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*Essence of Administrative Guarantees of the Rights of Individuals and Legal  
Entities During State Control (Supervision)*

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# Secção I

## Investigação Científica\*

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## Essence of Administrative Guarantees of the Rights of Individuals and Legal Entities During State Control (Supervision)

### Essência das Garantias Administrativas dos Direitos das Pessoas Singulares e das Entidades Jurídicas Durante o Controlo do Estado (Supervisão)

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**ABSTRACT:** This paper explores the fundamental principles of administrative guarantees related to the protection of the rights of individuals and legal entities during state control and supervision. Through a comprehensive analysis of the current national legislation in Ukraine, this study examines how administrative guarantees serve as an essential component of the mechanism for safeguarding the rights of citizens and organizations during state control and supervision. The research question that guides this study is how administrative guarantees ensure that the rights of controlled individuals and entities are respected and protected during the process of control and supervision. This study finds that there are multiple administrative guarantees used in the implementation of state control and supervision, which can be systematically classified based on various criteria. Overall, this research contributes to a deeper understanding of the crucial role that administrative guarantees play in promoting the rights of individuals and legal entities during state control and supervision.

**KEYWORDS:** Administrative guarantees; State control; Legal entities; Rights protection; Supervision; Ukrainian legislation.

**RESUMO:** Este artigo explora os princípios fundamentais das garantias administrativas relacionadas com a proteção dos direitos dos indivíduos e das pessoas coletivas durante o controlo e a supervisão do Estado. Através de uma análise abrangente da atual legislação nacional na Ucrânia, este estudo examina como as garantias administrativas servem como componente essencial do mecanismo de salvaguarda dos direitos dos cidadãos e das organizações durante o controlo e supervisão do Estado. A pergunta que orienta este estudo é a de saber de que forma as garantias administrativas permitem assegurar que os direitos dos indivíduos e entidades controladas sejam respeitados e protegidos durante o processo de controlo

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e supervisão. Este estudo conclui que existem múltiplas garantias administrativas utilizadas na implementação do controlo e supervisão do Estado, as quais podem ser sistematicamente classificadas com base em vários critérios. Globalmente, este estudo contribui para uma compreensão mais profunda do papel crucial que as garantias administrativas desempenham na promoção dos direitos dos indivíduos e das entidades jurídicas durante o controlo e a supervisão do Estado.

**PALAVRAS-CHAVE:** Garantias administrativas; controlo do Estado; entidades jurídicas; proteção de direitos; supervisão; legislação ucraniana.

## Introduction

State control as a means of strengthening law and discipline in society should be carried out within the law, with respect for the rights of individuals and legal entities. Practice shows that control bodies violate the rights and legitimate interests of controlled persons<sup>5</sup>. The rights of members of society, covering this category of persons, are ensured by a system of various political, social, economic, cultural, ideological, and other instruments<sup>6</sup>. Legal guarantees have a special place in the system of deterrence of unjustified state interference in the activities of persons being inspected<sup>7</sup>. These legal remedies in terms of qualities and characteristics restrict control (supervisory) bodies from unauthorised interference in the affairs of controlled persons. It is important to assess the place and role of these tools in the mechanism of administrative guarantee of rights during state control (supervision)<sup>8</sup>.

Administrative guarantees of the rights of controlled persons are legal guarantees established within the administrative method of regulating public relations<sup>9</sup>. In the context of this scientific article, "administrative guarantees" refer to legal provisions or mechanisms designed to protect the rights of individuals and legal entities during state control and supervision, ensuring that the process conducted in a fair and impartial manner. These guarantees can include, for example, the right to due process, the right to access information, the right to appeal, and other procedural protections aimed at safeguarding the

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<sup>5</sup> OSTAPENKO, O.I., KOVALIV, M.V., YESIMOV, S.S. *Administrative law of Ukraine*. Lviv: Spolom, 2021.

<sup>6</sup> CHUB, A. Administrative and legal guarantees for implementation of the right of citizens to peaceful assembly. *Actual Problems of Jurisprudence*, 2020, vol. 4, n. 24, pp. 86-90.

<sup>7</sup> ZAIATS, N. The essential characteristics of legal means in the mechanism of legal regulation. *Entrepreneurship, Economy and Law*, 2016, vol. 12, pp. 202-205.

