

CONSTITUTIONAL AND LEGAL GUARANTEES FOR PROTECTION OF FOREIGNERS' RIGHTS IN THE RUSSIAN FEDERATION: THEORETICAL AND PRACTICAL ASPECTS.

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Abstract: Constitutional and legal guarantees granted to foreign citizens on the territory of the Russian Federation represent are of significant international legal interest. The article studies the theoretical aspect of constitutional and legal guarantees in general and their understanding in Russian science of constitutional law as a theoretical aspect, as well as the basic guarantees provided to foreign citizens in Russia as a practical aspect; the foreigners' right to access to Russian justice on equal terms with Russian citizens is of particular importance. The guarantee is formulated as an unconditional and inalienable right to use services of an interpreter under the threat of repealing any statutory act of a state body or judicial decision affecting the rights of a foreign citizen. The right of a foreign citizen to compensation for violation of his or her rights by state authorities and the procedure for its implementation are noted. The peculiarities of interpreter's participation in civil, criminal and administrative proceedings in court administration in Russia are considered including the examples of the existing judicial practice and the positions of the Supreme Court of the Russian Federation. The ways of self-defense of one's rights by a foreign citizen while participating in legal proceedings, as well as investigative procedural actions on the territory of Russia are proposed. The method of ensuring the verifiability of correctness of interpretation and translation presented to the citizen and executed on his or her order. The negative consequences of wrong interpretation and translation for an interpreter are studied; they represent a penitential guarantee of a foreign citizen's right to access Russian justice on an equal with citizens of Russia conditions and with equal liabilities

Key words: constitutional law, constitutional and legal guarantees, guarantees of foreign citizens' rights on the territory of Russia, equal access to justice for foreign citizens and citizens of the Russian Federation.

The issue of the constitutional guarantees provided by the Russian Federation legislation to foreign citizens on its territory is of vital practical importance for both foreign citizens and the international status of the state as a whole.

Constitutional guarantees are constitutional provisions ensuring legal protection of human rights and freedoms guaranteed by the Constitution of Russia. Therefore, guarantees are state duties to citizens and other persons residing on its territory.

M. V. Baglay says: " guarantees are referred to as legal remedies that ensure the realization of any right of man and citizen. A right can be realized only if there is someone's duty to provide it. Guarantees, as a matter of fact, are duties in relation to the constitutional rights and freedoms, it is state duty." Thus, while considering constitutional guarantees granted to foreign citizens in Russia it is necessary to imply not only declared guarantees, but also declared rights and duties stipulated in legally enforceable enactments.

The main document that contains the constitutional guarantees of protection of foreign citizens' rights is, obviously, the Constitution of the Russian Federation having territorial supremacy in the country and being the main (basic) law of the state. M. V. Baglay remarks that the Constitution, which is directly applicable and secures granting of a right, is on its own terms a guarantee of impossibility of its denial in any case.

Russian constitutional law one can see the difference between the forms of stipulating guarantees. M. V. Baglay noted that some of the rights are set declaratively by means of wording "everyone has the right...", others are determined and formulated as a guarantee – "freedom of the media is guaranteed...", still others sound as the object of protection of the law or state "the right to property is protected by law...". It should be noted that the difference in wording shall not in any way derogate the recognition, preservation or protection of certain rights, as well as provision of certain guarantees.

However, from the linguistic point of view the word "guaranteed" sounds more powerful in Russian language and its application is determined by different mechanisms of providing the opportunity proposed by state. Thus, Article 43 of the Russian Constitution it is noted that preschool and basic general education is "guaranteed", while everyone "has the right" to obtain higher education. In this example M. V. Baglay points to the relationship with a sufficient number of preschool and basic educational establishments in the Russian Federation and the apparent inability of the state to provide such affordable higher education.

It is possible to agree with this statement only in part, since the Constitution of Russia does not allow raising the issue of implementation of the provided guarantees depending on national economy, foreign policy and other provisions of the state. Judging by the analysis of the Russian legislation it is possible to make the reasonable conclusion that the guarantees and rights that are defined as "protected by the state" or "under the protection of law" are secured by special law with the detailed regulations of the procedure of their implementation and ways of protection, for example, the guarantee of protection of the right to labour captured in the Article is regulated in detail by the codified act – the Labour Code of the Russian Federation.

It is also necessary to pay attention to the wording "citizen" and "every" in the text of the Russian Constitution. The provisions containing "every" in the hypothesis would be applicable to any person on the territory of the Russian Federation including foreign citizens. It is provisions with the hypothesis "every..." that capture fundamental human rights and freedoms in Russia.

