

CONSTITUTIONAL STATUS OF AN INDIVIDUAL IN THE CONTEXT OF CORONAVIRUS PANDEMIC: VECTORS OF TRANSFORMATION IN RUSSIA

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The subject of research is the scientific understanding of the ways, manifestations and trends in the transformation of the constitutional status of an individual in the context of the spread of coronavirus infection.

The purpose of the research is to confirm or disprove the scientific hypothesis that the COVID-19 pandemic impacts negatively on the content and implementation of the constitutional status of an individual in Russia.

The methodology. General scientific methods, especially dialectical ones, made it possible to study the conditions and process of evolution of the constitutional status of an individual in the context of confronting coronavirus infection. With the help of a synergistic method the analysis of cross-sectoral communication of national constitutional law and international legal regulation is carried out. The systemic-structural method was used in the study of intrasystemic changes in the constitutional status of an individual. A study of normative legal sources was made using the formal legal method.

The main results, scope of application. The constitutional status of an individual is undergoing a clear transformation in four directions, each of which has received a separate consideration in the work. Basically, the transformation concerned such an element of the constitutional status as "rights". For the most part, these changes have a negative character for an individual, that is, they worsen his constitutional and legal situation in comparison with the "pre-pandemic" period, but they will remain in one way or another until the sanitary and epidemiological situation normalizes.

It is noteworthy that the same element of the constitutional status, including the same right, can experience several variants of transformation, but with a difference in time, content, territory of action or circle of persons. For example, the development of the right to freedom of movement on the territory of the Russian Federation is accompanied by both its restriction and suspension of implementation in general, and the right to entrepreneurial activity is accompanied by an additional opportunity for business representatives to receive compensation for forced losses.

The pandemic has demonstrated the permissibility and even a certain expediency of transforming the constitutional status of a person and a citizen not only by federal laws (which follows from Part 3 of Article 55 of Russian Constitution), but also by laws and regulations, not only at the federal, but also at the regional level. This possibility is due to references in federal legislation. It should be recognized that over the past year, for the first time, we have witnessed the active regulation of the constitutional status of a person and a citizen by the subordinate normative acts of the constituent entities of the Russian Federation, which indicates their confident incorporation into the number of sources of its legal regulation.

Conclusions. The vectors of transformation of constitutional status of an individual due to COVID-19 pandemic were: (a) the restriction of some basic rights, (b) the suspension of the implementation of a number of basic rights, (c) the substantive clarification and addition of certain rights and mechanisms for their implementation, (d) imposition of additional responsibilities.

1. Introduction.

The year 2020 was marked by a new global challenge - the pandemic coronavirus infection. The pandemic has formed a new world reality [1; 2], caused crisis phenomena in the economy [3; 4; 5], caused the growth of crime [6], had a significant impact on the development of a wide range of social relations, noticeably influenced the formation and subsequent evolution of new approaches to legal regulation. Mainly, this found expression in the confident formation of voluminous and cross-cutting in the system of objective law "anti-covid" legal array [7], transforming the established branches and institutions of Russian law.

In modern conditions, even the basic immutable segments of international [8] and domestic Russian law, one of which is the legal status of the person and citizen [9], are under specific transformation. At the same time, its core, that is, the constitutional status of the person and citizen, is undergoing notable changes. The currently observed actualization of certain constitutional rights, the emergence of new ways of state control over the individual [10], narrowing of the autonomy of the individual, and, on the contrary, the strengthening of its dependence on the state in conditions of countering the spread of COVID-19 make the raising of this issue topical. In this regard, a scientific understanding of the ways, manifestations, and trends of the transformation of the constitutional personality in the light of its relationship with the public authorities is becoming increasingly important.

The impact of the coronavirus pandemic on the legal status of a person, including his constitutional rights, has been reflected in domestic and foreign legal science. In particular, Russian scientists who devoted attention to this problem include G. E. Adygezalova, S. A. Belov, E. N. Doroshenko, M.V. Zaloilo, S.I. Plotnikov, G.B. Romanovsky, N.N. Chernogor, Y.L. Shumskikh. Foreign researchers of this issue were Ayala Korao, Determan Lothar, Jeremy McBride, Joseph Sara.

