

COVID-19 PANDEMIC. NEW CHALLENGE FOR CONSTITUTIONAL RELATIONS

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The subject. Current constitutional legal relations are considered in the context of the objective legal reality of the COVID-19 pandemic.

The purpose of the article is confirmation or confutation of the hypothesis that COVID-19 pandemic impacts on the development of constitutional relations.

The methodology. The author uses the method of comparative legal analysis legal measures aiming the minimization of pandemic's impact on society and formal legal analysis of legislative acts.

The main results of the research. It is alleged that the COVID-19 pandemic had a significant impact on the state of constitutional legal relations and revealed the most acute social and economic problems in all areas of public life.

The development of constitutional legal relations in a pandemic will lead, firstly, to a new correlation of collective and individual human rights. As a result of a pandemic, constitutional legal relations in the healthcare sector will move from the category of individual right to life and health to the category of public interest. When the health of an individual citizen is a guarantee of economic and public safety.

Secondly, the development of the institution of self-limitation of constitutional human rights. From the position of law, self-restriction of rights allows: to ensure personal and public safety of citizens; avoid introducing restrictions on constitutional rights and freedoms; eliminate redundancy of human rights restrictions.

Self-limitation of constitutional human rights is considered as conscious voluntary abstinence from the exercise of constitutional rights on the recommendation of public authorities in an emergency or other conditions close to them (high alert, self-isolation) in order to ensure public and personal safety. Self-limitation of constitutional human rights allows us to observe the constitutional balance of personal and public interests.

Thirdly, the experience of combating a pandemic has shown that if the population is able to cope with the consequences of a short-term restriction of their rights on their own, then long-term quarantine measures lead to a significant drop in incomes of the population and must be compensated by the state.

Conclusions. The COVID-19 coronavirus pandemic on the one hand triggered a new stage of constitutional legal relations, and on the other hand, like any emergency, exposed the most acute social and economic problems in society. The development of constitutional legal relations in the context of the emerging digital society and the state will not only lead to the development of new principles of constitutional development and, as a result, to constitutional legal relations of a new, digital level, but also affect such areas as the ratio of collective and individual human rights; development of the institution of self-restriction of human rights; further improvement of compensatory constitutional legal relations.

1. Introduction

More recently, when discussing the challenges to modern constitutional legal relations, we mentioned the construction of a digital state, the state of the environmental environment, migration problems and other challenges of our time. But, in December 2019, news agencies flew around the news about the coronavirus in the Chinese province of Hubei. According to Rospotrebnadzor, the COVID-19 epidemic affected more than 180 countries in addition to China and covered about 10 million people. The consequences of the COVID-19 pandemic have yet to be assessed, and how to survive the pandemic itself. The unprecedented measures taken in many countries of the world to overcome its consequences suggest that the pandemic will contribute to changing many social relations.

The constitutional relations on the one hand, define the foundations of the state, values and ideals of society, social conditionality and autonomy of law, and with another — affect the current legislation and the state of industry relations. They ensure the identity of the legal system to the national and cultural traditions of the people and the ideals of law that are accepted by society [1, p. 46-47]. These are the reasons that led the traditional Japanese state to change its Constitution [2, pp. 59-86]. In terms of subject matter, constitutional legal relations express rights and freedoms of man and citizen, the foundations of the constitutional system and the principles of the legal organization of society being classical legal relations [3, p. 14; 4, p.56]. Constitutional legal relations are the guarantors of the role of the state. By their nature, constitutional legal relations are related to the self-sufficiency of the Constitution [5, p. 34-45].

2. Coronavirus pandemic as a factor of influence on constitutional legal relations

During the COVID-19 pandemic, constitutional legal relations as the basic social relations of building a legal state and recognizing and observing human rights and freedoms were put to the test. Constitutional legal relations have been developing for many years under the influence of various internal and external factors, which were studied in detail in a larger work [6]. The coronavirus pandemic can be recognized as the strongest factor in recent decades. The gradual development of the pandemic and the involvement of States in it, both with old democracies and newly built democracies, simultaneously revealed both the weaknesses of constitutional legal relations and pushed them to a new stage in the development of legal relations.

Chronologically important for the absolute majority of States was the origin and successful fight against COVID-19 in China. The rapid introduction of strict quarantine throughout Hubei province, which is home to 65 million people, has raised the question of whether constitutional legal relations and an effective fight against the pandemic are compatible. On the one hand, there are hundreds and thousands of victims of the pandemic, and on the other hand, human rights and freedoms. Authoritarian methods of public administration have made it possible to quickly implement a whole range of necessary quarantine measures and stop the spread of the epidemic throughout the state.

