

THE ISSUE OF PUBLIC OFFICIALS' PROMISES IN THE LIGHT OF PHILOSOPHY OF STATE

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Abstract: The legal nature of promises of state bodies has not become a subject of discussion in the theory and philosophy of Soviet and Post-Soviet Law. Issues related to the promise/assurance of an administrative act and its legal consequences are studied in more detail in the doctrine of German administrative law. Moreover, positive legal provisions on the promise of an administrative act exist in Germany.

The results of studying the promise in this article will be presented in a deductive methodology (from general to specific). The article will present:

First, within the framework of the types of law enforcement, theoretical approaches about the legal nature of the promises made by officials, their place in the system of sources of law (philosophical and legal plane);

Second, the essence of the promise made by an official as a performative act, types of promises and connection with the doctrine of legal expectation (theoretical and legal plane);

Third, judicial practice of consideration and resolution of disputes related to the promise made by administrative bodies.

The authors conclude that the fulfillment of public promises of high-ranking officials is not only a moral duty, but also causes political and legal consequences.

Keywords: promise, state body, legal understanding, psychological theory of law, theory of natural law, administrative body, administrative act.

Introduction

General provisions. The state itself is a complex social phenomenon that ensures the integrity of the society. The concept of the state has passed a long historical path, various stages of development, ranging from the primary and undeveloped

state to the formed integral system of developed social life. In each era of mankind, views on the state have changed due to the concretization of fundamental values and ideals.

As is known, the problems concerning political rights and their implementation were in the focus of thinkers of the ancient world. The polit-

ical life of the states (polises) of Ancient Greece entered the history of mankind as the first example of democratic government. The ideas and principles of democracy developed by the civilization of Ancient Greek had a great influence on the history and practice of state building in subsequent eras. It was on the land of Ancient Greece that the fundamental concepts of democracy - equality, the rule of law, the election of state bodies and officials, and the active participation of citizens in solving state problems were originated (Harutyunyan, 2021, p. 104).

One of the most famous teachings regarding the ideal state belongs to the Ancient Greek philosopher Plato. According to the philosopher Plato (1998), there are the following types of states:

- state as an idea,
- perfect ideal state,
- existing in the world of ideas,
- actually existing states.

According to the Ancient Greek philosopher, actually existing states need to be transformed and improved so that they become consistent with the ideal state, namely the state as an idea.

One of the fundamental principles of the ideal Platonic state is the principle of justice. This principle assumes that the interests of the entire state are more important than the interests of individuals, and each element in the state must perform its own functions. Taking into account the principle of justice, according to the philosopher, the population of an ideal state should be divided into three main classes, which, respectively, are representatives of the three main components/principles of the state:

- philosophers-rulers - representatives of the reasonableness (wisdom),
- warriors - representatives of the furious (courage),
- artisans and farmers (this class includes all people, in one way or another connected with production) - representatives of desirable (Plato, 1998).

The Ancient Greek philosopher Plato demands *truthfulness and honesty* from citizens, because the state dies without these qualities. Is it worth believing these requirements and are they not a trick that misleads citizens temporarily in order to preserve the existing state order? Unfortunately, the philosopher left these questions to us for consideration.

Aristotle is another great philosopher who classified the forms of government in the state. Aristotle opposes his project of an ideal state to all other theories of state structure that are not accepted, condemned and rejected. Aristotle, having his own idea of the better, distinguishes between the correct and incorrect forms of the state. The philosopher considered *politia* (a mixture of moderate oligarchy and moderate democracy) the most correct form of government for the state, in his words: “*Politia* as the best form of state, combines in itself the best features of oligarchy and democracy, but is free from their shortcomings and extremes. *Politia* is the “average” form of the state and the “middle” element in it dominates everything: in morals - moderation prevails, in property - average prosperity, in ruling - the middle class. A state consisting of average people will also have the best state form” (Aristotle, 2004, p. 608).

However, it should be noted that when the question concerns truthfulness and honesty, Aristotle acts as an opponent of unconditional truthfulness, since this “averageness” is not self-sufficient, it must be subordinated to the “moral beauty” and “usefulness” of an act, i.e., to the requirements that develop in society and have a common meaning in the form of traditional norms, rules, and habits. According to Aristotle (1893), “A truthful person, like a good friend, “...will behave in the same way with strangers and intimates, relatives and strangers, although, of course, as it should in each individual case...”, in his words he admits “owning to what he has, and neither more nor less” (p. 126). This is morally good and commendable, while “deceit in itself is bad and deserving condemnation” (Aristotle, 1893, p. 128). At the same time, a forced deceit (under the pressure of circumstances beyond human strength) is forgivable, “evokes sympathy,” and therefore is not punishable.

The problem of the truthfulness of a person's honesty in statements and promises did not play much importance for Aristotle and Plato, as it was at Cicero as well, who lived in the era of the decline of the morals of Roman society and the beginning of tyranny of emperors (Utchenko, 1972). It is far from accidental that in almost all of his works, Cicero, in some way citing historical examples of the ability of people to follow an honest and virtuous lifestyle, tries to carve out the image of an “honest person”.

