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**MECHANISM OF RESTRICTING THE RIGHTS AND FREEDOMS OF CITIZENS
AND ORGANIZATIONS IN ORDER TO PROTECT PRIVATE AND PUBLIC INTERESTS**

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Abstract

The purpose of the article is to characterize the legal restriction of the rights and freedoms of citizens and organizations in order to protect private and public interests. In such work were applied such methods as formal legal, sociological, historical, systematic methods, comparison, analysis and synthesis, interpretation of legal norms. The author analysis the concept and content of the restriction of the rights and freedoms of citizens and organizations. A scientific approach is proposed to determine the restriction of the rights and freedoms of citizens and organizations in order to protect private and public interests as a formative element of the legal status of an individual, reflecting the limits, conditions and procedure for the realization of rights and freedoms. Based on the analysis of international acts and Russian constitutional judicial practice, the legal principles and requirements for the application of restrictions on the rights and freedoms of citizens and organizations in order to protect private and public interests are disclosed.

Keywords

Restriction – Human rights – Private interest – Public interest – Personality

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Introduction

Currently the problem of restrictions on individual rights in a pandemic, the necessity of the protection of moral, public health, ensure the right to a favorable environment, the right to reliable information, protect other vital state and public interests is becoming increasingly important. The severity of this problem intensifies in the context of the need to maintain a balance of private and public interests. The high importance of restricting rights and freedoms in the public interest has allowed domestic and foreign scientists to talk about the increasing role of the protective function of the state and the trends of the transition from a legal state to a security state¹. Therefore, it is advisable to define the concept of restriction of rights and freedoms and formulate legal principles and requirements for its application.

The United States Patriotic Act of 2001² (expired on June 1, 2015³) reflected the temporary nature of excessive restrictions on rights and freedoms that do not comply with constitutional norms. The adoption of the US National Security Strategy of 2015⁴, which provides new ways to ensure public interests, shows the demand for increasing the legitimacy of public policy and ensuring the protection of state by combining the efforts of the state, society and individual.

The legal doctrine formed in the legal positions of the Constitutional Court of the Russian Federation proceeds from the obligation of the legislator and law enforcer under any restrictions of the constitutional rights and freedoms of man and citizen to guarantee the security of the individual⁵. This suggests that the restriction is not only a border, but also an important element of the legal status of the individual. Historical experience shows the need for legitimate restrictions on the rights of citizens in the event of their participation in state and socially significant activities. Therefore, the establishment of the concept, requirements for application, legal principles of restrictions is fundamental for determining the legal status of an individual.

The current state of foreign policy relations and the globalization process necessitate the timely development by the state of means of prompt response to various manifestations that pose a threat to private and public interests, which manifested itself, for example, in the context of the spread of COVID-2019 (COronaVirus Disease 2019). The state's task is to maintain the stability of the constitutional system and strengthen the rule of law. In this regard, it is necessary, on the one hand, to observe the principles of a democratic and rule of law state, and, on the other hand, to increase the effectiveness of state bodies in ensuring the national security. Significant is the solution of the problem of developing fundamental

¹ J. Braml, "Vom rechtsstaat zum sicherheitsstaat? Die einschränkung persönlicher freiheitsrechte durch die Bush administration", *Aus Politik und Zeitgeschichte* num 45 (2004): 6–15 y V. A. Glazyrin, "The paradoxes of human rights: point of view", *Russian Law Journal* num 5 (2009): 91–99.

² USA PATRIOT Act of 2001 (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001). Public Law num 1 (2001): 7–56.