We believe that the constitutional status of the person and citizen is undergoing an evident

transformation in four directions, each of which requires separate consideration. They are 1) limitation of basic human and civil rights; 2) suspension of the implementation of fundamental human and civil rights; 3) imposition of additional duties on a person and a citizen; 4) meaningful clarification and addition of some human and civil rights, as well as mechanisms of their implementation.

2. Restriction of fundamental human and civil rights.

Over the past year in the domestic science of constitutional law, there has been an active discussion on the legality of limiting human and civil rights and freedoms in the current circumstances [11; 12]. This discussion highlights several issues: the permissibility of restrictions in terms of the main international treaties on Russia's participation, the form and level of restrictions, and their permissible limits.

In general, international treaties allow for the possibility to limit human rights and freedoms in emergencies (for example, Article 4 of the International Covenant on Civil and Political Rights 1966, Article 4 of the International Covenant on Economic, Social and Cultural Rights 1966, Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, from now on referred to as the ECHR). For instance, Article 15 of the ECHR stipulates that "in case of a war or other emergency threatening the nation's life", a state party to the ECHR is entitled "to derogate from its obligations" under this Convention.

At the same time, the above treaties define certain limits or restrictions to human rights and freedoms. Their norms proceed from the necessity of restrictions precisely in the presence of exceptional conditions, clearly formulated and accessible by the law, and if the restrictions are compatible with the nature of rights and freedoms and are proportionate to the purpose defined by law. In addition, Article 15 of the ECHR requires the imposition of measures to be compatible with other state obligations under international law.

Restrictions introduced in the Russian Federation in the context of the pandemic from the international law perspective are reasonably considered admissible in terms of grounds and objectives. However, opinions differ concerning the form and optimal limits of such restrictions. As is known, part 3 Article 55 of the Constitution of the Russian Federation admits the possibility of restrictions of human and civil rights and freedoms just by federal law. Most scholars believe that it is sufficient to provide for the possibility of restrictions in federal law, that is, their establishment in the format of federal law. At the same time, their direct introduction can be carried out based on the reference of federal law by a subordinate normative legal act [13, pp. 79-80], including the regional level [14, p. 10], but there is also the opposite point of view [15]. Federal Law No. 52-FZ of March 30, 1999 "On the sanitary epidemiological well-being of the population", defining the quarantine regime as a system of restrictive measures in case of a threat of emergence and spread of infectious diseases (Article 31), establishes that its introduction on a specific territory is provided based on proposals, instructions of chief state sanitary inspectors and their deputies by a decision of the Government of the RF, executive authority of a subject of the RF or local self-government body. In other words, the mentioned Law allows imposing restrictions on the level of subordinate acts by referring to them in the federal law, which does not contradict part 3, Article 55 of the Constitution of the Russian Federation.

The problem of optimal limits of restrictions is actualized against the background of specific restrictions on some fundamental rights and freedoms. They affected the right of everyone to move freely, choose a place of stay and residence on the territory of Russia (part 1, Article 27 of the Constitution), the right of everyone to freely leave the Russian Federation (part 2, Article 27 of the Constitution), the right of everyone to engage in entrepreneurial activities (part 1, Article 34 of the Constitution), the right of everyone to privacy and the associated prohibition on collecting personal data without the consent of the person (part 1, Article 23, Paragraph 1 of the Constitution), Article.

23, part 1, Article 24 of the Constitution of the Russian Federation), the right to medical assistance (part 1, Article 41 of the Constitution of the Russian Federation) due to the noticeable reduction in the provision of medical care on a planned basis.

Moreover, some rights stipulated by the Basic Law, but enshrined in the current legislation (for example, the restriction of entry into the Russian Federation of foreign citizens and stateless persons, which concerning the citizens of certain countries was modified into a complete ban on entry) were subjected to restriction.

