

Artículo de investigación

The theoretical and methodological bases of the institution of restrictions in the system of individual's legal status

Las bases teóricas y metodológicas de la institución de las restricciones en el sistema del estado legal del individuo

As bases teóricas e metodológicas da instituição de restrições no sistema de status legal do individuo

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Abstract

The paper analyzes the notional, historical, theoretical and methodological elements in the structure of the legal institution of the restrictions on human and civil rights and freedoms in the context of modern scientific views. It formulates the theoretical basis for this legal institution by comprehending the scientific knowledge and the system of appropriate legal norms compared to the international and European legal norms and legal provisions of similar institutions in the foreign countries. The authors examine the essence and purpose of the institution of restrictions in the system of legal regulation. They analyze the terminology of the institution under study and reveal its challenges. Besides, they offer to specify the basic terms and notions used to regulate legal relationships in this area. The analysis enables the authors to define various elements of the institution. Besides, they introduce terminological specifications for some of them. In particular, they define lawful restrictions and arrange them in a fine system of absolute and relative restrictions on human and civil rights and freedoms. The authors make a conclusion that absolute limitations should be

Resumen

El documento analiza los elementos nocionales, históricos, teóricos y metodológicos en la estructura de la institución legal de las restricciones a los derechos humanos y civiles y las libertades en el contexto de los puntos de vista científicos modernos. Formula la base teórica para esta institución legal al comprender el conocimiento científico y el sistema de normas legales apropiadas en comparación con las normas legales internacionales y europeas y las disposiciones legales de instituciones similares en los países extranjeros. Los autores examinan la esencia y el propósito de la institución de restricciones en el sistema de regulación legal. Analizan la terminología de la institución bajo estudio y revelan sus desafíos. Además, ofrecen especificar los términos básicos y las nociones utilizadas para regular las relaciones legales en esta área. El análisis permite a los autores definir varios elementos de la institución. Además, introducen especificaciones terminológicas para algunos de ellos. En particular, definen las restricciones legales y las organizan en un fino sistema de restricciones absolutas y relativas a los derechos y libertades humanos y civiles. Los

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introduced only in case of a specific situation (martial law or emergency state). They take into account that these situations are treated as self-sufficient and unique.

Key words: human rights and freedoms, civil rights and freedoms, institution of restrictions, elements of the institution of the restrictions on rights and freedoms.

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Palabras clave: derechos humanos y libertades, derechos y libertades civiles, institución de restricciones, elementos de la institución de las restricciones a los derechos y libertades.

Resumo

O documento analisa os elementos nocionais, históricos, teóricos e metodológicos na estrutura da instituição legal das restrições aos direitos humanos e civis e liberdades no contexto dos modernos pontos de vista científicos. Ele formula as bases teóricas para essa instituição legal, compreendendo o conhecimento científico e o sistema de normas jurídicas apropriadas, em comparação com as normas legais internacionais e européias e com as disposições legais de instituições similares em países estrangeiros. Os autores examinam a essência e finalidade da instituição de restrições no sistema de regulação legal. Eles analisam a terminologia da instituição em estudo e revelam seus desafios. Além disso, eles oferecem para especificar os termos básicos e as noções usadas para regular as relações jurídicas nessa área. A análise permite que os autores definam vários elementos da instituição. Além disso, eles introduzem especificações de terminologia para alguns deles. Em particular, eles definem restrições legais e as organizam em um belo sistema de restrições absolutas e relativas a direitos humanos e liberdades civis. Os autores concluem que as limitações absolutas só devem ser introduzidas no caso de uma situação específica (lei marcial ou estado de emergência). Eles levam em conta que essas situações são tratadas como auto-suficientes e únicas.

Palavras-chave: direitos humanos e liberdades, direitos e liberdades civis, instituição de restrições, elementos da instituição de restrições aos direitos e liberdades.

Introduction

The topic under study is relevant, since it is crucially important to develop the efficient mechanism of legal regulation of the restrictions introduced by state authorities and to provide the inviolability of the priority of human and civil rights and freedoms in Russia.

A legal life of the modern Russian society has continuously and persistently demonstrated that we need to regulate clearly the basic elements of individual's status. Recently, some researchers within the law have become too much concerned for the ideas of inviolability of rights and freedoms in individual's legal status. Therefore, the rights of some members of the society inevitably turned out to be incompatible with the rights of other members of the society and with a common or, otherwise, a public interest. Thus, the issue of a balance in the system of rights, freedoms, duties and restrictions of individual's legal status becomes especially important.

