

## IMPLEMENTATION OF HUMAN RIGHTS IN THE CONTEXT OF COVID-19 PANDEMIC

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The subject of the article is the legal basis of human rights and freedoms, including their restriction as one of the aspects of the COVID-19 pandemic.

The purpose of the research is to confirm or confute the hypothesis that the restriction of human rights in particular the right to life, the right to health and freedom of movement in Russia during COVID-19 pandemic is legally justified.

The methodology of research includes the formal legal interpretation of legal acts as well as the comparative analysis of Russian and foreign legal literature. The authors analyze and interpret international law, including international treaties and the law of foreign states as well as law of the Russian Federation and the constituent entities of the Russian Federation.

The main results. Restrictive measures of main human rights may lead to the violation of the constitutional rights and freedoms of citizens, and can also create conditions for abuse of authority while applying the rules governing the emergency situations. International human rights law allows the suspension of certain rights in an emergency that threatens the life of the nation. This can only be done in cases where the emergency has been officially declared, the adoption of emergency measures is caused by an urgent need in the current situation, does not contradict other obligations under international law, is limited in time and does not lead to discrimination. The provisions of the Russian Constitution provide criteria, which observance is mandatory when introducing restrictions on human and civil rights and freedoms. However, no state of emergency was introduced in the Russian Federation. The state has adopted the self-isolation regime that does not have sufficient legal regulation. It has created legal uncertainty. The legal basis of measures to restrict freedom of movement is questionable. It seems these measures go beyond the high-alert regime and require the adoption of regulations that meet the requirements of legislation in the field of emergency situations. The realization of the right to health requires a solution to the problem of coordinating the needs of other patients and patients with COVID-19.

Conclusions. Based on the analysis of international law, the law of foreign states and law-making activities of state authorities of the Russian Federation in the context of the spread of coronavirus, the authors conclude that the created legal framework for regulating the current situation is characterized by inconsistency, lack of «transparency» and radicality. Unfortunately, the pandemic has shown that regulation in sphere of emergencies, as well as health care, was not fully prepared for active spread of coronavirus. It is necessary to ensure that all emergency measures, including the imposition of a state of emergency, are lawful, proportionate, necessary and non-discriminatory, with a specific purpose and duration.

## 1. Introduction

At the end of 2019 the world faced an unprecedented crisis, which is based on a global health emergency. It cannot be compared in scale to any other emergency situation that has occurred over the past century, so it requires a global response. In view of the exceptional situation and in order to save people's lives, countries have no choice but to take extraordinary measures: impose general isolation regimes, restrict freedom of movement and the enjoyment of other human rights.

But people and their rights should be at the forefront and in the center of attention. It is necessary to ensure that all emergency measures, including the introduction of a state of emergency, are lawful, proportionate, necessary and non-discriminatory, have a specific purpose and duration.

International human rights norms allow certain rights to be suspended in an emergency situation that threatens the life of the nation. This can only be done in cases where an emergency has been officially declared, and the adoption of emergency measures is urgently necessary in the current situation, does not contradict other obligations under international law, is limited in time and does not lead to discrimination.

Indeed, both in Russian and foreign literature, the authors express concerns that restrictive measures are a violation of the constitutional rights and freedoms of citizens [1, p.52; 2, p.487], and can also create conditions for abuse of authority in the application of norms regulating the emergency situation [3].

The Constitution of the Russian Federation provides for a number of provisions that are peculiar criteria, compliance with which is mandatory when introducing restrictions on human and civil rights and freedoms. For example, Article 56 allows the restriction of individual rights and freedoms of citizens, but under the conditions of a legally imposed state of emergency, and Articles 15 and 17 establish a general guarantee of respect for the rights and freedoms of citizens and prescribe compliance, including with international

standards in this area. According to N.V. Vitruk, such criteria are necessary to ensure that "there are no unjustified restrictions, arbitrariness, and the possibility of abuse by the authorities and officials". [4, p. 104].

However, the Russian Federation has not introduced a state of emergency or a state of emergency regime. The state limited itself to the introduction of a self-isolation regime, which has no legal regulation in the legislation, which created legal uncertainty and made it possible for the state to "manually" regulate this situation.

