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NATIONAL SECURITY

Abstract to the dissertation for the academic degree of candidate of law  
in the specialty 5.1.2. Public law (state law) sciences

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Relevance of the topic of the dissertation research.

The relevance of the topic of the dissertation research is due to the problems associated with the need in certain cases to limit human rights and freedoms, which is not always clearly regulated by current legislation, especially when it comes to fundamentally new phenomena, such as the introduction of new technologies, and threats to national security, such as a pandemic. In a state governed by the rule of law, civil society closely monitors the observance of constitutional human rights and freedoms, and any restriction of the latter causes public discontent if government agencies fail to clearly define the legality and compliance with the Constitution of the Russian Federation of decisions taken related to these restrictions. In addition, new challenges cannot always be predicted in advance and taken into account in regulatory legal acts. For example, the pandemic of the new coronavirus infection has shown that the state authorities, not wanting to limit the rights and freedoms of man and citizen by applying the norms of the legislation on the state of emergency, allowed actions at the first stage of the development of COVID-19 that contradicted the Constitution of the Russian Federation, since the rights and freedoms were limited not in accordance with the federal law, as required by the Constitution of the Russian Federation, but on the basis of regulatory legal acts of senior officials of the regions. This fact showed that the current legislation was not ready for a force majeure situation, and the state authorities allowed a violation of the provisions of the Basic Law of the country, although thanks to prompt legislative work to amend the legislation, this violation of the Constitution of the Russian Federation was quickly eliminated.

The study of restrictions on human rights and freedoms in the context of pandemics and the widespread introduction of new technologies is just beginning, and any scientific understanding of the problems in this area is valuable for legal science and practice.

It is extremely relevant to assess the process of restricting human rights and freedoms in the context of a special military operation carried out by the Russian Federation. In particular, severe restrictions on freedom of speech seem to be

completely justified and correct from the point of view of ensuring national security.

Thus, a deep analysis of the existing legislation, which provides for restrictions on human rights, and the development of proposals for its improvement are extremely relevant at the present stage.

The very concept of the study seems to be relevant, according to which the institution of restricting the rights and freedoms of man and citizen is considered in the context of ensuring national security, which, as it seems, allows us to remove some questions about the legality (illegality) of the applied restrictions on human rights. According to the position defined in the work, the only basis for restricting human rights and freedoms can be exclusively ensuring national security. At the same time, the concepts of "foundations of the constitutional order", "territorial integrity", "health of the population" and some others used in the legislation are elements of the global category of "national security".

The purpose of the dissertation research is a scientific analysis of the institution of restricting the rights and freedoms of man and citizen in the context of ensuring national security of Russia and the development of proposals for improving the regulatory framework in this area.

Objectives of the dissertation research:

- to understand the relationship between national security and human rights in Russia;
- to consider international legal standards in the field of restricting human and civil rights and freedoms;
- to study the constitutional and legal basis for restricting human and civil rights and freedoms in order to ensure national security in modern Russia;
- to analyze the legal regulation of restricting constitutional rights in the context of special legal regimes and during operational-search activities;
- to study new threats to Russia's national security that require legal regulation of restricting human rights and freedoms;

– to develop proposals for improving the current legislation in the field of restricting human and civil rights and freedoms.

The object of the dissertation research is public relations that develop regarding the restriction of citizens' rights and freedoms by public authorities in order to ensure national security.

The subject of the dissertation research is legal norms regulating the mechanism of restricting citizens' rights and freedoms.

Scientific hypothesis of the dissertation research.

The institution of restricting human and civil rights and freedoms is considered in the context of ensuring national security, which allows us to remove some questions about the legality (illegality) of the applied restrictions on human rights. According to the position defined in the work, the only basis for restricting human rights and freedoms can be exclusively ensuring national security. At the same time, the concepts of “foundations of the constitutional order”, “territorial integrity”, “health of the population” and some others used in legislation are elements of the broad concept of “national security”.

Theoretical and methodological basis of the dissertation research.

