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Legal limitations of socio-economic rights: positive and negative experience of Europe

Limitaciones legales de los derechos socioeconómicos: experiencia positiva y negativa de Europa

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Abstract

The article shows the review of legislative restrictions in European countries which deal with the limitations of the socio-economic rights of the population. The research aims to analyze the limits of human and civil rights and freedoms in modern conditions and directly related relations based on the study and generalization of the doctrinal heritage of legal science, current European legislation, and practice of its application. The article highlights the critical analysis of scientists' opinions on the formation and limitation of socio-economic rights, makes a general assessment of the legislative regulation of this issue. As a result, the features of legislative protection of human rights in European countries, the place of socio-economic rights in the general human rights, and their importance for the socio-economic development of society are shown. Furthermore, the main principles of legislative regulation and practical restrictions are shown: the supreme source of law, indivisibility, and interrelatedness of rights, the doctrine of the supreme public right over the

Resumen

El artículo muestra la revisión de las restricciones legislativas en los países europeos que se ocupan de las limitaciones de los derechos socioeconómicos de la población. La investigación tiene como objetivo analizar los límites de los derechos y libertades humanos y civiles en las condiciones modernas y las relaciones directamente relacionadas a partir del estudio y la generalización del acervo doctrinario de la ciencia jurídica, la legislación europea actual y la práctica de su aplicación. El artículo destaca el análisis crítico de las opiniones de los científicos sobre la formación y limitación de los derechos socioeconómicos, hace una valoración general de la regulación legislativa de este tema. Como resultado, se muestran las características de la protección legislativa de los derechos humanos en los países europeos, el lugar de los derechos socioeconómicos en los derechos humanos generales y su importancia para el desarrollo socioeconómico de la sociedad. Además, se muestran los principios fundamentales de la regulación legislativa y las restricciones prácticas:

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individual one, the principle of formation of rights and restrictions under the national specifics. All this allowed, as a result, to make a comparative analysis of the positive and negative experience of state regulation of socio-economic rights and summarize the conclusion that ensuring social and economic rights of some people can create prerequisites for the formation of socio-economic restrictions for others. In such situations, the state must perform a controlling function, which will ensure a balance between the rights of some parties and the limits of others.

Keywords: socio-economic rights, individual rights, Covid-19, ecological development.

Introduction

A democratic society cannot exist without forced restrictions on social and economic rights. The community has to limit its interests for the sake of the public good and the achievement of consensus of peaceful coexistence. The indicated restrictions directly relate to the human and civil rights and freedoms that can be legally, and most importantly, practically ensured and guaranteed only in democracies.

Legislators of the EU countries have developed many laws aimed at improving the socio-economic life level through restricting the rights and freedoms of an individual. Tariffs, reforms, taxes, fines, subsidies, and other modern regulations have become legal restrictions for people, making life quite difficult. As a result, such rules work to improve the overall social and economic situation in the country. Still, at the same time, they can harm the rights of specific people, so they may not be able to cope with organizing their own lives. On the one hand, such policies are capable of forming a developed democratic society, but, on the other hand, threaten to undermine social conditions and, as a consequence, mental and physical health and even death. The observance of a balance in the state's regulation and restriction of social and economic rights is the main problem in the formation of states' socio-economic policy. Practice shows that quite often, such limitations may not always be legitimate. Cases of illegal abuse of opportunities by both the population and the authorities are also possible, leading to human and civil rights violations. Such situations can often be met in inviolability problems,

la fuente suprema del derecho, la indivisibilidad e interrelación de los derechos, la doctrina del derecho público supremo sobre el individual, el principio de formación de los derechos y las restricciones en el orden nacional. detalles específicos. Todo esto permitió, como resultado, hacer un análisis comparativo de la experiencia positiva y negativa de la regulación estatal de los derechos socioeconómicos y resumir la conclusión de que garantizar los derechos sociales y económicos de algunas personas puede crear requisitos previos para la formación de derechos socioeconómicos. Restricciones para otros. En tales situaciones, el Estado debe realizar una función de control, que asegure un equilibrio entre los derechos de unas partes y los límites de otras.

Palabras clave: derechos socioeconómicos, derechos individuales, Covid-19, desarrollo ecológico.

property rights, possession of information, activities of political organizations, and judicial proceedings. The article's relevance was strengthened by the pandemic restrictions of 2020-2021, which made the problem even more acute. Many people have lost their means of living under quarantine restrictions, and some are losing their health and lives altogether under the state's failure to provide free treatment.

