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LEGAL LIMITATION OF HUMAN RIGHTS AS A GUARANTEE OF LEGALITY AND A CONDITION OF SOCIAL STABILITY

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Abstract: *The purpose of the article is to characterize the legal limitation of the rights and freedoms of citizens, to examine its practice in the modern world and to establish its concept and principles. The work uses historical, sociological, formal legal and systemic methods, as well as methods of comparison, analysis, synthesis and interpretation of legal norms. The analysis of the concept of limitation of the rights and freedoms of citizens is carried out. A scientific approach to the definition of the limitation of the rights and freedoms of citizens as a form-forming element of the legal status of an individual, reflecting the limits, conditions and procedure for the exercise of their rights and freedoms, is proposed. Based on the analysis of international legal acts and Russian constitutional judicial practice, the legal principles of limiting the rights and freedoms of citizens are revealed.*

Keywords: *human rights, limitation, personality, principle, legality, democracy, federalism.*

INTRODUCTION

Currently the problem of limiting on individual rights in a pandemic, the necessity of the protection of moral, public health, ensure the right to a favorable environment, the right to reliable information, protect other vital state and public interests is becoming increasingly important. The severity of this problem intensifies in the context of the need to maintain a balance of private and public interests. The high importance of restricting rights and freedoms in the public interest has allowed domestic and foreign scientists to talk about the increasing role of the protective function of the state and the trends of the

transition from a legal state to a security state (Braml, 2004). Therefore, it is advisable to define the concept of limiting of rights and freedoms and formulate legal principles and requirements for its application. The legal doctrine formed in the legal positions of the Constitutional Court of the Russian Federation proceeds from the obligation of the legislator and law enforcer under any limiting of the constitutional rights and freedoms of man and citizen to guarantee the security of the individual (Muradyan, 2013). This suggests that the limiting is not only a border, but also an important element of the legal status of the individual. Historical experience shows the need for legitimate limiting on the rights of citizens in the event of their participation in state and socially significant activities. Therefore, the establishment of the concept, requirements for application, legal principles of limiting is fundamental for determining the legal status of an individual.

THE PRACTICE OF LIMITING HUMAN RIGHTS IN THE MODERN WORLD

The current state of foreign policy relations and the globalization process necessitate the timely development by the state of means of prompt response to various manifestations that pose a threat to private and public interests, which manifested itself, for example, in the context of the spread of COVID-2019 (Coronavirus Disease 2019). The state's task is to maintain the stability of the constitutional system and strengthen the rule of law. In this regard, it is necessary, on the one hand, to observe the principles of a democratic and rule of law state, and, on the other hand, to increase the effectiveness of state bodies in ensuring the national security. Significant is the solution of the problem of developing fundamental provisions on limiting the rights and freedoms of citizens and organizations and legal mechanisms used in the implementation of activities to protect public and state interests, implemented both in normal times and during the emergency, high alert and the like. For example, as features of the legal framework in the period of the fight against a New Coronavirus Infection in Russia, it should be noted its spontaneous formation, the anticipation of the adoption of unlawful acts over legal ones, bylaws over legal and regional legislation over the federal one. The key, determining state policy in this area belongs to the head of state. The practice of delegating the legislative and law enforcement powers of federal bodies of state power to the level of state power of the constituent entities of the Russian Federation has emerged. In addition, there is an obvious increase in the influence of the head of the capital as an orienting subject of the Russian Federation for other regions of Russia. Thus, in the current situation, the need for operational measures was realized by officials, who, in the absence of a previously developed legal framework, took upon themselves the legal registration of the actions taken.

The United States Patriotic Act of 2001 (USA PATRIOT Act...2001) (expired on June 1, 2015 (White House: no 'Plan B' if U.S. Congress fails to act on Patriot Act, 2015)) reflected the temporary nature of excessive limiting on rights and freedoms that do not comply with constitutional norms. The adoption of the US National Security Strategy of 2015 (National Security Strategy of the United States of America, 2015), which provides new ways to ensure public interests, shows the demand for increasing the legitimacy of public policy and ensuring the protection of state by combining the efforts of the state, society and individual. Thus, Russian and foreign legislation widely applies the institution of limiting on the rights and freedoms of man and citizen. Thus, limiting on rights and freedoms are used to counter terrorism (Kuchumova, 2012). The United States of America has passed the Foreign Account Taxation Act (FATCA), which aims to prevent US