Part 3 of Article 62 of the Constitution of the Russian Federation stipulates that in the Russian Federation foreign citizens have rights and bear duties equally with citizens of the Russian Federation except for cases defined by Federal Law or International Treaty of the Russian Federation.

A special legally enforceable enactment regulating the rights of foreign citizens is Federal Law of 25.07.2002 № 115-FZ "On the legal status of foreign citizens in the Russian Federation". The term "foreign citizen" under part 1 of Article 2 of the abovementioned law means "a person who is not a citizen of the Russian Federation and has proof of citizenship (nationality) of a foreign state."

The basic general legal guarantees provided to foreign citizens by the Russian Federation are the guarantees of observance and protection of human rights and freedoms, possibility of self-protection of their rights by any means not prohibited by law (including self-help), international protection of human rights and freedoms, the right to demand compensation of harm caused by actions (or inactions) of state bodies and officials, inadmissibility of cancellation or restriction of human rights and freedoms.

Judicial guarantees include procedural safeguards of subjection to a jurisdiction, the right to qualified legal assistance in a foreign language chosen for a foreign citizen, the presumption of innocence, the prohibition on reconviction for the same crime, the invalidity of illegally obtained evidence, the right to appeal the sentence to a higher court in the procedure established by Federal Law, as well as the right to plead pardon or commutation, the guarantee against self-incrimination, the protection of victims of crime and abuse of power are provided by the state etc.

As it is noted by Barkhatovoy E. Y. in the commentary to the Constitution of the Russian Federation, on the territory of Russia being under the local national law foreign citizens do not break legal relationship with their own states while retaining certain rights and burden of some duties as citizens. That is why foreign citizens are assigned with some duties of Russian citizens

(for example, the duty of military service) and are not given individual rights (due to their nature) provided exclusively to Russian citizens (e.g. the right to be elected or appointed to certain positions - judge, prosecutor, notary, etc., the right to participate in referendums, etc.). Also a number of special rules are set for implementation of the right to labour in the case of foreign citizens, as well as in terms of social welfare, stay on the territory of Russia, procedure of bringing to administrative and criminal liability.

It is necessary to note that there are special regulations of Russian legislation established for specific groups of foreign citizens in Russia: diplomats enjoying diplomatic immunity, consuls, members of crews of foreign ships and aircrafts, etc.

Here Barkhatova E. Y. remarks that the Russian Constitution does not bind the application of equality between aliens and nationals and the principle of reciprocity, which is implemented in Russia regardless of whether such regime is used by foreigners in the relevant foreign country, which means by Russian citizens.

At the same time, if in a foreign country restrictions of rights and freedoms are applied only to Russian citizens, unlike other foreigners, i.e. they are discriminatory, the government of the Russian Federation can apply the act of retorsion. Retorsion - retaliatory restriction determined by the Government of the Russian Federation in respect of property and personal non-property rights of citizens and legal entities of those states, which has special restrictions on the property and personal non-property rights of Russian citizens and legal entities. The act of retaliation is applied for a certain period. The Government can also raise the issue of the application of retorsion if in the process of legal investigations the cases of discrimination of Russian citizens are found out. At the same time, if the act of retorsion is adopted, the court shall deny the protection of subjective rights of citizens who the act of retorsion is applied to. In order to apply the act of retorsion it is necessary to prove the fact of wrong-doing as regards the interests of the state as a whole but not particular individual.

Special legally enforceable enactments regulating the process of foreign citizens' participation in activities of society and state settle a number of procedural guarantees as regards the observance of the principle established in paragraph 3 of Article 63 of the Russian Constitution, namely equality between aliens and nationals of the Russian Federation (with legal exceptions).

In the context of constitutional and legal guarantees of foreign citizens in the Russian Federation the guarantees associated with the language barrier in the field of criminal and administrative prosecution and participation in judicial proceedings in general are of particular concern.

Part 2 of Article 26 of the Russian Constitution provides for the right of every person to use his or her native language or the language chosen for communication, education and creativity. The procedure of participation of Russian citizens and foreign citizens in the life of state and society in the most meaningful and important areas is regulated by special codified acts such as the Civil Procedural Code of the Russian Federation, the Russian Federation Code of Criminal Procedure, the Code of Administrative Offences of the Russian Federation, Administrative Procedure Rules of the Russian Federation.

As stated above in the Russian Federation the most common problem for foreign citizens is the language barrier.