Each generation of lawyers has to decide in what extend the law can interfere with person's life and in what degree the regulations of individual's behavior will be an admissible restriction of his freedom, which is inherent of every person from birth, as asserted by the natural theory of law.

It is quite obvious that the social nature of a person that provides his adequate existence only among other people requires defining the limits of freedom of each person's behavior to protect the human society and even the human civilization in general.

Modern Russian legal system has also adopted the idea that we need to find balance in the structure of individual's legal status. It is correct to say that Russia's main law – The Constitution of the Russian Federation of December 12, 1993 aims to embody the achievements of a civilized world including the achievements associated

with universally accepted principles and norms of the international law. It fixes and proclaims basic and inalienable human and civil rights and freedoms. Russia positions itself as a part of international community. It took voluntarily the obligations to protect and provide human and civil rights and freedoms and acknowledged their high value. Russia emphasizes that the civil society and free and equal guarantees of rights and freedoms are possible only in case of a developed and reasonable system of restrictions on rights and freedoms.

The research of the institution of restrictions on rights and freedoms is relevant, since the modern Russian legal system and human rights and freedoms as the officially acknowledged level of a basic law have no theoretically justified system of legal restrictions. Thus, the Russian legal system and human and civil rights and freedoms are declared the highest constitutional value (art. 2 of the RF Constitution); besides, there are some limits and restrictions (art. 17, 19, part 3 art. 55, part 3 art. 56 of the RF Constitution). We should note that the Russian Federation observes international legal norms expressed in the supremacy of universally accepted principles and norms of international law (part 4 article 15 of the RF Constitution). However, we should emphasize that the degree, form, types, and reasons that are directly associated with the subject of enforcement often have a discretionary power even without establishing some legal principles. In this case, it is actually quite easy to violate human and civil rights and freedoms.

On the other hand, the absolute priority given to the institution of restrictions on human and civil rights and freedoms and detailed formal regulation of these restrictions in a legal norm as the most optimal means of legal regulation renders the very idea of human rights meaningless, contributes to the defect of popular will and, as noted by B.A. Kistyakovskiy, the famous Russian legal expert, is inherent of the police state...and represents its distinctive feature opposite to a legal state" (Kistyakovskiy & Zashitu Prava, 1991).

There is still no conceptual theory or an official doctrine of the restrictions on human and civil rights and freedoms. Besides, this legal institution is still understudied despite of the requirements of the legal reality. Thus, the lack of a uniform approach to the treatment of restrictions on

human and civil rights and freedoms in practical enforcement is a big challenge now. Therefore, since we have no concept of the restrictions on human and civil rights and freedoms, there is a situation when a "patchwork" approach to its establishment leads to the incapacity of sectoral legislation to regulate legal relationships, since it is fixed and prepared without any system and balance.

All the above makes it more relevant to look for an adequate and balanced understanding of such an institution as the restriction on human and civil rights and freedoms in the theory of Russian law. The Russian legal system needs a thorough legal examination of the many-sided legal institution of the restriction on human and civil rights and freedoms more than ever. In fact, there is a need for a complex examination of the level of restrictions on rights and freedoms, which are admissible, justified, legal, and, hence, lawful in a legal democratic state. It is also important to formulate the signs of unlawful restriction.

However, in spite of the variety of available theoretical and practical material, we have to admit that the institution of the restrictions on human and civil rights and freedoms as the element of the legal status was not examined. This challenge is declared substantial for modern Russia. It needs detailed theoretical elaborations. In this doctoral research, we tried to fill in the gaps in the human rights theory and to create a modern concept of the development of restrictions institution in the system of individual's legal status in modern Russian legal science.

The objects of study are social relationships that develop in the legal mechanism of the restriction on human and civil rights and freedoms.

The subject of study is legal norms united in a cross-sectoral institution. They regulate the relationships of lawful restrictions on human and civil rights and freedoms during the implementation of state functions.

The goal of the study is to create a conceptual theory of the restrictions on human and civil rights and freedoms using a thorough examination and a complex analysis of the specifics of this institution and to elaborate specific proposals for improving the methodology of the scientific cognition of

normative legal regulation of the system of individual's rights and freedoms.

