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Maltseva Anastasiya Mikhaylovna

**IMPLEMENTATION OF THE CONSTITUTIONAL RIGHT TO JUDICIAL
PROTECTION IN RUSSIAN FEDERATION UNDER SPECIAL LEGAL REGIMES
THAT RESTRICT THE RIGHTS AND FREEDOMS OF CITIZENS (USING THE
EXAMPLE OF THE COVID-19 PANDEMIC)**

**Specialty 5.1.2 – Public law
(public law) sciences**

**ABSTRACT OF THE DISSERTATION
for the degree of Candidate of Law**

Scientific supervisor
Candidate of Law, Associate Professor
Kalyak Andrey Mikhailovich

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The relevance of the dissertation research topic. The epidemic of the COVID-19 infection has had an impact on various spheres of society, becoming a serious challenge for the state and the law. The danger and rapid spread of the disease have put on the agenda important issues about the implementation of fundamental constitutional rights of citizens, previously considered not to be subject to restriction. Admittedly, the judicial system and justice have also undergone a number of changes. Due to the introduction of restrictive measures, the number of court sessions held with in-person (offline) attendance of persons involved in the case has significantly decreased, which significantly increased the informatization of the entire Russian judicial system. At the same time, the rapid digitalization and digitalization of justice, spurred by extraordinary circumstances, has created a number of problems with the use of telecommunications in the exercise of the right to judicial protection in conditions of non-adapted procedural legislation. In an attempt to overcome the forced stoppage in the administration of justice, Russian courts experimentally conducted court sessions in the web conference format, using sometimes unregulated software and web conferencing systems. Following the joint decisions of the Presidium of the Supreme Court of the Russian Federation and the Presidium of the Council of Judges of the Russian Federation, the courts dealt with cases (materials) of an urgent nature in the usual way, despite the fact that the latter were not properly normatively defined. At the same time, a dualism of approaches to calculating procedural deadlines arose, in which participants in the proceedings were faced with the need to perform procedural actions on "non-working days", and in case of missing procedural deadlines, with the need to restore them.

The pandemic pointed to the lack of legal regulation for determining the order of work of courts and the administration of justice during the period of restrictive measures in the country, and also pointed to the problems of legal regulation of the introduction of "executive" moratoriums in relation to specific cases (for example, bankruptcy cases).

Also, these problems, which have become relevant in the context of the COVID-19 pandemic, have shown the insufficiency of legal regulation of certain aspects of judicial activity in the context of exercising the right to judicial protection under restrictive regimes, as well as the need for a scientific analysis of emerging public practice in order to develop scientifically sound proposals for its regulation.

Thus, current realities have pointed to the need for a scientific and doctrinal understanding of the impact of restrictive measures imposed on the territory of the Russian Federation during the COVID-19 pandemic on the exercise of the right to judicial protection, in order to subsequently create the necessary favorable conditions for the unhindered exercise by citizens and organizations of the above right under special legal regimes involving the introduction of restrictive measures, as well as to ensure the effective administration of justice in such extraordinary circumstances. In addition, the current military-political and socio-economic situation in Russia and the world leaves no doubt about the need for rapid adaptation of law and public administration to the emergence of various kinds of emergency situations of a natural and anthropogenic nature, in which the implementation of constitutional rights and freedoms guaranteed by the Russian Federation will be difficult or even impossible.

Consequently, the empirical material accumulated over the years of restrictions related to the COVID-19 pandemic can be used in legal science for analytical and predictive purposes to improve relevant legal institutions and solve practical problems related to the legal regulation of the administration of justice and the actual exercise of the right to appeal to the court by citizens of the Russian Federation under special legal regimes..

Solving the above-mentioned problems is relevant both for representatives of the judicial community in order to carry out their official duties in a more organized and effective manner, and for the direct holders of the constitutional right to judicial protection, since anyone and everyone may find themselves in a

situation where there is a need to immediately seek judicial protection under special legal regimes and related restrictive measures.

Because of this it is important to examine the accumulated experience, both positive and negative, in order to assess the impact of various facts on the implementation of the constitutional right to judicial protection and certain aspects of the organization of judicial activity in modern reality, as well as to identify ways to improve the legal regulation of these issues.

The purpose of the study is to determine the impact of restrictive measures under special legal regimes (using the example of the COVID-19 pandemic) on the implementation of the constitutional right to judicial protection in the Russian Federation based on an analysis of theoretical foundations and practical problems.

