Security of the state power limits: limit system

Seguridad de los límites de poder del estado: sistema de límites

Galina S. Belyaeva *
Belgorod State University - Russia
belyaeva_g@bsu.edu.ru

Boris V. Makogon*
Belgorod State University - Russia

Rina V. Savelyeva*
Belgorod State University - Russia

Evgeniy E. Tonkov*
Belgorod State University - Russia

Natalya I. Dolzhenko*
Belgorod State University - Russia

ABSTRACT

The article discusses the limitations of state power, presented in the form of a backbone foundation, constructed on the foundation of a methodologically significant classification basis: a place in the social regulation system. In the context of the stated perspective, the author builds up a set of limitations of the axiological level, which appears to be determined in the field of public relations.

Keywords: legal limitations, security, public authority, power limitation.

RESUMEN

El artículo discute las limitaciones del poder estatal, presentado en forma de una base principal, construida sobre la base de una base de clasificación metodológicamente significativa: un lugar en el sistema de regulación social. En el contexto de la perspectiva establecida, el autor construye un conjunto de limitaciones del nivel axiológico, que parece estar determinado en el campo de las relaciones públicas.

Palabras clave: limitaciones legales, seguridad, autoridad pública, limitación de poder.

* Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod region, 308015, Russia

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1. Introduction

Power limitations are inherent in all stages of the development of society. In this regard, sharing the opinion of A.V. Malko, we should note that a special regulatory system was formed even in the conditions of the primitive-communal socio-economic formation, including limitation limiting various instincts of biological nature, norm-prohibitions, norm-limitations [Belyaeva, Makogon, Bezugly, Prokhorova & Szpoper, 2017].

I.A. Pokrovsky adheres to a similar position, speaking in his writings about the limitations to a certain extent within any historical period (limitations in the interests of neighbors and in the interests of common good) [Nesmeyanova, Ryabova, Tkhabisimova, Tsapko and Makogon, 2018].

Appeal to the interpretation of the term "limitation" showed that this concept is expressed in the retention within certain limits, boundaries, in moderation, curbing, constraint; constraint, limiting the rights, opportunities; limiting the scope of activities, narrowing the opportunities, etc. Thus, linguistic interpretation unambiguously indicates boundaries (or limits), and the use of "limits" in conjunction with the adjective "legal" indicates the establishment of boundaries (or limits) precisely with the help of legal tools.

By systematizing the established restrictions of state power [Belyaeva, Makogon, Bezugly, Prokhorova & Szpoper, 2017; Makogon, Savel'eva, Lyahkova, Parshina & Emel'anov, 2017; Ol'ga, Kuksin, Makogon, Spektor & Vladimirova, 2018; Makogon, Markhgeym, Novikova, Nikonova, & Stus, 2018], based on a place in the social regulation system, we have identified a basic, axiological level, which constitutes the borders of such limits, and the security foundation of their borders.

2. Materials and methods

During the study, we used the classical methodology for the qualitative analysis of systems and processes, in particular, the system-analytical approach to the study of the research objects.

In addition, the study methodology is represented by modern tools. The study was conducted on the basis of dialectic, as well as the widespread use of general scientific (analysis, synthesis, induction, deduction, analogy) and particular scientific methods of reality cognition. The application of general scientific methods allowed the authors comprehending the development of scientific ideas about the limitation of state power, to determine the factors influencing the content of the declared subject, to formulate provisions relating to the subject and meet the requirements of modern conditions.

The use of partial scientific methods contributed to the subject study in order to systematize the source array with respect to the criteria that can be used as a basis for the classification of limitations in their diversity.

The use of such special methods (as a comparative legal method of legal forecasting) allowed holistically and comprehensively comprehending and disclosing the research subject.

3. Results

We associate limitations of the axiological level with the designation of the limits of functioning of the public authority system through the complex of subjective rights and personal freedoms seeking to dominate, determining the respective responsibilities of the state bodies and officials within the "rule of law" category [Bingham, 2007; Scalia, 1989].

At the same time, one of the most significant qualities of the designated system is the proportionality of rights and obligations (applicable to all levels of legal consciousness) [Nesmeyanova, Ryabova, Tkhabisimova, Tsapko and Makogon, 2018]. Transformation of rights into duties (for example, the freedom of work - the duty to have the official status of an employed person) is frankly statist, anti-legal in nature.

The modern legal democratic states are characterized by the constitutional consolidation of a complex of human and citizen rights and freedoms. Modern Russia is not an exception in this context. The recognition of a person, his rights and freedoms as the highest value is enshrined in Art. 2 of its basic law. Here, their recognition, observance and protection are defined as the state's duty. As a result, the rights and legitimate interests of a person are prioritized in the complex system of human-society-state relations. In this context, Art. 18 of the Russian Constitution, whose norms declare the rights and freedoms of a person and a citizen as a "measure" of the activity of the legislative and

executive authorities, the application of laws, local self-government and justice.

Let us clarify that the level of government limitations we are considering is not associated with the limitation of subjective rights. In this case, we consider it justified to share the point of view of B.S. Ebzeev and we mean that the immanent limits of basic rights and freedoms are determined by the constitution and outline the limits of freedom of individuals and their associations, recognized and protected by the fundamental law; constitute the regulatory content of any human or civil right, the composition of powers contained in it, as well as the system of guarantees [Ebzeev, 2008].