The purpose of the article is to analyze the limitations of human and civil rights and freedoms in modern conditions and directly related relations based on the study and generalization of the doctrinal heritage of legal science, current European legislation, and the practice of its application.

Literature Review

The issue of theoretical aspects of the formation of human rights restrictions is quite studied. In particular, there is enough modern literature that examines the problem in the context of certain countries today. It is worth highlighting the study of Mernyk A. et al. (2020), who studied theoretical and practical aspects of restrictions on human rights and freedoms on the example of Ukraine.

The literature study shows that, in general, scientific researchers are consistent in the perception of social and economic law. Thus, Veprytskij R. (2008), in his dissertation, reveals the content of the concept of "socioeconomic rights" as "the opportunities of a person and

citizen in the sphere of property, entrepreneurship, labor and recreation, social protection, housing, and health care. The law aims to create conditions for the formation and development of the personal property, work, and the security of workers who find themselves in a difficult situation in the state and society. European researchers Piovesan F. (2005); Fredman S & Wesson. (2009); also agree with this interpretation.

Equally important is the issue of clarifying the essence of the concept of "human rights restrictions". It can be defined as international and national law interventions that lead to changes in the scope of human rights and freedoms in the public interest and ensure the balance of interests to protect constitutional values (Kostytskij, 2010; Fredman & Wesson, 2009).

However, these studies have only dealt with the theoretical aspect of limiting socioeconomic human rights. Theoretical and practical analysis of this topic was conducted only concerning fundamental human and civil rights, which does not allow to consider the criteria of limitation of human and civil rights and freedoms in modern conditions. That is why this study is of particular relevance since it has theoretical and applied content.

It should be emphasized that, given the increase in the actualization of social and economic rights under pandemic conditions, it is worth highlighting practical studies by Ortiz (2021), in particular in Spain, that adopted the strictest restrictions. There are also generalized studies on the world as a whole (Simões, 2021). Although many people suffered from limitations of their right to work, the authors conclude that such restrictions are legitimate and essential for society. Still, at the same time, they point to the need to harmonize measures on the part of all states. Zaryaeva & Oliynyk's (2021) legal research shows that the actions used to combat coronavirus are not clearly defined from a legal perspective. Even though to 2021, the legislative part in many countries is elaborate, the executive branch does not have the resources to ensure that all legislative restrictions are implemented to the necessary level. At the same time, the better developed the state and the more established the law enforcement agencies and the democratic foundations of society are, the fewer problems arise with the infringement and restriction of human rights and freedoms. In turn, developing countries, lacking sufficient resources and organization of the executive branch, often

formally organize social and economic human rights. Mendzhul & Melehanych (2020), Zaryaeva & Oliynyk (2021), Emmons, S. (2020) also highlighted the problem. They believe that during the fight against the pandemic socioeconomic restrictions are necessary, but they must be legal and equal for all citizens, regardless of their social status, economic status, influence, and other factors.

Today, the European legislative and judicial practice is the benchmark for the legal regulation of developing European countries. Therefore, to build research, the legal and regulatory aspects of restrictions on social and economic freedoms were studied, which assess the success and ineffectiveness in transferring the experience of regulation to developing countries.

Methods of research

The object of scientific research is human rights; in their context, the institute of rights restriction will be analyzed. For a clear understanding of the latter, let us define the approaches to understanding the object of the scientific article.

- implementation of the general analysis of human rights and freedoms;
- to allocate classifications of rights and freedoms;
- determination of the theoretical basis of the institute of limitation of economic and social rights and freedoms of a person;
- analysis of European legislation in the sphere of human rights and their limitations;
- studying the mechanism of practical limitation of human rights and providing suggestions for its improvement;
- formation of general conclusions about positive and negative facts of legislative restrictions of social and economic freedoms of citizens.

The use of general scientific methods of cognition based on the analysis of regulatory legal acts and the results of judicial proceedings of European practice allows:

- systematize the field of regulation of restrictions of socio-economic rights (analysis and synthesis);
- group the results of research to highlight the main points in the theoretical and practical state regulation of social and economic rights (grouping);
- extract from the general flow of information the main points of discussion which relate to

the normative-legal regulation of socio-economic restrictions of citizens (induction);
– form recommendations and assumptions that would solve the main problem of socio-economic restrictions (deduction).

