# SYSTEM OF LEGAL LIMITATIONS ON STATE POWER: IN SEARCH OF CRITERIA

Galina S. Belyaeva, Marina V. Markhgeym, Alevtina E. Novikova, Valeriy N. Samsonov, Evgeniy E. Tonkov
Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod region, 308015, Russia
e-mail: belvp46@mail. ru

**ABSTRACT**
In the presented paper, some questions concerning the system of legal limitations on state power were covered. In the search for universal criteria for limiting power, the evolution of the main theories of such was analyzed in accordance with the chronology of their emergence and subsequent modernization: the limitation on power by another power, self-limitation of state power, the limitation of state power by law and human rights in conjunction with contemporary problems of limiting a state power in a state governed by the rule of law. Based on the results of the study, a conclusion was drawn on the role of law as the main criterion for limiting state power in the context of the legal state paradigm.

**Keywords:** state power, limitation, limitation criteria, self-limitation, law, human rights, rule of law.

## INTRODUCTION

Objectively and indisputably, a state power needs a limitation, otherwise it risks to become a spontaneous uncontrolled phenomenon devoid of its main purpose - serving the interests of individuals and society as a whole. In this connection, the opinion of the French jurist Georges Scelle about the nature of power should be justly acknowledged: "The foundations of any power are all-inclusive and totalitarian; any power tends to be absolute inside and dominant outside" [1].

However, it is necessary to pay attention to the dual (and even contradictory) nature of limitations on state power: on the one hand, it is an absolute good, since it ensures the implementation and protection of human rights and freedoms, on the other, a state must be strong to provide protection of civil rights by a potential possibility of using means of state coercion. Thus, according to the German jurist R. Jhering, "the weakness of authorities is the cardinal sin of a state, which is forgiven less to heads if the state than their cruelty and arbitrariness" [2].

Thus, a limitation on state power must simultaneously ensure organizational and substantial strengthening of the power institutions empowering them, and be subordinated to a certain system of rules that guarantee it from degeneration into an uncontrolled phenomenon devoid of its basic purpose: serving the interests of individuals and society as a whole. Accordingly, there is a need to search for criteria for limiting state power, ensuring both the stability of the state and protecting the rights and freedoms of its citizens from the tyranny of power.

It is noteworthy that the problem of searching for criteria for limiting state activity dates back to the ancient centuries in the works of Aristotle, Plato, Panetius, Polybius, Lucretius, and Cicero on the three main state forms (monarchy, aristocracy, democracy), the evolution of this evolutionary chain and deviations from "right" forms, etc. [3].

In the later period, the concepts of limitations on state power were developed in the doctrine of the law of war and peace H. Grotius [4], the theory of state by Hobbes [5], the theory of separation of powers by Montesquieu [6], the social contract theory of Jean-F. Rousseau [7], the doctrine of the law by Kant [8], the philosophy of rights by G.W.V Hegel [9], the theories of the limits on state activity by V. Humboldt

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[10], the "fight for the right" by R. Jhering [2], about the social transformation of law and state L. Duguit [11], of the Constitution and sovereignty of the state by C. Schmitt [12], institutional theory of public law by M. Hauriou [13], and many others. [14]

However, there is not and cannot be an unequivocal answer to the question of what can serve as criteria for limiting on state power, since at various periods of historical development the idea of limiting on state power has received various incarnations.

**METHODOLOGY**

Various general scientific methods and methods of logical cognition are used in the work: analysis and synthesis, abstraction, modeling, structured system, functional, and formal-logical approaches. The methodological foundations of the study should also include a system-holistic approach to legal phenomena, allowing them to be viewed as systems that have not only internal but also external links; comparative-legal approach which involves the exchange of information at the level of the world's legal science and the search for new parameters for comparing the phenomena of legal reality in different countries.

**DISCUSSION AND ITS RESULTS**

The research tasks set before us and intended to determine the criteria for limiting state power presuppose an examination of the evolution of approaches to this problem.

The idea of counterweights should be recognized as chronologically first theory of limitations on state power, where the main criterion for limitation on state power is another power: a divine power in the theory of Thomas Aquinas [15], a constitutional power according to J. Locke [16], and people power according to J. -J. Rousseau [17].

Later, after evolving, the theory of counterweights in the works of a number of political scientists was transformed into the idea of self-limitation of state power, fully embodied in the theory of separation of powers.

In the traditional understanding as to modern science, the principle of separation of powers between different branches of powers was first formed in England in the 13th century and has since passed from the system of separation of powers with the priority of one of the branches of power in the theories of J. Locke, to the mechanism of separation of powers based on a system of checks and balances ensuring their equal interaction and balancing on the basis of the law developed by Ch. L. Montesquieu.

At the legislative level, the separation of powers into legislative, executive and judicial powers was first enshrined in the US Constitution as follows: "Legislative, executive and judicial bodies should be divided and different so that none of them can use the authority that definitely belongs to another: neither one person cannot simultaneously exercise power greater than the power of one body" [18].

Two years later, in France, the Declaration of the Rights of Man (a part of the modern Constitution of France) enshrined the principle of separation of powers as follows: "Any society in which enjoyment of rights is not provided and separation of powers failed to be carried out the, has no Constitution" [19].

An important criterion in the system of limiting state power seems to be the law. This form of limitation on state power in its traditional interpretation was embodied in the Anglo-Saxon concept of the "rule of law" and the continental concept of a "law-governed state", under which law is a kind of "cure" from abuse of power by state and officials.

And, finally, there should be recognized as the most modern (with respect to others) the idea of limiting state power to human rights. This theory, on the whole, is derived from the previous one and is based on the hypothesis that the supremacy of law, like any other phenomenon, is not an absolute value.