Codified laws, which regulate the participation of citizens of both Russia and other states in the proceedings in judicial and other governmental bodies, provide special rights for foreign citizens.

So the judicial proceedings in courts of general jurisdiction within civil trials with participation of foreign citizens are covered in Section V where Article 398 specifies equal legal status of foreign citizens and citizens of the Russian Federation. The law imposes limitations on determining the jurisdiction rules of disputes; it is allowed to use agreed jurisdiction except in specified cases involving state interest of the Russian Federation including the protection of state secrets, as well as the disputed real property, special order of proceedings etc.

Article 9 of the Civil Procedural Code of the Russian Federation establishes the guarantee provided to persons involved in the case and not speaking the language, which is used in civil proceedings, to give explanations, decisions, speak, present petitions and file lawsuits in their native language or in any freely chosen language of communication, as well as use services of an interpreter. The interpreter is involved in the proceedings simultaneously and jointly with a person, who uses his or her services, including the proceedings at closed court sessions. The significance of the interpreter's status and guarantee of the correctness of interpretation are set in Articles 16, 18, 19, 20 of the Civil Procedural Code of the Russian Federation defining the ability to withdraw (to dismiss) the interpreter interested in the outcome of the case. The basic guarantee of the correctness of interpretation is the criminal liability of the interpreter for intentionally wrong interpretation according to Article 307 of the Criminal Code of the Russian Federation providing punishment up to imprisonment for a term of five years. The interpreter gives a receipt proving his or her recognition of the liability before he or she starts interpreting. In addition, Article 162 of the Civil Procedural Code of the Russian Federation grants the right to the interpreter to make comments about the accuracy of interpretation, which shall be entered in the court records that are made throughout the process. All stated explanations, arguments and comments are entered into the court records, which allow restoring the progress of the process in the future ensuring the verifiability of interpretation and judicial decisions in general.

Apart from that, civil procedure law contains no prohibition on audio recording within the judicial process with technical means of the persons participating in the case. It is necessary to make audio records to ensure verifiability of the correctness of interpretation. According to court practice notification procedure of making audio records is adopted, that is, before starting audio recording it is recommended to inform the participants and the court about this fact in order to legitimize the records in the future. These records can be used not only to check the compliance of the interpretation to the position expressed by a foreign citizen, but also to challenge the contents of the trial record. Here it is expedient to send a copy of the recording on the tangible medium to the court along with the submission of remarks regarding the trial record.

Similar guarantees of eliminating the language barrier is provided to foreign citizens in criminal procedures and legal procedures on administrative offences except for the fact that in these procedures interpreter's participation is provided free of charge for an indigent person at state expense necessarily at the request of the person.

The status of the interpreter in criminal procedures is defined in Article 59 of the Russian Federation Code of Criminal Procedure. The interpreter can be involved by either court or on the basis of the crime investigator's decision.

The constitutional right to choose the language for communication is enshrined in Article 16 of the Russian Federation Code of Criminal Procedure, "the participants of criminal proceedings who do not speak or are not proficient in the language, in which the proceedings are conducted, in a criminal case must be clarified and secured of the right to make statements, give explanations and testimonies, present petitions and file lawsuits, get acquainted with the materials of the criminal case, testify in court in their native language or another language they speak, as well as receive interpreter's assistance free of charge in the order established by this Code." Moreover, the right to receive interpreter's assistance free of charge is provided to any participant of the process including the suspect, accused, civil plaintiff, defendant, victim and witness.

It should be noted that identification of the need for the involvement of an interpreter to participate in the proceedings is conducted in Russian at the beginning of procedures. So it is necessary to declare the need for interpreter's involvement immediately after the start of the process in any available way. Any investigational or procedural action, which is taken against a foreign citizen not knowing the language, in which the proceedings are conducted, automatically eliminates the legitimacy and the validity of the results obtained in the course of such event.

Violation of the rule regarding the language of the proceedings including the failure of providing a foreign citizen with the possibility to use services of an interpreter at court session implies the unconditional cancellation of any legal act or act of public body affecting the right of

a foreign citizen in any way (Article 330 of the Civil Procedural Code of the Russian Federation, 389.17 of the Code of Criminal Procedure, 25.10 of Administrative Offenses Code of the Russian Federation, 310 of Administrative Procedure Code).