A research subject is normative legal documentation, academic articles, law journals, and media publications related to socio-economic restrictions of citizens' rights worldwide.

Results and discussion

Human rights are their subjective abilities to independently, freely, and independently determine the measure and way of own behavior that is not prohibited by law and does not violate the rights and freedoms of others (Mernyk et al., 2020).

In addition, human rights are equated with this option of behavior, which is defined as an opportunity to enjoy social benefits provided by the state (Mernyk et al., 2020). The proposed definitions have both shortcomings related to

abstract, universal human rights and rational components. For the purposes of this study, let's use the first definition of human and civil rights and freedoms.

The different definitions of the legal category of human rights consider different human rights. There are the following criteria for classifying human and civil rights and freedoms: by subjects, by origin, by time of conception, by the nature of the formation, by type of subject, etc. However, the majority of the listed criteria are of theoretical significance. Instead, the classification of human rights and freedoms by content that takes on theoretical and practical importance:

- 1) individual (right to life, liberty, personal inviolability, the secrecy of correspondence, etc.)
- 2) political (electoral right, right of access to public service, etc.)
- 3) socio-economic (right to work, entrepreneurial activity, right to property, social security)
- 4) cultural-ecological (right to education, right to the safe ecological environment).

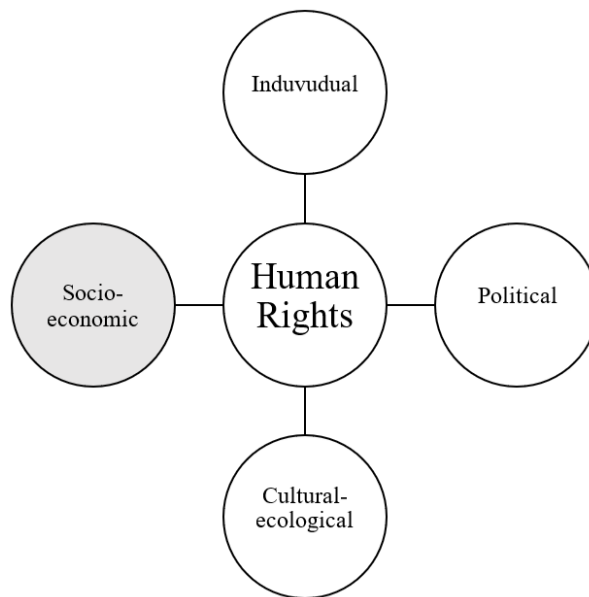


Figure 1. The place of socio-economic human rights in general rights

The object of our study is socio-economic rights. However, based on Figure 1, we can see that this is only a part of rights, which significantly differs from other civil-political rights that assert fundamental freedoms: the right to life and personal integrity, equality before the law, property, freedom of thought, conscience, beliefs and their expression, freedom to seek, receive and impart information and ideas by any means,

to peacefully assemble and form associations, to take part in the government of the country, etc.

In contrast to individual and civil rights, it is clear that socio-economic human rights are much less universal (Bogoraz, 1995). The lesser universality is particularly evident in two respects.

1. Non-permanent nature. This form of right is historically and culturally fluid, its limits changing over social time. However, in contemporary industrial and post-industrial socio-economic societies, socio-economic rights predominantly affect the area of labor relations and directly related spheres.
2. Labor relations. Socio-economic rights entirely apply to the economically active population, mainly to those in paid employment. Moreover, socio-economic rights, as they are currently understood, make sense in regulating non-elite workers. For top managers and the political and cultural elite, social security, protection from unemployment, safe working conditions, or the right to a healthy home and a decent standard of living become critically important only in exceptional cases. Whereas for employed citizens, this problem is an ever-present one (Sirotkin, 1993).

In short, socio-economic rights are not the rights of the population but the rights of the economically active people, who are full-time employees of companies or entrepreneurs and business owners. They account for at least 60-70% of the active population in developed countries. Therefore, the limitation of the effect of these legal restrictions in the context of the individual's socioeconomic status is the central aspect of the debate in positive and negative experiences of legal limits in the EU.

To assess the practical aspects of the action of legislative acts in the context of socio-economic restrictions, let's examine theoretical principles and practical examples of legislative regulation and practical restrictions.