Materials and methods

The legal nature of any institution in the system of current law is conditioned by its essence and aim in the regulatory mechanism of this system. Therefore, the legal nature of the institution of the restrictions on human and civil rights and freedoms is conditioned by the essence and aim of the very institution of rights and freedoms and a doctrinal approach to its content from the positions of harmonious definitions of its volume and limits of distribution of each element in the establishment and application with respect to the individual's status in the state. Actually, the institution of restrictions on rights and freedoms in the system of individual's legal status is none other than the instrument for balancing the interest of a person and society, a person and state, a person and other personified legal subjects (individuals, legal bodies, public entities etc.)

The main question for any civilized society and state to answer is the possibility of the restrictions on individual's rights and freedoms in a modern situation and the criteria of these restrictions. However, to justify the need for restrictions and their volume, we should, first of all, examine the very subject of restriction - the institution of rights and freedoms.

Therefore, basic human rights and freedoms define human essence. Actually, to alienate in the absolute sense means to refuse from a person as a biosocial creature. However, this is no boundless permissiveness. Each person who exercises his rights has to suggest that other representatives of the society have the same rights. In this respect, "the basic question of the theory and practice is rather whether the restrictions of these rights are admissible than what rights are guaranteed to a person" (KonstitutsionnyePrava & DelaiResheniya, 2002).

S.V. Pchelintsev assumes that "the theory of constitutional law has a special meaning of the restriction on human and civil rights and freedoms, since the constitutional law is a basis for creating the entire restricting legislation" (Pchelintsev et al., 2006).

The application of the theory of law as a universal theory, which involves the notions and categories of law in general, does not enable to

give a clear definition of the notion "restriction" and to provide its further development in the modern law.

Many theoretical scholars assume that we should use the social and individual benefit in any form less frequently, since there are restrictions in the definition of the limits of freedom in the society.

Thus, V.S. Nersesyants mentions that "restrictions are temporal decrease or reduction of rights especially in the field of subjective rights and bases to apply for a personal or a public benefit, the duration, volume and quality of the use of this benefit and the reduction of these rights and freedoms in certain frameworks, limits or balancing of various interests and benefits of the legal subjects." (Nersesyants et al., 1995).

A.V. Malko is of another opinion. "Taking into account the restrictions only in the aspect of a legal phenomenon, the legislation establishes the limit for subjects to act and use their rights and freedoms. These limits are mostly created by duties and restrictions as well as by responsibility." (Malko et al., 1994).

We can treat restrictions from the perspective of a functional approach "as state's legitimate activity in performing its protective functions to implement some restrictions in the execution of rights and freedoms. The goal of these restrictions is to localize conflict factors including extremism and terrorism." (Utyashev et al., 2005).

T.V. Istomin indicates that "individual's definition of restrictions is a necessary condition for the existence and development of society and state. Unlimited rights and freedoms of one person will inevitably lead to the infringement of rights and freedoms of other people and conflicts between them. To fulfill its obligations efficiently, the state and society should become independent subjects of law, and, in some cases, freedom. The provision of the optimal degree of rights is obvious for everyone only if the rights and freedoms of every person are restricted." (Istomin et al., 2005).

V.A. Chetvertinin assumes that "the legislative definition of the level of freedom is called the regulation of human and civil rights and freedoms in the constitution. In this context, the notion of "regulation" is wider than "restriction". The 'regulation' establishes the limits of freedom and guarantees human and civil rights and freedoms." (Chetvertinin et al., 2007).

As seen from the above, general theoretical ideas of the restrictions on human rights and freedoms are quite heterogeneous. They represent a view that a restriction is a mean of legal regulation expressed in any restrictions of freedom, which is necessary in a modern situation.

The results of the research on the assessment of level or conflict of interest in the bunch "state – society – person" in the different areas of study of state and law (Simonova et al., 2009) enabled to formulate some highlights:

- now, there are no elaborated methods of assessing the compliance of different legal bodies' interests; the only study in this area uses the method of structural and probabilistic analysis.
- the preliminary assessment of the scales of balance between the interests in the bunch "state – society – person" showed that these notions are incompatible and there are no means to lead them to a single meaning;
- the abstract bunch "state – society – person" has no legal conceptual projecting of its own, i.e. we do not know what they mean from the perspective of real legal relationships. Therefore, there is no definition of a normative balance of interests for these categories in the legal field.