A difficult choice for States with well-established constitutional legal relations has divided the world into two camps. On the one hand, these are States that, under the influence of the high death rate from COVID-19, have imposed strict restrictions on

constitutional rights and freedoms. Italy, Spain, Czech Republic, UK, USA, Germany. On the other hand, States that refused to seriously restrict human rights even in the face of a pandemic Sweden, the Netherlands, Brazil, Belarus, Mexico and South Korea have chosen alternative ways to combat the pandemic. In some cases, this tactic was justified (South Korea), in other cases it raised questions (Brazil, Mexico, Sweden, the Netherlands).

The coronavirus pandemic has highlighted, and in some cases exacerbated, the accumulated problems associated with the realization of human rights and freedoms mainly of the most vulnerable segments of the population. So in the United States, there is an aggravation of problems related to racial prejudice, according to the UN, the number of crimes against women and children (domestic violence) has increased, in Italy, great Britain, and Sweden, mass violations of the right to health of older citizens have been identified.

The social-Darwinian approach to saving the population has been demonstrated by many European States with developed constitutional legal relations. In the United States, Spain, Sweden, and the United Kingdom, medical care was actually denied to elderly citizens and migrants. As a result, according to the WHO European office, in the countries of the region, up to half of all deaths from coronavirus occur in detention centers for the elderly. In Spain, 66%, and the UK, 25% of deaths occur in nursing homes. It should be noted that, according to European legal experts, "constitutional pluralism can and will remain relevant for EU/UK relations, as well as within the EU, in the future" [7].

3. Effects of the coronavirus pandemic on constitutional legal relations

Not every state was ready to change the

objective legal reality, both from the point of view of the existing constitutional legal relations, and from the point of view of the development of health and social security systems. The changes brought about by the need to combat the pandemic have led to the creation of completely new legal institutions and have served as a powerful incentive for the development of nascent constitutional legal relations.

First, there is a new type of constitutional legal relations-self-restriction of constitutional human rights. Until now, the term "self-restraint" has only been applied to the state. As a system of restrictions, in which the first plan is to ensure the freedom of citizens [8, p. 12], as a restriction of its discreteness, established on the initiative and will of the ruling elites, dictated by the "instinct of self-preservation" or external assessments of the international community [9, P.13-17]. In the works devoted to the legal state, self-restraint of power is rightly singled out as a principle of state improvement [10, p.260-263]. In this regard, with regard to constitutional and legal principles, it is appropriate to refer to the opinion of N. A. Bogdanova, who rightly believes that the allocation and systematization of the principles of constitutional law is associated with the highest level of logical generalization, which brings constitutional and legal knowledge to the level of the philosophy of law [11, p.165].

Self-restriction of constitutional human rights should be considered as a deliberate voluntary abstinence from the exercise of constitutional rights on the recommendation of state authorities in an emergency or other conditions close to them (high alert, self-isolation) in order to ensure public and personal security. Self-limitation of constitutional human rights allows to observe the constitutional balance of personal and public interests.

Self-restraint and the restriction of constitutional rights are united by common constitutional purpose of protection of bases of the constitutional system, morality, health, rights and legal interests, ensuring of national defense and state security (Article 56 of the Constitution). Restrictions on constitutional rights are established only by Federal laws (part 1 of article 56 of the Constitution of the Russian Federation). However, the analysis of empirical materials has shown that the restriction of rights and freedoms is possible not only by Federal laws, but also by orders of the heads of constituent entities of the Russian Federation. The scientific literature notes that the inaction of the legislative authorities as an "interpretive aid" can cause "practical, conceptual and constitutional problems" [12]. Therefore, this practice has caused a number of appeals to the judicial authorities of the Vologda, Orenburg and Tyumen regions, in the Komi Republic, in Moscow and in some Ural regions.

Self-restriction of constitutional rights and freedoms is implemented on the basis of appeals from heads of state and heads of government, chief medical officers, and individual Ministers. In particular, in Sweden, public health Agencies formulate recommendations for citizens and hold daily briefings. Self-restrictions and restrictions should not in a hidden form cancel or detract from the rights and freedoms of a person and citizen. They can only be applied to the extent necessary for the purposes provided for in the Constitution.

From the point of view of law, self-restriction of rights allows: to ensure the personal and public safety of citizens; to avoid the introduction of restrictions on constitutional rights and freedoms, as a consequence of the recognition of human rights and freedoms as the highest value; to eliminate the redundancy of restrictions on

human rights.