Such rights as the right to life, the right to health and the right to freedom of movement are at the forefront of the fight against the COVID-19 pandemic. Issues related to the implementation of these rights during the pandemic, as well as possible restrictions on rights and the compliance of the imposed restrictions with national legislation and international law will be discussed in this article.

## 2. Right to life

The right to life is the basis and foundation of all human rights [5]. The spread of the coronavirus has shown States and their populations how valuable and fragile life is, and its protection has become a real challenge at both the international and national levels.

Deprivation of life or violation of the right to life in the absence of adequate State provision of medical care, medicines and equipment is a serious problem during the pandemic. The right to life directly depends on the amount of resources of the health system and its capabilities.

International law establishes a special mechanism for implementation and ensurance the right to life, which occupies a special place. As V.V. Gavrilov correctly notes, "the main purpose of treaties and other international legal acts on human rights is not to replace national legislation, but to establish clear general standards of States behavior, to ensure their universal recognition and uniform application" [6, p. 54].

Thus, the Universal Declaration of Human Rights (adopted by the UN General Assembly on 10.12.1948) declares in Article 3: Everyone has the

right to life, liberty and security of person<sup>1</sup>. The content of the right to life is also enshrined in Article 6 of the International Covenant on Civil and Political Rights of 16.12.1966: «The right to life is an inalienable right of every human being. This right is protected by law. No one can be arbitrarily deprived of their life.<sup>2</sup>»

It is these two documents that establish a universal international standard for the entire international community to legal regulation and ensure the right to life.

The positions of the UN Human Rights Committee are important for the modern understanding of the concept of the right to life. The UN Human Rights Committee, the organization that oversees the implementation of the International Covenant on Civil and Political Rights in the countries that are parties to the Covenant, formulates its positions in general comments (GC). These observations summarize the accumulated practice regarding the articles of the Covenant. Two observations are known as: General Comment No. 6 (1982)<sup>3</sup> and General Comment No. 14 (1984).

Of interest is general comment No. 6 (1982), in which the Committee expressed its understanding of the necessary measures that States should take to comply with this right. In clause 2, the right to life is proclaimed as a fundamental right, from which no derogation is allowed, even during a state of emergency in a State in which the existence of the nation is threatened. It is argued that the right to life is a right that cannot be interpreted narrowly.

The Committee also pointed out that the protection of the right to life obliges States to take all possible measures to preserve life, for example,

measures to reduce child mortality, overcome the problems of malnutrition of the population, and stop epidemics [7, pp. 121-122].

Thus, the comments do not provide detailed guidance on protecting the right to life in a pandemic, nor do they indicate any specific measures that States should take to preserve the lives of its population.

We should agree with M.F. Kosolapov that "the current GC under Article 6 of the Covenant are quite general in nature. The Committee, while emphasizing that the right to life cannot be interpreted narrowly, did not even define approximate guidelines for the correct interpretation" [8].

At the present time, when the mortality rate of people from coronavirus remains at a fairly high level, the question arises about the State's compliance with international legal obligations to protect the right to life.

The right to health is an integral part of the right to life. The WHO Constitution states: «The enjoyment of the highest attainable standard of health is a fundamental right of every human being, without distinction as to race, religion, political opinion, economic or social status.»<sup>4</sup>

Although the right to health was not included as a separate right in the Universal Declaration of Human Rights, it was included as a separate element in Article 25 (1) of the Declaration, which states: «Everyone has the right to a standard of living, including food, clothing, housing, medical care and necessary social services, which is necessary for the maintenance of the health and well-being of the individual and their family».

### 3. Right to health and access to health care

The right to the «highest attainable standard of living» was subsequently established in Article 12 of the International Covenant on Economic, Social and Cultural Rights as a separate human right. This is stated in Article 12 of the Covenant as follows:

"1. The States, parties to the present Covenant, recognize the right of everyone to the enjoyment of

<sup>1</sup> The International Covenant on Economic, Social and Cultural Rights of December 16, 1966. Human rights: Collection of international treaties. The United Nations. - New York and Geneva, 2002. Vol. I. Universal treaties. - Part 1. Pp. 7-37.

<sup>2</sup> The International Covenant of 16.12.1966 "On Civil and Political Rights" (entered into force on 23.03.1976). Bulletin of the Supreme Court of the Russian Federation. 1994. No. 12.