<sup>8</sup> YESIMOV, S.S. Preventive regulation: theoretical aspects. *Socio-Legal Studios*, 2020, vol. 3, n. 9, pp. 40-47.

<sup>9</sup> HORBOVA, N.A. The nature of state control (supervision) and the genesis of its legislative definition. *Law and Public Administration*, 2019, vol. 1, n. 34, pp. 37-42.

rights of individuals and organizations subject to state control and supervision. Administrative law governs social relations that arise in public administration, acts as a legal form that organises the administrative matter according to the objectives of the state and society. The method of administrative legal regulation is characterised by the imperative nature of administrative law<sup>10</sup>, the dominant position in the relationship of executive power, the implementation of the subjects of administrative relations of various social roles and some other properties<sup>11</sup>.

In the science of administrative law, the term “administrative guarantees” is used in different meanings. It is applied to administrative law, when covering the mechanism of administrative regulation and various administrative regimes, to certain types of administrative regulation of public relations, characterising the administrative status of a person, when considering ways to ensure legality in public administration and other values. The concept of “administrative guarantees” is used as a generalisation for a group of administrative means by which administrative relations transform from ideal, abstract models into actual, real ones. They form a necessary part of the administrative mechanism to ensure the rights of individuals and legal entities during state control (supervision)<sup>12</sup>.

In the legal literature, the mechanism of administrative support of public administration is considered as a complex set of administrative law and based on them general and special conditions, processes and tools implemented by the state to maintain the established order of government<sup>13</sup>. Using this mechanism, the realisation of subjective rights of individuals and legal entities during the implementation of control and supervision measures is analysed and evaluated, measures are taken to realise their ideal transactions into real

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<sup>10</sup> Law of Ukraine No. 877-V “On the basic principles of state supervision (control) in the sphere of economic activities” [Online]. 2007 [viewed 17 November 2022]. Available from: <https://zakon.rada.gov.ua/laws/card/877-16>.

<sup>11</sup> KOVALIV, M.V. Persuasion and coercion as general methods of influence in the executive branch. *Bulletin of Lviv State University of Internal Affairs*, 2015, vol. 1, pp. 211-219.

<sup>12</sup> ANDRONICEANU, A. Transparency in public administration as a challenge for a good democratic governance. *Administrație Și Management Public*, 2021, vol. 36, pp. 149-164.

<sup>13</sup> OSTAPENKO, O.I., KOVALIV, M.V., YESIMOV, S.S. *Administrative law of Ukraine*. Lviv: Spolom, 2021.

ones<sup>14</sup>. As for the structure of the mechanism under study, the researchers do not have a unified position, and different opinions are expressed<sup>15</sup>. This mechanism includes public authorities (institutional entities), administrative relations, law, acts of realisation of rights and responsibilities, acts of interpretation, the rule of law, legal education, legal responsibility<sup>16</sup>, and other elements<sup>17</sup>. Without controversy over the composition of this phenomenon, it should be noted that an essential part of the mechanism for ensuring the rights of individuals and legal entities, researchers recognise guarantees<sup>18</sup>.

The studies of legal scientists were also essential for the development of the problem of administrative and legal guarantees of the rights of individuals and legal entities<sup>19</sup>. Currently, there are virtually no studies on the problems of administrative guarantees of the rights of individuals and legal entities during state control (supervision)<sup>20</sup>. Some issues related to the optimisation of the activities of the subjects of implementation of this function in the context of public administration reform remain controversial or undeveloped<sup>21</sup>.

The purpose of this study is to investigate the essence of administrative guarantees of the rights of individuals and legal entities under implementation of state control (supervision).

This study is guided by a number of specific research questions:

- What are the fundamental principles of administrative guarantees that

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<sup>14</sup> GURZHII, T., GURZHII, A., JAKUSZEWICZ, A. Public law and administration under conditions of hybrid warfare (the experience of Ukraine). *Comparative Law Review*, 2021, vol. 27, pp. 195-218.

<sup>15</sup> NAZAR, Y. S., NAZAR, T. Y., PROTS, I. M., YOSYFOVYCH, D. I., ILYUSHYK, O. M. Application of administrative and financial and legal responsibility for budget offenses under the laws of Ukraine and other countries of eastern Europe. *Journal of Advanced Research in Law and Economics*, 2020, vol. 11, n. 4, pp. 1246-1252.