International regulation over national regulation

For EU members or countries planning European integration, the question of regulating state restrictions on the socio-economic rights of citizens must take into account the international norms and standards adopted by the EU. In this case, all these international standards are complemented by the European Court of Human Rights jurisprudence, according to which all courts must apply the practice of the European Court and the Convention as a source of law.

It is important to remember that EU members are simultaneously the member states of the Council of Europe and parties of the central part of its international human rights instruments, the

European Convention for the Protection of Human Rights and Fundamental Freedoms (European Court of Human Rights, 1950). Therefore, in the application of European law, the member states must fulfill in good faith their international obligations in the field of protection of social and economic human rights restrictions.

International human rights law recognizes economic, social, and cultural rights as an integral part of the totality of human rights. Major international treaties specifically addressing economic, social rights include the following:

- Universal Declaration of Human Rights (1948);
- International Covenant on Economic, Social and Cultural Rights (United Nations, 1966);
- Declaration of Social Progress and Development (1969);
- Convention on the Elimination of All Forms of Discrimination against Women (1979);
- Declaration on the Right to Development (1986);
- Convention on the Rights of the Child (1989);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

The International Covenant on Economic, Social, and Cultural Rights (United Nations, 1966) remains the fundamental treaty on economic and social rights. It recognizes the following rights:

- The right to self-determination (Article 1);
- the equality of men and women (art. 3);
- right to work and to enjoy good working conditions (Articles 6 and 7);
- right to form and join trade unions (Article 8);
- Right to social security (Article 9);
- right to protection of the family, mothers, and children (Article 10);
- right to an adequate standard of living, including adequate food, clothing, and housing (Article 11);
- right to the highest attainable standard of health and medical care (Article 12);
- The right to education (Article 13);
- the right to free and compulsory primary education (Article 14);

The right to participate in cultural life, enjoy the results of scientific progress and benefit from the protection of any scientific, literary or artistic

production of which one is the author (Article 15).

Practical aspect: case 26/62 Van Gend en Loos, where the Court of Justice reasoned that the EU creates a new legal order in international law, in favor of which States have limited their sovereign rights, while also limiting the rights of citizens. A similar approach was revealed in the decision of 6/64 Costa v. ENEL. It was noted there that "unlike ordinary international agreements, the Treaty on the European Economic Community created its legal system, which is an integral part of the member states' legal systems and which their courts are bound to respect" (Fomin, 2019). It means that the law of the European Union has supreme legal force over the national law of the member states.

Indivisibility and interdependence of all rights

The indivisibility and interdependence of all human rights (civil, cultural, economic, political, and social) are basic international human rights principles repeatedly affirmed at the 1993 World Conference on Human Rights.

Inseparability and interdependence of all human rights mean that economic and social rights apply to all persons equally, without discrimination. However, they create specific obligations for governments, are justiciable, and can and should be enforceable.

To promote and protect human rights, national human rights institutions need to pay equal attention to all rights.

Practical: The objective impossibility of providing distance work to all has formed an active resistance by entrepreneurs to the prohibition of trade, stores, and entertainment centers. For example, in the Czech Republic, the ban on trade in construction materials was overturned in court (Kučera & Jiří Maršál, 2021), because anti-crisis measures and restrictions should be based on objective and reasonable justification, which the Czech authorities have failed to do. The situation was similar in the U.S. Thus, such conditions were judicially lifted on the rights of unreasonableness and to ensure equality and fairness (Hull Eikho et al., 2021).

Public rights above individual human rights

Article 29 of the 1948 Universal Declaration of Human Rights states that: "In the exercise of his rights and freedoms, everyone shall be subject only to limitations determined by law solely to

secure due recognition and respect for the rights and freedoms of others and to secure the requirements of morality, public order, and the general welfare in a democratic society."

This declaration proclaimed for the first time since the Second World War the limits and grounds for limitations of human rights, as well as social and economic rights, at the international level. Thus, the permissible limit of human rights limitations is defined by ensuring recognition and respect for the rights and freedoms of others, i.e., the realization of one's rights ends where the rights and legitimate interests of others begin.

Based on the 1948 Universal Declaration of Human Rights proclaimed by the United Nations General Assembly, "Limitations permitted under this Convention in respect of the mentioned rights and freedoms shall not apply for other purposes than those for which they are prescribed."