<sup>3</sup> General Comment No. 6 (1982) of the UN Human Rights Committee. Available at: <http://hrlibrary.umn.edu/russian/gencomm/Rhrcomms.html> (accessed: 15.11.2020).

<sup>4</sup> "The Charter (Constitution) of the World Health Organization (WHO)" (Adopted in New York on 22.07.1946).

the highest attainable standard of physical and mental health.

2. The measures to be taken by the States, parties to the present Covenant, for the full realization of this right shall include those necessary to:

(a) ensure the reduction of stillbirths and child mortality and the healthy development of the child;

(b) improve all aspects of environmental and occupational health in industry;

(c) prevent, treat and fight epidemic, endemic, occupational and other diseases;

(d) create conditions that ensure that everyone receives medical attention and medical care in case of illness."<sup>5</sup>

It is in this way that the right to health has received its normative formalization in international law.

As for its subsequent consolidation, the right to health is contained in the International Convention on Racial Discrimination of 1965, the Convention on the Elimination of All Forms of Discrimination against Women of 1979, the UN Convention on the Rights of the Child of 1989, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990, and the Convention on the Rights of Persons with Disabilities of 2006. All these documents confirm and further detail the right to health in relation to specific groups of people [9].

The COVID-19 crisis is testing the ability of States to protect the right to health. Everyone has the right to the enjoyment of the highest attainable standard of health, which provides them with decent living conditions. Everyone, regardless of their social or economic status, should have access to the health care they need. Persistent underfunding of health systems has weakened the ability to respond to the pandemic while providing other critical health services.

Experience in the fight against COVID-19 shows that it is imperative to ensure universal access to

health services.

The updated COVID-19 strategy serves as a guide for public health authorities to respond to COVID-19 at the national and regional levels and provides updates to the global strategy for responding to the COVID-19 pandemic.<sup>6</sup> This document supplements and links to the technical recommendations for COVID-19 preparedness and response<sup>7</sup> published by WHO since the start of the response.

In times of a pandemic, protecting the right to health for all should be the main goal of public policies and measures, since pandemics and the State's response to them can also pose a significant risk to many other social rights<sup>8</sup>.

Article 41 of the Constitution of the Russian Federation states: "Everyone has the right to health protection and medical assistance. Medical care in state and municipal health care institutions is provided to citizens free of charge at the expense of the relevant budget, insurance premiums, and other revenues". Health is the highest value of society, and other human and civil rights lose their meaning without exercising the right to protect it [10; 11, p. 151].

The right to health protection and medical assistance is specified in federal and regional legislation. Thus, by virtue of Article 2 of the Federal Law "On the Fundamentals of Public Health Protection in the Russian Federation" dated 21.11.2011 No.323-FZ, medical assistance is a set of measures aimed at maintaining and (or) restoring health and including the provision of medical services.

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<sup>6</sup> "Updated strategy to combat COVID-19". Available at: [https://www.who.int/docs/default-source/coronaviruse/covid19-strategy-update-2020-ru.pdf?sfvrsn=29da3ba0\\_19](https://www.who.int/docs/default-source/coronaviruse/covid19-strategy-update-2020-ru.pdf?sfvrsn=29da3ba0_19) (accessed: 12.12.2020).

<sup>7</sup> Technical recommendations for preparedness and response to COVID-19". Available at: <https://www.who.int/ru/emergencies/diseases/novel-coronavirus-2019/technical-guidance> (accessed: 12.12.2020).

<sup>8</sup> «Statement on the right to protection of health in times of pandemic crisis», European Committee of Social Rights, 22 April 2020. Available at: <https://www.coe.int/en/web/european-social-charter/-/european-committee-of-social-rights-statement-on-the-right-to-protection-of-health-in-times-of-pandemic-crisis#>: (accessed: 12.12.2020).

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<sup>5</sup> The International Covenant on Economic, Social and Cultural Rights of December 16, 1966. Human rights: Collection of international treaties. The United Nations. - New York and Geneva, 2002. Vol. I. Universal treaties. Part 1. Pp. 7-37.

Unfortunately, during the period of the spread of coronavirus, when the improvement of the situation in the country directly depends on the quality of medical care, people who are not infected with coronavirus do not receive medical care or face difficulties in obtaining it, which creates the risk of neglect of patients who do not have COVID-19.