<sup>16</sup> ĐANIĆ ČEKO, A., PETRAŠEVIĆ, T. Lack of one common administrative procedure? is regulation on the EU administrative procedure necessary in the EU? *Balkan Social Science Review*, 2020, 15(15), 93-116.

<sup>17</sup> LAVRENIUK, YU.F. The concept of regulatory administrative and legal guarantees of legality of activities to ensure the economic interests of Ukraine. *Prykarpattia Legal Bulletin*, 2021, vol. 1, n. 36, pp. 71-74.

<sup>18</sup> GUZMÁN, O. A. Defense of the presumption of innocence as an essential guarantee in the sanctioning administrative law. *Revista Eurolatinoamericana De Derecho Administrativo*, 2021, 8(2), 71-88.

<sup>19</sup> COSTA, F. M. G. The independence of the administrative information commissioners. *Revista General De Derecho Administrativo*, 2020, 53, 34-45.

<sup>20</sup> KANEKO, H. Axiology of administrative discretion (gyōsei sairyō) as well as administrative guidance (gyōsei shidō) in Japan from the perspective of judicial control. *Studia Iuridica Lublinsia*, 2020, 29(3), 135-148.

<sup>21</sup> SOLÉ, J. P. The failure of the guarantor administration. myths, fallacies and lessons of the pandemic for public administrations, administrative law and the contentious-administrative jurisdiction. *Revista General De Derecho Administrativo*, 2021, 58, article number 424237.



protect the rights of individuals and legal entities during state control and supervision?

- How do administrative guarantees serve as an essential component of the mechanism for safeguarding the rights of citizens and organizations during state control and supervision?
- How do they ensure that the rights of controlled individuals and entities are respected and protected?
- How can administrative guarantees be systematically classified based on various criteria?
- What is the crucial role that administrative guarantees play in promoting the rights of individuals and legal entities during state control and supervision, according to the Ukrainian legislation?

### **Materials and Methods**

This study aims to explore the essence of administrative guarantees related to the protection of the rights of individuals and legal entities during state control and supervision, with a focus on the Ukrainian legislation. To achieve this goal, this study employs various research methods, including cross-analysis, induction and deduction, comparative analysis, statistical method, and legal analysis.

The cross-analysis method is used to identify the most significant administrative guarantees and their interrelation with other legal institutions, such as criminal and civil law. The induction and deduction methods are applied to derive general principles and rules from specific cases and vice versa. The comparative analysis method is used to compare the Ukrainian legislation with international standards and practices in the field of administrative guarantees.

Furthermore, the statistical method is employed to analyze the relevant legal data and identify the most common violations of the rights of individuals and legal entities during state control and supervision. The legal analysis is used to identify legal gaps and ambiguities in the current Ukrainian legislation related to administrative guarantees.

Overall, the combination of these research methods enables us to gain a comprehensive understanding of the essence of administrative guarantees and their role in protecting the rights of individuals and legal entities during state

control and supervision. The cross-analysis method helps us to identify the key administrative guarantees and their interrelation with other legal institutions. The induction and deduction methods allow us to derive general principles and rules from specific cases and vice versa. The comparative analysis method enables us to compare the Ukrainian legislation with international standards and practices in the field of administrative guarantees. The statistical method helps us to analyze the relevant legal data and identify the most common violations of the rights of individuals and legal entities during state control and supervision. Finally, the legal analysis is used to identify legal gaps and ambiguities in the current Ukrainian legislation related to administrative guarantees.

In conclusion, the use of a combination of research methods is critical in ensuring the accuracy and reliability of the results of this study. These methods enable us to provide a comprehensive analysis of the essence of administrative guarantees and their role in protecting the rights of individuals and legal entities during state control and supervision in Ukraine.

## **Results and Discussion**

### ***Theoretical approaches to determining the essence of administrative guarantees***

Guarantees in the administrative mechanism for ensuring the rights of individuals and legal entities occupy a considerable, independent place, but do not exhaust the full scope. They, as legal guarantees in general, are established and act for a particular purpose: using tools to influence the social environment and people to ensure the subjective rights of participants in public relations, their full use and implementation, protect legal relations from encroachment and violations. According to A. Chub, guarantees of administrative protection of legal opportunities of citizens cover a wide range of tools that contribute to the rule of law in public relations, and gain practical importance through the rule of law, law enforcement, individual legal acts that allow citizens independently or with assistance public administration bodies to ensure the realisation of needs, to counteract offences, to restore legal opportunities, to compensate for the damage caused<sup>22</sup>.