Being a lawyer, Cicero, however, did not divide duties as moral and legal, because everything is aimed at achieving a common goal, namely, to streamline a person's life. In his scientific essay "On Duties", Cicero (1887) exalts justice as the highest of the virtues, the basis for which is "fidelity, namely, truthfulness and, of course, steadfastness in words and obligations assumed" (p. 14).

It should be noted that Cicero adheres to the opinion of Aristotle and believes that duties depend on circumstances, since when circumstances change, obligations cannot remain the same. According to the philosopher, a person's duty must correspond to his natural capabilities. If we compare fraud with force, then "fraud", in his words, "seems to belong, as it were, to the fox, and force to the lion". "And neither to be congenial with man. Yet of the two, fraud is the most detestable" (Cicero, 1887).

The Roman philosopher Cicero postulates the most important principle of moral philosophy - the unity of moral duty ("morally beautiful") and useful. According to his postulate, the immorality cannot be useful, it always goes harm. Cicero (1887) says: "...nothing that is not worthwhile is beneficial, even if you could achieve it, uncovered by anyone" (p. 216). The philosopher deduces a very clear and strict rule "either what seems useful should not be shameful; or, if it is shameful, it should not seem useful". Useful, advantageous should not contradict the moral. But is the morally beautiful immutable and permanent? No. (Cicero, 1887). The Roman philosopher enhances the conditioning of moral norms with the following words: "Thus many things which seem to be right by nature become wrong by circumstances. *To keep promises*, to abide by agreements, to restore trusts, to return what has been accepted for safekeeping, by a change of expediency becomes morally wrong" (Cicero, 1887, p. 228).

As we can see, the topic of "promise" has always aroused interest both from an ethical point of view and from a moral philosophy. First of all, by "promising" we assume responsibility and obligation, that is, it can be said that a promise in itself creates an obligation.

In Roman law, unilateral promises given to an indefinite circle of persons or directed to a certain person who has not yet received this promise, as a rule, were not sources of obligations. As

an exception, unilateral promises could be sources of obligations (obliges the person making a promise immediately, i.e. without accepting it by another person) only in the following cases: if unilateral promises were made in favor of a temple (*Votum*) or in favor of the state (*pollicitatio*¹ (Bernstein, 1871, p. 19)). Unilateral promises made by a private person, i.e. promises that an unspecified person, if he/she finds a thing or performs something else, will receive a reward, were also protected by law (Pukhan & Polenak-Akimovskaya, 2000, p. 294).²

In Roman law, a promise made to the state was considered a legally binding and legally enforceable act if there were special reasons for this (*instacansa*), for example, a person who has made a promise is given or will be given an office/position; the community was damaged by fire or earthquake, but the fact is that the promise made to the state was legally protected (Baron, 1910, pp. 16-17).

The concept of "social state" was first introduced into scientific circulation in 1850 by the German statesman and economist Lorenz von Stein (1815 - 1890). However, E. P. Hennock (2007), a professor of history at the University of Liverpool, in his work "The Origin of the Welfare State in England and Germany, 1850-1914: Social Policies Compared" proved that the concept of the social state, almost simultaneously, began to develop from the middle of the 19th century in England and Germany. In any case, it should be perceived that, in one form or another, social policy was carried out by states throughout the history of their existence. If we look back at history, we will see that already in ancient Greek Sparta there was an institute of guardianship over orphans. It should be noted that social policy was carried out in later historical periods - in medie-

¹ The word "pollicitatio" has two meanings: in the narrow sense it means a unilateral unaccepted promise, in the broad sense it means both an accepted and an unaccepted promise. Grammatically, the word "pollicitatio" means only one side of the contract - the statement of the obliging party; but also in Russian, French and German, the word "promise", corresponding to the word "pollicitatio".

² In modern states, too, a public promise to pay a reward (including a promise given by the state) is the basis (as a unilateral action) for the emergence of a private legal obligation (Article 1041 of the Civil Code of the Republic of Armenia).

val Europe and in the states of the New Age as well.

One of the main stages in the development of the ideas of the social state was the period of economic development after the Second World War, which is known for the formation of clearer classifications of theoretical models of the social state and the beginning of their construction in European countries.

Starting from the second half of the 20th century, in jurisprudence, and in particular in constitutional law, the idea of a modern state as a social state appeared. In many constitutions of foreign states, the concept of “social state” is currently enshrined: in the RA Constitution it is enshrined in Article 1 (Constitution of the Republic of Armenia, 2015).

The concept of social state (welfare state) is quite complex and comprehensive and can be considered from different points of view. Thus, economic, political and ideological approaches to the consideration of this concept may be distinguished in the scientific literature. However, within the framework of all these approaches, the existence of some basic elements is assumed, without taking into account the interaction of which it is impossible to obtain a basic idea of the social state. These elements include the state itself (its public authorities), the market and the society (Tavip, 2014).

Today, most constitutions include a wide range of socio-economic rights, either as directly enforceable provisions or as desirable statements or directive principles. One of the modern indicators of a social state is social justice, which essentially means creating, ideally, equal starting opportunities for all members of society through the system of upbringing, education and social support, etc. (Dawood & Bulmer, 2017).