The theoretical basis of the work was formed by the main concepts, conclusions and theories of domestic and foreign researchers. The issues of constitutional and legal regulation of human and civil rights and freedoms and their limitations were studied by Yu. S. Kanina, A. A. Smirnov, N. A. Shchegoleva, E. V. Egorova, B. S. Ebzeev, L. L. Belomestnykh, V. I. Goyman, E. E. Gretsova, M. I. Nagornaya, V. N. Ageev, A. A. Podmarev, L. M. Churkina, I. D. Yagofarova, V. V. Lazarev, V. M. Malinovskaya, A. V. Tarasov, D. Sh. Pirbudagova, T. V. Prikhodko, A. F. Kvitko, N. I. Shaklein, D. V. Iroshnikov, V. V. Mamonov, M. V. Baglai, G. N. Komkova, E. V. Kolesnikov and others. However, almost none of the legal scholars addressed the study of the institution of limiting human rights in close connection with ensuring national security, although some authors mentioned this. For example, E. E. Gretsova examined the restrictions of human rights and freedoms in the interests of ensuring public safety, and E. S. Izzatdust analyzed national

security in the context of human rights protection; A.A. Smirnov devoted his dissertation research to the restrictions of human rights and freedoms in ensuring the defense of the country and state security.

The problems of national security, its provision and its types were studied by M.I. Agabalaev, A.M. Voronov, V.B. Rushailo, I.B. Kardashova, A.I. Sapozhnikov and others.

Empirical basis of the study. The author's proposals related to the improvement of legislation providing for the possibility of limiting the rights and freedoms of man and citizen, as well as legislation on security and special regimes, can be implemented in legislative and law enforcement activities. The conclusions presented in the dissertation can be used by practicing lawyers in cases of limiting the constitutional rights and freedoms of man and citizen.

The dissertation research can form the basis for future research in the field of ensuring national security through legitimate restrictions on human and civil rights and freedoms of theoretical and applied significance. In addition, the results of the dissertation can be used in the process of teaching constitutional law, operational investigative activities, as well as disciplines and special courses related to national security.

The main scientific results obtained by the author and their novelty.

As a result of the dissertation research devoted to the institution of restricting the rights and freedoms of citizens in order to ensure national security, it is advisable to make the following general conclusions.

In legal science, with a fairly large number of studies in the field of restricting human rights and freedoms, this institution is practically not considered in the context of ensuring national security, while the analysis of international legal documents and domestic legislation shows that the only legitimate basis for restricting rights and freedoms is precisely ensuring national security in general or its individual types.

In the process of developing security legislation, innovations or newly adopted laws do not always fully comply with the spirit of the Constitution of the



Russian Federation in terms of human and civil rights and freedoms. In this regard, it is necessary, for example, to return to the current Federal Law "On Security" some of the formulations of the legislative act on security that has lost its force, which gave a clear and verified definition of security and presented the sequence of its main objects, in which the person was in the first place.

In addition, the concept of "future generations" (future generations are people who have not yet been born) should be widely introduced into security legislation, primarily into the basic Federal Law "On Security", since ensuring national security pursues as a goal not only the possibility of realizing human rights and freedoms today and now, but also determines the fate of people in the near and distant future. The same applies to strategic planning documents in the field of security, the analysis of which revealed the fact that in modern existing documents on national security and on certain types of security, human and civil rights and freedoms are often shifted to the background or are absent altogether. For example, the current National Security Strategy for 2021 does not contain provisions on the implementation of human and civil rights and freedoms, which does not correspond to the constitutional provision on a person as the highest value in the state. A comparative historical analysis shows that from this point of view the National Security Strategy of 2009 was optimal, in connection with which it is proposed to return to its provisions on the rights and freedoms of man and citizen in the future National Security Strategy of the Russian Federation. Similar provisions are also missing in some strategic planning documents on types of security, in particular, in the Doctrine of Food Security of the Russian Federation and the Strategy of Economic Security of the Russian Federation for the period up to 2030. It is proposed to amend these documents in the part concerning the rights and freedoms of man and citizen, taking as a model the Doctrine of Information Security of the Russian Federation, which, as a comparative historical analysis has shown, contains the optimal version of the provision on the protection of constitutional rights of man and citizen.

