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INSTITUTION OF LEGAL RESTRICTIONS: ISSUES OE THEORY AND PRACTICE OF REGULATION

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Kewords: Legal Restrictions, Concept, Signs, lustitutiou Of Legal Restrictions, Legal Framework.

ABSTR-VCT
This article covers some issues regarding the concept of legal restrictions, their features, institutional design and legal consolidation at the national constitutional and international levels. Some issues of the doctrinal study of legal restrictions and the institution of legal restrictions at the present stage are analyzed, as well as the features of their legal regulation in normative legal acts, fixing general conditions, methods, goals, objectives and grounds for establishing legal restrictions. The role of international legal norms as the main guidelines for fixing restrictions in national legislation is determined. Based on the results of the study, a conclusion on the nature and content of the institution of legal restrictions as a complex, law enforcement institution of Russian law is drawn.

Kev words:

Introduction

Legal restrictions in modem Russia are characterized by a complex multilevel interbranch legal regulation, which includes, the norms that determine the content of these measures, along with the principles and guarantees of their lawful establishment and implementation.

At the same time, it should be noted that in legal science and practice there is no uniform approach to the general theoretical interpretation of the institution of legal restrictions in relation to various subjects of law (individual and collective), this institution has not received independent

Study, which cannot but adversely affect industry legislation, designed to regulate the relationship in relation to the established scope of legal impact.

As for the legal doctrine, its problem of the concept, essence, content of legal restrictions due to the complexity and diversity of the latter is debatable. The subject of numerous smdies is social and legal and political and legal restrictions in the field of state power (management), the essence and content of legal restrictions in a general theoretical perspective, restrictions on human rights and freedoms (of an individual, citizen), conceptions, the concept and system of limiting state power (Zaitseva and Panchenko 2015; Inshakova et al. 2017; Belyaeva et al. 2017, 2018a, 2019a; Makogon et al. 2019).

The formation of civil society and the rale of law is most closely interconnected with legal restrictions. On the one hand, the rather one-sided enthusiasm of some legal scholars in recent years for the ideas of inviolability of rights and freedoms in the legal status of individuals has inevitably led to the fact that the rights of some members of society are in conflict with the rights of others, with a coimnon, public interest. In this regard, the problem of finding a balance in the system of rights, freedoms, duties and limitations of the legal stams of the individual arose in order to maintain stability in the country, to ensure the conditions for the existence of each individual and the progressive development of society and the state. On the other hand, the fundamental features of a rale of law state are also associated with legal restrictions such as separation of powers, restriction of power by law and human rights, otherwise the state power risks degenerating into a spontaneous uncontrollable phenomenon, devoid of its main purpose - serving the interests of the individual and society. In this regard, it is appropriate to refer to the opinion of the French jurist G. Scelle about the namre of power: “The foundations of any power are all-encompassing and totalitarian; all power strives to be absolute inside and dominant outside”)Scelle G 1948; Wameryd 1990 ; Lobao, & Pereira, 2016).

At the same time, one should pay attention to the dual (and even contradictory) nature of the restriction of state power: on the one hand, it acts as an unconditional good, since it helps to realize and protect human rights and freedoms, and on the other, the state must be strong in order to ensure protection of civil rights by the potential use of state coercive means. So, according to the German lawyer R. Jheringng, "the weakness of power is the mortal sin of the state, which is less forgiven to leaders than cruelty and arbitrariness" (Jhering 1915; Lensirrk and Scholtens 2007; Sitdikova et al. 2015; Laarnena.et al, 2018). Consequently, legal restrictions are necessary, both in relation to deterring the abuse of rights and unlawful behavior of individual citizens in the name of a conunon (public) interest, and the arbitrariness of the state as a whole and state bodies (officials) in particular.

In connection with the foregoing, against this background, the situation remains with the lack of a conceptual theory (official doctrine) of legal restrictions: restrictions on the rights and freedoms of man and citizen and state power, as well as the fact that the instimtion of legal restrictions has so far remained unexplored to the extent as required by legal validity (Binici et al. 2010).

Objectres

This article focuses on some issues regarding the concept of legal restrictions, their features, institutional design and legal consolidation at the national constimtional and international levels. There is no uniform

approach to the general theoretical interpretation of the concept of legal restrictions in relation to various subjects of law (inciiviciual and collective) in legal science and practice and, as a result, the inability of industry legislation to regulate the relations in question in relation to the established sphere of legal impact. This article is at least partially dedicated to the solution of this issue.