In a philosophical sense, the Constitution is a promise, an oath that the state gives to its citizens. Frequent changes/amendments in the constitution are tantamount to inability and unwillingness to keep the given word. If we want to secure the blessings of freedom for ourselves and our descendants – and to make sure that its promises of protection are worthy of our respect – then we must always respect the principles of our nation’s fundamental law and the public servants who will fulfil those promises. Of course, not all constitutions are formed as an antidote to the state of nature. People who are

dissatisfied with their current political system demand promises from their superiors to rule according to a more just or orderly set of criteria. When citizens participate in constitution-making processes, the desire to improve their economic situation and social circumstances is often at the foreground of their minds. Many people would like to see a firm (and preferably enforceable) promise in a constitution that their needs and priorities will be resolved by the state.

Because the constitution of the country is its supreme law, the recognition of the right to social security in the constitution of the country usually means that this right enjoys a higher level of protection than if it were simply included in ordinary law. However, ensuring socio-economic rights requires public resources and the potential of the state (in terms of technical knowledge and efficient administrative structures) (United Nations, 2018). If the state fails to bring them together, then rights will exist only as unfulfilled promises. It is said that this can have a harmful effect on other rights and on the constitutional system as a whole, as it can lead to a political culture in which the promised rights exist only on paper and are not regarded by the public or the government as credible or binding to execution (Dawood & Bulmer, 2017).

We conclude from the foregoing, that the constitution must be realistic. All states, even the poorest ones, have a direct duty to “take the fastest and most effective steps possible” to realize social and economic rights to the maximum extent possible.

In the history of political and legal doctrines, however, the need to keep the promises of the monarch (other officials) or the possibility of their failure has been discussed. For example, in the Middle Ages there were politicians, philosophers who not only justified the fact that the sovereign did not keep his word or promise given to them, but also viewed it as a necessity.

However, it is assumed that a person living in the 21st century must trust the clearly formulated (given) promise of the power he has elected. Modern man, expecting that the promise made by the highest body of state power will be fulfilled, can build his further behavior in accordance with this promise. However, expectations and reality diverge on this issue.

If in the Middle Ages the monarch, considered a “cunning fox”, due to his absolute power,

could avoid to fulfill a publicly made promise, in the 21st century, on the contrary, a populist leader, thanks to his “natural” abilities to resort to manipulation, is able to easily avoid fulfilling promises and successfully get rid of the political and legal consequences of failure to fulfill them. A vivid example of this is the public promise of the Prime Minister of the Republic of Armenia and the Minister of Justice of the Republic of Armenia dated 11 May, 2020, to gradually increase the salaries of judges (Pashinyan & Badasyan, 2020). This promise was specific and definite, as it indicated a clear timeframe and amount of salary increases, which served as the basis for a number of judges to take loans to purchase housing, but the promise was not kept, and these judges faced the difficult task of meeting their financial obligations in a timely manner.

Failure to fulfill promises made by leaders or officials of the state can always be justified by various pretexts; however, the political and legal threats of failure to fulfill the promises of officials should not be underestimated. Thus, the failure of the center-right government in France to fulfill its promises to combat unemployment, the encroachment on the social gains of the masses, became the main reason for the defeat of the parties of the government coalition in the early parliamentary elections of 1997 (Baglay et al., 2004, pp. 279-280). It is no exaggeration when Russian constitutionalists point out that the ultimate reason that regimes in the countries of the former Soviet Union and Eastern Europe fell was their prolonged failure to fulfill their promises (Mishin, 2013, pp. 208-209).

The third President of the Republic of Armenia, whose term of office expired in 2018, initiated constitutional reforms in 2014, which provided for the transition to a parliamentary form of government. On 10.04.2014, the President of the RA at a meeting with members of the Specialized Commission on Constitutional Reforms, stated: “I officially declare that I, Serzh Sargsyan, will never nominate my candidacy for the post of the President of Armenia again. If, as a result of the final discussions, a path is chosen that does not correspond to my desire - I mean the parliamentary model of government - then I will not apply for the post of the Prime Minister

either. I am even sure that the same person should not more than twice in his life claim to be at the helm of the state in Armenia again” (Sargsyan, 2014).

On 06.12.2015 a referendum was organized in Armenia, as a result of which amendments were made to the RA Constitution and a transition was made from a semi-presidential form of government to a parliamentary form of government. Changes to the Constitution entered into force in full in 2018, after which the President of the Republic of Armenia (whose term of office had already expired), contrary to his public promise, was nominated as a candidate for the Prime Minister, and on 17.04.2018 was elected Prime Minister of the RA by the National Assembly of the Republic of Armenia. Following it, mass protests began in Armenia, during which the accusation that the President of the Republic of Armenia openly violated the clear promise made in 2014 that he would not aspire to lead the country for the third time and would not run for prime minister, was heard most often.

A few days after the election on 04/23/2018, the RA Prime Minister resigned, noting: “Street movement opposes my tenure in this position” (Sargsyan, 2018). The organizers of the street movement called the occurrence a revolution, after which a series of tragic events took place in Armenia, the threats of which have not yet been fully disclosed.

