Human Rights and Freedoms as a Means of Legal Limitation of State Power

Kazanchian Lilit A.
PhD in Law, associate professor of the Department of Jurisprudence, International Scientific-Educational Center of the NAS RA, Senior Researcher at the Institute of Philosophy, Sociology and Law NAS RA (Yerevan, RA)
lilit_law@mail.ru
Zaqaryan Ashot G.
PhD student, The Institute of Philosophy, Sociology and Law NAS RA (Yerevan, RA)
ashot.zaqaryan.55555@inbox.ru

UDC: 342; **EDN:** DGKITE;
DOI: 10.58587/18292437-2023.4-22
Keywords: state, restriction of state power, legal restriction, human rights, freedoms, constitution, convention, statism, liberalism, personal (civil) rights and freedoms.

Մարդու իրավունքները և ազատությունները որպես պետական իշխանության իրավական սահմանափակման միջոց

Ղազանչյան Լիլիթ Ա.
Իրավաբանական գիտությունների թեկնածու, ՀՀ ԳԱԱ Գիտակրթական միջազգային կենտրոնի իրավագիտության ամբիոնի դոցենտ, ՀՀ ԳԱԱ Փիլիսոփայության,սոցիոլոգիայի և իրավունքի ինստիտուտի ավագ գիտաշխատող (Երևան, ՀՀ)
lilit_law@mail.ru
Զաքարյան Աշոտ Գ.
ՀՀ ԳԱԱ Փիլիսոփայության,սոցիոլոգիայի և իրավունքի ինստիտուտի հայցորդ(Երևան, ՀՀ)
ashot.zaqaryan.55555@inbox.ru

Ամփոփագիր. Պետական իշխանության սահմանափակման խնդիրը ժամանակակից իրավագիտության արդիական ուսումնասիրություններից է: Մասնավորապես, ժամանակակից իրավաբանները մարդու և քաղաքացու իրավունքների և ազատությունների ամբողջությունը և դրա առանձնահատկությունները դիտարկում են որպես պետական իշխանության սահմանափակման իրավական կառուցակարգ: Սույն գիտական հոդվածում, հիմնվելով անվանի իրավագետների կարծիքների, ինչպես նաև միջազգային և ներպետական օրենսդրության ուսումնասիրության վրա, ներկայացված են պետական իշխանության իրավական սահմանափակման առանձնահատկությունները մարդու և քաղաքացու իրավունքներերով: Միևնույն ժամանակ, հոդվածում ներկայացված են «մարդու իրավունքներ» և «իրավական սահմանափակում» հայեցակարգերի էությունը, որոնք ժամանակակից իրավական գրականությունում պետական իշխանության սահմանափակման տեսության հիմք են: Հոդվածում, հիմք ընդունելով պետական ռեժիմի տեսակները, բացահայտվում են նաև պետության և անհատի փոխհարաբերությունների հիմնարար հայեցակարգերի առանձնահատկությունները, ինչպիսիք են էտատիզմը, ազատականությունը և համագործակցության հայեցակարգը: Ավելին, պետության և անհատի փոխհարաբերության համատեքստում ներկայացված է մարդու իրավունքների և ազատությունների դասակարգումը, որն օժտված է պետական իշխանության սահմանափակման ուրույն գործառույթներով:
Հանգուցաբառեր՝ պետություն, պետական իշխանության սահմանափակում, իրավական սահմանափակում, մարդու իրավունքներ, ազատություններ, սահմանադրություն, կոնվենցիա, էտատիզմ, ազատականություն, անձնական (քաղաքացիական) իրավունքներ և ազատություններ

Права и свободы человека как средство правового ограничения государственно власти

Казанчян Лилит А.
Кандидат юридических наук, доцент кафедры юриспруденции, Международный научно-образовательный центр НАН РА, Старший научный сотрудник Института философии, социология и право НАН РА(Ереван, РА)
lilit_law@mail.ru
Закарян Ашот Г.
Соискатель, Институт философии, социология и право НАН РА (Ереван, РА)
ashot.zaqaryan.55555@inbox.ru