We should mention "a legal fact - a restriction, a prohibition, a duty, a suspension, a measure of responsibility etc." as means to implement restrictions in law. "In some cases, these means are applied to state structures, in other cases - to an individual." (Novikova et al., 2004).

We should agree that "the representation of duties as the forms of restrictions is quite popular in legal science. Thus, restrictions are defined as expressed in the form of positive duties, which implies person's "active" behavior in achieving common goals determined by the state" (Shundikov et al., 1998).

There are the following means of restrictions in the legal literature:

- 1- an absolute prohibition – a prohibition to execute a right or a freedom in general;
- 2- a relative prohibition – a prohibition for a specific embodiment of a right and a freedom, i.e. the establishment of limits of behavior;

- 3- state authorities' invasion into the rights and freedoms (active efforts of the government and passive behavior of an individual)
- 4- duties;
- 5- responsibility (Pereverzev et al., 2006).

Thus, we can make an intermediate conclusion that responsibility, prohibitions and duties are a kind of restrictions on human and civil rights and freedoms.

Besides, we should note that "more authors treat individual's legal position (status) as a complex phenomenon, which encompasses some elements apart from legal rights and duties" (Podmarev et al., 2011; Lepeshkin et al., 1966; Schetinina et al., 1975).

The distribution of duties and responsibilities for a restriction is logical and clear, since, in fact, there is some restraint in exercising human rights. However, in this case, we can assume that such a wide understanding of restriction is incapable for some reasons.

We know that basic approaches to the definition of functions in Russian law were formulated by L.D. Voevodin. He assumes that freedom is a possibility of a certain behavior of an individual who performs his actions, an adequate understanding of human rights and freedoms in the society and their reflection in the Constitution, while duty is a need for certain behavior". "It can be expressed in the form of general requirements, it can provide one course of actions to prevent some more variants and it is used at individual's discretion." (Matuzov et al., 1972).

Therefore, the description of individual's legal position in a wide sense is quite a positive event. However, "a new approach to the content of this phenomenon exists within a framework of traditional logical constructions; in some cases, it exists due to the enlargement of already known notions of individual's legal position as a set of legal rights and duties." (Avakyan et al., 2010).

The same situation is with restrictions - the treatment of duties in the legal sense as the notion equal to restrictions or a form of restrictions adds more uncertainty to the latter. We assume that from the standpoint of Russian legislation, the restrictions and duties are variables. We should always be cautious in treating responsibility as one of the forms of

restrictions by voluntary interpretation (Vitruk et al., 2011).

However, some restrictions can be expressed in the form of obligations, though there are a few of them. Thus, article 59 of the RF Constitution fixes basic duties of a Russian citizen in defending Motherland. It is true that military service somehow restricts individual's constitutional rights and freedoms. Part 2 article 38 of the RF Constitution contains some restrictions too.

In this respect, we should emphasize that constitutional and legal norms, which somehow contains restrictions, enable to define restrictions as a special phenomenon, which is different from a right, a duty or responsibility.

A legal prohibition as a restriction of human and civil rights and freedoms is treated even wider.

We should bear in mind that "pursuant to the provisions of part 3 article 55 of the RF Constitution, a criminal law prohibits to commit crimes against social security, public order and state authority including the crimes against the bases of the constitutional order and state security, justice, management scheme, military service...in fact, the norms of the Criminal Code are a system of legal restrictions established to protect human and civil rights and freedoms, social order and the RF constitutional order from criminal violations." (Denisenko et al., 2014).

We assume that the essence of restraining from criminal violations as a method of legal legislation and the essence of constitutional restrictions in the articles 55 and 56 of the RF Constitution do not fully coincide.

Obviously, these phenomena have some common features, because they determine the level of permissiveness and restrictions. Therefore, we should take some measures given in the law. In this meaning, restrictions and not prohibitions, i.e. they establish the limits of the activities of an individual or other persons if they do not coincide with the interests of society or contradict to social values. The goal of prohibitions and restrictions is to prevent subjects' illegal actions.

Another important aspect is the restriction and responsibility ratio or the treatment of responsibility as a form of restriction.