It is established empirically that self-restriction of the right is implemented only in conditions of public confidence in the recommendations of state authorities. The experience of fighting COVID-19 has shown that Japan and South Korea were able to do without strict restrictive measures precisely because the recommendations of the state on self-isolation were accepted with confidence by society. In Sweden, the level of trust in public institutions is very high: in March 2020, according to social surveys, the level of trust in the public health Agency increased from 65 to 74%, and the personal rating of trust in the head of the epidemiological service A. Agnello was 53% higher than that of the leader of the Swedish party.

Secondly, compensatory constitutional legal relations will be further developed. Experience in the fight against the pandemic has shown that if the population is able to cope with the consequences of a short-term restriction of rights on its own, then long-term quarantine measures lead to a significant drop in the population's income and must be compensated by the state. According to the ILO, only the first month of the crisis led to a 60% drop in income, and in the future up to 1.6 billion workers worldwide will lose their livelihoods. In the United States, there were armed protests with demands to immediately lift the restrictions imposed and allow them to return to work. In Washington, about 2.5 thousand people in the state capital of Olympia demanded that the Governor ease restrictions. In Michigan, where the protest gathered about 3,000 participants, some came with rifles, pistols and American flags. About 100 protesters outside the Ohio government building called on Republican Governor Mike DeWine to end the self-isolation regime. More than 200 protesters took to the streets of Huntington beach, California. Similar actions

were held in Colorado, Montana, Minnesota, Texas, Kentucky, and Maryland .

A number of States provide a mechanism for compensating for falling incomes of the economy and population. In particular, in the Russian Federation, additional payments are provided for families with children. According to the Pension Fund, since April 2020, 19 million families have received payments totaling 274 billion rubles. In addition, a package of economic measures is provided for the most affected sectors of the economy. The Council of the European Union agreed to allocate €37 billion as part of measures to protect the bloc's economies from the impact of the coronavirus, the UK Treasury announced loan guarantees for £330 billion and providing a three-month mortgage reprieve; the German government has accepted a package of assistance to private entrepreneurs and companies, as well as various groups of the population, totaling about €750 billion. Economic support measures are provided by the legislation of many States.

Third, as a result of the pandemic, constitutional legal relations in the field of health will move from the category of individual right to life and health to the category of public international interest. When the health of an individual citizen is a guarantee of economic and public security. An analysis of the health systems of States affected by the COVID-19 pandemic has shown that access to health care plays a key role in the fight against the pandemic and is a guarantee of the least social and economic losses. The experience of fighting the epidemic in the United States has shown that, despite the high level of medical development, this state has become the leader in the number of cases, more than 2 million people, and the number of deaths of more than 124,000 people due to the

unavailability of medical care for part of the population. 27.5 million Americans do not have health insurance, which is 8.5% of the US population .

Nobel laureate Joshua Lederberg said "the world is just one village." In 2017, Obizhiofor Aginam called on the United States, together with other States, to become a leader in global health, especially in the areas of research, development, surveillance, education, coordination, and training. "Considering that all of humanity is currently mutually vulnerable to the cross-border threat of disease." "We" and "they" or the differences "our disease" and "their disease" have become anachronisms. All of humanity has become an integral part of the common compact. "Our common health is the future" [13].

Fourth, forced social distancing accelerates the pace of digitalization of States and the introduction of artificial intelligence. Digitalization of the economy and education, digital passes and the "health code" tools actively implemented by modern States. The introduction of digital control systems made it possible to build a hospital in Wuhan (China) with an area of almost 60 thousand square meters in just 10 days. South Korea conducted rapid tests for 200 thousand citizens and used smartphones to track the movements of infected people to quickly notify healthy people of such movements.

In the science of constitutional law, the need to formulate the constitutional principles of the digital state is actively discussed. In the new conditions, this work is more relevant than ever. We have already proposed separate constitutional principles of the digital state designed to ensure the development of technologies within the framework of constitutional legal relations [14, p. 61-63]. The need for legal regulation in the field of digitalization and the emergence of new legal institutions and structures in this regard is

noted in the work of A. T. Karasev, O. A. Kozhevnikov, V. A. Meshcheryagin [15, p. 99-119].