Subsequently, the UN General Assembly adopted the International Covenant on Economic, Social and Cultural Rights in 1966, which defined the grounds for restrictions on the right to form and join trade union organizations:

- 1) in the interests of national security;
- 2) in the interests of public order;
- 3) to protect the rights and freedoms of others (Article 8).

Practical aspect: individual decisions of the European Court of Human Rights define the procedure and grounds for constitutional-legal restrictions of socio-economic rights. Therefore, the European Court of Human Rights activities is a core in regulating and protecting the limitation of these rights. An analysis of the European Court of Human Rights practice demonstrates the existence of decisions on cases involving legitimate limits on the right to property, restrictions on social benefits, restrictions on the right to pension security, and restrictions on the right to strike.

For example, mentioned international legal acts have repeatedly noted the legitimacy of social and economic rights limitations in the public interest. For example, the European Court of Human Rights practice in the case of James and others v. The United Kingdom (Oxford Reports on International Law, 1986) set forth the legal position. The seizure of property to implement a lawful socio-economic policy may be carried out in the public interest.

In 2020, it was pretty common to see situations in the world where public members sued the judiciary in favor of lifting restrictions on economic activity through quarantine restrictions. A judge ruled that emergency-related restrictions (notably the Covid-19 pandemic) were not violations of human rights (Hudson, 2020). According to the authors, such court decisions can be the basis for other precedents in the U.S. and other countries where society faces such a problem.

Limitations of state regulation of social and economic relations

Although EU countries have formed legislation that protects social and economic rights, other documents were signed in 1996 that impose some restrictions. Such a document is the European Social Charter. The state may derogate from its essential obligations to protect social and economic rights in cases of threats to national security, public health, or morals. The Charter's restrictions on rights and obligations apply only for strict purposes (Council of Europe, 1996).

To meet human rights standards, restrictions on socio-economic rights must:

- Be provided for by law;
- be necessary for a democratic society;
- be based on sound scientific evidence;
- be neither arbitrary nor discriminatory;
- be subject to examination;
- be limited in time;
- be proportionate to the objectives to be achieved;
- take into account the differential impact on specific categories of the population.

Under the provisions of Article 53 of the EU Charter on the Level of Protection, none of the provisions of this Charter can be regarded as limiting the social and economic human rights established in the EU and the European Society and States (Official Journal of the European Communities, 2000) in conditions that do not involve a threat to security, health or morals.

In December 2009, following the entry into force of the Lisbon Treaty, the 2000 Charter of Fundamental Rights of the European Union became a priority document in the European legal system. As a result, the EU Charter is now the primary source of human rights protection standards, particularly limitations on socio-economic rights for all bodies of the European Union.

Restrictions on rights and freedoms occur in accordance with the financial capacity of states to protect people's rights

Despite the sufficient level of legal regulation of socio-economic restrictions, another essential fact must be mentioned. Any regulation is not a guarantee of implementing the rule of law until the executive authorities organize the execution of laws, orders, and decrees of the legislative bodies. At the same time, as mentioned above, having a good legislative framework, many countries do not have the resources to ensure a high level of protection of social and economic rights.

Practical aspect: in the case of Autism-Europe v France (Council of Europe, 2002), the Committee pointed out that if securing a certain right related to the implementation of the European Social Charter is complex and requires significant financial resources, the state must take measures allowing achieving the objectives of the European Social Charter in a reasonable time and using the maximum possible resources necessary for rights implementation. Thus, the Committee has identified a characteristic dependence of the level of implementation of social and economic rights on the financial capacity of the national economy of the country and, accordingly, further permissible cases of their restriction. At the same time, states must ensure the minimum requirements for implementing social and economic rights.

Thus, based on the results of this study, it is possible to highlight the following positive and negative European experiences with limitations of rights.