In particular, the practice of restricting freedom of movement in space, time of action, content, and circles of persons in conditions of epidemics is widespread in the world [16, p. 60; 17]. In Russia, the possibility of these restrictions is provided by Article 8, RF Law "On the right of citizens of the Russian Federation to freedom of movement, choice of location and residence within the Russian Federation". According to which, it is possible, including "in certain territories and settlements, where special conditions and regimes of population and economic activities are introduced in case of danger of the spread of infectious and mass noninfectious diseases and poisoning of people"¹. According to S. I. Plotnikov, who specifically studied this issue, the arsenal of measures restricting freedom of movement implemented by various subjects of the Russian Federation includes 1) a ban on leaving the place of residence (place of stay); 2) a ban on entry and exit to certain municipalities within the subject of the Russian Federation; 3) the obligation to observe quarantine upon arrival of the subjects of the Russian Federation and foreign countries with a complex sanitary and epidemiological situation; 4) the establishment of self-isolation regime for specific categories of citizens (mostly over 65 years and with chronic diseases) [18, p. 132], standard in many foreign countries [19].

The regional rule-making practice also demonstrates nonstandard restrictive measures. For example, according to the Decree of the Governor of

¹ Vedomosti of the Congress of People's Deputies and the Supreme Soviet of the Russian Federation. 1993. No. 32. Art. 1227.

Altai Territory of March 31, 2020, No 44, "On certain measures to prevent the entry and spread of a new coronavirus infection COVID-19" was temporarily suspended visiting by citizens for recreational, entertainment, cultural, physical culture, sports, exhibitions, educational, advertising and other similar events, buildings, structures (premises therein) designed primarily for such events, including nightclubs (discos) and other similar facilities, cinemas (cinemas), children's playrooms and children's entertainment centers, other entertainment and recreational facilities (para. 1)².

All restrictive measures at the regional level were introduced, considering the specific sanitary and epidemiological situation in the relevant territory. According to the fair observation of D. McBride "the proportionality of these restrictions - both in terms of their scale and duration - depends on whether their importance for the prevention of the spread of the disease, as well as their impact on the ability to obtain the basic needs...". [20, c. 7]. In general, these circumstances were taken into account when establishing restrictions, which were distinguished by proportionality and showed their effectiveness.

In some cases, the restriction limits are specified by the law, which can be demonstrated by the example of tightening a criminal [21, p. 49] and administrative responsibility in conditions of the pandemic. It is known that part 4 of Article 29 of the Constitution of the Russian Federation provides for the right of everyone to disseminate information by any lawful means freely. In this regard, Y.L. Shumskikh rightly draws attention to the increasing number of situations "with the spread of fakes (false information) on the Internet, which lightning leads to extremely negative consequences: creating obstacles to the implementation of measures to prevent the spread of coronavirus, panic, and disorientation of the population, causing psychological damage to

citizens" [22, p. 58]. As a natural reaction is observed, the addition of Article 13.15 of the Code on Administrative Offences of the RF "Abuse of freedom of mass information" with two compositions of administrative offenses (10.1, 10.2), and the Criminal Code of the RF with Article 207.1 "Public distribution of deliberately false information about the circumstances that threaten the life and safety of citizens" and Article 207.2 "Public distribution of deliberately false socially significant information, leading to grave consequences".

For example, exceeding the legal limit of the right to disseminate information under clause 10.1 is the dissemination "under the guise of reliable reports of deliberately false information about the circumstances posing a threat to the life and security of citizens, and (or) about the measures taken to ensure the security of the population and territories, techniques and methods of protection against these circumstances.

3. Suspension of basic human and civil rights.

According to a reasonable observation of N. N. Chernogor, a distinctive feature of legal regulation in the conditions of countering coronavirus, is a change in the composition of the legal space, which is expressed in the suspension of certain norms of law [23, p. 15]. In some cases, this entails a temporary (particular or indefinite) suspension of the implementation of some of the civil rights provided in the Constitution of the Russian Federation. It is important to emphasize: we are talking not about abolishing these rights, which is inadmissible following part 2 of Article 55 of the Constitution of the Russian Federation, but precisely about the temporary impossibility to exercise them, including due to the forced ban. This phenomenon has affected most severely the right to freedom of assembly and other mass events (Article 31 of the Constitution), the right to use cultural institutions and access to cultural values (part 2, Article 44 of the Constitution), the right to take part in elections (part 2, Article 32 of the Constitution), the right to freedom of assembly and other mass events (part 2, Article 33 of the Russian Federation Constitution), the right to take part in elections (part 2, Article 44 of the Russian Federation Constitution), and the