However, it is the right to health care that should be given special attention, since its exercise is closely linked to the right to life, which is absolute and not subject to restriction.

In Russia the restriction of the right to health protection was initiated by the Order of the Ministry of Health No.198n dated 19.03.2020 "On the temporary procedure for organizing the work of medical organizations in order to implement measures to prevent and reduce the risks of spreading the new coronavirus infection COVID-19". Appendix No.3 to the order states that the heads of executive authorities of the constituent entities of the Russian Federation in the field of health protection and the heads of medical organizations and their structural divisions that provide medical care in outpatient and day-care settings suspend preventive medical examinations and medical examinations (clause 1.10), and also consider the possibility of postponing the delivery of medical care in a planned form, including in a day-care setting (clause 1.11). Thus, the powers of the constituent entities of the Russian Federation have been expanded.

The next act was the decree of the Government of the Russian Federation No.432 dated 03.04.2020 "On the specifics of implementing the basic program of compulsory medical insurance in the face of the threat of the spread of diseases caused by a new coronavirus infection", which already specified the measures taken to limit it. As a result, almost all hospitals are quarantined or repurposed to work with coronavirus patients, routine operations are canceled, and doctors only work with situations where emergency care is required. As a result, there is an uneven redistribution of medical resources: when all forces and resources are directed exclusively at overcoming the virus, the state has forgotten about the existence of other

diseases. There is a risk of making discriminatory decisions in the allocation of resources that put other people (who are not sick with coronavirus) in an extremely unfavorable position [12]. The lack of prompt response of the authorities to this situation leads to numerous complaints and lawsuits<sup>9</sup>.

However, restrictions on the right to medical care exist not only in Russia. Thus, in March in the United States the number of hospital visits across the country began to decline, as the authorities called for postponing treatment unrelated to COVID-19 as much as possible in order to free up health resources to fight the pandemic. Surgeries, outpatient procedures, and even some preventive services were canceled. Thus, by mid-May, almost 94 million people were withheld medical care<sup>10</sup>.

Another problem closely related to the realization of the right to health and medical care is the shortage or unavailability of medicines. This problem is caused not only by the restriction of the right to freedom of movement, the closure of borders, but also by the conduct of clinical trials. Thus, the literature notes that the race to test the same drugs under different conditions leads to a sharp increase in demand for specific drugs for clinical trials. This fact increases the risk of deficiency, which is especially problematic when research is focused on the so-called "repurposing" of existing drugs for the treatment of covid. One such example is hydroxychloroquine, which is used daily by patients with autoimmune diseases such as rheumatoid arthritis or systemic lupus erythematosus [13]. The Russian also faced this problem<sup>11</sup>.

Summing up, it should be noted that the constitutional right to health protection and medical

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<sup>9</sup> In Rostov, a lawyer filed a lawsuit against the regional government. Available at: <https://bloknot-rostov.ru/news/v-rostove-advokat-prodal-isk-protiv-regionalnogo-p-1234876> (accessed: 13.12.2020).

<sup>10</sup> Americans are delaying medical care, and it's devastating health-care providers. The Washington Post. Available at: <https://www.washingtonpost.com/nation/2020/06/01/americans-are-delaying-medical-care-its-devastating-health-care-providers/?arc404=true> (accessed: 13.12.2020).

<sup>11</sup> Diseases argue pills. Kommersant. Available at: <https://www.kommersant.ru/doc/4334029> (accessed: 13.12.2020).

care is guaranteed regardless of the nature of the disease. In this regard, the application of measures related to the restriction of this right should not be arbitrary and discriminatory [14]. However, currently in Russia and the regions there is an unacceptable situation when the imposed restrictions, due to the granting of additional powers to regional authorities, are not controlled. This is confirmed by numerous complaints to the All-Russian Union of Patients and explanations of the Compulsory Health Insurance Fund for Providing medical care during the pandemic, which actually confirms violations of citizens rights<sup>12</sup>. However, it is extremely important to deal with an emergency situation in the most effective and efficient way, when the needs of other patients must be coordinated with the emergency health needs for the treatment of patients with COVID-19 [15; 16].

#### 4. Right to freedom of movement

The right to freedom of movement is one of the key constitutional rights. In the legal literature, freedom of movement is considered by the authors as an integral component of individual freedom [17, p. 20] and individual self-determination [18, p.8]. It is this right that was primarily restricted during the fight against the pandemic, since the virus spreads only through active interaction of people with each other.