International standards concerning the legitimate restriction of human and civil rights and freedoms confirm the concept chosen in this study, according to which all restrictions of human and civil rights and freedoms are conditioned solely by the purposes of ensuring national security in general or its individual types. At the same time, the absence in most cases of the term "security" itself does not change this position, since in essence the reason for restricting rights and freedoms remains the need to ensure some type of national security.

With regard to human and civil rights and freedoms, the Constitution of the Russian Federation, along with the term "restriction", uses the concepts of "denial", "cancellation", "diminishment", "violation". An analysis of the concepts from the point of view of semantics and taking into account the scientific positions of legal scholars allows us to conclude that only the term "restriction" implies a legitimate change in the scope of constitutional rights and freedoms.

It is important for science to classify restrictions of human and civil rights and freedoms for the purposes of ensuring national security. As a result of the study, the following typology of these restrictions is proposed:

1. Emergency restriction of rights and freedoms, which is characterized by temporariness. Such a restriction lasts until the threat to the security of an individual, society or the state in a specific place is completely eliminated. An emergency restriction is a response to a specific security threat.

2. A permanent restriction of the rights and freedoms of a person and citizen, applied to certain categories of citizens or territories specified by law. The main purpose of such permanent restrictions is to prevent security threats, not to eliminate them. Such types of restrictions are typical, for example, for the regime of closed administrative-territorial entities, for the regime of state secrets, etc.

An analysis of the legislation, the norms of which establish certain restrictions on the rights and freedoms of man and citizen, allowed us to conclude that unification is necessary, the main goal of which is a common legal mechanism for implementing the provisions of the Constitution of the Russian Federation establishing the grounds for these restrictions in order to ensure security. It is

advisable to reflect such a mechanism in the Federal Law "On Security", which also needs to enshrine the basic principles of limiting constitutional rights and freedoms, in particular, the principle of "maintaining a balance between the vital interests of the individual, society and the state", expand legal guarantees against unjustified restrictions on human rights and freedoms, and specify the issues of responsibility of government bodies in the context of limiting the rights and freedoms of citizens.

An analysis of the Constitution of the Russian Federation allowed us to identify the grounds for limiting the rights and freedoms of man and citizen:

3. Protection of the foundations of the constitutional system. It should be noted that the foundations of the constitutional system affect all three fundamental objects of national security (personal, public, state). This basis could become the only and self-sufficient one, since the foundations of the constitutional system cover all areas of human life, society and the state. 2. Protection of morality In Russia, morality can be considered as an element of spiritual security. 3. Health protection. In accordance with the Constitution of the Russian Federation, we are talking about protecting the health of an individual, that is, this basis for restricting the rights and freedoms of a person and citizen is associated with the safety of the individual. The importance of this constitutional basis for restricting the rights and freedoms of an individual has clearly manifested itself in the context of the spread of the new coronavirus infection COVID-19. The study revealed a fact that requires further separate scientific analysis: the right to health protection in the Constitution of the Russian Federation is not included in the list of rights and freedoms that cannot be restricted.

4. Protection of the rights and legitimate interests of others. This basis for restricting human rights and freedoms is provided for in international documents and reflected in the Constitution of the Russian Federation.

5. Ensuring the country's defense. An analysis of strategic planning documents showed that defense was previously considered a type of national security. According to the National Security Strategy of 2021, defense is considered through the concepts of "national interests" and "national priorities". In accordance



with the Federal Law "On Defense", defense is defined as a system of various measures to prepare for armed defense and armed defense of the Russian Federation.

6. Ensuring state security. This basis can be interpreted quite broadly, but under a democratic political regime, clear legal boundaries are established that determine the necessary measure of restriction of human rights and freedoms.

Thus, six constitutional grounds for restricting human and civil rights and freedoms are directly related to national security or its types.