Responsibility is the response of the state to an illegal action, which leads to the criminal's

obligation to endure some hardships or restrictions. We should bear in mind that the issue of positive legal responsibility has serious objections. They are mostly associated with the lack of necessary regulatory and legal components in responsibility. In this research, we share the opinion of retrospective responsibility, since it is always associated with a particular crime and implies that a criminal should always be subject to the measures of state coercion established by the legislation (Pravai Svobody Cheloveka et al., 2005).

Therefore, the main difference between responsibility in a classic sense and restrictions in a theoretical and legal sense is a stage, at which the state interferes with individual's freedom and uses the conditions of claims for human rights. In Russian law, the restriction as an institution is a measure of influence of state authorities on human rights irrespective of individual's positive or negative intentions.

Therefore, we can describe responsibility as restrictions on human and civil rights and freedoms in case they are executed as a socially dangerous and anti-legal action. The followers of a narrow approach see some limits in the behavior of the carriers of rights and freedoms in the restrictions.

R.G. Nurmagambetov writes that legal restrictions "are a mean of legal regulation of social relationships fixed in the RF Constitution and other regulatory acts, which establishes some limits of behavior for the participants of such legal relationships in case they directly exercise their powers." (Lebedeva et al., 2014). Overall, the variety of viewpoints is a positive thing, since there are a few definitions in law that would be completely acknowledged by scholars. However, the main disadvantage here is a true violation of human and civil rights and freedoms, since there is no uniform interpretation of restrictions.

It is important to emphasize that the difference in the doctrinal treatment of restrictions touches the rights that result in the legal standards of law enforcement insufficiency.

The literature shows the lack of common view on restrictions, which is also important for the understanding of this issue (Nurmagambetov et al., 2007; Lapaeva et al., 2005)

The issue of restrictions is a part of theory of freedom. Therefore, the importance of its research within a framework of the constitutional law is justified by both individual and collective categories in the field of society existence in general with regard to legislation.

The exercise of human and civil rights and freedoms is related to their restrictions, while the violation of their limits leads to the violation of individuals' exercise of their rights.

In this respect, we should mention some important points.

First of all, the term "restriction" has a wide range of meanings, each of which has already obtained doctrinal interpretation (responsibility, duty, prohibition etc.). However, at the present moment, it has no legal definition. In the results, the notions mix. They create terminological confusion and do not enable to elaborate a common conceptual basis.

Note further that for the Russian theory of state and law, the established restrictions are legitimate (lawful, legal, admissible, clear, just etc.), while other restrictions stay outside the general theory of law and sectoral legal sciences and, therefore, are crimes (KabrievaT et al., 2005). Otherwise, they are just mentioned; however, there is no clear demarcation line between legal and illegal. When researchers mention the restrictions on legal bases, they actually separate them from illegal restrictions (Romashova et al., 2013).

Thus, the authors notice that local government is one of the spheres with some restrictions. We should note that these restrictions are often explained by the law qualification of lawyers who are incapable of focusing on the individual peculiarities of territories in the statutes of municipalities (Rovovaya et al., 1998).

Another important moment is that the restriction is closely associated with the manifestation of law enforcement, since everything exists within a framework of the supremacy of law, and, in any case, leads to the analysis and content of the very legal norm. In the long run, a right or a freedom in law is a famous restriction on human rights, if we consider law as the establishment of limits. In this case, the establishment of admissible forms to exercise rights defines the mechanism of defense from a violation or a mechanism of restoring the violated law. Therefore, this "restricting" law

corresponds to the goals of legal regulation. I.e. the law is a restriction. In the constitutional sense, the restriction of constitutional rights and freedoms narrows the volume of rights and freedoms.

The main reasons of the lack of common understanding of the restrictions on human and civil rights and freedoms are:

- 1) a difference in approaches, which leads to completely opposite conclusions. Some authors have a wide understanding of restrictions, duties and responsibility and treat them as forms of restriction. Other authors assume that restrictions exist only in the aspect of article 55 and article 56 of the RF Constitution;
- 2) the constitutional legislation treats the same terms in a different way. On the one hand, the mechanism of restrictions on human and civil rights and freedoms is represented as an independent institution of the constitutional law; on the other hand, the concept of restrictions is used in the negative sense including illegal restrictions (part 2 article 19 of the RF Constitution).