Fifth, COVID-19 could not fail to make adjustments to the system of constitutional values. In Italy, Greece, France, Cyprus, and Russia during the epidemic, the right to freedom of movement was restricted by the introduction of a pass system. The prevalence of the right to collective security over the rights of individual citizens is also noted by the UN, which also noted that the coronavirus epidemic can threaten human rights. Along with terrorism, the pandemic is changing the perception of the relationship between collective and individual human rights. Due to the fact that the coronavirus pandemic does not yet have clear time limits and is difficult to predict, it can be assumed that the problems of collective security will remain the mainstream of the near future. As a result, individual human rights will be implemented as far as the requirements of collective security allow.

The legal consequence of the preponderance of collective rights over individual human rights in States with insufficiently stable constitutional legal relations may be increased state control over the activities of citizens. The coronavirus pandemic can not only be recognized as a factor determining the development of constitutional legal relations in the foreseeable future, but also as an indicator of the maturity of constitutional legal relations.

4. Conclusion

Thus, the COVID-19 coronavirus pandemic, on the one hand, triggered a new stage of constitutional legal relations, and on the other hand, like any emergency, exposed the most acute social and economic problems in society. The development of constitutional

legal relations in the context of the emerging digital society and the state will not only lead to the development of new principles of constitutional development and, as a result, to constitutional legal relations of a new, digital level, but will also affect such areas as the relationship between collective and individual human rights; development of the institution of self-restraint of human rights; further improvement of compensatory constitutional legal relations.

REFERENCES

1. Osipov M. Yu. *Theory of constitutional-legal processes*. Moscow, Nota-Bene Publ., 2011. 299 p. (In Russ.).
2. Matsui S. Fundamental Human Rights and 'Traditional Japanese Values': Constitutional Amendment and Vision of the Japanese Society. *Asian Journal of Comparative Law*, 2018, vol. 13, iss. 1, pp. 59-86. doi:10.1017/asjcl.2017.25.
3. Kozlova E.I., Kutafin O.E. *Constitutional law of Russia*. Moscow, TK Velbi, Prospekt Publ., 2010. 347 p. (In Russ.).
4. Luchin V.O. *Features of constitutional law relations*. Moscow, Jurist Publ., 2003. 159 p. (In Russ.).
5. Mironov D.N. Constitutional legal relations: impact on the legal system. *Zhurnal rossiyskogo prava = Journal of Russian law*, 2013, no 12, p. 33–45. (In Russ.).
6. Lungu E.V. *Constitutional legal relations: the experience of theoretical research*. Novokuznetsk, Kuzbass Institute of the Federal Penitentiary Service of Russia, 2018. 106 p. (In Russ.).
7. Mac Amhlaigh C. Back to a Sovereign Future?: Constitutional Pluralism after Brexit. *Cambridge Yearbook of European Legal Studies*, 2019, vol. 21, pp. 41-58. DOI: <https://doi.org/10.1017/cel.2019.8>.
8. Chaillot A. *Self-restraint of power (a short course of constitutionalism)*. Moscow, Yurist Publ., 1990. (In Russ.).
9. Borodach M.V. The principle of self-restriction of public authority in the interactions of public owners with other (non-public) owners: constitutional and legal grounds and content. *Konstitutsionnoye i munitsipal'noye pravo = Constitutional and municipal law*, 2017, no 6, pp. 13–17. (In Russ.).
10. Milusheva T.V. Self-restraint of state power: legal dimension. *Yuridicheskaya tekhnika = Juridical techniques*, 2018, no. 12, pp. 260–263. (In Russ.).
11. Bogdanova N.A. *The system of constitutional legal science*. Moscow, Yurist Publ., 2001, 256 p. (In Russ.).
12. Bailey D. Interpreting parliamentary inaction. *The Cambridge Law Journal*, 2020, vol. 79, iss. 2, pp. 245-259. DOI:10.1017/S0008197320000276.
13. Aginam O. From Isolationism to Mutual Vulnerability and Back: International Law and Unfair Distribution of Global Disease Burdens. *Proceedings of the ASIL Annual Meeting*, 2001, vol. 95, pp. 58–64. <https://doi.org/10.1017/S0272503700056615>.
14. Lungu E.V. Trends in the development of constitutional legal relations in the light of the transition to the DIGITAL STATE. *Rossiyskaya yustitsiya = Russian justitia*, 2020, no. 2, pp. 61–63. (In Russ.).
15. Karasev A.T., Kozhevnikov O.A., Meshcheryagin V.A. Digitalization of legal relations and its impact on the implementation of individual constitutional rights of citizens in the Russian Federation. *Antinomii = Antinomies*, 2019, vol. 19, no. 3, pp. 99–119. (In Russ.).

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