The study concluded that most often the restriction of human and civil rights and freedoms is provided for by the state in the context of special legal regimes. The doctrine does not have a single approach to defining special legal regimes, therefore, for the purposes of the work, a distinction was made between a special and an emergency regime, since the first concept in relation to the second is related as the general to the particular, or as a generic one. By analogy with the restrictions of the rights and freedoms of a person and citizen, a typology was applied, according to which special regimes are divided into two types: an emergency special regime, which is introduced in connection with a threat to national security and is temporary, and a permanent special regime, which implies a permanent effect in relation to legally defined persons or territories. As can be seen, the most significant and extensive restrictions of rights and freedoms, due to the need to ensure national security, take place precisely in the conditions of emergency special legal regimes.

In the course of scientific research, it has been convincingly proven that special legal regimes include the counter-terrorist operation regime and operational-search activities. The specificity of the first is that, firstly, it is not directly provided for in the Constitution of the Russian Federation, and secondly, it is regulated not by a federal constitutional law, but by a federal law, but at the same time it can be a kind of component of a state of emergency or martial law.

The peculiarity of operational-search activities is that they are carried out constantly, but in connection with specific criminal acts or intentions. It is

concluded that operational-search activities should be classified as emergency special legal regimes due to their temporary nature in each specific case.

As a result of the study, the fundamental features of a special legal regime were formulated (ensuring national security as the basis for introducing a special legal regime; limiting the rights and freedoms of man and citizen as one of the means of implementing a special legal regime) and its definition from a constitutional and legal point of view: a special legal regime is a special order of legal regulation, the main purpose of which is to ensure the security of the individual, society and the state, and one of the main legal means of which is the limitation of the rights and freedoms of man and citizen. The federal constitutional laws "On the State of Emergency" and "On Martial Law", as well as the Federal Law "On Counteracting Terrorism" and the Federal Law "On Operational Investigative Activities" can generally be considered as meeting the constitutional requirements for limiting the rights and freedoms of man and citizen. The restrictions provided for in them are quite moderate and correspond to the principles of humanism and justice. All restrictions on rights and freedoms are temporary and are valid only until the security threats are eliminated.

However, the study noted negative aspects of limiting the rights and freedoms of man and citizen in the context of special legal regimes:

1. At the constitutional level, absolute (unlimited) fundamental rights are designated only in relation to a state of emergency and, as the analysis of the Constitution of the Russian Federation and the legislation of Russia showed, cannot be considered universal.

2. The provisions of the Federal Law "On Counteracting Terrorism" regarding extrajudicial wiretapping of telephone conversations do not comply with the Constitution of the Russian Federation.

3. The possibility of destroying a watercraft or aircraft seized by terrorists with hostages and crew, provided for by the Federal Law "On Counteracting Terrorism", also contradicts the Constitution of the Russian Federation, since it

does not mean limiting the right to life (this right cannot be limited), but directly canceling this right, which contradicts constitutional norms.

As for operational investigative activities, it was concluded that the specified special legal regime also needs legal adjustment. It is proposed to amend the Federal Law "On Operational Investigative Activities" according to which in Article 8 the words "events or actions (inactions) that create a threat to the state, military, economic, information or environmental security of the Russian Federation" should be replaced with "the security of the individual, society and the state in the Russian Federation"; in Article 9 to introduce a norm obliging the bodies carrying out operational investigative activities to provide the court with materials justifying the need for such operational investigative measures and restrictions on rights and freedoms, as well as a norm stipulating the mandatory support of a court decision with objective data; to introduce a norm obliging the bodies carrying out operational investigative activities to inform citizens not involved in criminal activity about information received about them, about its non-disclosure and subsequent destruction.

It is also proposed to provide by law for informing citizens about violations of human rights and freedoms during operational investigative activities.

New global threats to national security that the world has already faced and will face again have revealed the fact that the current legislation did not provide government agencies with sufficient tools to counter these challenges. A comprehensive analysis of the regulatory framework and legislative activities in the context of the new coronavirus pandemic, as well as scientific publications on this topic, led to the following conclusions.

1. The COVID-19 coronavirus pandemic has undoubtedly and unequivocally become a global threat to the national security of any state in the trinity of its basic objects: individual, society, state.