The purpose of the study predetermined the formulation of the following tasks:

1. To identify the impact of restrictive measures imposed on the territory of the Russian Federation in connection with the COVID-19 pandemic on the possibility of unhindered exercise of the powers that constitute the content of the constitutional right to judicial protection based on an analysis of doctrinal approaches about the legal nature and content of the right to judicial protection, regulatory legal acts and law enforcement practice.

2. To investigate the impact of restrictive measures imposed on the territory of the Russian Federation in connection with the COVID-19 pandemic on the accessibility of justice in the Russian Federation, as well as to determine their impact on the implementation of the principles of openness and transparency of legal proceedings based on the experience of organizing the activities of courts in the Russian Federation in a given period of time.

3. Analyze the problem of achieving a balance of private and public interests when suspending the exercise of the right to judicial protection in emergency situations using the example of the introduction of a moratorium on bankruptcy proceedings in connection with the COVID-19 pandemic and propose amendments to Article 9.1 of the Federal Law "On Insolvency (Bankruptcy)".

4. To investigate some legal aspects of the introduction of information technologies into justice in the context of ensuring the unhindered exercise of the constitutional right to judicial protection during court sessions in the format of web conferences.

5. To carry out a legal assessment of the possibility of differentiating procedural time limits in connection with the introduction of restrictive measures in order to ensure the implementation of the intersectoral principle of a reasonable period of legal proceedings.

6. To develop a legal model for organizing the activities of the judiciary under special legal regimes, ensuring the work of the judicial system and its interaction with participants in legal proceedings under restrictive measures aimed at the freedom of movement of citizens in order to protect their life and health as fundamental constitutional values, and therefore formulate proposals for amendments to the Federal Law the Constitutional Law "On the Supreme Court of the Russian Federation".

The object of the research is the system of public relations that develops in the process of legal regulation and implementation of the right to judicial protection in the Russian Federation.

The subject of research is legal norms and legal acts containing them, defining the nature and content of the constitutional right to judicial protection, regulating the procedure for its implementation in the Russian Federation under special legal regimes and restrictive measures caused by them (using the example of the COVID-19 pandemic), as well as scientific views on their application.

Methodology and research methods. In the course of the research, general methods (the method of analysis and synthesis, the method of deduction, the method of induction, hypothetical and historical-legal methods), as well as special legal methods (the formal legal method, the comparative legal method, the method of legal forecasting and legal modeling, as well as the method of legal interpretation) were used to solve the tasks set.

The theoretical basis of the research. Among the domestic studies, a significant contribution to the development of the right to judicial protection was made by: V.M. Gessen, V.M. Gordon, N.V. Vitruk, G.L. Osokina, L.A. Vaneeva, O.Ya. Belyaevskaya, N. V. Vechkanova. Monographs and scientific articles by such modern scientists and jurists as E.A. Adzinova, A.A. Aryamov, V.V. Arkhipov, P.A. are devoted to the analysis of the legal nature of the right to judicial protection, its internal structure, as well as the analysis of the impact of the COVID-19 pandemic on the exercise of the right to judicial protection, and the study of trends in the digitalization and robotization of justice. Astafichev, K.V. Balakin, E.V. Begicheva, O.A. Benedskaya, K.L. Branovitsky, N.S. Bondar, D.H. Valeev, E.A. Voynikanis, Gadzhiev G.A., S.S. Galkin, M.A. Gergolenko, M.E. Glazkova, Yu.V. Gracheva, L.Y. Grudtsina, O.V. Zhdanova, G.A. Zhilin, L.I. Zaitseva, R.F. Zakirov, V.D. Zorkin, M.A. Ilesanmi, A. Kamyshev, V.P. Kamyshansky, V.I. Kachalov, O.V. Kachalova, I.N. Kashkarova, O.N. Kolokolova, A.V. Koretsky, M.Y. Krutikov, O.N. Kryazhkova, V.M. Lebedev, I.K. Lyaskovsky, N.N. Makolkin, T.G. Morshchakova, S.B. Nanba, B.V. Naumov, T.S. Nikifirova, I.G. Primak, I.P. Popova, A.V. Poteeva, M.A. Rozhkova, M.A. Savina, K.M. Smirnova, T.V. Sokolov, O.A. Sycheva, A.R. Sultanov, L.R. Sukiainen, Yu.A. Tikhomirov, E.S. Trezubov, A.V. Tyaglo, A.S. Ulezko, Yu.G. Fedotova, A.G. Filonovich, S.A. Khalatov, D.O. Chislina, E.V. Shireeva, D.O. Schniger, V.V. Yarkov, and others.