³ White House: no 'Plan B' if U.S. Congress fails to act on Patriot Act. Retrieved from: <http://www.reuters.com/article/usa-whitehouse-patriotact-idUSL1N0YH1GM20150526> y P. Zengerle y W. Strobel, Update 7-U.S. Senate lets NSA spy program lapse, at least for now. Retrieved from: <http://www.reuters.com/article/2015/06/01/usa-security-surveillance-idUSL1N0YM0BK20150601>

⁴ National Security Strategy of the United States of America. February 2015. Retrieved from: https://www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy.pdf

⁵ E. R. Muradyan, "Legitimate restrictions on the rights and freedoms of man and citizen in the Russian Federation – a condition for ensuring personal security", *News of Higher Education Ural region* num 1 (2013): 18–22.

provisions on limiting the rights and freedoms of citizens and organizations and legal mechanisms used in the implementation of activities to protect public and state interests, implemented both in normal times and during the emergency, high alert and the like.

Russian and foreign legislation widely applies the institution of restrictions on the rights and freedoms of man and citizen. Thus, restrictions on rights and freedoms are used to counter terrorism⁶. The United States of America has passed the Foreign Account Taxation Act (FATCA), which aims to prevent US taxpayers from taxing with foreign accounts. Moreover this law has an extraterritorial character⁷. In this regard, another problem arises – the reduction of national influence in the field of human rights.

Maintaining a balance of private and public interests is an important scientific problem, the relevance of which is especially high in resolving issues of protecting public interests while observing the constitutional rule, according to which a person, his rights and freedoms are the highest value, as well as generally recognized norms and principles of international law. The need to protect the constitutional system from external interference, on the one hand, and the need to improve the legal regulation of domestic relations, ensuring the effective implementation of public authorities, on the other hand, necessitates the development of conceptual provisions on improving the legal status of citizens, legal entities and other persons in conditions an environment conducive to the emergence of threats to national security.

Such definitions are quite common in the legal literature in which the main criterion for restricting rights is a quantitative change in the possibilities of behavior and human freedoms^{8, 9, 10, 11}. Restriction of rights is “the withdrawal from constitutional status” of a person (citizen) or “the withdrawal from the circle of powers constituting the normative content of fundamental rights and freedoms”. Some authors define the restriction of rights as a decrease in the scope of opportunities, freedom, and, therefore, individual rights, which is achieved with the help of duties, prohibitions, punishments¹². The restriction of the rights and freedoms of man and citizen should be understood as the formative element of the legal status of the individual, reflecting the limits, conditions and procedure for the implementation of its rights and freedoms¹³. This concept is proposed as a fundamental theoretical and legal

⁶ T. L. Kuchumova, “The main directions and features of the legal regulation of countering terrorism in foreign countries”, *Legal World* num 7 (2012): 52-60.

⁷ A. Sukharenko, “Influence of American law on the Russian financial system”, *EJ-Lawyer* num 42 (2013): 4.

⁸ N. N. Chernogor, *General doctrine of the legal order: the rise of the rule of law: monograph*. (Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation: INFRA-M, 2019).

⁹ V. V. Lazarev, “Restriction of law by judicial decisions”, *Journal of Russian Law* num 6 (2018): 5–16.

¹⁰ A. Kh. Kazarina; V. P. Kashepov; V. P. Ryabtsev; Yu. A. Tikhomirov y T. Ya. Khabrieva, *Legality in the Russian Federation: monograph* (Moscow: Publishing house of the Institute of legislation and comp. Jurisprudence, 2008).

¹¹ Yu. A. Tikhomirov y N. V. Subanova, *Legality: theory and practice: monograph*. (Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation: LLC “LAW FIRM CONTRACT”, 2017).

¹² M. V. Novikov, “The essence of constitutional restrictions on the legal status of an individual”, *Constitutional and municipal law* num 9 (2005): 31-33.

¹³ Yu. G. Fedotova, “The concept of limiting the rights and freedoms of citizens and organizations in the interests of ensuring the defense of the country and the security of the state”, *Modern Law* num 6 (2015): 30-35.

basis of principles and content of the mechanism for restricting rights and freedoms for specific purposes with respect not only to individuals, but also to legal entities and other organizations, to which, based on a systematic interpretation of constitutional norms, constitutional judicial practice, are applicable provisions defining the foundations of a person's legal status.