² Decree of the Governor of the Altai Territory No. 44 dated March 31, 2020 "On certain measures to prevent the import and spread of a new coronavirus infection COVID-19". Available at: <https://rg.ru/2020/03/31/altkrai-ukaz43-reg-dok.html> (accessed on 27.04.2021)

right to freedom of assembly and access to cultural values (part 2, Article 35 of the Russian Federation Constitution). 32 of the Constitution of the Russian Federation), the right to freely leave the Russian Federation (part 2 of Article 27 of the Constitution of the Russian Federation), the right to strike (part 4 of Article 37 of the Constitution of the Russian Federation), the right to work in conditions that meet safety requirements (part 3 of Article 37 of the Constitution of the Russian Federation) [24], the right to engage in entrepreneurial activity (part 1 of Article 34 of the Constitution of the Russian Federation).

Illustration of the above may be the amendment to Federal Law No. 68-FZ dated December 21, 1994, "On the protection of population and territories from emergencies of natural and man-made character" dated April 1, 2020, according to which "upon the introduction of a high alert or emergency in order to protect the life and health of citizens of the Russian Federation voting in elections, referendums may be postponed by decision of the relevant Election Commission ..." (Article 11.2)³. Based on this provision on 03.04.2020, the CEC of Russia adopted decision no. 246/1820-7 "On postponing of voting at elections and referendums on the territory of several subjects of the Russian Federation"⁴. Voting in 109 election campaigns in 38 regions of Russia was postponed, of which 35 were early elections, 53 were additional elections, 4 were repeated elections, and 5 were elections for newly created bodies (first convocation)⁵. Similar legal practices are also found abroad [25].

³ Federal Law No. 98-FZ of 01.04.2020 (as amended on 30.12.2020) "On Amendments to Certain Legislative Acts of the Russian Federation on the prevention and liquidation of emergency situations". Collection of Legislation of the Russian Federation. 2020. No. 14 (Part I). Article 2028.

⁴ Available at: http://www.consultant.ru/document/cons_doc_LAW_34_9848/92d969e26a4326c5d02fa79b8f9cf4994ee5633b/ (accessed on 20.04.2021).

⁵ What elections will be postponed due to the coronavirus pandemic. Available at: <https://www.rabochy-put.ru/news/126924-kakie-vybory-perenesut-iz-za-pandemii-koronavirusa.html> (accessed on 27.04.2021).

However, the suspension of the implementation of certain constitutional rights has been repeatedly established at the regional level [26, p. 14]. Thus, the Decree of the Mayor of Moscow dated 05.03.2020 No 12-UM (as amended) "On the introduction of a high-preparedness regime" prohibits holding public and other mass events in Moscow (para. 2)⁶. In several regions, such a measure is presented in normative legal acts more concretely. For example, Decree No 30-UG (ed. from 14.04.2021) of the Governor of Pskov Region "On measures to ensure the sanitary and epidemiological well-being of the population in the Pskov Region in connection with the spread of a new coronavirus infection (COVID-19)" from March 15, 2020, prohibits public events with citizen presence in person, except for pickets held by one participant. Mass events other than public events are allowed if several conditions are simultaneously met: they are held based on a decision of a public authority or a local government body; the event is coordinated with the Chief State Sanitary Doctor of the Pskov Oblast; the organizer of the event ensures compliance with the conditions of the event as defined by the Chief State Sanitary Doctor of the Pskov Oblast⁷.