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The supremacy of law, in the opinion of representatives of the idea, protects citizens as a limitation on the state power, but simultaneously gives them to the power of soulless forms that have replaced the arbitrariness, deprived of the possibility to take into account the human factor (suffering, helplessness, etc.): "The supremacy of law creates formal equality being an important advantage, but contributes to the inequities that creates such a consciousness that radically separates the law from the policy, objectives from means, and processes from their results" [20].

In connection with the foregoing, the thesis is formulated that human rights as a universal, person-centric and libertarian idea determine the meaning and content of the entire system of public authorities. The axiom is that power is derived from human rights and freedoms.

This theory was developed in the works of pre-revolutionary Russian scientists. So, according to B.A. Kistyakovsky, "the narrowness of a power in a state governed by the rule of law is created by the recognition for the person of inalienable, inviolable and indefeasible rights... there is a well-known sphere of self-government and self-identity, to which the state has no right to intrude. The inalienable rights of a human person are not created by the state, on the contrary, they are essentially appropriated by the person himself" [21].

The reflection of this concept in the modern period is, for example, the opinion of Amartya Sen, Nobel Prize laureate of 1998 "For the contribution to economic welfare theory": "Economic science places too much emphasis on assessing the state's performance in the light of its expected consequences, thereby weakening the intellectual justification for the fact that it is the fundamental individual freedoms that should serve in the capacity of criteria for determining the permissible and desirable scale of this activity" [22].

The real legal embodiment of the theory on power limitation by human rights was received in international instruments by pointing out the primacy of human rights and the permissibility of restricting them only according to certain goals. So, in part 2, Article 29 from the Universal Declaration of Human Rights of 1948 it is said, in particular: "When exercising their rights and freedoms, each person must be subject only to such limitations as are established by law solely for the purpose of ensuring due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and general well-being in democratic society" [23].

This provision has been further developed in the International Covenant on Economic, Social and Cultural Rights opened for signature on 16 December 1966. According to Article 4 of this Covenant, limitations must be carried out solely "in order to promote the general welfare, should be determined by law, and cannot contradict the nature of the rights being limited" [24].

It seems that the limitation on the rights and freedoms of citizens is established in domestic (national) legislative acts in two main ways: either by enshrining additional conditions, prohibitions and duties that restrict the implementation of subjective rights and freedoms, or by increasing the powers of public authorities and their officials, or both ways simultaneously. The result is one in this case: a reduction in the number of alternatives for possible behavior that constitute the content of the subjective rights and freedoms of citizens.

It should be noted that the forms of limitation on citizens' rights and freedoms envisaged by legislation can be different: a ban on a certain alternative of realization of law or freedom, that is, the establishment of the boundaries of conduct (relative prohibition); ban on the implementation of a law (freedom) in general (or absolute prohibition); interference (intrusion) into the subjective right (freedom) of a citizen by authorized state bodies; a duty or responsibility.

In our opinion, in order to prevent an arbitrary limitation on the rights and freedoms of citizens and to prevent abuses by public authorities in this area, there are clear criteria for limiting these rights:

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- The legal basis for the limitation on human rights should be only the law: the Constitution (the basic law), constitutional or common laws;

- The purpose of limiting human rights is to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of others, to ensure the country's defense and state security;

- Conditions for the establishment of such limitations (necessary in the aggregate): a real or potential possibility of causing harm to public and public interests; impossibility to protect the said interests by other means; proportionality of imposed limitations; the harm caused is less than that which is prevented;

- Limitations should be of a general (non-personalized) nature, not retroactive and should not change the essence of the most restricted constitutional law (freedom);

- Limitations should correspond to the generally recognized principles and norms of international law;

- Limitations should not concern fundamental human rights and freedoms and should not be discriminatory;

- The legal norm restricting the rights and freedoms of citizens must be clearly formulated and not allow arbitrary (spread or restrictive) interpretation.

And in conclusion of the consideration of the problem put forward in the title of the paper, it is necessary to say a few words about convergence-based approaches to limiting state power. It was developed by the proponents of the discursive theory of law, which was formed within the framework of the communicative theory of the society by J. Habermas, based on the interconnection (interdependence) of human rights and the idea of democracy, the idea of people's sovereignty [25].

According to this concept, legitimacy is not reduced to legal registration or the ability of the authorities to effectively use the resources of violence; legitimate are the laws that embody the basic principles of law: social harmony, social compromise, and social justice ideas.

Thus, the idea of restricting state power to human rights best fits into the Western concept of human rights, from the point of view of which human rights are a requirement for a state to commit or refrain from doing certain actions; a means of combating the abuse of state organs. It is human rights that are a means of combating abuse of power; since of all the above "internal" criteria for limiting state power, they alone are an indispensable "external" factor in control over its activities, a peculiar manifestation of the power of an individual, and the will of civil society.

Opponents of this theory argue that the recognition of human rights as primary in relation to the effectiveness of governance can cause powerlessness of state power, which, in turn, threatens security and freedom and can become a determining factor for establishing arbitrariness. Continuing this idea, you can unreasonably oppose state power to freedom. However, the limitation of human freedom by state power is at the same time a necessary condition for its provision and protection. Thus, in reality legal freedom is confronted only by state power which is not limited by law.

## CONCLUSIONS

Based on the results of the study, we come to the following basic conclusion: the conceptual ideas of the above-mentioned theories on limiting state power in an updated form were reflected in the formulation of the formal legal essence of a law-governed state, namely, the principle of the most consistent linkage of state power through the use of the law.

It seems obvious that it is the law (in its natural-legal and positive manifestations) as the official civilized, universal and most effective regulator of social relations, is the most important social, cultural and moral

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value, the measure of freedom and responsibility of an individual, and should balance out initially unequal positions of a state (the bearer of power) and an individual (the bearer of freedom alone) to the extent required.

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