The right to freedom of movement under Article 27 of the Constitution of the Russian Federation consists of five elements: 1) the right to freedom of movement; 2) the right to free choice of residence; 3) the right to free choice of residence; 4) the right to freely travel outside the country; 5) the right to freely return to Russia [19, p.440; 20, p.70-79; 21, pp.187-195; 22, pp.601-605; 23, pp.463-466].

The possibility of restricting constitutional rights is also noted in the literature. Thus, most

scientists support the position of dividing all rights into absolute (unlimited) and rights that can be restricted [24, p. 194; 25, p.167-168; 26, p.310; 27, p.45-46; 28, p.531]. The right to freedom of movement is not an absolute right and is unanimously regarded as a right that can be restricted on certain grounds [29, p. 196].

In international law, the right to freedom of movement is enshrined in Article 13 of the Universal Declaration of Human Rights, Article 12 of the International Covenant on Civil and Political Rights, and Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Thus, Article 12 of the International Covenant on Civil and Political Rights provides:

«1. Everyone who is lawfully present in the territory of a State has, within that territory, the right to freedom of movement and freedom to choose his or her place of residence.

2. Everyone has the right to leave any country, including his own.

3. The rights referred to above may not be subject to any restrictions other than those prescribed by law, necessary for the protection of national security, public order, public health or morals, or the rights and freedoms of others, and compatible with the other rights recognized in the present Covenant.

4. No one may be arbitrarily deprived of the right to enter their own country.<sup>13</sup>»

Thus, the international community recognizes the priority of human rights and freedoms, but at the same time allows for their restriction in order to protect the health of the entire population. In order to contain the spread of the COVID-19 coronavirus infection, the main forms of restriction of freedom of movement are: self-isolation or curfew; border closures and travel bans outside the country of residence; internal movement restrictions.

However, not all restrictions on rights and freedoms within the framework of measures taken to protect the population can be legal.

<sup>12</sup> The Federal Migration Service called the refusal of hospitalization without a coronavirus test unacceptable. Available at: <https://newizv.ru/news/society/13-05-2020/foms-nazvala-nedopustimym-otkaz-v-gospitalizatsii-bez-testa-na-koronavirus> (accessed: 15.10.2020).

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<sup>13</sup> International Covenant on Civil and Political Rights (Adopted by General Assembly resolution 2200 A (XXI) of December 16, 1966) // Official website of the United Nations. Available at: [https://www.un.org/ru/documents/decl\\_conv/conventions/pactpol.shtml](https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml) (accessed: 15.10.2020).

The requirements for measures and restrictions to be imposed are contained in the Syracuse Principles on Provisions concerning Limitations and Derogations of Rights in the International Covenant on Civil and Political Rights, adopted by United Nations Economic and Social Council on Human Rights<sup>14</sup>, as well as the adopted by UN Human Rights Committee general comments on freedom of movement and the state of emergency.

Siracusa principles establish that restrictions must be provided by law and implemented in accordance with the law (the basis of the legitimacy); should be required to achieve a specific goal in a democratic society (the basis of necessity ); can not be excessive and should be adequate to the circumstances in which they arose, and also need to achieve this goal with a minimum of abuses and limitations (the basis of proportionality).

In turn, general comment No.27 (sixty-seventh session, 1999) provides authoritative recommendations on the measures taken by the State that are accompanied by restrictions on rights and freedoms in the interests of protecting public health or in a state of emergency.<sup>15</sup>

Special attention in the comments is paid to the principle of proportionality: restrictive measures should be appropriate for the performance of their protective function and be proportionate to the protected interest.

Thus, the measures taken by States cannot be arbitrary. The international community requires States to comply with their international legal obligations to protect fundamental human rights.

Russian legislation also provides for its own guarantees to prevent unjustified restrictions on the right to freedom of movement. This right is specified in Law of the Russian Federation No.

5242-1 of 25.06.1993 "On the right of citizens of the Russian Federation to freedom of movement, choice of place of stay and residence within the Russian Federation". Article 1 of the Law of the Russian Federation No. 5242-1 of 25.06.1993 states that restrictions on the right of citizens of the Russian Federation to freedom of movement, choice of place of stay and residence within the Russian Federation are allowed only on the basis of the law.