Thus, non-fulfilment of promises by persons holding high public positions can have devastating consequences for the state; therefore the science of constitutional law should try to find legal guarantees that will protect society from the negative consequences of unfulfilled promises, especially if these promises objectively served as the basis (reason) for organizing the legal behavior of members of society. Failure to fulfill such promises and their consequences should be the subject of not only political, but also constitutional and legal assessment. The aforesaid is especially relevant in such state systems where populism prevails. However, such issues require a separate study. Whereas the subject of this article is more specific: the promise of an official (administrative body) to adopt an administrative act and its consequences.

Promise of an Administrative Act as a Subject of Scientific Research

The promise of administrative bodies to adopt an administrative act and its legal consequences have not been the subject of comprehensive scientific discussion in the Post-Soviet states. There are also no studies on the legal consequences of the promise of an administrative act in Russian and Armenian jurisprudence. There are no positive legal regulations regarding the promise of an administrative act in Russia and Armenia as well. Even if disputes related to the promise of an administrative body arose in Armenian practice, these disputes either did not become the subject of court consideration, or, in order to resolve the dispute in court, the parties accepted the doctrine of legitimate expectations as a basis.

Issues related to the promise of an administrative act and its legal consequences are studied in more detail in the doctrine of German administrative law. In some works on German administrative law, recently translated into Russian, analyzes about the promise of an administrative act can be found (Pudelka, 2021, pp.71-72; Broker, 2021, pp. 84-93). Moreover, there are positive legal provisions on the promise of an administrative act in Germany.

The results of studying the promise of an administrative act in this article will be presented in a deductive methodology (from general to specific). The article will present:

First, within the framework of the types of law enforcement, theoretical approaches about the legal nature of the promises made by officials, their place in the system of sources of law (philosophical and legal plane);

Second, the essence of the promise made by an official as a performative act, types of promises and connection with the doctrine of legal expectation (theoretical and legal plane);

Third, judicial practice of consideration and resolution of disputes related to the promise made by administrative bodies.

The Legal Nature of the Unilateral Promise of an Official by Types of Legal Understanding

General provisions. From the point of view of legal positivism, the obligation to fulfill the pro-

mise made by an official can be considered part of objective law if the rule on this obligation is fixed in a regulatory legal act, otherwise the judgment about the obligation to fulfill the promise is not in itself a legal norm and, therefore, cannot entail legal consequences and cannot be considered a normative basis for resolving a legal dispute. From this point of view, the substance of the legal obligation to fulfill the promise made by an official is absent if there is no positive legal norm in the given legal system on the obligation to fulfill the promise.

The Normativists consider it a duty to keep a promise as a moral obligation (part of a static normative system). Thus, Hans Kelsen in his work "Pure Theory of Law", as an example of the norms of a static normative (moral) system, indicated the norms "do not lie", "do not cheat", "do not give false testimony", "do fulfill the promise" - and he derived these norms from a more general norm, namely from the norm that prescribes to be truthful (Kelsen, 2015, p. 242).

Can the norm on the obligation of an official to fulfill the promise made be considered part of a dynamic normative system (legal order)? The answer to the question is positive: it is important that the norm providing for such an obligation is valid and effective. The content of this norm does not matter for belonging to a dynamic normative system (law and order).

The second question that may arise is whether H. Kelsen wants the obligation of an official to fulfill a promise to be provided in a dynamic regulatory system? After all, the state limits itself with this self-binding. The answer to this question is also positive. The state, having introduced into the legal order the norm on the obligation to fulfill the promise made by an official, limits its power, however, the self-binding of the state was not alien to the theory of H. Kelsen. The state, having introduced into the legal order the norm on the obligation to fulfill the promise made by an official, limits its power, however, the self-binding of the state was not alien to the theory of H. Kelsen. Although he thought that the state exists independent of law and even precedes the law, at the same time he noted that the state fulfills its historic mission by creating the law, "its" law, the legal order, and "submits itself to it afterwards", "a state not subject to law is inconceivable" (Kelsen, 2015, pp. 349-380). From the foregoing, we can conclude that from the point

of view of normative legal understanding, a valid and effective norm on the fulfillment of a promise made by an official can be considered part of the legal order.

Outside of positive law, the legal obligation to fulfill a promise given by an official can only be discussed within the framework of a broad legal understanding, the supporters of which, however, rarely speak explicitly about the legal nature of promises made by officials, their place and role in the system of sources of law. In such cases, judgments about the public and legal nature of the promise should be derived from the general judgments of the supporter of the given legal understanding.

In this article, we will consider those types (directions) of legal understanding, where issues related to the legal nature of the promise made by officials are discussed explicitly: Let us turn to the doctrine of natural law (on the example of international law) and the psychological theory of law of L. I. Petrażycki.

The Legal Nature of the Promise of the State According to the Theory of Natural Law (On the Example of International Law)

Specialists of international law consider promises of the state to be a source of law in a material sense (Anzilotti, 1961, p. 78), or as a unilateral act of a state that gives rise to international legal consequences, or a source of international obligations (Kalamkaryan, 1984), or a source of international obligation (Konnova, 2014, p. 9). These qualifications, given by modern specialists in international law, were influenced by the teachings of the founder of the theory of international law H. Grotius.