4. The imposition of additional responsibilities on a person and a citizen.

The legal basis for this vector of transformation of the constitutional status of the person and citizen is the amendment to the Federal Law "On Protection of the Population and Territories from Natural and Man-Made Emergency Situations" of 01.04.2020. Following the subparagraphs "y" of clause 1 of Article 11 of the Law, the state authorities of Subjects of the Russian Federation received a new power to establish "the rules of behavior mandatory for citizens and organizations during the introduction of the high alertness regime or emergency situation"⁸. Nevertheless, in the

⁶ Official website of the Mayor of Moscow. Available at: <https://docs.cntd.ru/document/564377628> (accessed on 27.04.2021).

⁷ Pskovskaya pravda. 2020. March 20.

⁸ Federal Law No. 98-FZ of 01.04.2020 (as amended on 30.12.2020) "On Amendments to Certain Legislative Acts of the Russian Federation on the prevention and

literature is presented the opinion that the Act "does not provide for the obligations of citizens when declaring the regime of heightened readiness" [27, p. 37].

To the greatest extent, additional duties were manifested in the spheres of personal communication, education, work, entry into the territory of Russia, movement within the territory of a constituent entity of the Russian Federation, or municipality. Normal additional obligations were, in particular, the need to use personal protective equipment (masks, gloves), compliance with social distance, the obligation of remote work and distance learning, the obligation of Russian citizens to observe quarantine upon arrival of subjects of the Russian Federation and foreign countries with a poor epidemiological situation, and for Russian citizens returning to Russia by air also the obligation within three calendar days of arrival to pass a laboratory examination of their health condition. In addition, when foreign nationals enter the territory of Russia, they are obliged to have a current medical document confirming the absence of COVID-19 and the questionnaire for those arriving by air into our country. For those arriving for work purposes, they are required to comply with the requirement to isolate themselves for 14 calendar days from the date of arrival.

Concretization of additional obligations is observed at the regional level, starting with the introduction in several subjects of the Russian Federation (like Moscow) of a system of special electronic passes for movement within the territory of the respective region on personal and public transport. For example, according to clause 5 of Decree No. UG-111 of the Head of the Republic of Bashkortostan dated March 18, 2020 "On introducing a "high alert" regime on the territory of the Republic of Bashkortostan in connection with the threat of new coronavirus infection (COVID-2019) spread in the Republic of Bashkortostan"⁹, the citizens arriving at Ufa

International Airport after Mustay Karim from foreign countries must undergo obligatory thermometry on board the aircraft. According to clause 2 of the Decree of the Head of the Komi Republic dated March 15, 2020, No 16, "On the introduction of the high alert regime," citizens arriving on the territory of the Komi Republic from outside of the Russian Federation have to inform the hotline about their return, place, dates of stay on the specified territories and contact information by the specified phone number¹⁰.

5. Substantial clarification and addition of some human and civil rights, as well as mechanisms for their realization.

It seems that this direction of transformation has three manifestations. 1) Attention is drawn to the legalization of new opportunities at the federal level within the framework of certain rights established by the Constitution of the Russian Federation. Within the framework of the right to health protection and medical care, a special right of access to a vaccine against COVID-19 [28]. The right to social security is concretized in new conditions by the right to monetary compensation for specific categories of persons involved in the fight against the spread of coronavirus infection (for example, medical workers) and families with children. Significant restrictions on entrepreneurial activity have led to individual compensation cases by the state for business representatives. The right to rest from work was substantially enriched by such a phenomenon as "days off with pay for employees. In particular, such days were established in the Russian Federation from April 4 to April 30, 2020¹¹.

2) New rights or meaningful expansion of previously established rights at the regional level are observed. Among others, it is free of charge provision of means of individual protection (clause

liquidation of emergency situations". Collection of Legislation of the Russian Federation. 2020. No. 14 (Part I). Article 2082.

⁹ Official Internet portal of legal information of the Republic of Bashkortostan. Available at:

<https://npa.bashkortostan.ru/27524/> (accessed 20.04.2021).

¹⁰ Statements of normative acts of state authorities of the Republic of Komi. 2020. No. 5. Article 44.

¹¹ Decree of the President of the Russian Federation No. 239 of 02.04.2020 "On measures to ensure the sanitary and epidemiological well-being of the population on the territory of the Russian Federation in connection with the spread of a new coronavirus infection (COVID-19)". Collection of Legislation of the Russian Federation. 2020. No. 14 (Part I). Article 2082.