Methodology

The methodological basis of this study is based on various general scientific techniques and methods of scientific research (analysis, synthesis, deduction, induction, system-structural, formal-logical approaches), as well as private-scientific methods - formal-legal, comparative legal and interpretative.

Results .ynd discussion

The review and analysis of points of view on the concept and essence of legal restrictions (Scelle G 1948; Barth et al. 1986; Zaitseva and Panchenko 2015; Belyaeva et al. 2017, 2018b, 2019b; Makogon et al. 2019) allows us to formulate our own opinion on this issue and highlight the following main features of the latter:

- legal restrictions are a variety (subsystem) of social restrictions;
- legal restrictions (and this distinguishes them in the system of other social restrictions) are of a regulatory nature and, therefore, are subject to consolidation in the current federal legislation (part 3 of article 55 of the Constitution of the Russian Federation). It should be added here that the boundaries of legal restrictions must have a constitutional (legal) character;
- objects of legal restrictions can be a person’s life and health, his consciousness and subconscious mind, physiological and biological processes, intuitions and instincts, rights and obligations, legal statuses of people and organizations (state and non-state), goals and objectives, means and methods of their activity, economic and social, political and legal regunes and rule of law;
- from the point of view of the information-psychological approach, they create unfavorable (or even super-unfavorable) conditions for satisfying the subjects' own interests;
- expressed in a decrease in the volume of legal personality (rights and freedoms of the subject), in the exclusion of certain opportunities, in exemptions fr'om the legal status of the subjects;
- they are implemented tlirough general legal prohibitions and positive obligations;
- they are fixed in such forms as a ban on the exercise of the right (pennanent and temporary), deprivation of the right, setting limits, qualifications, suspension, punislunent, and other coercive measures (the Constitution of the Russian Federation itself indicates some methods - part 5 of article 13, part 2 Article 22, part 2 of article 23, article 25, part 2 and part 4 of article 29, part 3 of article 32, part 2 of article 34, part 3 of article 35, part 2 Article 36) and are provided by the coercive power of the state (that is, they are a form of state coercion) (constitution 2020);
- they are instrumental in nature (that is, they are legal means);
- they are legitimately aimed (targeted) at deterring the person’s illegal (or undesirable for the state) behavior, protecting public interests, satisfying the interests of counter-legal entities, etc. So, in accordance with Part 3 of Alt. 55 of the Constitution of the Russian Federation, the goals of restricting the rights and freedoms of man and citizen are: "protection of the

founcdations of the constitutional order, protection of morality, protection of health, protection of the rights and legitimate interests of others, ensuring the defense of the country, ensuring the security of the state" (constimtion 2020).

Thus, legal restrictions can be defined as the boundaries (limits) of the permitted behavior of legal entities, enslu:ined in the current legislation and provided by the coercive force of the state, expressed in the exclusion of certain opportunities in their activities and exemptions from their legal stams, creating unfavorable conditions for satisfying the interests of the subjects and aimed at deteixing them and at the same time at satisfying the interests of counteiparties or public interests of protected by the state.

Modern international norms, integrated into national legislation, provide an opportunity to act in the legal system of the state with the assistance of national legislation, while a certain set of measures is taken on behalf of the state aimed at recognizing the legal force of international legal norms and then implementation in the activities of state bodies.

Among the most important international documents fixing the norms of the instimtion of legal restrictions are the 1948 Universal Declaration of Human Rights (hereinafter refeixed to as the Declaration) (ReRvoiid 2020). A feature of its status is that it is of a reconunendatory nature. However, at present, its provisions as the principles of international law are mandatory and are widely used as a model in many countries of the world in the construction of the provisions of the Constitution, laws and documents relating to human rights.

Russia, in mrn. unconditionally recognizes the validity of this provision, and in the Decisions of the Constitutional Court of the Russian Federation, after indicating that certain articles of the Constitution of the Russian Federation correspond to certain articles of the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights, it is concluded that these provisions, as related to generally recognized principles and norms of international law, in accordance with Article 15 (Part 4) of the Constitution of the Russian Federation are an integral part of the legal system of the Russian Federation (Gross 2002).

For the first time in the history of mankind, the Declaration formulated the basic and universal rights that should be perceived in accordance with the law and that the permissible restrictions apply to all declared rights (Article 29 of the Declaration). This formulation, quite generalized from the point of view of legal technology, regarding restrictions allows us to express concerns of the following property: consolidation of coimnon words is fraught with danger, and if not abused, then, in any case, this statement is disproportionate to the protected in favor of restrictive measures (Belyaeva et al. 2018a, 2019a; Chemerinsky 2019).