The doctrine of H. Grotius on the obligation to keep promise. Experts in the history of legal and political doctrines note that, according to the teachings of H. Grotius, the source of natural law is the human mind, which contains the desire for a calm communication of a person with other people. In accordance with this reasonable public sociability, a person has the ability to know and act according to general rules. Such observance of the general rules of coexistence is the source of the so-called law in the proper sense. This includes the “obligation to fulfil promises” (Nersesyants, 2004, p. 300). Regardless of the pres-

ence of written laws and ascertainment, a person by his very nature is inherent in the desire for justice, the desire for such an order in which the coexistence would not be violated. For this purpose, a human develops special norms that regulate relations between people in the society. These rules prescribe ... the fulfillment by people of the promises they have made. Whatever is contrary to these principles is also contrary to human nature (Bihdriker, 1938, p. 112).

It is clear from the quotations that H. Grotius considered the obligation to keep (fulfill) the promise a requirement of natural law, intended to ensure justice and coexistence. If any rule or behavior is contrary to the requirement to fulfill a promise, this means that this rule or behavior is contrary to the natural rights of a person.

H. Grotius in his well-known work devoted a separate chapter (XI) to promises, where he discusses in detail the nature of a unilateral promise, the conditions for the legitimacy of a promise, and other issues. H. Grotius distinguished three stages of expressing the will about future actions, and accordingly singled out three modes of promise: 1) a bare assertion not binding; 2) a mere promise gives rise to a natural obligation, but no right arises for another; 3) promise from which rights arise for another person.

1) A non-binding bare assertion is an expression of the will existing in the present about the future intentions.

This regimen of promises is vague, since H. Grotius does not point to an example of an expression of will about future actions that does not bind a person. Under such conditions, it is difficult to imagine a bare assertion about future actions that does not legally or naturally bind the person who made the promise. It can be assumed that a bare assertion did not entail a natural or legal obligation to fulfill (preserve) it, since the statement (assertion) about future actions was a simple description of goals, and future actions. The person who made the assertion does not express a direct and clear will to do something in the future. In other words, a bare assertion about future actions was considered a description of future actions (intentions), and not a performative act³ (Arutyunova, 1990).

2) In the case of a promise that gives rise to a

³ Performative (from Medieval Latin *performo* - I act) - a statement equivalent to an action, an act.

natural obligation, “the will itself determines itself for the future with a sufficiently clear expression, indicating a readiness to persist in its intention” (Grotius, 1956, p. 330). This type of promise, although it obliges a person, but this obligation has a natural character and not legal. Promises that give rise to a natural obligation, but no legal right arise for the other party, are related to mercy, gratitude, and etc. For example, if a person promised out of mercy to provide material assistance to another person, then he is bound by a moral (natural) obligation to fulfill the promise; however, the other party, on the basis of this promise, cannot by legal procedures demand the fulfillment of the promise or the imposition of a penalty for non-performance of the promise. Grotius noted that “the promiser cannot be compelled by natural law to keep the promise” (Grotius, 1956, p. 330).

3) In the case of a promise that gives rise to the right to demand, the expression of readiness to concede own rights to another is added to the indicated self-determination of the will. This is a perfect promise that entails an action similar to the alienation of property. It is either a way of alienating a thing (for example, a promise to give up something), or it is an alienation of some part of our freedom (for example, a promise to fulfill something) (Grotius, 1956, p. 330).

The second and third types of promises, if they are expressed by the wording “I promise...” and express a clear will for future actions, then in modern terminology they can be called performatives, that is, speech acts equivalent to action. The second type of promise limits the person making the promise, not legally, but morally. A promise of the third type entails legal consequences: the addressee of the promise acquires the right to claim.

General Theoretical Problems of the Official's Unilateral Promise

General Provisions. A unilateral promise made by an official may form certain expectations in his addressee, and the latter can organize his behavior on the basis of this promise, with the expectation that the promise will be fulfilled. If an official, without any reasonable legal justification, does not fulfill his promise, as a result of which the person suffers certain damage, then he

should be able to take advantage of legal protection. The legal basis for such protection can be the doctrine (principle) of protecting legal (legitimate) expectations.⁴ The principle of protection of legal expectations arises mainly for two reasons.⁵

1. The expectation arises on the basis of the termination of a subjective right at the stage of its implementation as a result of a change (termination) of the law (legitimate expectation).
2. Expectation arises on the basis of a unilateral promise of public authorities (lawful expectation). The Venice Commission, in opinion CDL-AD(2016)007 (Rule of Law Checklist) in the 5th paragraph of section “B” (Legal Certainty), reveals the essence of the principle of legitimate expectations as follows: “...public authorities should not only abide by the law but also by their promises and raised expectations. According to the legitimate expectation doctrine, those who act in good faith on the basis of law as it is, should not be frustrated in their legitimate expectations”.

First, the Venice Commission derives the protection of legitimate expectations from the principle of legal certainty.