taxpayers from taxing with foreign accounts. Moreover, this law has an extraterritorial character (Sukhareenko, 2013). In this regard, another problem arises – the reduction of national influence in the field of human rights. Maintaining a balance of private and public interests is an important scientific problem, the relevance of which is especially high in resolving issues of protecting public interests while observing the constitutional rule, according to which a person, his rights and freedoms are the highest value, as well as generally recognized norms and principles of international law. The need to protect the constitutional system from external interference, on the one hand, and the need to improve the legal regulation of domestic relations, ensuring the effective implementation of public authorities, on the other hand, necessitates the development of conceptual provisions on improving the legal status of citizens, legal entities and other persons in conditions an environment conducive to the emergence of threats to national security.

THE CONCEPT AND PRINCIPLES OF LIMITING ON HUMAN RIGHTS

Such definitions are quite common in the legal literature in which the main criterion for restricting rights is a quantitative change in the possibilities of behavior and human freedoms. Limiting of rights is “the withdrawal from constitutional status” of a person (citizen) or “the withdrawal from the circle of powers constituting the normative content of fundamental rights and freedoms”. Some authors define the limiting of rights as a decrease in the scope of opportunities, freedom, and, therefore, individual rights, which is achieved with the help of duties, prohibitions, punishments (Novikov, 2005). The limiting of the rights and freedoms of man and citizen should be understood as the formative element of the legal status of the individual, reflecting the limits, conditions and procedure for the implementation of its rights and freedoms (Fedotova, 2015b). This concept is proposed as a fundamental theoretical and legal basis of principles and content of the mechanism for restricting rights and freedoms for specific purposes with respect not only to individuals, but also to legal entities and other organizations, to which, based on a systematic interpretation of constitutional norms, constitutional judicial practice, are applicable provisions defining the foundations of a person’s legal status. Moreover, the specifics of restricting rights and freedoms to protect the morality, health, rights and legitimate interests of others, the foundations of the constitutional system, ensuring the country's defense and state security is that the enforcement of such a limiting lead not only to maintaining the stability of the constitutional system, but also contributes to strengthening public safety, protecting the individual, her rights and freedoms, legitimate interests.

The value system has historically been formed in the Russian Federation and it should determine the meaning of legislative norms on limiting the rights and freedoms of citizens and organizations. A combination of direct and indirect limiting of rights is acceptable depending on the degree of threat to any activity or its subject of morality, public health, the rights and legitimate interests of others, the foundations of the constitutional order, the country's defense and state security. In accordance with Part 2 of Art. 29 of the Universal Declaration of Human Rights of 1948 in the exercise of their rights and freedoms, each person should be subject only to such limiting as are established by law solely to ensure due recognition and respect for the rights and freedoms of others and to satisfy the fair requirements of moral, public order and general welfare in a democratic society.

The proportionality, legality, democracy and the targeted nature of limiting on rights and freedoms are established in the provisions of the International Covenant on Economic, Social and Cultural Rights of 1966. The Covenant determines that the state can establish only such limiting on rights as are determined by law, and only insofar as this is compatible with the nature of these rights, and solely for the purpose of promoting general well-being in a democratic society. The target nature of legislatively imposed limiting on rights and freedoms can be traced in the International Covenant on Civil and Political Rights of 1966. The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 establishes in its norms the goals of restricting rights and freedoms as well as the requirement to introduce them based on law. Thus this convention defining the right of everyone to respect his personal and family life, home and correspondence, indicates the inadmissibility of interference by public authorities in the exercise of this right, except when such interference is prescribed by law and is necessary in a democratic society in the interests of national security and public order, the economic well-being of the country, in order to prevent unrest or crime, to protect health or morality or to protect rights and the freedom of others.