Such a law is Federal Law No. 68-FZ of 21.12.1994 "On the protection of the Population and Territories from natural and man-made emergencies "(hereinafter referred to as Federal Law No. 68) [30, p. 28]. In accordance with Article 1 of this law, an emergency situation is a situation in a certain territory that has developed as a result of an accident, a dangerous natural phenomenon, a catastrophe, the spread of a disease that poses a danger to others, a natural or other disaster that may or may not cause human casualties, damage to human health or the environment, significant material losses and violation of the living conditions of people.

However, in Russia, a state of emergency has not been officially declared. On the territory of the constituent entities of the Russian Federation, a high-alert mode was introduced and is still in effect. For the first time in 2020, the Mayor of Moscow declared a high-alert mode in accordance with Federal Law No. 68. Simultaneously with the introduction of such a regime, a number of restrictive measures were introduced related to the right to freedom of movement, the right to assemble peacefully, hold meetings, rallies, the right to education and other constitutional rights. As noted by N. G. Zhavoronkova and Yu. G. Shpakovsky, "a very strange construction occurs, in which the measures taken at the level of the subject of the Russian Federation are much stricter in this regime than during the emergency regime, which was never declared" [3, 1].

If we look at international experience, we can see that the state of emergency was introduced in Canada (Declaration of an Emergency to Protect the Public, 27 March 2020), Bolivia (Decree No. 4196 Declaring a State of Emergency on 17 March 2020), Argentina (Decree No. 260 Declaring a Public Health Emergency, 12 March 2020), Armenia (Decree No.

<sup>14</sup> Syracuse Principles for the Interpretation of Exceptions and Derogations from the Provisions of the International Covenant on Civil and Political Rights (1985). - Available at: <https://www.legislationline.org/ru/documents/id/14623> (accessed: 15.10.2020).

<sup>15</sup> General comments 27 (sixty-seventh session, 1999). - Available at: <http://hrlibrary.umn.edu/russian/gencomm/Rhrcom27.html> (accessed: 09.10.2020).

298-N of declaring a state of emergency, March 16, 2020), Portugal, Egypt (state of emergency was introduced for three months in accordance with article 154 of the Constitution of Egypt) and other countries.

An interesting situation developed in the state of Michigan (USA). On March 10, 2020, Decree 2020-4 declared a state of emergency. Due to the escalating situation, the governor was confident of the need to extend the state of emergency. Under the Emergency Management Act of 1976, both houses of the Legislative Assembly must approve a request for an extension of the state of emergency, otherwise it will expire in 28 days. Both chambers agreed to extend the state of emergency until April 30, but declined to extend it further. In response to the refusal, on April 29, the Governor declared the state of emergency imposed by the previous decree ended and a minute later on the same day declared a new state of emergency in accordance with the State of Emergency Law, thereby launching a new, 28-day period during which the state of emergency is valid and does not require legislative approval.

However, a high-alert regime has been introduced in the constituent entities of the Russian Federation, which raises the question: is it possible to restrict the rights of citizens to freedom of movement when a high-alert regime is introduced (without introducing an emergency situation or a state of emergency)?

As V.Y. Gulakova and N.S. Kastornov emphasize, "measures taken by the authorities should not restrict the rights and freedoms of citizens, including the right to freedom of movement" [32, p.27]. Indeed, according to section 10 of Article 4.1 of Federal law dated 21.12.1994 № 68-FZ "On protection of population and territories from emergency situations of natural and technogenic character" with the introduction of high alert the competent authorities may, in particular, implement measures due to the development of an emergency, measures, which do not limit the rights and freedoms of man and citizen and protect the population and territories from emergency situations, providing necessary conditions for the prevention and liquidation of emergency situations and minimizing their

negative impact. However, the vague wording and ambivalent interpretation of these norms allow for such restrictions, taking into account that in the same part 10 of Article 4.1, the power to restrict access of people and vehicles to the territory where there is a threat of an emergency, as well as to the emergency zone, is mentioned. Thus, the situation that has arisen has revealed imperfections in the legislation that allow the authorities to take measures that somehow infringe on the rights of citizens in the absence of an officially declared state of emergency.