Part 2 of Article 24.2 of Administrative Offenses Code of the Russian Federation provides for the right of foreign persons participating in the proceedings and not speaking the language, in which they are conducted, to make statements, give explanations, present petitions and recusations, file lawsuits in their native language or another language freely chosen by the above persons for communication, as well as use services of interpreter. The status of an interpreter is defined in Article 25.10 of Administrative Offenses Code of the Russian Federation. However, it should be noted that the interpreter's liability in legal proceedings on administrative violations is administrative, but not criminal. The most severe punishment for intentionally wrong interpretation is a monetary fine. In this case the inadequacy of the legal warranty of interpreter's honesty is obvious in the context of equal access to justice for both foreign citizens and citizen of Russia. However, legal proceedings on administrative violations (as in all other types of proceedings) provide for the right of any person participating in the case to involve an interpreter on a fee-paid basis at his or her own expense. Involved thus interpreters should have more credibility among foreign citizens – participants of the proceedings.

In any case, the establishment of intentionally false interpretation is the ground for cancellation of any final decision of a public body or court under Article 25.10 of the Administrative Offenses Code of the Russian Federation.

The status of an interpreter in administrative proceedings under the Administrative Procedure Code is enshrined in Article 52 of the Administrative Procedure Code, where the provisions are made as regards criminal liability for intentionally wrong interpretation, which is a sufficient guarantee of observance of the constitutional principle of equal access of both a citizen of the Russian Federation and a foreign citizen to the administration of justice because tough criminal and legal consequences of the deliberately wrong interpretation together with the provisions of Article 310 of the Administrative Procedure Code of RF, which establish the unconditional basis for cancellation of any act due to violation of the rights and safeguards associated with the correct interpretation indicate sufficient protection of a foreign citizen in this aspect.

Thus, the main constitutional judicial guarantee for the protection of foreign citizens' rights on the territory of the Russian Federation, which determines the access to justice and participation in judicial proceedings on equal terms with citizens of the Russian Federation, is firmly articulated in the legislation system.

Court practice also supports the arguments about the illegality of the judicial decisions made in violation of the rules concerning the language of court proceedings in respect of violation of foreign citizens' right to use services of an interpreter.

Thus, Bulletin No. 7 of the Supreme Court of the Russian Federation for 2010 according to the materials of the Court order of the judicial panel of the Supreme Court of the Russian Federation dated 10.12.2009 No. 66-009-219 clarifies that failure to provide an interpreter at the court session (on reasonable grounds and necessity) is violation of the right to defense, which, in turn, leads to unconditional cancellation of the judicial act – decision (resolution). This position of the courts is in conformity with international covenants and agreements including the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which the Russian Federation is a party of.

In paragraph 9 of the Resolution of Plenum of the Supreme Court of the Russian Federation of 31.10.1995 N 8 "About some issues of application of the Constitution of the Russian Federation by courts in the administration of justice" it is clarified that the right to use his or her language is prescribed in part 2 of Article 26 of the Constitution of the Russian Federation. Due to this constitutional provision and in accordance with the provisions of part 2 of Article 9 of the Code of Civil Procedure of the Russian Federation, part 2 of Article 18 of the Code of Criminal Procedure of the Russian Federation, part 2 of Article 24.2 of the Code of Administrative Offences of the Russian Federation the court is obliged to explain and provide the persons involved

in the case with the right to make statements, give explanations and testimonies, file petitions, file complaints and appear in court in their native language or another language, which they know, as well as use the services of the interpreter.

Here, paragraph 16 provides courts with explanations regarding the necessity of fulfillment of constitutional provision stipulating that while implementing justice it is not allowed to use the evidence received in violation of the Federal Law (part 2 of Article 50 of the Constitution of the Russian Federation), as well as implementation of the requirements of Article 75 of the Russian Federation Code of Criminal Procedure, which stipulates that evidence obtained in violation of the criminal procedure legislation have no legal force and cannot be taken as a basis for prosecution.

It is also explained that the evidence are supposed to be admitted as being obtained in violation of the law if during their collection and preservation the rights of the man and citizen guaranteed by the Constitution of the Russian Federation are violated or the procedure of evidence collection and preservation prescribed by the criminal procedure legislation is not observed, as well as if the collection and preservation of evidence are carried out by an unauthorized person or body or as a result of activities that are not provided by rules of procedure.

Thus, judicial practice prescribes the considered guarantee of access to the courts of a foreign citizen on a par with a citizen of the Russian Federation by providing the opportunity to use interpretation services delivered if applicable on a pro-bono basis in appropriate way and of required quality under the threat of recognition of the fact that evidence and judicial or departmental acts obtained as a result of any investigation and legal proceedings are invalid and illegal.

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