The empirical basis of the study was: Russian and foreign judicial practice related to the realization of the right to judicial protection and the exercise of fundamental human rights and freedoms during the period of restrictive measures related to the COVID-19 pandemic.

The scientific novelty of this work consists in a comprehensive study of the specifics of the implementation of the right to judicial protection in the Russian Federation under restrictive measures (using the example of the coronavirus pandemic), as well as in developing a legal model for the implementation of this

right and the exercise of judicial power under special legal regimes related to the restriction of the constitutional right to free movement of citizens.

The main advantages of the proposed concept are:

1. In the context of a conflict of constitutional values arising from the introduction of restrictive measures – the health and safety of people throughout the state, on the one hand, and access to justice for a particular person to protect his personal rights and freedoms, on the other hand, the exercise of certain powers that constitute the content of the constitutional right to judicial protection is associated with actual restrictions. However, this is not reflected in the generally accepted ideas about the legal nature and content of the right to judicial protection. These circumstances necessitate the development of a legal model for organizing the activities of the judiciary under special legal regimes related to the restriction of the constitutional right to free movement of citizens, which would streamline the administration of justice under such regimes, as well as ensure the continuity of justice, specify guarantees of the reality, effectiveness and accessibility of judicial protection, while preventing the emergence of gaps in legal regulation, creating barriers in the judicial protection of human and civil rights and freedoms.

Regulation No. 1, submitted for protection, corresponds to paragraphs 2, 4, 5 of the Passport of scientific specialty 5.1.2. "Public law (state law) sciences".

2. The concept of "accessibility of judicial protection" implies bringing justice closer to the subject of the above-mentioned law without loss of quality, which implies, in particular, the abandonment of certain formalities that do not correspond to the current level of informatization of justice, improving and speeding up the work of courts through the introduction of information technologies into their work, which is not affected by restrictions imposed under special legal regimes, with the legislative guarantee by the state of universal access via the Internet to the systems "GAS Justice" and "My Arbitrator". It also states that restrictive measures related to the freedom of movement of citizens cannot affect the operation of the intersectoral principles of openness and transparency of judicial proceedings in the Russian Federation due to the fact that these principles

ensure the implementation of the constitutional right to judicial protection through public control over the activities of judicial authorities through the participation of listeners and media representatives in court sessions. In order to ensure the principles of openness and transparency of justice in the context of restrictive measures, it is proposed to legislatively guarantee listeners and media representatives access to court sessions in the form of a web conference, as well as to expand the practice of posting recordings of court sessions on the Internet through domestic online platforms.

Regulation No. 2, submitted for protection, corresponds to paragraph 5 of the Passport of the scientific specialty 5.1.2. "Public law (public law) sciences".

3. When imposing restrictions on constitutional rights and freedoms within the framework of special legal regimes, it is necessary to take into account the balance of private and public interests in such a way that they do not affect the essence of the restricted right due to the risk of such restrictions creating a threat of loss of the essence of this right.

Regulation No. 3, submitted for protection, corresponds to paragraph 5 of the Passport of scientific specialty 5.1.2. "Public law (state law) sciences".

4. The moratorium on the initiation and consideration of certain categories of cases (using the example of the moratorium on bankruptcy proceedings), which is essentially a temporary suspension of the exercise of the right to judicial protection, is one of the forms of its limitation and does not provide a balance between the rights protected by the Constitution of the Russian Federation and the competing interests of the parties to the dispute, and its application causes significant restrictions distorting the meaning and significance of the right to judicial protection.

Regulation No. 4, submitted for protection, corresponds to paragraph 5 of the Passport of scientific specialty 5.1.2. "Public law (state law) sciences".

5. The suspension of the exercise of the right to judicial protection in emergency situations must comply with the constitutional principle of legal certainty, be consistent from the perspective of law enforcement, which implies the

exclusion of formal criteria for its dissemination and taking into account the actual circumstances of the legal entity's activities, as well as taking into account the organizational and legal form of the debtor business entity and the participation of state legal entities in its capital.

Regulation No. 5, submitted for protection, corresponds to paragraph 5 of the Passport of scientific specialty 5.1.2. "Public law (state law) sciences".

6. It is proposed to abandon the use of foreign messengers, video conferencing programs and services in the administration of justice, with courts switching exclusively to Russian software integrated into the GAS Justice and My Arbitrator systems, while allowing the possibility of using specially accredited in the Russian Federation systems of foreign and interstate information support for justice. The consequences of the inability to participate in a court hearing for technical reasons should be determined by law, based on the principle of interpreting any doubts about the reality and insurmountable technical impossibility of the appearance of a participant in the process in favor of a one-time postponement of the case. There should also be a uniform and universal rule on the exclusion of time periods that have fallen on the introduction of restrictive measures when calculating any procedural time limits for both the participants in the process and the court

Regulation No. 6, submitted for defense, corresponds to paragraphs 2.5 of the Passport of the scientific specialty 5.1.2. "Public law (state law) sciences".