Given that Federal Law No. 68-FZ of 21.12.1994 "On the Protection of the Population and Territories from Natural and Man-made Emergencies" gives an ambiguous answer to the possibility of restricting the constitutional right to freedom of movement, it is necessary to refer to the normative acts directly containing such measures.

In Russia restrictions on freedom of movement are established by decrees of The President of the Russian Federation, and in the constituent entities of the Russian Federation – by normative acts of the constituent entities of the Russian Federation. So, in accordance with subclause " b " of clause 2 of the Decree of the President of the Russian Federation No. 239 of 02.04.2020 "On measures to ensure the sanitary and epidemiological welfare of the population on the territory of the Russian Federation in connection with the spread of a new coronavirus infection (COVID-19)" regulatory acts of the constituent entities of the Russian Federation in the regions establish a special procedure for the movement of citizens and vehicles. For example, in the Omsk Region, the order of the Governor of the Omsk Region No. 19-r dated 17.03.2020 "On measures to prevent the import and spread of a new coronavirus infection (COVID-19) in the Omsk Region" is in effect.

These normative legal acts are not laws, therefore, the very legal basis for introducing such measures is called into question. In our opinion, regulation should be carried out at the level of federal law, as prescribed in Part 3 of Article 55 of the Constitution of the Russian Federation.

In addition to the accepted restrictions, a special regime was introduced - a self-isolation regime. Domestic legislation does not include the concept of



"self-isolation", which creates a problem of interpretation and definition of the legal basis of such a regime.

Currently, there is a judicial practice to challenge the regulatory acts of the subject where restrictions on freedom of movement are established.

Thus, the decision of the constitutional court of the Russian Federation of 25.12.2020 "On the case of the verification of constitutionality of subclause 3 of clause 5 of the decree of the Governor of Moscow region "On the introduction in the Moscow region a high alert for the management bodies and the Moscow regional system forces of prevention and liquidation of emergency situations and certain measures to prevent the spread of the new coronavirus infection (COVID-2019) on the territory of the Moscow region" in connection with the request from Protvino city court of the Moscow region", the decision of the authorities to limit the movement of people during a pandemic was recognized as constitutional. The Court, first of all, considered the question of the permissibility of restricting the right to freedom of movement, noting, that it is the State that is responsible for protecting the life and health of its population, as a result, it is forced to take appropriate measures aimed at protecting basic goods. With this in mind, it is necessary to ensure a balance between protecting the life and health of citizens and the rights and freedoms of a particular citizen.

In support of its position, the Constitutional Court laid down the norms of not only international acts, the Constitution of the Russian Federation, federal and regional legislation, but also mentioned International Health Regulations, recommendations of the World Health Organization, as well as the practice of other states in introducing the "lockdown" regime.

In foreign countries, indeed, special legal regulation of the self-isolation regime is being developed, and "stay-at-home order", "safer-at-home order", "a movement control order" (typical for South Asia) or lockdown regulations are being adopted (in the UK, Spain, France, Italy). In the United States, there are shelter-in-place orders (literally "take shelter on the spot") at the state level. A common feature of such regulation is the

lack of uniformity. Note that the terminology of the regimes varies, and therefore the content of the measures taken is different.

Thus, in Italy and France, in order to prevent the spread of the virus, it was forbidden to leave your home, except for going to the store for food or medicine. At the same time, you must notify us in writing about your movements.<sup>16</sup>

In the United States, the power of states to adopt mandatory regulations on their territory to protect public health, safety and general well-being is characterized by the term "the state police power". This term is fixed in The Tenth Amendment to the U.S. Constitution. Thus, the Tenth Amendment provides that powers not delegated to the United States by this Constitution and not prohibited to individual States are reserved to the States or the people respectively<sup>17</sup>.

In 1905, the United States experienced a public health emergency similar to COVID-19 - smallpox. In most states, mandatory vaccination was introduced. State Massachusetts also passed a law allowing cities to introduce mandatory vaccination for their residents. Citizen Jacobson refused to be vaccinated, and the case went to the United States Supreme Court. *Jacobson v. Massachusetts* case 197 U.S. 11 (1905) decided whether the Mandatory Vaccination Act violates the right to liberty enshrined in the Fourteenth Amendment to the Constitution of the United States. The court, by a majority of 7 to 2 votes, ruled that the law does not violate the rights of a citizen, since individual freedom is not absolute and is subject to "the state police power". To prevent the spread of an infectious disease, states can use their authority ("police power") to adopt regulations to protect the health and safety of the public [33]. Thus, the Supreme Court stated that, faced with an epidemic that threatens society, the state can take emergency measures that restrict constitutional rights, if these measures have at least

<sup>16</sup> Décret no 2020-293 du 23 mars 2020 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire, Art. 3. Available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041746694/> (accessed: 11.10.2020).