Therefore, the confusion in definitions enables to use one term for different notions, which leads to completely opposite conclusions. To fill in this gap in the constitutional law, we find it necessary to create a new conceptual constitutional and legal approach to the restrictions on rights and freedoms. This approach will enable to identify the positive sides of legal restriction by legal regulation. Besides, it enables to reveal some negative features of its notions, which describe certain violations of rights and freedoms associated with their restriction.

The main principle of a new concept is based on the understanding that the very procedure of a constitutional and legal restriction is multi-level; therefore, we should analyze it mostly by system methods of research.

We should note that there is still no appropriate approach to this issue. In this respect, it is important to underline that we need a complex and system approach to the research of restriction. This is emphasized by some authors.

Thus, we need to use a system and contextual approach in studying the essence of a restriction, "which, on the one hand, would give a deep and all-round description of the issue, and, on the

other hand, would show the purpose and the degree of a restriction” (Goiman et al., 1998).

Some authors assume that restrictions as the restrictions on rights should differ from legal methods of fixing the limits of a lawful freedom (for example, articles 21, 26, 29, 34, 37 of the RF Constitution). Here, the volume of rights does not become narrower. This is just the specification of its content and limits, within which this law exists. The restrictions on rights and freedoms have various aspects: they may be caused by the enforcement and a subsequent change of reality; the restrictions may be both urgent and permanent; they may emerge in natural legal environment or exist due to the necessity of legal coercion. Besides, “restrictions occur towards the rights of individuals and legal bodies in public and private law, towards individual and collective rights etc.” (Ebzeev et al., 1998).

The legal literature gives the following system of the restrictions on human and civil rights and freedoms:

- General restrictions pursuant to the article 55, 13, 19, 29 of the RF Constitution, which contain individual’s constitutional and legal status and define the limits of the exclusion from rights and freedoms;
- The restrictions on rights and freedoms in case of emergency situation pursuant to article 56 of the RF Constitution and the legislation on the emergency situation;
- Restrictions due to the established special legal status of some subjects and their relations with the state (Dolzhikov et al., 2003).

We need to study both negative assets (penalties etc.) and positive assets (including the principles of law that prescribe recommended requirements too), which restrict people’s behavior and define the limits of their activity. Such a wide approach enables us to take into account the specific features of restrictions depending on the way, in which the state applies them to the society. First of all, a legislator should be interested in legal restrictions; however, he cannot but take into account other factors that define individual’s behaviors. Real life shows that non-legal means and methods (economic, political, religious) are sometimes more significant in the establishment of restrictions on activities than legal means and methods.

Results

1. The legal nature of the institution of restrictions is based on the ratio of categories “guaranteed and recognized rights of an individual” and “a social benefit and universal interests provided in the society”. The institution has dualistic essence associated with lawful and unlawful behavior of legal subjects. First, a legal system establishes lawful restrictions that imply legal, lawful, just, coherent and recognized phenomena with a restricting nature. Second, the restrictions associated with subjects’ unlawful behavior are usually covered by the notion “delinquency”.

The legal relationships established in the regulation of lawful restrictions are based on positive means: principles of law, empowering and recommended norms and prescriptions. In the second case, negative means enter into force: prohibiting norms and legal prescriptions, sanctions and other means of cohesion and punishment.

2. The restrictions on human and civil rights and freedoms in compliance with the law should be treated as illegal actions of the representatives of state authorities in performing their duties, especially if they are responsible for exercising human and civil rights and freedoms. The research of illegal restrictions enabled the author to make the following highlights:

- the infringement of human and civil rights and freedoms is the unlawful restriction of rights and freedoms expressed in the underestimation of the value of a human right and a negative change of qualitative features of the law. It eliminates the normative sense of human rights and freedoms.
- the negation of human and civil rights and freedoms is the understanding of rights and freedoms that affects the importance of rights and makes them lose their content as the highest value. Therefore, the very essence of law is changing.
- the abolition of human and civil rights and freedoms is the official withdrawal of particular human and civil rights and freedoms in the legal system by introducing changes and amendments in the normative and legal acts or bylaws on the suspension of particular regulatory and legal acts, which guarantee rights and freedoms, in general.

3. Within a framework of a legal system, the restrictions on human and civil rights and freedoms in modern law imply a particular way of implementing knowledge of all the forms, types, levels, limits, principles and functions of the restrictions on the constitutional human and

civil rights and freedoms including the most efficient use of this knowledge in case of a targeted impact on the sphere of individual freedom. The system reflects a whole range of restrictions in the legal regulation of the national legal system.