The restriction of the rights and freedoms of citizens and organizations is based on the recognition of the need to ensure a balance of private and public interests. Based on the fact that in the hierarchy of constitutional values "personality, society, state" the introduction of restrictions on rights and freedoms is permissible, justified and necessary, none of these values can exist in isolation, outside or to the detriment of the above triad. Moreover, the specifics of restricting rights and freedoms in order to protect the morality, health, rights and legitimate interests of others, the foundations of the constitutional system, ensuring the country's defense and state security is that the enforcement of such a restriction leads not only to maintaining the stability of the constitutional system, but also contributes to strengthening public safety, protecting the individual, her rights and freedoms, legitimate interests. The state, therefore, acts not only as a goal, but also as a means of ensuring the security of all elements of the triad of "personality, society, state".

In the Russian Federation, under the conditions of the modern legal system, political regime and political reality, the approaches to restricting the rights and freedoms of individuals and organizations that took place at different stages of the development of world and Russian statehood are not fully applicable. At the same time the value system of Russian society has historically been formed, which should determine the meaning of legislative norms on limiting the rights and freedoms of citizens and organizations. A combination of direct and indirect restrictions of rights is acceptable depending on the degree of threat to any activity or its subject of morality, public health, the rights and legitimate interests of others, the foundations of the constitutional order, the country's defense and state security.

In accordance with Part 2 of Art. 29 of the Universal Declaration of Human Rights of 1948 in the exercise of their rights and freedoms, each person should be subject only to such restrictions as are established by law solely to ensure due recognition and respect for the rights and freedoms of others and to satisfy the fair requirements of moral, public order and general welfare in a democratic society.

The proportionality, legality, democracy and the targeted nature of restrictions on rights and freedoms are established in the provisions of the International Covenant on Economic, Social and Cultural Rights of 1966. The Covenant determines that the state can establish only such restrictions on rights as are determined by law, and only insofar as this is compatible with the nature of these rights, and solely for the purpose of promoting general well-being in a democratic society. The target nature of legislatively imposed restrictions on rights and freedoms can be traced in the International Covenant on Civil and Political Rights of 1966.

The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 establishes in its norms the goals of restricting rights and freedoms as well as the requirement to introduce them on the basis of law. Thus this convention defining the right of everyone to respect his personal and family life, home and correspondence, indicates the inadmissibility of interference by public authorities in the exercise of this right, except when such interference is prescribed by law and is necessary in a democratic society in the

interests of national security and public order, the economic well-being of the country, in order to prevent unrest or crime, to protect health or morality or to protect rights and the freedom of others.

As explained in the Decree of the Constitutional Court of the Russian Federation dated October 30, 2003 No. 15-P “In the Case of Verifying the Constitutionality of Certain Provisions of the Federal Law“ On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” in connection with a request from a group of deputies State Duma and complaints of citizens S.A. Buntman, K.A. Katanyana and K.S. Rozhkova”, restrictions on constitutional rights, including freedom of the media, should be necessary and proportionate to the constitutionally recognized goals of such restrictions. In cases where constitutional norms allow the legislator to establish restrictions on the rights they are enshrining, he cannot implement such regulation that would encroach on the very essence of a law and would lead to the loss of its real content. If it is permissible to restrict one or another law in accordance with constitutionally approved goals, the state, ensuring a balance of constitutionally protected values and interests, should not use excessive, but only necessary and strictly stipulated by these goals measures. Public interests listed in Part. 55 of the Constitution of the Russian Federation, they can justify legal restrictions on rights and freedoms only if such restrictions meet the requirements of justice, are adequate, proportional, proportionate and necessary to protect constitutionally significant values, including the rights and legitimate interests of others, are not retroactive and do not affect the very essence of constitutional law, such as do not limit the scope and application of the main content of the relevant constitutional norms. In order to exclude the possibility of disproportionate restriction of the rights and freedoms of man and citizen in a specific law enforcement situation, the norm should be formally defined, accurate, clear, not allowing an expansive interpretation of the established restrictions and, therefore, their arbitrary application. The stated legal positions of the Constitutional Court of the Russian Federation correspond to the legal positions of the European Court of Human Rights in cases related to defining the boundaries of freedom of expression and the right to information during the election campaign.

