

LIMITS OF RESTRICTIONS OF HUMAN RIGHTS AND FREEDOMS TO ENSURE SECURITY (PROBLEM STATEMENT)**

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The subject. The world faced a coronavirus pandemic in 2020. Many states, including Russia, adopted harsh measures that were largely based on restricting human rights and freedoms in an effort to counter pandemic spread. Inter-State borders were closed, restrictions were imposed on the operation of public catering organizations and the holding of sports and entertainment events was suspended, some of the fundamental rights were heavily constrained. This resulted in the growth of public disaffection, falling of incomes and a worsening of the overall economic environment. As a result, the problem of the permissibility of restrictions of human rights and freedoms for the sake of public security, as well as the requirements for such restrictions, had once again become relevant.

The purpose of the article is, firstly, to learn what is the concept of “freedom” nowadays, to define the conditions and principles of application the permissible restrictions on human rights and freedoms, their aims and purpose. The authors dare to analyze the laws and regulations establishing the possibility of restricting human rights and freedoms and to give a description of the procedure for imposing restrictions in situations of greater danger.

The methodology of research includes formal legal interpretation of legal acts, systemic approach to cognition of social relations, analysis and synthesis.

The main results, scope of application. The definition and concept of freedom, its limited character, the regulation of the possibility of its restriction for the purpose of protecting society have been studied and defined. Russian and international legislation on the restriction of human rights and freedoms has been analyzed. The principles on the basis of which it is permissible to restrict human rights and freedoms have been identified. The principle of the inadmissibility of restrictions on all rights and freedoms; the adequacy of the imposed restrictive measures to the existing threat; the principle of economic efficiency; the principle of detailed regulation of the imposed restrictions are among them. It has been found out that there is a threat of establishing tyranny with arbitrary restrictions on human rights and freedoms.

Conclusions. In today’s world, the restriction of human rights and freedoms should be considered as a necessary measure to ensure the security of the individuals and of society as a whole, especially in the situations of a great danger to public interests. At the same time, the imposing restrictions should be strictly regulated and, moreover, possible abuses should be avoided in order to minimize the negative consequences and avoid establishing totalitarian regime.

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1. Introduction.

In the modern world, in which the process of globalization continues, such a social value as the priority of human rights and freedoms is already firmly rooted. This is legally fixed both at the domestic level in most countries and at the international level. At the same time, it is worth noting that, inherently from the legal consolidation of the priority of human rights and freedoms, it should be mentioned that their limitation is possible, when it seems necessary and when it is required to protect the state and public interests. So, in the modern world human rights are not unrestricted, and freedom is not absolute.

As a rule, the possibility of restricting liberty is a measure of state influence designed to ensure the safety of citizens in critical situations that endanger their life, health, and well-being. To our mind, this seems to be especially significant today, when both Russia and the whole world due to the previously mentioned globalization face many threats: military, economic and social, which include, for instance, terrorism, and epidemiological, which today is a pandemic caused by coronavirus infection.

Taking into account the restrictive measures that were taken to prevent the spread of coronavirus infection (the closure of borders, mandatory mask regime, lockdown, etc.), as well as the public dissatisfaction caused by these measures, we believe that it is relevant to analyze the problem of permissibility of restriction of rights and freedoms for the sake of ensuring public safety, highlighting the issues of the goals and procedure of adoption, principles and limits of such restrictions, as well as the problems that may arise because of them.

2. Human rights and freedoms and the possibility of their limitation.

The problematic question of the balance between liberty and the possibility of its restriction is certainly relevant, but not at all new. In the past, many prominent philosophers

and thinkers touched upon it to one degree or another. For instance, we can cite the famous works of Aristotle [1], J.J. Rousseau [2], F. Voltaire [3], D. Diderot [4], C. Montesquieu [5], L. Seneca [6, p. 73], G. Hegel [7], M.T. Cicero [8], T. Hobbes [9], J. Locke [10]. First of all, in order to understand the problems of the issue under study, we need to analyze what the word "liberty" means in the modern world, and then determine in which cases its restriction is thought to be possible.

Liberty as a fundamental human right is inextricably linked with the possibility of its limitation, which is largely determined by the rules of human coexistence. At the same time, let us clarify that the restriction of liberty can be understood both in a narrow sense - through the application of measures emanating from the state, and in a broad sense. A person is constrained in his actions by a variety of factors, such as: moral norms, opinions of others and much more [11, p. 7], which people most often face every day. It would be appropriate to quote the statement of V. I. Lenin: "It is impossible to live in society and be free from the society" [12, p. 104]. However, in our opinion, due to the subject that we study it is acceptable to narrow the range of methods of restriction and consider further only regulatory legal measures taken by the state.