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<sup>22</sup> CHUB, A. Administrative and legal guarantees for implementation of the right of citizens to peaceful assembly. *Actual Problems of Jurisprudence*, 2020, vol. 4, n. 24, pp. 86-90.



As for the content of administrative guarantees of the rights of individuals and legal entities during state control (supervision), it is important to note that by nature the administrative means that make up their content are not exclusive to state control (supervision). These tools are universal for the administrative way of regulating public relations. Specificity and unifying principles are provided by purpose, object of guarantee, subject of application, and period of application. In terms of the issue of understanding the essence of legal guarantees and administrative-legal guarantees, the authors of this study are in solidarity with researchers who based their understanding of legal guarantees on the unity of law and practical activities to implement legal requirements as one of the conditions of law. In the legal literature, legal remedies are considered as different legal categories through which public relations are governed and the interests of legal entities are satisfied: principles of law, rules of law, subjective rights and legal obligations, legal liability, legal restrictions, legal incentives and encouragement, acts of application of legal norms<sup>23</sup>.

These tools are used to construct administrative guarantees. The list of legal categories that allows guaranteeing the rights of individuals and legal entities regarding state control (supervision) depends on the status of the subject of guarantees, the tasks pursued, and the functions performed. In the field of protection of the law, preventive regulation arises from the moment when there is a rule of law that contains or allows the possibility of adverse consequences of illegal behaviour or behaviour that is evaluated by society or the state negatively<sup>24</sup>. Administrative guarantees of the rights of controlled persons can be described as a set of administrative norms and actions carried out on their basis by authorised entities that ensure recognition, observance, and protection of rights of individuals and legal entities as participants in state control (supervision). Administrative guarantees are characterised by several properties. Analysis of the nature of these regulators and scientific sources on the problem allows naming the main properties of administrative guarantees that ensure the realisation of the rights of individuals and legal entities during state control (supervision), namely:

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<sup>23</sup> ZAIATS, N. The essential characteristics of legal means in the mechanism of legal regulation. *Entrepreneurship, Economy and Law*, 2016, vol. 12, pp. 202-205.

<sup>24</sup> YESIMOV, S.S. Preventive regulation: theoretical aspects. *Socio-Legal Studios*, 2020, vol. 3, n. 9, pp. 40-47.

– guarantees have a public-law nature and are focused on ensuring the public interests of participants in control and supervisory relations; derivatives of constitutional guarantees, which are the initial and universal guarantees of the rights of individuals and legal entities, develop and specify them;

– mediated by the rules of law, implemented within the administrative legal order according to certain administrative procedures;

– are in the nature of service, protection, and maintenance of the rights of the subjects of control and supervisory relations provided by law; are an integral part of the mechanism for ensuring the rights of individuals and legal entities as participants in control and supervisory relations, while acting as an element of the administrative status of a citizen and the legal status of a legal entity; the need to address them arises in connection with the practical activities of executive bodies and other public administration bodies for the implementation of control and supervisory powers;

– have a special legal force aimed at overcoming obstacles to the interests and realisation of the rights of individuals and legal entities during state control (supervision); act as a means of deterring deviations from other participants in the control and supervisory relationship;

– lead to concrete results in the form of creation of conditions for unimpeded realisation of the rights in the control and supervisory relations, protection and protection of these rights mediated by functions of guarantees; in the implementation provided by the coercive force of the state;

– rely on the legal possibility of applying legal liability to violators; formalised in the norms of administrative law, in various administrative-procedural documents and actions.

### ***Functions of administrative guarantees of the rights of individuals and legal entities during state control (supervision)***

Public relations constitute the object of administrative guarantee in the field of state control (supervision). Public relations are formed in connection with ensuring the rights of individuals and legal entities as participants in control (supervisory) relations. The subject of influence of guarantees is the behaviour of control (supervisory) bodies, their officials. The guarantees are designed to

ensure that the conduct of these bodies is in the best interests of the controlled persons. This is achieved by establishing appropriate prohibitions, restrictions, responsibilities and control procedures. The principles of organisation and implementation of state control (supervision) are addressed to control (supervisory) bodies. Properly regulated and lawful control (supervisory) activities guarantee the observance of the rights of controlled persons<sup>25</sup>.