Resolution of the Constitutional Court of the Russian Federation of February 18, 2000 No. 3-P “In the Case of Verification of the Constitutionality of Clause 2 of Article 5 of the Federal Law“ On the Prosecutor's Office of the Russian Federation ”in connection with the complaint of citizen B.A. Kekhman's” defines the requirements (guarantees) of restrictions on rights and freedoms, including the legislative definition of such restrictions at the level of federal law, proportionality, and the right to judicial protection. In essence, the same legal positions were expressed in a number of decisions previously adopted by the Constitutional Court of the Russian Federation that retain legal force.

In general, analyzed the provisions of the Syracuse, Johannesburg, Limburg, Maastricht principles, as well as the decisions of the Constitutional Court of the Russian Federation, from which it follows that by virtue of the principle of equality of the provisions of Ch. 2 of the Constitution of the Russian Federation applies to organizations, it can be concluded that the legal institution for restricting the rights and freedoms of citizens and organizations is based on the following principles: legality, democracy, federalism, recognition of the dignity and worth of the human person and the inalienable equal rights of everyone, the equality of all before the law and the court, unity of rights and obligations of citizens and organizations, timeliness, continuity, control over the establishment of the grounds (conditions) for the introduction and application of restrictions on the rights and freedoms of a citizens and organizations, monitoring threats to national security, the

interaction of all state authorities and other state bodies, judicial protection of human and civil rights and freedoms from unlawful application of restrictions, inevitability of punishment in case of non-compliance with restrictions on the rights and freedoms of citizens and organizations¹⁴.

The legal principles of restrictions on rights and freedoms and the requirements for them should be distinguished. Requirements for the application of restrictions of rights and freedoms in order to protect the moral, health, foundations of the constitutional system ensure the country's defense and state security and their criteria:

1) legality means restrictions are introduced in accordance with federal constitutional or federal law, which is valid at the time the restriction is introduced, restrictions are not personalized, their effect applies to everyone, clarity, unambiguity and certainty of legal norms;

2) validity indicates reasonableness, proportionality (proportionality) to the constitutionally fixed goals of such restrictions; temporary in emergency situations;

3) expediency implies that restrictions are imposed to protect private or public; these goals should be socially justified and meet the requirement of justice.

From the foregoing, it can be concluded that the restriction of constitutional rights should be based on clear and detailed criteria defined by federal law, namely, the legislator, and not the law enforcer, and therefore the discretion of the latter is destructive, replacing the legislator and distorting the constitutional provision of Part 3 Art. 55 of the Constitution of the Russian Federation on the introduction of such restrictions only on the basis of federal law.

It is necessary to emphasize the special relevance of the judicial interpretation as a way of filling legal uncertainty. At the same time, attempts by executive authorities to point out to the court the inadmissibility of interference in the administration's activities and its position on the appropriateness of the decisions taken cannot be considered legal. The interests of ensuring personal security should not lead to a diminution of rights, obstruction of their reasonable implementation and exceeding the limits of restrictions, non-compliance with the requirements for them. All fundamental legal categories of subjective law, legal obligation, responsibility are determined through the concept of "measure". It means if the limits of any phenomenon, action are not defined, it is not legal. In this view, it is worth noting that the restriction of constitutional rights and freedoms also acts as an extreme measure to ensure private and public interests.

The limitation of judicial discretion to the requirements of expediency of actions of public authorities is not legal and justified. In law enforcement practice, it is not permissible to substitute the law enforcer for the legislator. Otherwise, the executive authorities actually appropriate not only the powers of the legislative branch, but also become uncontrolled by the judiciary, which fundamentally contradicts the basic constitutional principles of the organization of the state.

¹⁴ Yu. G. Fedotova, "Legal principles of limiting the rights and freedoms of man and citizen in the interests of ensuring the country's defense and state security", *Modern Law* num 7 (2015): 19-28.

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