Let us turn to the Declaration of the Rights of Man and the Citizen of 1789, the fundamental act of the Great French Revolution. In its second article liberty is listed among the "natural and inalienable human rights" [13, p. 135]. The aforementioned Declaration is one of the most noticeable steps in the struggle for the recognition and consolidation of those humanistic values that are firmly rooted in the consciousness of modern society, and therefore it seems to us extremely important for understanding the idea inherent in the word "freedom". Explicitly in the Declaration itself, freedom is not simply postulated as an inalienable human right, it receives its normative definition: according to Article 4, freedom (liberty) consists in "doing anything which does not harm others" [13, p.

135]. Moreover, the Declaration directly points to the possibility of prohibiting actions harmful to society. Consequently, within the meaning of these provisions, the freedom of a person in society is not absolute: a person is limited to the extent that this allows him not to harm others and not interfere with other people in the exercise of their rights.

On the one hand, this predetermines the possibility of the state restricting human rights and freedoms, which in itself has a negative connotation, on the other hand, restrictions impose order that ensures the observance of the rights of citizens and allows society to function normally [14, p. 30].

Therefore, the main idea of the abovementioned provisions is reproduced both by international law, for instance, in the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights and others, and by domestic law and, for example, in the Constitution of the Russian Federation. So, in the fundamental international act - the Universal Declaration of Human Rights of 1948, it is said about the "duties" that each person has to society. The essence of them is manifested directly in the restrictions of rights and freedoms we are considering, which are legal in nature and are intended to respect the rights of others, and also, which is important, to ensure public order and welfare in a democratic society. A similar provision is contained in the International Covenant on Economic, Social and Cultural Rights, which establishes the possibility of lawful restriction of human rights and freedoms only to the extent that it does not contradict the nature of these rights and freedoms and contributes to the well-being of society.

Further, in order to understand how and for what human rights and freedoms can be limited in more detail, we concern it appropriate to analyze the provisions of Russian legislation.

3. Terms for limiting human rights and freedoms by the example of Russian legislation.

It should be noted that the question of the relationship between human rights and

freedoms and the possibility of their limitation is relatively new for the Russian Federation, since throughout its historical development the major approach dominated, which is characterized by the predominance of the interests of society over the interests of the individual [15, p. 5]. It was the same during the Soviet period, when the state interests were prevailing, and to ensure it, measures of limiting the rights of individuals often were used. [16, p. 3]. However, after the dissolution of the USSR, the concept of individual-state relations changes - human rights and freedoms are recognized as the highest value, and their limitation now is allowed in cases provided by the law and only for a certain purpose.

Russian legislation like the legislation of other developed countries contains a detailed list of restrictions which regulate the behavior of citizens and other people who live in the country. As a rule, this happens through the legal establishment of responsibility for the commission of certain actions. For example, the Criminal Code of the Russian Federation provides for liability for encroachments on the life and health of people, their honor and dignity, property, the Code of Administrative Offenses of the Russian Federation - for violation of traffic rules and much more. In most cases, the rationality of such restrictions and the need for their existence are not questioned, since people who live in a society understand the need for the existence of certain rules of behavior.

However, the introduction of restrictions may not always be positively perceived by the society. A good example of this is the situation with the coronavirus infection, which arose in early 2020 and continues to this day. The sharp increase in the incidence among people and the rate of its spread prompted the leaderships of the countries to take tough measures, which sometimes were negatively perceived by the people. Firstly, this is due to the nature of the measures taken, their focus, when those rights that people in our time are accustomed to enjoying in full were significantly limited, for example the right of free movement. Secondly, because of negative economic consequences, both for individuals and for entire groups, for

example, for representatives of small businesses.

Situations like this constitute a threat to society, therefore, are accompanied by the implementation of the most severe restrictive measures. In our opinion, such critical situations raise the question of how the rights and freedoms of an individual person can be limited when it is necessary to protect the entire society? We will try to give the answer further.