Table 1.
Europe's positive and negative experiences in restricting social and economic rights

Positive experience	Negative experience
Standardized uniform regulation of the protection of the rights and freedoms of Europeans makes it possible to increase the overall level of social and economic protection of Europeans	The different development levels of states do not allow the application of European standards to all countries due to budgetary constraints. National regulation of socio-economic rights considers the peculiarities of national socio-economic relations. Still, it may not comply with European rights protection standards, which forms the preconditions for violations of socio-economic rights in the protection of rights in the European Court.
Socio-economic human rights and restrictions are the same levels of importance as other civil or personal human rights.	Due to the limitations of the scope of regulation of socio-economic rights by the active, employed population, the importance of these rights is reduced for society compared to individual and civil rights, which have no limitations on the scope of regulation.
Socio-economic individual rights are exercised on the basis of equality	Social and economic rights can be exercised as long as they do not violate the public interest
The state clearly sets the boundaries of social and economic rights and restricts them when they pose a threat to national security	Because of insufficient legislative regulation of state action in the face of contingencies that may threaten the public, socioeconomic rights may be illegitimately infringed upon and restricted or regulated in a non-transparent manner

The question of the realization and limitations of the socio-economic rights of the population of Europe always has two sides: positive and negative. On the one hand, we can see how, at the legislative level, European countries are trying to organize the basic principles of democracy and equality. However, on the other hand, there are many practical situations in which certain persons can use restrictive standards for the population to their advantage.

The issue is always more acute when it comes to protecting the rights of the rich and the poor, managers and staff, officials, and the population.

Despite the principles of the indivisibility of all rights and the equality of socio-economic rights with other human and civil rights, in practice, it is clear that socio-economic rights play a secondary role in today's world. However, they should be on the same level as individual rights by European standards (Fredman & Wesson., 2009).

On the one hand, absolute social equality makes free use of abilities, total freedom of labor, property, and ownership impossible. But, on the other hand, within the framework of such mutual contradictions and restrictions, the danger of transforming ideas of social justice and social equality into an ideology of total unfreedom increases sharply.

Large-scale production, mainly that using hired labor, is organized so that its participants are divided into managers and ordinary workers, specialists, and lower executives. The second category, conventionally denoted by the term "workers," although covering the majority of the economically active population, is in many respects socially weaker than the first. That is since the owners and managers of production in social relations will always favor the company and its profitability. Yet, at the same time, rank-and-file workers cannot resist the organization's socio-economic order without special efforts (Connell, 2011).

A natural consequence of these trends is the slow growth or even decline in workers' living standards, the widening gap between the poor and the rich. In such a situation, the danger of a social explosion inevitably arises.

It might seem that the most effective way to achieve balance and harmony is direct state intervention in production and social life. However, the experience of the totalitarian regimes of recent times and communism has shown that state intervention is a threat to the market economy. The lessons of the twentieth century show that achieving a natural equilibrium in the interaction of participants in social relations requires limited, cautious (more often indirect than direct) state intervention in social and economic life.

Given that the state cannot regulate all the circumstances faced by economically active people, it must at least organize a transparent judicial system to confront the large-scale human rights violations in a market economy (Beer & Vettori, 2017). Furthermore, it is critical to control the restriction of workers' rights, the abuse of power by officials, and the equal distribution of state revenues.

Conclusions

Limitation of human rights and freedoms is an institute of law that consists of a large number of interrelated, coordinated norms of constitutional, criminal, civil, administrative, ecological, and other branches of law that establish the procedure, legitimacy, mechanisms of restriction of the content and size of human rights.

All these norms are complemented by the judicial practice of state courts, the European Court of Human Rights. The courts must apply the Convention and the Court's decisions as a source of law when considering cases.

Analyzing the core theoretical and legal aspects of the constitutional and legal limitations of social and economic human rights under the EU standards, let's make several conclusions:

- 1) all international legal acts proposed for consideration determine that states may enshrine the right of public authorities to limit socio-economic rights in constitutions, which must comply with European standards.
- 2) the area of socio-economic rights limitations must be defined at the constitutional level. At the same time, these restrictions and freedoms must not contradict public rights and national security.
- 3) European Court of Human Rights decisions provide an expansive interpretation of specific cases of constitutional and legal restrictions of human rights. They are a guideline for forming principles of protection of constitutional limits of socio-economic rights of man and citizen in national courts.

The analysis of the positive and negative experiences of European regulation of socio-economic rights allows us to draw the following conclusions:

1. An individual socio-economic rights may be quite infringed compared to other rights.

2. In the same way, the opposite pattern may occur when securing the rights of individuals may contradict the rights of other citizens.
3. Government regulation is an option for balancing the rights of some with the restrictions of others.
4. State regulation of socio-economic rights and restrictions can only occur at the legislator and the judiciary level because any interference in market processes can lead to violations of the socio-economic development of society.

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