As explained in the Decree of the Constitutional Court of the Russian Federation dated October 30, 2003 No. 15-P “In the Case of Verifying the Constitutionality of Certain Provisions of the Federal Law“ On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” in connection with a request from a group of deputies State Duma and complaints of citizens S.A. Buntman, K.A. Katanyana and K.S. Rozhkova”, limiting on constitutional rights, including freedom of the media, should be necessary and proportionate to the constitutionally recognized goals of such limiting. In cases where constitutional norms allow the legislator to establish limiting on the rights they are enshrining; he cannot implement such regulation that would encroach on the very essence of a law and would lead to the loss of its real content. If it is permissible to restrict one or another law in accordance with constitutionally approved goals, the state, ensuring a balance of constitutionally protected values and interests, should not use excessive, but only necessary and strictly stipulated by these goals’ measures.

Public interests listed in Part. 55 of the Constitution of the Russian Federation, they can justify legal limiting on rights and freedoms only if such limiting meet the requirements of justice, are adequate, proportional, proportionate and necessary to protect constitutionally significant values, including the rights and legitimate interests of others, are not retroactive and do not affect the very essence of constitutional law, such as do not limit the scope and application of the main content of the relevant constitutional norms. To exclude the possibility of disproportionate limiting of the rights and freedoms of man and citizen in a specific law enforcement situation, the norm should be formally defined, accurate, clear, not allowing an expansive interpretation of the established limiting and, therefore, their arbitrary application. The stated legal positions of the Constitutional Court of the Russian Federation correspond to the legal positions of the European Court of Human Rights in cases related to defining the boundaries of freedom of expression and the right to information during the election campaign.

Resolution of the Constitutional Court of the Russian Federation of February 18, 2000 No. 3-P “In the Case of Verification of the Constitutionality of Clause 2 of Article 5 of the Federal Law“ On the Prosecutor's Office of the Russian Federation ”in connection with the complaint of citizen B.A. Kekhman’s” defines the requirements (guarantees) of limiting on rights and freedoms, including the legislative definition of such limiting at the

level of federal law, proportionality, and the right to judicial protection. In essence, the same legal positions were expressed in several decisions previously adopted by the Constitutional Court of the Russian Federation that retain legal force.

In general, analyzed the provisions of the Syracuse, Johannesburg, Limburg, Maastricht principles, as well as the decisions of the Constitutional Court of the Russian Federation, from which it follows that by virtue of the principle of equality of the provisions of Ch. 2 of the Constitution of the Russian Federation applies to organizations, it can be concluded that the legal institution for restricting the rights and freedoms of citizens and organizations is based on the following principles: legality, democracy, federalism, recognition of the dignity and worth of the human person and the inalienable equal rights of everyone, the equality of all before the law and the court, unity of rights and obligations of citizens and organizations, timeliness, continuity, control over the establishment of the grounds (conditions) for the introduction and application of limiting on the rights and freedoms of a citizens and organizations, monitoring threats to national security, the interaction of all state authorities and other state bodies, judicial protection of human and civil rights and freedoms from unlawful application of limiting, inevitability of punishment in case of non-compliance with limiting on the rights and freedoms of citizens and organizations (Fedotova, 2015a). From the foregoing, it can be concluded that the limiting of constitutional rights should be based on clear and detailed criteria defined by federal law, namely, the legislator, and not the law enforcer, and therefore the discretion of the latter is destructive, replacing the legislator and distorting the constitutional provision of Part 3 Art. 55 of the Constitution of the Russian Federation on the introduction of such limiting only based on federal law.

CONCLUSION

It is necessary to emphasize the special relevance of the judicial interpretation as a way of filling legal uncertainty. At the same time, attempts by executive authorities to point out to the court the inadmissibility of interference in the administration's activities and its position on the appropriateness of the decisions taken cannot be considered legal. The interests of ensuring personal security should not lead to a diminution of rights, obstruction of their reasonable implementation and exceeding the limits of limiting, non-compliance with the requirements for them. All fundamental legal categories of subjective law, legal obligation, responsibility are determined through the concept of "measure". It means if the limits of any phenomenon, action are not defined, it is not legal. In this view, it is worth noting that the limiting of constitutional rights and freedoms also acts as an extreme measure to ensure private and public interests. The limitation of judicial discretion to the requirements of expediency of actions of public authorities is not legal and justified. In law enforcement practice, it is not permissible to substitute the law enforcer for the legislator. Otherwise, the executive authorities appropriate not only the powers of the legislative branch, but also become uncontrolled by the judiciary, which fundamentally contradicts the basic constitutional principles of the organization of the state.

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