<sup>17</sup> America's Founding Documents. Available at: <https://www.archives.gov/founding-docs/bill-of-rights-transcript> (accessed: 11.10.2020).

some "real or significant relation" to the public health crisis and are not a clear, tangible invasion of the rights enshrined in the basic law.

Based on this practice and interpretation of the powers of the States some authors conclude that the decisions taken by States, like shelter-in-place and stay-at-home orders are constitutional. Other scholars argue that the principle of suspension of constitutional rights derived from decisions such as *Jacobson v. Massachusetts*, is wrong, as the conclusion of the courts on the legality of the input measures in the period of crisis is associated with a decrease in the level of judicial control in emergency situations, based on the fact that "ordinary" judicial control would be too harsh against the government's actions in the crisis and therefore may undermine the effectiveness of the imposed restrictions [34].

However, according to the authors, this is unacceptable, because an independent judicial system in a crisis is "perhaps the only institution that is in any structural position to resist the potential excessive influence of local, state or federal political authorities" [35, 5].

It should also be noted that in the United States, a distinction is made between the above mentioned modes: stay-at-home order and shelter-in-place order. Stay-at-home orders were accepted in 42 states, for example, in Alabama, Alaska, New York, Nevada, Pennsylvania, Washington, Michigan, and Missouri<sup>18</sup>.

Shelter-in-place orders were first accepted in California (San Francisco Bay Area). The main controversy was that «shelter-in-place» measures are measures taken in cases of protection from radiation or chemical emissions into the environment in cases of bombing, active firing and nuclear wars<sup>19</sup>.

Therefore, after the declaration of such a regime, citizens did not understand its significance

in relation to the pandemic and doubted what should be done. Later, New York Governor Andrew Cuomo condemned the introduction of the shelter-in-place order, as this news causes people to panic<sup>20</sup>. In this regard, most states, including California, have renamed their regime to stay-at-home order.

Thus, the problem of legally correct characterization of the current situation and the possibility of classifying it as an emergency or comparing it with martial law arose reasonably. Given this uncertainty, it is highly likely that heads of State will abuse their powers and impose regimes that are incompatible and disproportionate to the current situation. The legal basis of measures to restrict freedom of movement is also questionable. It seems that these measures go beyond the high-alert regime and require the adoption of regulations that meet the requirements of legislation in the field of emergency situations.

## 5. Conclusions

Based on the conducted analysis, it can be concluded that the created legal framework for regulating the current situation has several characteristic features: inconsistency, lack of "transparency", and radicalism. Unfortunately, the pandemic has shown that the regulatory framework for emergency management, as well as healthcare, was not fully prepared for the conditions of the spread of coronavirus. The State was forced to make hasty changes to numerous regulatory acts. The response of States to COVID-19 has shown that the lack of planning and preparedness for such emergencies is a systemic problem that affects almost all sectors of society [36]. Therefore, false interference with the exercise of human rights, restrictions and prohibitions should have a substantial legal basis and remain under the close control of independent judicial authorities and, above all, the State itself.

<sup>18</sup> Shelter-in-Place and Stay-at-Home Orders: What They Mean//The Cut. Available at: <https://www.thecut.com/article/what-does-shelter-in-place-mean.html> (date of request: 09.10.2020).

<sup>19</sup> Shelter in place, stay at home, quarantine: What do coronavirus restrictions mean? Yahoo!news. Available at: <https://news.yahoo.com/shelter-in-place-stay-at-home-quarantine-what-do-coronavirus-restrictions-mean-145017819.html> (accessed: 09.10.2020).

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<sup>20</sup> Coronavirus in the US: How all 50 states are responding – and why eight still refuse to issue stay-at-home orders// USAToday. Available at: <https://www.usatoday.com/story/news/nation/2020/03/30/coronavirus-stay-home-shelter-in-place-orders-by-state/5092413002/> (accessed: 09.10.2020).

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