2. All restrictions that took place in the context of COVID-19 should be divided into federal and regional (by legal regulation); mass and selective (by categories of persons whose rights were limited); strict and lenient (by the scope

and severity of restrictions and liability for their violation); by objects (the elderly, the infected, etc.); on restrictions on the rights of those sick with coronavirus and preventive restrictions (for health reasons).

An analysis of judicial practice allows us to assert that the measures taken to counter the pandemic and restricting the rights and freedoms of man and citizen have been recognized by courts of various instances as legal and constitutional.

In order not to introduce a state of emergency, the Russian authorities took the path of introducing amendments to the Federal Law "On the Protection of the Population and Territories from Emergencies of Natural and Man-Made Nature", which made it possible to solve the tasks set in the context of the pandemic. However, a certain (albeit short) period of restrictions on human rights and freedoms was introduced outside the constitutional field, which is unacceptable.

There are also unresolved issues on further improving the legislation on the protection of the population and territories from emergency situations of natural and man-made nature. It is proposed to use "widespread infectious disease of people" instead of the phrase "spread of a disease that poses a danger to others" in the supplemented legal definition of an emergency, adding "poses a danger to others".

It is also proposed to change the name of the Federal Law "On the Protection of the Population and Territories from Emergencies of Natural and Man-made Nature", excluding "natural and man-made nature" from it, and to introduce into the updated law all the rules established during the period of greatest activity of the coronavirus by the heads of regions.

Another serious challenge of our time is the unprecedented development of new digital technologies and artificial intelligence.

The analysis of the problem, undertaken in the dissertation study, showed that already now some restrictions on the rights and freedoms of man and citizen in order to ensure security are perceived ambiguously by society. In Russia there is a legal definition of artificial intelligence, but it is obvious that the development of digital technologies in general and artificial intelligence in particular significantly



affects legislative activity in this area. There is no doubt that when using artificial intelligence, it is necessary to first of all focus on ensuring the safety of the individual.

In the course of the study, the problem of ensuring national security in the context of limiting the rights and freedoms of man and citizen in the context of the development of digital technologies, in particular, artificial intelligence, is divided into two parts: 1) ensuring national security in the process of using artificial intelligence; 2) prevention and warning of threats emanating from artificial intelligence.

The main conclusion in this part of the study was the idea that the use of technologies and artificial intelligence should already now be accompanied by advanced legislative regulation, especially when it comes to limiting the rights and freedoms of man and citizen.

In order to solve the problem of preventing unjustified restrictions on the rights and freedoms of man and citizen as a result of using the latest technologies and, above all, artificial intelligence in order to ensure national security, it is proposed to introduce the concept of "identification secret" into the legal field, as well as a number of new rights: to information self-determination, to data transfer, to privacy. In addition, it is proposed to consolidate the principles according to which the work of artificial intelligence is organized. The analysis showed that the limits of artificial intelligence development should be defined by law, and all digital innovations related to the restriction of human and civil rights and freedoms can only come from the state or be legislatively approved by it in order to achieve a single goal - ensuring national security. In general, it was concluded that the legal restriction of constitutional human rights and freedoms is possible only for the purpose of ensuring national security. It is permissible only if a balance of interests of the individual, society and the state is ensured.

Provisions submitted for defense.

1. A conceptual position has been put forward, according to which any restriction of human and civil rights and freedoms is possible only for the purpose

of ensuring national security. This is evidenced, in particular, by the analysis of the current Constitution of the Russian Federation: constitutional grounds for restricting human rights and freedoms have either a direct and immediate, or an indirect (defense) relation to the security of the individual, society and the state.

2. In the process of analyzing Russian legislation and strategic planning documents on security, it was established that in the current regulatory legal acts, strategies, concepts and doctrines, the place of a person, his rights and freedoms does not always take the first place, determined by the Constitution of the Russian Federation. In this regard, the said documents are heterogeneous, and some of them, in the proposed context, are inferior to previous similar acts and strategic planning documents.

3. Based on the analysis of international documents, it has been proven that international standards in the sphere of legitimate restriction of human and civil rights and freedoms link the possibility of these restrictions with national security or any of its types.