Second, the Venice Commission also uses the concept of “legitimate expectations” when describing the expectations arising from the promise of the public authorities. The use of the term “legitimate” does not have a clear justification, therefore, first of all, it should be taken as a conventional term. In addition, the use of the concept “legitimate” can be explained in terms of a broad type of legal understanding. The fact is that the unilateral promises of public authorities that are outside the legislative text, from the point of view of the positivist (legist) type of legal understanding, do not bind the body that made the promise, however, from the point of view of the theory of natural law (H. Grotius) or

⁴ As a rule, the concept of “legal expectation” is not used in doctrinal sources and judicial acts. In view of this, referring to such sources, we will apply the concept used by this author.

⁵ There is no need to separate legitimate and lawful expectations if, in a given legal system, the obligation to fulfill a promise is provided for by the laws of the state. For example, in Germany, the legal issues related to the promise to adopt an administrative act, including the legal consequences of failure to fulfill the promise, are regulated by law.

the psychological theory of law (L. I. Petrażycki) are binding and subject to legal protection.

In order for a unilateral promise made by an official to be considered a basis for the formation of a legal (legitimate) expectation, and for the state to protect this expectation, among other conditions, the promise must be predominantly a reformative act, and the will of the official about future behavior must be specific and substantive.

The Promise of Administrative Bodies and Its Legal Consequences in the Administrative Law of the Post-Soviet States

General provisions. The legal nature of the promise made by administrative bodies to accept or not to accept an administrative act (hereinafter referred to as the assurance of an administrative act) and its consequences were not the subject of a comprehensive study of the Soviet science of administrative law. The Soviet positive administrative law also did not provide for the regulation of the legal nature of the assurance and its consequences.

After the collapse of the USSR, the legislation of individual states provided for rules governing certain provisions on the assurance of an administrative act (for example, Georgia, Turkmenistan, and Azerbaijan).

Legislative Regulation of Promise of an Administrative Act

There is a separate article on the assurance of an administrative act in Georgia and Turkmenistan called “Assurance of an administrative body”. At the same time, both countries provide for a legislative definition of the assurance of an administrative body. Thus, in Paragraph 1 of Article 9 of the “General Administrative Code” of Georgia (2021), the assurance (promise) of an administrative body is defined as follows: *“The assurance of an administrative body shall be a written document confirming that the current act shall be performed. This document may become grounds for legal reliance of an interested party”*.

Paragraph 1 of Article 29 of the Law of Turkmenistan “On Administrative Procedures” (2017) gives a similar definition, but does not

indicate that a written document containing an assurance can become the basis for the legitimate trust of the person concerned.

“An administrative body may assure to issue an administrative act only after the interested parties submit personal opinions and the administrative body gives its written consent. The consent shall be required under legislation for issuing the promised administrative act,” (General Administrative Code of Georgia, 2021, Paragraph 3 of Article 9). A similar definition is given in the Law of Turkmenistan “On Administrative Procedures”.

The legislation of both states also provides grounds for recognizing the assurance of an administrative body as invalid or for the non-existence of legitimate trust in relation to the assurance. Thus, legal trust in respect of the assurance of an administrative body cannot exist (Georgia), or the assurance of an administrative act is invalid (Turkmenistan) if:

1. it is based on an illegal assurance of an administrative body;
2. it is based on the unlawful act of the interested party;
3. if due to a change in the relevant regulatory act, the person cannot meet the established requirements (Georgia);
4. it contains signs used to invalidate an administrative act (Turkmenistan).

Unlike Georgia and Turkmenistan, in the Law on Administrative Proceed of Azerbaijan, the norms on assurance are enshrined in an article on the principle of protecting the right to trust. According to Paragraph 3 of Article 13 of the law, the trust of individuals or legal entities in assurance or statements of administrative bodies related to the subsequent adoption or non-adoption of an administrative act is protected by law. Assurance or statement of administrative authorities are recognized as an effective guarantee and form the basis of the right of confidence only if they are made in written form. The trust of individuals or legal entities in administrative practice cannot be based on illegal actions.

The Promise of an Administrative Body in the Judicial Practice of the Republic of Armenia

The RA Law “On the Fundamentals of Admin-

istration and Administrative Proceedings” does not provide for a provision on the promise/assurance of an administrative act. This law does not expressly (explicitly) provide for the principles of protecting legitimate expectations or the right to legitimate trust. However, the RA judicial authorities often refer to the doctrine of the protection of legitimate expectations. Thus, the Constitutional Court of the Republic of Armenia in its decisions DCC-723, DCC-741, and DCC-881 stated the possibility of protecting the right of ownership on the basis of legitimate expectations.

On 18 March, 2008, the Constitutional Court of the Republic of Armenia noted in Paragraph 8 of the decision DCC-741: “*The protection of property rights guaranteed by Article 31 of the RA Constitution is granted to those persons whose property rights have already been recognized in accordance with the procedure established by law or who, by virtue of the law, have a legitimate expectation of acquiring property rights*”.

The principle of protecting legitimate expectations is also applied by the RA Administrative Court. The Administrative Court of the Republic of Armenia in certain cases considered the promises/assurances made by state bodies as grounds for the formation of a legitimate expectation.