However, guarantees do not exclusively affect the behaviour of control bodies. The scope of their activities includes the activities of other bodies and officials who are required by law to ensure the rights of controlled persons, to act in the interests of these persons, influencing the behaviour of control (supervisory) bodies. Such powers are granted to the prosecutor's office, the court, and some other bodies and officials of the state administration. Usually, the main purpose of legal guarantees is related to the protection of violated rights, their restoration. Recognising the importance of protecting violated rights, the authors of this study believe that this is not entirely correct. Because the state allows violations of rights by control (supervisory) bodies in advance. But rights are protected when no violation is committed. Therefore, the main purpose of guarantees is to prevent violations of the rights of controlled persons by creating conditions for the exercise of rights, prevention of violations, deterrence of illegal actions of officials of control (supervisory) bodies. Thus, it is mainly a positive component of state control for the controlled object<sup>26</sup>. Analysis of legislation and theoretical sources allows identifying the following seven functions that perform administrative guarantees for the rights of controlled persons:

- prevention of violations of the rights of controlled persons by control (supervisory) bodies;
- assistance in detecting and terminating violations of the rights of individuals and legal entities during the implementation of control (supervisory) activities;
- protection of the rights of controlled persons in case of violation by

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<sup>25</sup> MORGERA, E. Fair and Equitable Benefit-Sharing at the Cross-Roads of the Human Right to Science and International Biodiversity Law. *Laws*, 2015, vol. 4, n. 4, pp. 803-831.

<sup>26</sup> HORBOVA, N.A. The nature of state control (supervision) and the genesis of its legislative definition. *Law and Public Administration*, 2019, vol. 1, n. 34, pp. 37-42.

control (supervisory) bodies;

- promoting the creation of organisational and legal conditions for the realisation of the rights of controlled persons;

- limitation of subjective discretion in the activities of control (supervisory) bodies;

- assistance in equalisation of legal capabilities of controlled persons and control (supervisory) bodies in the implementation of legal personality;

- strengthening the rule of law in control (supervisory) activities.

The preventive role of administrative guarantees is to prevent violations of the rights of controlled persons, to deter deviations of control (supervisory) bodies, to refrain from deviations from established principles, rules and procedures of control (supervisory) activities. Administrative precautionary measures are aimed at preventing and preventing offences. The basis for their application is not an offence, but the occurrence of special conditions defined by law, related and unrelated to human activities<sup>27</sup>. Many guarantees ensure that this result is achieved in relation to the very fact of existence. It is unlikely that an official of the control (supervisory) body will deliberately ignore the procedure of the control (supervisory) measure, if he is sure that the controlled person will file a complaint to declare illegal actions, raise the issue of legal liability. Prevention of offences and abuses by officials of control (supervisory) bodies, the formation of respect for the rights of individuals and legal entities is provided through the implementation of special measures. These are the establishment of qualification requirements for the professional knowledge and skills of officials of control and supervisory bodies, appropriate training, and other measures aimed at high-quality staffing of the control apparatus.

The function of assisting in the detection and termination of violations of the rights of controlled persons, performed by administrative guarantees in the study area, is to facilitate the establishment of violations of the rights of individuals and legal entities, to prevent such cases. Guarantees serve to identify violations in a timely and complete manner. For example, the appeal of a citizen or the head of the institution regarding the actions of the control (supervisory) body during the review may help to identify the abuse of power or

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<sup>27</sup> KOVALIV, M.V. Persuasion and coercion as general methods of influence in the executive branch. *Bulletin of Lviv State University of Internal Affairs*, 2015, vol. 1, pp. 211-219.

abuse of office, deviation from the requirements of the relevant principle of control and supervision. Protection of the rights of controlled persons is achieved through jurisdictional measures to ensure the restoration of violated rights. This means that the actions of control and supervisory bodies that impede the exercise of the rights of individuals and legal entities are eliminated, the guilty officials are responsible. Compensates for material and moral damage caused to individuals and legal entities as a result of illegal actions of officials, provided by the Law of Ukraine No. 877-V "On the Basic Principles of State Control (Supervision) in Economic Activities"<sup>28</sup>.