27 of the Decree of the Head of the Republic of Bashkortostan from March, 18, 2020, No UG-111)¹², free delivery of vitally necessary medicines to the citizens, who observe the self-exclusion regime (clause 13.4 of the Decree of the Head of the Komi Republic from March, 15, 2020 No 16 "About introduction of the high readiness regime")¹³, the right to receive communication services and connection to the information and telecommunication network Internet for citizens over the age of 65, with a zero or negative balance (clause 10.4 of the Decree of the Governor of Ivanovo region of 17.03.2020 No23-ug "On the introduction of the high alert regime in Ivanovo region")¹⁴, the right to receive communication services and connection to the information and telecommunication network Internet for citizens over the age of 65, with a zero or negative balance (clause 17 of the Decree of the Governor of Ivanovo region of 17.03.2020 No23-ug)¹⁵.

3) The mechanism of realization of some constitutional rights changes towards their digitalization. The pandemic has generated, along with many adverse effects and positive effects in the form of mass and active use of modern digital technologies in the implementation of the right to participate in elections, the right to communication, the right to judicial protection [29, p. 75], the right to access information, the right to conduct business activities, the right to medical care, the right to assembly, and several others. A consequence of this became online ordering and receiving of state and municipal services, Internet programs and mobile means of ensuring communication, holding meetings in the mode of

video conferencing using different programs, electronic voting, the use of the latest developments of artificial intelligence in the diagnosis of COVID-19 and several other diseases, online commerce, technologies of electronic justice. At the same time, it is necessary to recognize the aggravation of human rights violations in the context of the massive development of digital technologies, including the preservation of personal data [30].

6. Conclusions

The above allows us to draw several conclusions. First, under the conditions of the coronavirus pandemic, the constitutional status of the person and citizen in Russian Federation has undergone an evident transformation, observed in at least four directions. The vectors of its transformation were limitation of some basic rights, suspension of realization of some fundamental rights, substantive clarification and addition of some rights, and mechanisms of their realization, and assignment of additional duties. As can be seen, the transformation has mainly affected such an element of constitutional status as "rights". For the most part, these transformations are harmful to the individual and the citizen; they worsen his constitutional and legal status compared to the "pre-pandemic" period. These changes in constitutional status will persist in one way or another until the sanitary epidemiological situation normalizes.

Secondly, the same element of constitutional status, including the same right, may experience several transformation variants, but with differences in time, content, territory of action, or the circle of persons. For example, the development of the right to freedom of movement on the territory of the Russian Federation is accompanied by its restriction and suspension of implementation in general. The right to entrepreneurial activity is accompanied, against the background of its restrictions, by an additional possibility for business representatives to receive compensation for forced losses.

Thirdly, the pandemic has demonstrated the admissibility and even a certain expediency of transformation of the constitutional status of the person and citizen not only by federal law (which largely follows from part 3 of Article 55 of the Constitution of the Russian Federation), but also by

¹² Decree of the Head of the Republic of Bashkortostan No. UG-111 dated 18.03.2020 "On the introduction of the "high readiness" regime on the territory of the Republic of Bashkortostan in connection with the threat of the spread of a new coronavirus infection (COVID-2019) in the Republic of Bashkortostan". Official Internet portal of legal information of the Republic of Bashkortostan. Available at: <https://npa.bashkortostan.ru/27524/> (accessed on 27.04.2021).

¹³ Statements of normative acts of state authorities of the Republic of Komi. 2020. No. 5. Article 44.

¹⁴ Ivanovskaya gazeta. 2020. March 24.

¹⁵ Ivanovskaya gazeta. 2020. March 24.

subordinate regulatory acts and not only at the federal but also at the regional level. References in the federal legislation condition this possibility. At the same time, we must recognize that over the past year, for the first time, we have witnessed an active regulation of the constitutional status of the person and citizen by subordinate normative acts of the subjects of the Russian Federation, which indicates their confident incorporation in the number of sources of its legal regulations.

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