At the same time, this norm-principle was substantially specified in subsequent documents.

Thus, the International Covenant on Civil and Political Rights of December 16, 1966 aheady states that “there is no restriction or diminution of any fundamental human rights recognized or participating in this document by virtue of law, conventions, rules or customs, allowed under the pretext that such rights are not recognized” (Ohclirv' 2020). Note that in Russian legislation similar provisions are contained in Part 1 of Article 55 of the Constitution of the Russian Federation.

Of no small importance in the context of the analysis of international legal norms constituting the institution of legal restrictions is the appeal to the content of the Convention for the Protection of Human Rishts and

FuiKdamental Freedoms of 1950 (hereinafter: Convention (Refworld 2020), used as the main legal instiaiment in the activities of the European Court of Human Rights (ECHR), in mrn, which, according to the charter, is a body of defense of the Convention (Coe 2020).

The provisions of the Convention, which determine the content of legal restrictions, in tenns of their degree of formalization, differ significantly from similar provisions of the Universal Declaration of Human Rights: firstly, the Convention is characterized by a residual principle in the formulation of restrictions on rights, i.e. the right is declared inviolable and its deprivation is prohibited, with the exception of cases established by the Convention itself; secondly, this document quite clearly defines the grounds for restricting rights and fundamental freedoms. So, Art. 8 stipulates that no interference by public authorities with the exercise of the right to respect for private and family life, the citizen's home and correspondence is unacceptable, unless "such interference is prescribed by law and is necessaiy for the interests of national security and public order, the economic well-being of the country, in order to prevent crime, um'est, protect health and morality, protect rights and freedoms. " This trend is also obser\^ed in other articles of the Convention (Article 9 of the Convention).

Suimning, we note that the analyzed international norms that constitute the institution of legal restrictions establish: general conditions (goals, forms, proportionality, prohibition of discrimination) of the restriction of all individual rights and freedoms (Articles 2 and 29 of the Declaration, Article 2 of the Civil Covenant and political rights, art. 14 of the Convention); absolute rights and freedoms of the person that are not subject to restrictions under any conditions (for example, freedom from slavery and servitude; the right not to be subjected to torture, inhuman or degrading treatment or punishment, etc.; methods, cases, purposes of restricting certain rights and individual freedoms; principles of limiting individual rights and freedoms in the conditions of special state legal regimes.

A sufficiently detailed systematization of these provisions contained in international legal nonns is of fundamental importance for the fomiation and implementation of the national institution of legal restrictions due to the following circumstances:

- they must be taken into account in the development of current federal legislation establishing restrictions on the rights and freedoms of man and citizen (part 4 of article 15 and part 1 of article 17 of the Constitution of the Russian Federation);
- they should be taken into account by law enforcement, judicial and other law enforcement bodies in their practice. For example, international standards for restricting human rights and freedoms are used by the Constitutional Court of the Russian Federation in resolving specific cases;
- they are additional guarantees of protecting human rights and freedoms from arbitrary restrictions;
- they allow you to identify gaps and conflicts in the national legal regulation and determine directions for improving the institution of legal restrictions in a particular state (Fialkoff et al. 2017; Nintsyeva et al. 2018; Nesmeyanova et al. 2018; Turanin et al. 2019).

No less important is the question of the basis of legal restrictions. On the one hand, legal restrictions are legal due to the fact that they are based on law, which can be recognized as the most important and most universal way of fixing public restrictions.

Conclusion

Suimnarizing the above, we can come to the following conclusion. The institute of legal restrictions is a specific complex of legal nonns, principles anci stractures that form a certain system, isolated by a single legal regime governing social relations associated with the establislunent of the boundaries (limits) of permitted behavior of legal entities.

The institute of legal restrictions on specific features is the main, complex, complex, law enforcement. Its essence, based on the characteristics of all the features presented in the work, is the establishment by legal means of the boundaries (limits) of the permitted behavior of subjects with the aim of legal regulation and protection of public relations.

Of course, the conducted general theoretical study of the institution of legal restrictions could not include the whole range of issues regarding this legal category, in particular, the teclmology of legal restrictions, its monitoring, the practical implementation of legal requirements constituting the main content of the institution of legal restrictions in practice require legal research, another. At the same time, to a certain extent, this article will serv'e to increase scientific knowledge in the further development of the problems of legal restrictions by the science of the tlieoiy of state and law.

Recommend.utions

It is suggested that other issues of legal category like teclmology of legal restrictions, its monitoring and the practical implementation of legal requhements be considered in order to comprehensively address the subject of this study in its various dimensions.

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