4. It has been determined that all legitimate restrictions on human and civil rights and freedoms should be classified by analogy with restrictions on human rights and freedoms as emergency and permanent. Emergency restrictions are characterized primarily by their temporary nature and are lifted as soon as the threat to national security has passed. From a constitutional and legal perspective, a special legal regime is a special procedure for legal regulation, the main goal of which is to ensure national security, and the main legal means is to restrict human and civil rights and freedoms. It has been substantiated that special legal regimes can be divided into emergency and permanent.

5. One of the latest global threats to national security is the COVID-19 pandemic. In this regard, the opinion is substantiated that the refusal to use the provisions of the Federal Constitutional Law "On the State of Emergency" to counter the spread of coronavirus infection entailed a temporary violation of the Constitution of the Russian Federation, and this suggests, in particular, that the use of the provisions of the Federal Law "On the Protection of the Population and

Territories from Natural and Man-Made Emergencies" could not at that time ensure effective regulation of legal relations in the current situation, which is unacceptable even for a short period. The author's classification of restrictions on the rights and freedoms of man and citizen during the pandemic is proposed: from the point of view of legal regulation, federal and regional; by the number of categories of persons to whom the restrictions applied, mass and selective; from the point of view of the scope and severity of measures applied to violators of the rules, strict and lenient; by objects (those arriving from countries where coronavirus infection is widespread, 65-year-old citizens, persons with chronic diseases living with those arriving from countries where COVID-19 has spread and infected persons; 5) by health status - restrictions on the rights of those sick with coronavirus and preventive restrictions.

6. Specific special legal regimes are operational-search activities, which provide for restrictions on the rights and freedoms of a person and citizen as one of the legal means, like any other special legal regime, and are generally aimed at ensuring national security.

7. The expediency of using the concept of "special legal regime" in relation to a state of emergency, martial law and counter-terrorism operations, as well as operational-search activities, has been substantiated, abandoning others, for example, the concept of "administrative-legal regime". It should be borne in mind that emergency special regimes are characterized by intersectoral regulation, a high level of threat to national security, which necessitates the restriction of the rights and freedoms of a person and citizen.

8. It is proven that despite the existence of a legal definition of artificial intelligence and a regulatory legal act in this area, the development of digital technologies significantly outpaces the development of the legal framework in this area, which creates a direct threat to both national security and human rights. It is substantiated that when using digital technologies, in particular artificial intelligence, first of all, the safety of the individual must be ensured. Two aspects of the problem of ensuring national security (including from the point of view of



limiting human rights and freedoms) in the context of the development of new technologies are proposed: 1) ensuring national security in the process of using artificial intelligence; 2) prevention and warning of threats emanating from artificial intelligence. It is substantiated that there is a need for legislative designation of the limits beyond which the development of artificial intelligence and digital technologies in general should not go, as well as the exclusive right of the state to determine the possibility of using new technologies to limit the rights and freedoms of man and citizen in order to ensure national security.

Theoretical significance of the research results. The dissertation research includes proposals related to the improvement of legislation providing for the possibility of limiting the rights and freedoms of man and citizen, as well as legislation on security and special regimes, can be implemented in legislative and law enforcement activities. The conclusions presented in the dissertation can be used by practicing lawyers in cases of limiting the constitutional rights and freedoms of man and citizen.

The dissertation research can form the basis for future research in the field of ensuring national security through legitimate restriction of the rights and freedoms of man and citizen of theoretical and applied significance. In addition, the results of the dissertation can be used in the process of teaching constitutional law, operational-search activities, as well as disciplines and special courses related to national security.

Scientific and practical significance of the research results. The scientific and practical significance of the research results is that the author's proposals related to the improvement of legislation providing for the possibility of limiting the rights and freedoms of man and citizen, as well as legislation on security and special regimes, can be implemented in legislative and law enforcement activities. The conclusions presented in the dissertation can be used by practicing lawyers in cases of limiting the constitutional rights and freedoms of man and citizen.

The dissertation research can form the basis for future research in the field of ensuring national security through legitimate limitation of the rights and freedoms



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