

ADMINISTRATIVE LEGAL REGULATION PRINCIPLES OF RESTRICTIONS ON HUMAN RIGHTS AND FREEDOMS OF CITIZENS*Galina S. Belyaeva**Belgorod State University, Russia, 85 Pobeda Street, Belgorod, 308015, Russia**Sergey V. Bogdanov**Belgorod State University, Russia, 85 Pobeda Street, Belgorod, 308015, Russia**Aleksandr G. Nikolaev**Management Academy of the Ministry of the Interior of Russia, 8 St. Zoe and Alexander Kosmodemyanskikh, Moscow, 125993, Russia**Vladimir Ostapyuk**Belgorod State University, Russia, 85 Pobeda Street, Belgorod, 308015, Russia**Valery N. Samsonov**Belgorod State University, Russia, 85 Pobeda Street, Belgorod, 308015, Russia**e-mail: belyaeva_g@bsu.edu.ru*

Abstract. This article covered some issues regarding the principles of administrative and legal regulation of restrictions on the rights and freedoms of a person and citizen in the Russian Federation and at the international level. The authors presented the definition of these principles and their system. Here, the main international acts, the Constitution and current legislation of the Russian Federation are analyzed, and the system of principles for legal consolidation and regulation of restrictions on human rights and freedoms is fixed. According to the research findings, conclusions were made on the role of legal principles in the administrative and legal regulation of legal restrictions.

Keywords: legal restrictions, restriction of rights and freedoms of man and citizen, legality, proportionality.

1 Introduction

Legal restrictions are effective means for regulating social relations and their aim is to curb the destructive activity and maintain a balance between interests of an individual, society and the state. Giving the subjected certain rights (powers) and establishing their framework, imposing duties, and prohibiting certain actions, the right outlines the sphere of personal desires and aspirations of the individual interests of society.

At the same time, the formation of a democratic society and the law is closely connected with legal restrictions: the rights and freedoms of a person and citizen are priority, but they are not absolute and unlimited. To maintain the stability in the country, ensure conditions for the existence of each individual, and the progressive development of society and the state, the presence of a system with adequate restrictions on rights and freedoms is necessary.

At the same time, today's science has showed various approaches to understand the essence of legal restrictions and their institutional implementation, which are largely explained by the integrative, and generalizing the nature of the category under consideration [1, 2, 3, 4]. However, since it is widely used in legislation of all levels and legal science, an objective need arises to clarify the meaning of this concept in relation to various legal entities (individual and collective). In this regard, it is objectively important to appeal the knowledge of the general principles for enshrining the legal restrictions at the state level, under which in this article, we propose to understand the initial ideas, basic provisions, and definitions determining the general thrust of legal regulation in the sphere of limiting civil rights and freedoms, the powers of other subjects of law, and limitations and conditions for their establishment.

2 Research Method

The methodological basis of this research are various general methods of scientific knowledge (analysis, synthesis, deduction, induction, system-structural, formal-logical approaches), as well as particular scientific formal, legal, and interpretative methods.

3 Results and Discussion

First, it should be determined that the legal restrictions in this study's framework will be understood as boundaries (limits) for the permitted behavior subject of the law enshrined in current legislation, and provided with coercive power of the state, with exceptions of certain opportunities in their activities and exemptions from their legal status. Unfavorable conditions for satisfying interests of the subjects, and aiming at their deterrence, and at the same time, meeting the interests of counterparties or public interests are protected by the state.

Based on the fact that the principles of administrative and legal regulation of restrictions on the rights and freedoms of a person and citizen are basic ideas and provisions, we considered it possible to include the following fields in their system:

a) The general principles of this institution, define the most essential features of the legal restrictive regulation, its content and features that apply to all branches of law, regardless of the nature and specifics of the public relations regulated by them; this Part of the general principles of the institution of legal restrictions (legality, proportionality, validity) is enshrined in the Constitution of the Russian Federation;

b) Specialized principles of the institution for legal restrictions (inter-sectoral and sectoral).

The general principles of institution for the legal restrictions include the following items: principle of legality, principle of the inadmissibility of restrictions on absolute rights, principle of proportionality, principle of combining interests of the individual and public interests in the field of restrictions on human rights and freedoms, prohibition of derogation of rights, principle of equality of restrictions for all on which they apply, principle of temporary introduction and temporary certainty of restrictions; principle of the inadmissibility of limiting validity of legal presumptions (in particular, the presumption of innocence), principle of ensuring appropriate procedural possibilities; and principle of information support for the application of restrictions and others.