The legal restrictions on basic human and civil rights and freedoms in the internal legal system (appropriate legal limits, for which they are offered) are exercised by state authorities. They are based on the norms of positive legal interference with human and civil rights and freedoms fixed in the main law and national laws to prevent possible delinquency or to establish a punishment for already performed delinquency.

4. The absolute restriction is the legal instrument, which organizes individual allowed interferences in the system of human and civil rights and freedoms, individual's legal status, without exclusion, and a range of competences, which represents a regulatory content of basic human rights and freedoms in strictly defined cases to achieve certain goals using the principles of a democratic state. The absolute limits are established by the state and should be guaranteed by the norms of positive law. They are usually based on national legal acts that regulate the legal relationships in a climate of a special legal regime of emergency state.

In establishing absolute restrictions, the interests of the entire society or even the entire humanity, which may be under threat in the modern world, are the priority. The goals should be adequate to means. These restrictions are possible only in case of a real threat to the society and people's life and health in emergency states caused by technology-related, military and other circumstances. In this context, absolute restrictions can be called "legitimate violations of human rights".

5. Relative restrictions are established by the positive law within the frameworks of legal exercise of human rights and freedoms and imply the establishment of responsibility, guilt, limited possibilities, prohibitions, and obligations in a normal situation. Relative restrictions on human rights and freedoms are referred to particular human and civil rights and freedoms. Some of them are defined in the main law and represent the restriction on basic rights and freedoms as implemented in law.

The goal of relative restrictions is to prevent abuse or to create the negative effects of abuse in the sphere under consideration.

6. The comparative and legal analysis of the norms of the Federal Constitutional Law "On Martial Law" and "On Emergency State" shows that a) the restrictions on human and civil rights and freedoms admitted the martial law are as severe as in case of an emergency state; b) The RF Constitution does not unite military and emergency management in different legal norms; c) unlike the emergency state, which implies the possibility of restrictions on human and civil rights and freedoms, the martial law does not imply such possibility.

From the legal standpoint, we cannot refer to part 3 article 55 of the RF Constitution in the regulation of martial law, since: a) if there are no special provisions, some differences in the flexibility of restrictions require their full incompatibility; b) a formal basis for introducing restrictions in case there are no special provisions implied by part 3 article 55 of the RF Constitution is a federal law. The emergency situation becomes official due to the Federal Constitutional Law.

The legal regulation of the relationships under study should be supplemented by a list of rights, which cannot be restricted in case of martial law.

7. The analysis of current law and its system representation within a framework of the institution of restrictions on rights and freedoms leads to the conclusion that we need specially defined system measures. The critical assessment of the legal acts of modern Russian restricting legislation enables to reveal some specific features of the established concept.

- no conceptual idea of strengthening goals, principles, and limits of the restrictions on human and civil rights and freedoms;
- excessive variability of existing formulations, no common terminological and notional justification;
- underdeveloped social control over the state authorities' activities in the application of the norms of restrictive legislation;

8. The analysis of the legal acts of international bodies including the European Court on Human Rights enables to reveal some criteria for acknowledging the restrictions on rights and freedoms as legal. These requirements involve:

- a form of the restriction of law;
- social dimensions, limits;
- reasonable restrictions, i.e. restrictions only for the purposes given in part 2 article 16 of the Constitution;
- the efficiency of a restriction, i.e. what restrictions are allowed even if they enable to achieve goals;
- a balance of interests;
- clear and unambiguous formulation of restrictions.

The bases for restrictions, the goals of restrictions and the principles underlying the restrictions should be treated as the criteria of a legal restriction.

9. The criteria of legal restrictions on human and civil rights and freedoms should be treated as attributes that define the legal admission of these restrictions, their exclusiveness and legal nature. The criteria of legal restriction on human rights and freedoms are, in total, necessary and sufficient features of legal restrictions. The criterion of the lawfulness of restrictions is an adequate assessment of legal measures in establishing and applying restrictions. It defines their principles based on the provisions of the positive law and practice of its application by courts.

10. The basic principles of the institution of restrictions on rights and freedoms are the principle of legality, the principle of visibility; the principle of proportionality; and the principle of adequate goals.