7. The author substantiates the legal model of the organization of judicial power in the Russian Federation, assuming in the event of the introduction of special legal regimes restricting the rights and freedoms of citizens, a combination of the following actions:

- the publication of normative legal acts on the mode of operation of courts and the specifics of legal proceedings within the territories where such a legal regime operates, in order to exercise the powers of the Presidium of the Supreme Court of the Russian Federation on the basis of relevant federal legislation;

- the decisions of the Presidium of the Supreme Court of the Russian Federation, taking into account the hierarchy of constitutional values, define a list of categories of cases and materials of an urgent nature that must be taken into account by the courts, with the possibility of its subsequent adjustment if the socio-economic and political situation in a particular subject of the Russian Federation changes, as well as proposals from authorized state authorities and the legal community;

- in order to ensure guaranteed access to justice for citizens, it is necessary to timely post on the information portal created and administered by the Supreme Court of the Russian Federation up-to-date information on the functioning of all courts, judicial precincts of magistrates, and judicial presences on the territory of the Russian Federation in real time.

Regulation No. 7, submitted for defense, corresponds to paragraphs 2.5 of the Passport of the scientific specialty 5.1.2. "Public law (public law) sciences".

The scientific and theoretical significance of the dissertation research is as follows:

- the features of the implementation of the constitutional right to judicial protection are highlighted and its content is determined;

– the impact of restrictive measures related to the freedom of movement of citizens on the effect of the intersectoral principles of accessibility of justice, openness and transparency of legal proceedings in the Russian Federation is analyzed;

– the problems of limiting fundamental constitutional rights affecting the very essence of the restricted right, the relationship between private and public interests in determining the limits of such restrictions are identified, using the example of the introduction of a moratorium on the initiation of bankruptcy cases.

These results make it possible to enrich scientific knowledge about the legal nature of the constitutional right to judicial protection, the specifics of its implementation under special legal regimes that restrict the rights and freedoms of citizens. The constitutional and legal study of the right to judicial protection should

serve as a starting point for a more detailed scientific analysis of the applied issues of the implementation of this right by branch legal sciences. In addition, some of the results of this study can be used in the educational process when teaching courses in theory of state and law, constitutional law and procedural legal disciplines, as well as in research work on topical issues of domestic constitutional law.

The practical significance of the research results is expressed in:

- a proposal to amend the current legislation regarding the organization of judicial power during the period of the introduction of restrictive measures on the territory of the Russian Federation and (or) its subjects, namely, to specify the powers of the governing bodies of the Supreme Court of the Russian Federation to issue normative legal acts defining the mode of operation of courts and judges in a given period of time;
- a proposal to amend the Federal Law "On Insolvency (Bankruptcy)" regarding the definition of entities that may be subject to a moratorium on bankruptcy;
- recommendations on amendments to the legislation regarding the improvement of the procedure for conducting court sessions in the format of web conferences.

The proposals and recommendations contained in the work can find practical application in the law-making activities of legislative authorities when adopting normative legal acts on the regulation of the right to judicial protection, law enforcement activities by judges in the administration of justice and law enforcement activities by citizens and organizations defending their rights in court.

Approbation of the research results. The dissertation was discussed at the meetings of the Department of Constitutional and Municipal Law of the Siberian Institute of Management of the Russian Presidential Academy of National Economy and Public Administration. The results of the dissertation research were reflected in a number of presentations at scientific conferences in Novosibirsk,

Tomsk and Belgorod. The main conclusions and provisions of the conducted research are reflected in six scientific publications.

The proposals to amend the legislation indicated in the appendix have been sent to the State authorities. The relevant draft laws were reviewed by the Secretariat of the Constitutional Court of the Russian Federation, the Office of the Government of the Russian Federation, and the Committee on Constitutional Legislation and State Construction of the State Duma of the Federal Assembly of the Russian Federation.

The structure of the dissertation is determined by the object, subject, as well as the purpose and objectives of the research and consists of an introduction, three chapters, including 10 paragraphs, conclusions, bibliographic list and appendices. The work was carried out to the extent prescribed by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation for dissertation research.

A handwritten signature in blue ink, likely belonging to the author or a relevant official, is placed here.