Let us characterize a number of them in more details.

The principle of legality of legal restrictions is based on Part 3 of Article 55 of the Constitution of Russian Federation [5], according to which any restriction for the constitutional rights of citizens can take place only on the basis of federal laws and for the purposes determined by it (Constitution of the Russian Federation). The significance of this principle as a fundamental one is that it prevents the state from arbitrarily interfering in the exercise of rights and freedoms by legal entities. At the same time, it should be noted that by merely fixing the federal legislative level, the possibility of restricting rights is not a sufficient guarantor against the probable violation by the state and the third parties. The law providing for restrictions should be clearly regulated. In other words, the conditions, nature and limits, and the procedure for appealing against unlawful actions, as well as decisions of officials should be clarified.

At the same time, according to M. Horwitz, the law as a basis for establishing the legal restrictions, not only protects a citizen, but also gives him the power of soulless forms that have replaced arbitrariness, unable to take into account the human factor (suffering, helplessness, etc.): “The law creates formal equality, an important dignity, but contributes to inequality by forming a consciousness that radically separates right from politics, goals from funds, and processes from results” [6].

In this case, a few words should be said about the convergence-based approaches to legal restrictions, and primarily concerning the public entities (the state and its bodies). They are developed by supporters of discursive theory of law, which was formed in the framework of the communicative theory of society of J. Habermas, based on the relationship (interdependence) of human rights, the idea of democracy, and the idea of popular sovereignty [7]. According to this concept, legitimacy is not limited to the legal formulation or ability of authorities to effectively use the resources of violence. Laws embodying the basic principles are legitimate including: social consent, social compromise, and ideas of social justice. We fully agree with this statement.

Principle of inadmissibility of using restrictions to absolute rights. At the international level, referring to the text of Article 4 of the International Covenant on Civil and Political Rights, it can be concluded that they cannot be limited: “the right to life, the right not to be subjected to cruel, inhuman treatment, the right not to be subjected without free consent to medical or scientific experimentation, the right not to be held in slavery or servitude, the right not to be deprived of liberty for failure to fulfill any contractual obligation, the right not to be held liable for an act that at the time of its commission was not a criminal offense, the right of recognition before the law, and freedom of thought, conscience and religion”. [8]

Principle of proportionality of legal restrictions is based on the formula- restrictive measures that in their essence, are not excessive, but should only be limited to the adequate frameworks of the circumstances for which they arose.

Principle of combining (balance) public interests of the state and the interests of a person and a citizen is based on the fact that each person is a member of society, and therefore, freedom cannot be absolute; as a member of the society, a person is forced to measure his behavior with the actions of others and with public and state interests. The state, in turn, carries out activities to limit the human rights and freedoms, in order to achieve a balance between private, public and state interests, thereby establishing legal order.

Prohibition of rights derogation proceeds from Part 1 of Article. 21 of Constitution of the Russian Federation [5], containing the normative establishment, according to which, the dignity of an individual is protected by the state, and nothing can be the basis for his derogation. At the same time, Part 1 of Article. 55 of Constitution of the Russian Federation provides that the existence of fundamental rights and freedoms should not be interpreted as a denial or derogation of other generally recognized human and citizen rights and freedoms [5].

The importance of this principle (as well as formulation of the concept of “derogation of the right” and its distinction with category of “restriction of the right”) is important for the differentiation of positive (legal) and negative, unlawful restriction of human and civil rights and freedoms. Some authors believe that chaos reigns in the domestic legal science, and in the question of relationship between the concepts of “restriction of rights” and “impairment of rights” [9].

There is no unity for points of view in the definition of the concept of “law derogation”. Not expressing ourselves in the depth of such a discussion, we will express and clarify our point of view on the concept of law derogation. From position of the legislator (Art. 55 of Constitution of the Russian Federation) [5], derogation (identified with denial) is a phenomenon that exists outside the legal field and therefore, bears a negative (illegal) shade; it is not identified with the legal activities and is not a lawful behavior in connection with the legislation, which establishes some restrictions on the behavior that could entail such a derogation of rights and freedoms.