3.1 Legal regulation of the application of restrictive measures ensuring safety.

First of all, let us turn to the provisions of the Constitution of the Russian Federation. The Constitution is of fundamental importance for the subject we are studying, not just as the one of the laws of the state, but as an act that legally enshrine in the Russian legal system the “human-centered natural legal doctrine” based on inalienable human rights [17, p. 81]. So, Article 2 of the Constitution of the Russian Federation enshrines human rights and freedoms as the highest value, and their recognition, observance and protection as the obligations of the state. It is necessary to pay attention to the fact that this provision is contained in the first chapter of the Constitution, devoted to the foundations of the constitutional system. Thus, the importance of this provision is emphasized and, what is more, the desire to ensure its stability protecting it from possible encroachments with a special procedure for making changes which is substantially complicated to ensure the invariability of the fundamental principles and the state legal system.

Nevertheless, while human rights and freedoms are the highest values, the Constitution establish the possibility of their limitation. At the same time, it should be noted that the Constitution, while allowing the restriction of fundamental rights does not imply their derogation in essence. The opposite should be recognized as inadmissible [18, p. 19]. Moreover, it is assumed that the need for restriction arises only when it is both legally and socially justified [19, p. 507]. Part 3 of Art. 55 speaks of the admissibility of limiting human

rights and freedoms only to the extent that it is required to protect the health, rights and legitimate interests of other people, state security, morality and the foundations of the constitutional order, and in Part 1 of Art. 56 - for the safety of citizens and the foundations of the constitutional order. As we can see, the protection of security is mentioned several times among the conditions for the sake of which the restriction of human rights and freedoms can be justified. That is why we can agree with the opinion of the famous American psychologist Abraham Maslow who considered safety as one of basic human needs [20, p. 61-63]

Consideration should also be given to the mechanism that is envisaged for imposition of these restrictions. In Art. 55 of the Constitution, it is established that the limitation of human rights can be allowed only by federal law. Firstly, it will be important to note here that human rights and freedoms cannot be limited either by by-laws or by laws of the constituent entities of the Russian Federation - only at the federal legal acts. Secondly, doubts may arise about the legality of limiting the rights enshrined in the Constitution by federal law as a legal act that does not have supreme legal force. However, in this case there is no contradiction due to the fact that the Constitution itself allows the establishment of such restrictions by federal laws, which means that these restrictions will also be constitutional. And through the adoption of federal laws, they will be clarified since the Constitution itself contains a general rule and will be implemented in each specific case [21, p. 105]. Moreover, the admissibility of limiting human rights and freedoms by federal law is of no small importance. It manifests that human rights and freedoms require restrictions under unforeseen, unpredictable circumstances when immediate and decisive measures are required to maintain order in society, the life and health of people [22, p. 203], to which the procedure for the adoption of federal laws corresponds. the Federal Law of December 21, 1994, N 68-FZ «On the protection of the population and territories from natural and man-made emergencies», which provides the establishment of two regimes: «high alert» and

«emergency». In addition, the Federal constitutional law of 30.05.2001 N 3-FKZ «On the state of emergency establish another regime» – «the state of emergency», which is also provided as a measure of rapid response to emergency circumstances, which can only be dealt with through immediate and decisive measures. In accordance with this federal constitutional law, the state of emergency is introduced by presidential decree and approved by the Federation Council of the Federal Assembly of the Russian Federation.

All of the above measures, in particular, the listed legal regimes created to protect and ensure the security of the population and the state imply restrictions on human rights and freedoms. As a result, this leads to the increase of discontent and protest moods among the people, a fall in welfare and socio-economic deterioration in general. A vivid example of this is the sharp increase in discontent among the population after the establishment of the «high alert regime» in Moscow, which was accompanied by restrictions in the cultural and entertainment spheres, the catering sector, and many others. As a result, people suffered significant economic losses. For instance, the damage caused to the fitness industry due to the suspension of the activities of gyms in Moscow and the Moscow region, led to the bankruptcy of 20 percent of the total number of entrepreneurs involved in this business field.

Therefore, in order to avoid or at least minimize negative consequences the officials should be guided by the principles that would improve the effectiveness of the measures taken and prevent possible abuse.