Thus, on 18 December, 2001, the Government of the Republic of Armenia entered into a concession agreement with “Armenia International Airport” Closed Joint Stock Company (hereinafter referred to as the Company). According to the mentioned agreement, the Government of the Republic of Armenia guaranteed (assured) that the use of the rights, opportunities and powers of the Company will not under any circumstances be considered an abuse of a dominant position in the market or a restriction of competition.

Contrary to the promise/assurance of the Government of the Republic of Armenia, the State Commission for Protection of Economic Competition of the Republic of Armenia by decision 288-A of 20.07.2022, qualified the actions of the Company, in particular, unreasonable increase in the price of goods, the establishment or application of discriminatory prices, the establishment or application of discriminatory conditions (including prices) in relation to other business entities or consumers under otherwise equal

conditions, as abuse of a monopoly position, that is, it stated a violation of the RA Law “On Protection of Economic Competition”.

The Company challenged the mentioned act in the Administrative Court of the RA. The Administrative Court of the Republic of Armenia in the administrative case No. AC/0962/05/21 satisfied the claim and stated that the guarantees (assurances) issued by the State aroused a legitimate expectation in the interested person.

The promise made by Government of the RA was essentially not valid. The Government of the Republic of Armenia was not entitled to assure that in a particular case it would not react to the offense committed by the Company, that is, would not hold the Company liable. The promise of an administrative body not to respond to an offense committed by a particular person is unlawful in itself. In order to avoid such situations, it is necessary to provide legal provisions regarding the promise of the administrative body.

Conclusion

Failure to fulfill promises/assurances by persons holding high public positions can have devastating consequences for the state, therefore the science of constitutional law should try to find legal guarantees that will protect the society from the negative consequences of unfulfilled promises, especially if these promises objectively served as the basis (reason) for organizing the legal behavior of members of the society.

Unilateral promise of public authorities that are outside the legislative text, from the point of view of the positivist (legist) type of legal understanding, do not bind the body that made the promise, however, from the point of view of the theory of natural law (H. Grotius) or the psychological theory of law (L. I. Petrażycki) are binding and subject to legal protection.

The RA Law “On the Fundamentals of Administration and Administrative Proceedings” should provide for a legislative definition of the promise/assurance of an administrative act, the basis for the invalidity of a promise/assurance.

References

Anzilotti, D. (1961). *Kurs mejdunarodnogo pra-*

- va (Course of international law, in Russian). (Vol. 1: Introduction - General Theory). Moscow: Publishing House of Foreign literature.
- Aristotle (1893). *Nicomachean Ethics. Works: In 4 vols.* (Vol. 4). (5th ed., F. H. Peters, Trans.). London: William Clowes & Sons Ltd. Publication.
- Aristotle (2004). *Istoria politicheskix I pravovix ucheniy* (History of political and legal doctrines, in Russian). Moscow: Prior Publication.
- Arutyunova, N. D. (1990). Performative. In V. N. Yartseva (Ed.), *Linguistic Encyclopedic Dictionary*. Moscow. The Soviet Encyclopedia Publication.
- Baglay, M. V., Leiboi, Yu. I., & Entin, L. M. (2004). *Konstitucionnoe pravo zarubejnix stran: uchebnik dlya vuzov* (Constitutional law of foreign countries: A textbook for universities, in Russian). Moscow: Norma Publication.
- Baron, Yu. (1910). *Sistema Rimskogo grajdanskogo prava. Kniga IV: Obyazatelstvennoe pravo* (The system of Roman civil law. Book IV: Law of obligations, in Russian). (3rd ed.). Saintt Petersburg: "Law Center Press" Publication.
- Bernstein (1871). *Uchenie o razdelitelnix obyazatelstvax po rimskomu pravu I novyeshim zakonodatelstvam* (The doctrine of separation obligations under Roman law and the latest legislation, in Russian) Saint Petersburg: "Public benefit" Publication.
- Bihdriker, D. V. (1938). *Uchenie Hugo Grotiusiya o prave I gosudarstve*. (The teachings of Hugo Grotius on law and the state, in Russian). Moscow: Soviet State Publication.
- Broker, L. (2021). *Obeshanie administrativnogo akta* (The promise of an administrative act, in Russian). In Public Law Yearbook (pp. 84-93). Moscow: Infotropic Media Publication.
- Cicero (1887). *On moral duties (De Officiis)*. (Bt A. P. Peabody, Trans.). Boston. Retrieved October 4, 2022, from <https://oll.libertyfund.org/title/cicero-on-moral-duties-de-officiis>
- Dawood, A., & Bulmer, E. (2017). *Social and economic rights*. Retrieved October 4, 2022, from <https://www.idea.int/sites/default/files/publications/social-and-economic-rights-primer.pdf>
- Grotius, H. (1956). *O prave voyni i mira: Tri knigi, v kotorix obyaznyayutsya estestvennoe pravo i pravo narodov, a takje principy publichnogo prava*. (On the law of war and peace: Three books that explain natural law and the law of peoples, as well as the principles of public law, in Russian). (A. L. Sacchetti, Trans.). Moscow: Gosjurizdat Publication.
- Harutyunyan, A. (2021). International methodological basics of electoral law (From antiquity to modern times: Philosophy-legal dimension). *WISDOM*, 18(2), 103-113. <https://doi.org/10.24234/wisdom.v18i2.496>
- Hayastani Hanrapetutyun Sahmanadrakan dataran* (The constitutional court of the Republic of Armenia, in Armenian). (2008). Retrieved October 4, 2022, from https://www.concourt.am/decision/decisions/633d5aff8b24a_sdv-741.pdf
- Hayastani Hanrapetutyun sahmanadrutyun* (Constitution of the Republic of Armenia, in Armenian) (2015). Retrieved October 4, 2022 from <https://www.president.am/en/constitution-2015/>
- Hennock, E. P. (2007). *The origin of the welfare state in England and Germany, 1850-1914: Social policies compared*. New York: Cambridge University Press.
- Kalamkaryan, R. A. (1984). *Mejdunarodno-pravovoe znachenie odnostoronnix aktov gosudarstva* (International legal significance of unilateral legal acts of the state, in Russian). Moscow: Nauka Publication.
- Kelsen, H. (2005). *Pure theory of law*. (M. Knight, Trans.). Berkeley and Los Angeles: University of California press. Retrieved October 4, 2022, from <https://www.pdfdrive.com/pure-theory-of-law-e185094379.html>
- Konnova, E. V. (2014). *Odnostoronnie akti gosudarstv v mejdunarodnom prave* (Unilateral acts of states in international law, in Russian) (Doctoral dissertation, Belarussian State University, Belaru). Re-