The fundamental rights enshrined in the Constitution of the Russian Federation give the state not only an objectively passive duty of non-interference in the microspheres defined by the limits of individual freedom of the individual, but also an active duty consisting in the law-making, judicial, as well as general and particular-governmental activities aimed at promoting the implementation of rights and freedoms belonging to the individual [10]. It is appropriate to present the position of M. V. Markheim regarding the complexities of the methodological order arising from the "traditional study of a set of problems in the field of human rights, taking into account the triune constitutional duty of the Russian state in relation to human and civil rights and freedoms (recognition-compliance-protection)" [Markheim, 2005]. The way out of the current theoretical and problem-practical situation is associated with "the need for independent study of each of the components named by the Constitution of the Russian Federation - recognition, compliance, protection" [Markheim, 2005].

It should be clarified that, in contrast to the individual-personal freedom, the subjective right in all cases translates a triune duty to the subject operating within the legal field in parallel: directly exercise this right, facilitate its implementation and embodiment, or do not hinder its implementation in its activities. In the public-power field, social ties are practically legitimized, acquire praxeological effectiveness, subject to the condition according to which the reciprocal rights and obligations (both active and passive) are stipulated in the statuses of a subject and a counter-subject (a person vested in a specific relationship with power, and, accordingly, a subordinate).

It is significant that in the European countries considered progressive in the key, prior to the adoption of the French Declaration of the Rights and Freedoms of Human and Citizen of 1789, only the rights and various privileges of the state bodies, officials and corporations prevailed, while the institution of citizens' rights was expressed not in the form of subjective rights, but through some of the state's duties. We believe that only from this point a landmark transition from understanding the latter solely as the rights of those in power to interpreting them as state-guaranteed human and citizen rights in the concept of subjective rights and their implementation.

We should note that the legal theory developed the concept of "subjective public law". The goal of introducing such a scientific structure into circulation is an attempt to determine the limits that are set in relation to the state's power as a whole and the state-power subjects in particular by the public prerogatives of the subject of legal relations with the state, an individual member of society. As part of this work, we do not set the task of detailed disclosure and comprehensive analysis of the substantive elements of this kind of concepts. However, we consider it necessary to emphasize the fact that developments in the relevant subject speak of continuing attempts made by scientists to find and substantiate the optimal balance in the field of activity of public authority subjects, personal and public interests. Accordingly, we believe that the notion of subjective public rights can be regarded as a meaningful methodological device that can contribute to the solution of a designated, largely fundamental problem.

A.B. Zelentsov, in his conception, draws attention to the discrepancy between the subjective public rights of individuals and the responsibilities for their implementation (as opposed to the findings of numerous theoretical developments in the first half of the XX century, which state the opposite). For example, the right to vote (in a subjective sense) in no way gives its holder the obligation to participate in the election process. This right is correlated only with the duty of the state, its bodies and officials to create all the necessary conditions for its implementation into objective reality, and, accordingly, non-obstruction of its implementation. In addition, as far as public authorities and their representatives are concerned, not all the rights formally belonging to them coincide and are practically combined with their duties. A striking example in this context is the so-called discretionary powers. In their regard, the law only defines the appropriate framework, they are not strictly bound by the objective law. In addition, the statutory obligation of public authorities to perform any actions in the public interest most often corresponds to the right of individuals to take such actions. The author also notes that there can be no direct, direct correlative relationship between rights and duties in public legal relations, which is due to the peculiarities of some status rights, which are, in fact, declarative in nature and essentially closer to a certain form of legitimate interests than to subjective rights (for example, many socio-economic rights). We can agree with this statement, in general.

It is worth noting that in the Russian state law science of the late XIX - early XX centuries, most of the authors expressed the idea of having an independent legal phenomenon of subjective public rights along with legal responsibilities in the public sphere, based on the concept of differentiating the rights of individuals and the rights of state bodies in the field of public administration. In this context, the authors of the designated period singled out "the rights of power" and "the rights of freedom" in the public law. The first included the rights possessed by the state, its bodies and officials in relation to private subjects. Such powers were considered to be rather rigidly connected with the duty of their implementation, since the public authorities, as a rule, were not given the opportunity to freely dispose of them, but on the contrary, they were subject to mandatory implementation, while they were imperative and inalienable. The strict obligation to exercise the rights of power does not allow releasing the subordinates (private individuals) from the performance of their public law duties related to such rights, with the exception of emergency cases.

As for the "rights of freedom", this category included the subjective public rights of private entities with which they are vested in relation to the state. These rights were often divided into two groups: rights to participate in the exercise of state power and rights, including freedom from the state interference in the lives of individuals.

It seems that the system of subjective public rights, including the rights of power and "the rights of freedom", constructed by Russian authors, has retained its scientific and practical relevance even in modern conditions.

It should also be noted that the introduction into the scientific circulation of the criteria-signs, on the basis of which the subjective public rights are determined, indicates a thorough, scrupulous study of the corresponding approach. For example, the main criterion on the basis of which the public legal essence of individualized subjective rights in the specific legal relations is determined is the criterion of ownership of such rights by the individuals as the subjects of public law in the field of their interaction with the public authorities - state bodies and their officials.

The range of subjective public rights of individuals is very wide. Political, personal rights, a set of socio-economic and cultural rights in legal relations or concerning legal relations with the state bodies or municipal bodies and officials acting on their behalf can be referred to them as the subjects exercising their respective social connections. Such rights and relevant powers are enshrined in the public law norms of the most diverse branches of both substantive and procedural law, such as constitutional law, tax, administrative, criminal, criminal procedure, etc.

4. Conclusions

A state body (official), acting as an obligatory participant in power relations mediated by the subjective public rights, appears as a power not only commanding, but also rightful. In particular, the implementation of personal (civil) rights carried out within the framework of public relations is framed by guarantees from the state both on the existence of these rights, and on their exercise and protection, including through the adoption of framework and industry laws and sub-legal regulatory acts. However, it should not be forgotten that the rights in question can also be implemented within the framework of direct action of the relevant norms in the public and private law spheres.

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