The function of promoting the creation of conditions for the smooth exercise of existing rights by individuals and legal entities is aimed at developing a system of legal, organisational, economic, social, ideological, scientific, technical, and other prerequisites that the state creates for controlled persons so that they can successfully implement common and special rights during control and supervision activities. Administrative guarantees act as an efficient limiter of subjective discretion in the work of control and supervisory bodies. With guarantees, the state narrows the subjective administrative discretion during the implementation of state control (supervision). Restrictive guarantees warn control and supervisory bodies against excessive administrative discretion and illegal interference in the activities of controlled persons, determine the choice of algorithm of action that is not associated with the risk of violations of the rights of individuals and legal entities. Thanks to the function of promoting the equalisation of legal capabilities of controlled persons and control (supervisory) bodies in the implementation of legal personality, individuals and legal entities can defend legitimate interests on an equal footing with controllers.

Guarantees directly affect the strengthening of the rule of law in the control and supervisory activities. This, according to Y. Lavreniuk, is the perception of the subjects of legal circulation of the defining ideas and values of the rule of

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<sup>28</sup> Law of Ukraine No. 877-V "On the basic principles of state supervision (control) in the sphere of economic activities" [Online]. 2007 [viewed 17 November 2022]. Available from: <https://zakon.rada.gov.ua/laws/card/877-16>.

law and their implementation in everyday life<sup>29</sup>. They guide, stimulate control and supervisory bodies, their officials to raise the level of legal culture, force them to act within the legal space, on the basis and in strict accordance with the provisions of laws, other regulations within the powers granted, do not go beyond object and subject of control (supervision). When violating the limits of what is allowed, a human rights mechanism comes into force. These functions directly “work” on the task of combating offences in the control and supervisory relationship. But they have an independent meaning and content in the administrative mechanism of ensuring rights during control and supervision. Each guarantee performs one or more of these roles, contributing to the general goal of ensuring that the rights of individuals and legal entities are respected in the implementation of state control and supervision measures.

Given the above, administrative guarantees of the rights of individuals and legal entities during state control (supervision) can be defined as a set of administrative norms based on them legal and organisational actions of authorised entities aimed at recognising, enforcing and protecting rights natural and legal persons as controlled persons, prevention, detection and termination of violations of rights, equalisation of legal capabilities of controlled persons and control (supervisory) bodies in the implementation of legal personality, limitation of subjective discretion in the activities of control (supervisory) bodies. In the context of law, the difference between natural and legal persons is that natural persons are individuals who have legal rights and obligations by virtue of their humanity, whereas legal persons are entities created and recognized by law as having separate legal personality and the capacity to hold rights and incur obligations.

Administrative guarantees to ensure the rights of individuals and legal entities are of integrative importance in the system of legal guarantees of the rights of participants in control and supervisory relations. All other legal guarantees applied in the field of state control (supervision) are only supplemented by administrative regulators. Thanks to administrative guarantees, conditions are created in society for the realisation of rights, rights

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<sup>29</sup> LAVRENIUK, YU.F. The concept of regulatory administrative and legal guarantees of legality of activities to ensure the economic interests of Ukraine. *Prykarpattia Legal Bulletin*, 2021, vol. 1, n. 36, pp. 71-74.



are protected, and crime prevention is carried out. Unlike other types of guarantees (for example, criminal law, civil law), administrative law guarantees create legal opportunities for the unimpeded exercise of existing rights by all parties more quickly and at lower cost.

## Conclusions

Administrative guarantees play a crucial role in protecting the rights of individuals and legal entities during state control and supervision. However, they are just one aspect of a larger framework of state guarantees that includes other administrative means. Comprehensive legal protection of subjective rights requires effective legal remedies that can apply different regulations to protect the same object. Measures to strengthen the rule of law in public administration and control activities serve as the foundation for guarantees of the rights of individuals and legal entities. While guarantees of legality extend to the full scope of control and supervisory relations, there is a problem of interrelation between the guarantees of the rights of individuals and legal entities established by different branches of law. The coordination and harmonisation of guarantees established by different branches of law is necessary. Future research should focus on improving the mechanism of administrative guarantees and legal regulation of public relations to ensure equality during various types of state control and supervision, while optimising the activities of the subjects involved in implementing guarantees in terms of public administration reform.

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