- rieved October 4, 2022, from https://elib.bsu.by/bitstream/123456789/109017/1/2014_Konnova.pdf
- Mishin, A. A. (2013). *Konstitucionnoe (gosudarstvennoe) pravozarubezhix stran* (Constitutional (state) law of foreign countries, in Russian). Textbook for universities. Moscow: Statut Publication.
- Nersesyants, S. V. (2004). *Istoriya politicheskix i pravovixucheniy* (History of political and legal doctrines, in Russian). Textbook for universities. (4th ed.). Moscow: Norma Publication.
- Obshiy administrativniy kodeks Gruzii* (General Administrative Code of Georgia, in Russian). (2021). Retrieved October 4, 2022, from <https://matsne.gov.ge/ru/document/view/16270?publication=39-rus>
- Pashinyan, N., & Badasyan, R. (2020). *Video recording of the live broadcast of statements about increasing the salaries of judges*. Retrieved October 4, 2022, from https://www.youtube.com/watch?v=iuOIllpYqSk&feature=emb_logo
- Petrażycki, I. L. (2017). *Teoria prava i gosudarstva v svyazi s teoriy nrvstvennosti* (The theory of law and the state in connection with the theory of morality in 2 books, in Russian). (Part 2). Moscow: Yurayt Publication.
- Plato (1998). *The Republic. Book 8*. (B. Jowett, Trans.). Retrieved October 4, 2022, from https://www.gutenberg.org/files/-1497/1497-h/1497-h.htm#link2H_4_-0011
- Pudelka, J. (2021). *Administrativnoe pravo Germanii. Tom 1. Pravo administrativnix procedur. Obshee administrativnoe pravo* (German administrative law. Vol. 1. The right of administrative procedures. General administrative law, in Russian). Moscow: Infotropic Media Publication.
- Pukhan, I., & Polenak-Akimovskaya, M. (2000). *Rimskoe Pravo (Bazoviy uchebnik)*. (Roman law (Basic textbook), in Russian). Moscow: ZERTSALO Publication.
- Sargsyan, S. (2014, April 10). *Serzh Sargsyan bol'she ne vydvinet svoyu kandidaturu na post glavy gosudarstva* (Serzh Sargsyan will no longer nominate his candidacy for the post of head of state, in Russian). Retrieved October 2, 2022, from <https://rus.azatutyun.am/a/25328-188.html>
- Sargsyan, S. (2018, April 23). *Prime minister Serzh Sargsyan's statement*. Retrieved October 2, 2022, from <https://www.primeminister.am/en/press-release/item/-2018/04/23/Prime-Minister-Serzh-Sargsyans-statement/>
- Tavip, M. (2014). *The dynamic concept of welfare state in indonesian Constitution*. Brawijaya University.
- United Nations (2018). *Publication issued by the office of the United Nations High Commissioner for Human Rights (OHCHR)*. Retrieved October 4, 2022, from https://www.ohchr.org/sites/default/files/Documents/Publications/ConstitutionMaking_EN.pdf
- Utchenko, L. S. (1972). *Ciceron i ego vremya* (Cicero and his time, in Russian). Moscow: "Thought" Publication. Retrieved October 4, 2022, from <https://www.litmir.me/br/?b=138473&p=3>
- Venice Commission (2016). *Rule of Law Checklist, 106th Plenary Session (Venice, 11-12 March 2016)*. Retrieved October 4, 2022, from [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e)
- Zakon Turkmenistana "Ob administrativnix procedurax"* (The law of Turkmenistan about administrative procedures). (2017). Retrieved October 4, 2022, from <https://www.parahat.info/law/parahat-info-law-01za>