Discussion

In their research, the authors use the scientific achievements of the thinkers in the past. They made their contribution to the theory of human rights and freedoms. Among them are H. Grotius, H. Kelsen, T. Hobbes, J. Locke, J.J. Rousseau etc. Some aspects of rights and freedoms were studied in the works of Russian pre-revolutionary scholars. They made great efforts to develop the conceptual idea of human rights. In this group of scholars, we should mention the works of B.A. Kistyakovskiy, P.I. Novgorodtsev, E.N. Trubetskoi, B.N. Chicherin, G.F. Shershenevich.

The works of such researchers of the general theory of state and law as well as the philosophers of law S.S. Alekseev, M.I. Baitin,

N.V. Glukhareva, I.Yu. Kozlikhin, S.A. Komarov, O.E. Leist, A.V. Malko, M.N. Marchenko, O.V. Martyshin, A.V. Mitskevich, V.S. Nersesyants, I.V. Rostovschikov, L.S. Yavich, I.D. Yagofarova etc. enriched the Russian legal science substantially in the aspect under study. The authors' doctoral research uses the works of these authors as a basis to consider various aspects of the general theoretical issues of both individual's status and the nature of underlying restrictions on rights and freedoms.

For the last years, the issues of the restrictions on human rights are raised at a new level. Thus, candidate and doctoral theses with an interesting factual material and substantial theoretical generalizations were defended (Malinovskaya et al., 2007). Thus, L.L. Byelomestnyh's doctoral research (Belomestnyh et al., 2003) is of theoretical significance, since it considers the restrictions on human rights through in the content of their violation. At the same time, the author ignores the significant categories "derogation of rights and freedoms", "negation of rights and freedoms", and "abolition of rights and freedoms", which are similar in content with the notion violation of rights and freedoms.

The works of modern researchers within the constitutional law S.A. Avakyan, N.A. Bogdanova, N.V. Vitruk, G.A. Gadzhiev, T.D. Zrazhevskaya, I.A. Konyukhova, O.E. Kutafina, E.A. Lukasheva, N.A. Mikhaleva, S.V. Stepashin, B.A. Strashun, Yu.A. Tikhomirov, A.A. Uvarov, I.E. Farber, T.Ya. Khabrieva, V.E. Chirkin, S.M. Shakhrai, B.S. Ebzeev etc. played an important role for the study of the topic herein.

Besides, a substantial contribution to the theory of the restrictions on rights and freedoms in various sectoral aspects is made by the works of F.S. Galenopolsky, A.V. Esin, V.A. Konnov, V.A. Lazareva, A.N. Pilipenko, S.V. Pchelintsev etc. The author of the thesis research also resorts to the works of D.I. Dedov, V.V. Dolinskaya, V.G. Elizarov, A.Ya. Zhabin, I.L. Ivachev, V.P. Kamyshansky, I.A. Kudryavtsev, V.I. Kurdinovskiy, K.I. Sklovsky, N.N. Semenyuta, Yu.E. Paulova etc.

We cannot but mention a significant contribution of M.P. Avdeenkov, V.I. Akishin, S.N. Baburin, A.B. Gaboev, Yu.A. Dmitriev, V.I. Manukyan, D.Z. Mutagirov, V.S. Nersesyantz, O.G. Rumyantsev, A.A. Ter-Akopov, V.T. Tomin, T.V.

Khudoikin, M.M. Utyashev, A.E. Yuritsin etc. to the elaboration of the issues herein.

Conclusion

1. Natural freedom is derogated since a human exists among his kind, where the interests and needs of every person are different, and sometimes, contradict to each other and conflict with each other. In this situation, every person will try achieve an absolute freedom. Therefore, it becomes impossible to achieve common social goals. The society cannot exist without such goals, and a human cannot exist without the society
2. The law is a mean of social regulation, which admits the restriction on individual's freedom in the society. It is executed by the state authorities despite the highest social value of the freedom itself.
3. The individual's freedoms and public authorities' freedom are the extremes of legal phenomena. They are interrelated and interdependent. The co-existence of these categories needs to define legal limits to combine individual's needs for free development and the rational use of relationships in society for the efficient functions of the state.
4. A wide approach, which implies a parallel study of the restriction on individual's rights and the provision of freedom and powers of both state and municipal authorities enables to understand the content of the phenomenon, manifests itself in the categories of freedom and power and enables to show the importance of the notions limits and restrictions for the constitutional law.

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