4. Principles and limits of restriction of human rights and freedoms.

First of all, let us pay attention to the fact that some of the rights enshrined in the Constitution cannot be restricted. Among them - the right to life, to the protection of dignity, freedom of conscience and protection of private life (part 3 of Article 56). After analyzing the abovementioned rights, we can see that the law does not provide for the restriction of those

rights, exercising which, a person cannot prevent others from exercising their rights, or simply pose a danger to other people (as opposed to, for example, limiting the right to free movement of people infected with coronavirus). Accordingly, we can formulate the first principle, according to which measures taken to ensure security cannot limit all human rights and freedoms, especially when it comes to such fundamental ones as the right to life. At the legislative level, this can be fixed in various ways, for example, by listing the rights that cannot be limited under any circumstances, or, on the contrary, by introducing a closed list of rights that can be limited if necessary [23, p. 115-116].

Secondly, since the topic of our study is based on the problem of the balance of public and private interests, it is necessary to indicate the principle of proportionality. In this case, proportionality means the adequacy of the imposed restrictive measures to the existing threat [24, p. 67], so they should not be excessive or, on the contrary, insufficient.

Thirdly, referring to the abovementioned international conventions, we see that the restriction of rights and freedoms is assumed as a measure contributing to the well-being of society. Based on this, we can single out economic efficiency among the principles. By it, in this context, we mean the rationality of the restrictions imposed from an economic point of view, so that they do not bring more harm than the threat against which they are directed. So, for example, the restrictions on the work of certain sectors of the economy introduced in the spring of 2020 in the regions of Russia led to a drop in the income of the population, the loss of jobs for a considerable number of people, which affected the growth of unemployment and a decrease in the standard of living [25, p. 181] and, at the same time, did not stop the spread of the virus. Because of this, a natural increase in dissatisfaction with the actions of state and municipal bodies followed. Of course, the state can provide financial support to those who have been suffered losses because of the restrictions, but this is not always possible. Accordingly, the principle of cost-effectiveness should be guided so as not to

impose severe restrictions where this could lead to negative or critical consequences.

Further, one should adhere to the principle of detailed regulation of the imposed restrictions. So, when limiting human rights and freedoms, it is necessary to indicate certain measures taken in a given situation, the period for which they are introduced, the circle of persons or territories to which they apply, and other specifying characteristics. Let us especially highlight the temporary nature of the restrictions imposed, since, as mentioned earlier, the restriction of human rights and freedoms is permissible only if necessary, and it, in turn, appears in crisis situations that are temporary in nature.

All of the above principles, in addition to the named economic and social goals, pursue the main one - the prevention of the establishment of a totalitarian state, for which the restriction of rights and freedoms is not an extraordinary measure, but a routine and an integral condition of existence. The restriction of human rights and freedoms can be perceived as an effective, but forced and, importantly, a temporary measure to overcome crisis situations. So, for example, back in Rome during the period of the Republic "in cases of extreme necessity" a dictator was temporarily appointed, who, having concentrated state power in his hands, took action to restore order [26, p. 40].

But one should not initially assume that the strengthening of the role of the state in crisis situations is a manifestation of totalitarianism. In this case, the determining factor is the attitude of people, which is why it is crucially important for people to trust the state officials and to understand the essence and purpose of the restrictive measures taken [27, p. 38]. So, if people are aware why it is necessary to restrict their rights and freedoms and to strengthen the power of the state, expecting active actions from it, then such a situation barely can be compared with the establishment of totalitarianism. On the contrary, if the restriction of rights and freedoms does not find understanding and support among the population, then the actions of the government can already be perceived as an

attempt to establish tyranny [28, p. 655-656].

5. Conclusion.

Nowadays, with the legal consolidation of human rights and freedoms as the highest value, the admissibility of their restriction if necessary is directly established. The need, first of all, manifests itself in the protection of the entire society, its security, without which the enjoyment of the rights and freedoms of individuals is impossible. It was this need that forced people to abandon the fullness of their freedom, endowing the state with powers to limit their rights [29, p. 71].

At the same time, in order to avoid possible threats of establishing tyranny and minimize the negative effect of the imposed restrictions, it is necessary, first, to establish the procedure of the applied measures and their limits. For example, by fixing legally the conditions for the imposition of restrictive measures, the period for which they are introduced, as well as the rights and freedoms that are not subject to restriction. Secondly, when establishing restrictions, one should be guided by the principles, including: the principles of proportionality, economic efficiency, detailed regulation of the restrictions imposed and the inadmissibility of arbitrary restriction of rights and freedoms.

Consequently, people will be able to freely exercise their rights and freedoms within the established limits [30, p. 29], subject to the abovementioned terms, but at the same time they will be protected both from possible encroachments from other members of society and from the threat that appears in emergency situations.

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