For example, Federal Law No. 125-FZ of September 26, 1997 “On Freedom of Conscience and Religious Associations” contains the following provision: “In the legislation on the freedom of conscience, freedom of religion and religious associations, nothing should be interpreted in the sense of derogation or infringement of such rights” [10]. Impairment is used here in the sense of infringement of rights and freedoms of man and citizen.

In the electoral legislation in part 4 of article 51 in the Federal Law “On the Election of Deputies of State Duma for the Federal Assembly of Russian Federation” [11] and part 5 of Article 46 in the Federal Law “On Election of the President for the Russian Federation” [12] the term “impairment of rights” is equal to discrimination.

A closer approach to truth seems to be that the concept of “rights derogation” is similar in meaning to the concepts of unreasonable restriction of the scope of these rights or unreasonable restriction of their action in a circle of persons or in time, unreasonable reduction of their legal protection, exclusion from the range of powers, reduction of quantitative characteristics of exercising their rights, as well as guarantees of their exercise. In this context, derogation of rights, as a characteristic of violations of rights and freedoms, is characterized as a more comprehensive concept than the unlawful restriction itself.

Thus, the impairment of rights implies the unlawful restriction, expressed to reduce the role of rights in social life and subsequent changes in right itself in negative sense of its quality characteristics, as well as to reduce the basic content of individual rights and freedoms, which is unacceptable from the point of view of Constitution of the Russian Federation [5].

Regarding such principles as the equality of restrictions in relation to all persons to whom they apply, the temporal nature of introduction and temporal certainty of restrictions, inadmissibility of limiting the effect of legal presumptions (in particular, the presumption of innocence), ensuring appropriate procedural possibilities during the period of introducing legal restrictions, information support of the application of restrictions, their essence and content following the name, need no additional explanation, and a more detailed consideration requires independent scientific research.

The role and significance of legal principles in the administrative and legal regulation of restrictions on the rights and freedoms of a person and citizen are as follow.

In general, the presented system of principles defines the basic requirements of their legal consolidation and implementation in practice:

- Restrictions must be clothed in a certain form of federal law or federal constitutional law;
- The introduction of a restrictions on human rights should be initially required to ensure public security;
- Restriction of human rights is not a rule, it is an exception to it, a kind of urgent necessity;
- Introduction to restrictions is determined by the following conditions (in aggregate): the real (or potential) threat of harm to state and public interests; the impossibility of protecting these interests in other ways (except for limiting rights); the proportionality of restrictions imposed by the existing threat.
- Restrictions are general (non-personalized) and not retroactive;
- Restrictions must comply with the generally accepted norms and principles of international law;
- They must be based on reasonable sufficiency of measures for a state-legal nature, that is only carried out to the required extent, and is not applied to fundamental (absolute) rights and freedoms;
- Restrictions must be proportionate to the goal, they need to be clearly articulated and do not allow arbitrary interpretation. No less important is the question of the basis of legal restrictions. Legal restrictions are legal due to the fact that they are based on law, which can be recognized as the most important and universal way to secure public restrictions.

4 Findings

Thus, principles of administrative and legal regulation of restrictions on the rights and freedoms of a person and citizen represent the initial ideas, basic provisions, provisions determining the general direction of legal regulation in the sphere of restricting rights and freedoms of a person and citizen, as well as the powers of other subjects of law, their limits and conditions setting.

These principles are a specific system consists of general tenets of this institution, defines the most significant features of legal restrictive regulation, and defines its content and features that apply to all branches of law, regardless of the nature and specifics of public relations and specialized principles that they regulate (inter-sectoral and industry).

The general principles of institution of legal restrictions include principle of legality, principle of inadmissibility of applying restrictions to absolute rights, principle of proportionality, principle of combining interests of the individual and public interests in the area of restrictions on human rights and freedoms, prohibition of right derogation, principle of equality of restrictions for all on which they apply, principle of temporary introduction and temporary certainty of restrictions; principle of inadmissibility for limiting validity of legal presumptions (in particular, the presumption of innocence), principle of ensuring appropriate procedural possibilities; principle of information support of the application of restrictions and others. Totally, the presented system of principles determines the basic requirements for administrative and legal consolidation and implementation of restrictions on the rights and freedoms of a person and citizen in practice

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