Аннотация. Проблема ограничения государственной власти является одной из актуальных исследований современной юриспруденции. В частности, современные юристы рассматривают совокупность прав и свобод человека и гражданина, и ее особенности в качестве юридического механизма ограничения государственной власти. В данной научной статье, на основании изучения мнений известных правоведов, международного и внутригосударственного законодательства, представлены особенности правового ограничения государственной власти правами человека и гражданина. Вместе с тем, в статье представлена сущность концепций "права человека" и "правовое ограничение", которые в современной юридической литературе являются основой теории ограничения государственной власти. В статье, основываясь на виды государственного режима, так же раскрываются особенности основополагающих концепций взаимоотношений государства и личности, таких как: этатизм, либерализм и концепция сотрудничества. Более того, в контексте взаимоотношений государства и личности, представлена классификация прав и свобод человека, которая обладает особыми функциями по ограничению государственной власти.

Ключевые слова: государство, ограничение государственной власти, правовое ограничение, права человека, свободы, конституция, конвенция, этатизм, либерализм, личные (гражданские) права и свободы

In a modern democratic, legal and social state research devoted to the peculiarities of the legal restriction of state power is of fundamental importance.

It should be noted, that in modern legal literature the concept of "legal limitation" is determined as a legal deterrence of an illegal act, creating conditions for satisfying the interests of the counter-subject and public interests [**7**, p. 85; **20**]. It includes not only the barriers established in law, within which subjects must act, but also the prohibition of certain the activities of persons [**3**].

The importance of limiting state power cannot be overlooked, because without limiting it, it may suddenly become unregulated and unenforceable, serving the purpose of promoting individual and collective welfare.

In modern legal literature, it has been repeatedly noted that state power can be limited by the rights and freedoms of a person and a citizen. Moreover, the spectrum of human rights and freedoms is not only a legal restriction of power, but also the basis of a system of "checks and balances", thereby preventing excessive regulation or invasion of privacy by the state. For a more detailed consideration of this problem, it is necessary to reveal the essence of the concept of human rights.

According to the universally recognized definition, human rights are an opportunity to determine the extent of one's own behavior, and all other persons, organizations, public authorities, must eschew from meddling in this behavior [**1**, p. 85; **19**]. Nowadays, the concept of an individual's basic rights has developed within the framework of everyone's inherent equality, which has a shared, widely acknowledged, and legal significance for the global community [**19**; **23**, pp.22-24].

It should be noted, that in the legal literature, human rights, acting as a limiter of abuses by the state, are called subjective public rights, the theory of which was developed by G. Jellinek, According to G. Jellinek, members of society have the exclusive right to limit state power in favor of exercising and protecting their own rights and freedom [**6**, p. 8].This approach was further reflected in many constitutions of European countries (for example, in the constitutions of Portugal, Switzerland), and in the post-Soviet space this concept was enshrined in the Constitution of Republic of Armenia. In line with the Article 3 of the Constitution of RA "*The respect for and protection of the basic rights and freedoms of the human being and the citizen shall be the duty of the public power. The public power shall be restricted by the basic rights and freedoms of the human being and the citizen as a directly applicable law*" [**24**].

It is obvious, that the duty of all public authorities is to respect and protect the fundamental rights and freedoms. The purpose of using the term "public authority" in the context of the Constitution, is to ensure that the State in all its forms is bound by fundamental rights. When the state interferes with basic human rights, it does not matter by whom it is done - directly by state bodies and officials or by private entities on the delegation of the state.

Although a person is the highest value in democratic country, and his inalienable dignity is an integral basis of his rights and freedoms, nevertheless, the legal status of a person can be violated not only by individuals, public associations, commercial organizations, but also by the state itself in the person of its officials. In this regard, it is important to build an effective system of measures to protect human and civil rights.

It is worth agreeing with the opinion of some jurists who argue that human rights and the rule of law are characterized by common patterns of occurrence and functioning, since they can only exist and act together [**8**, p. 142]. It is known, that a State governed by the rule of law is an organization of political power that creates conditions for the fullest protection of human and civil rights and freedoms, as well as the most consistent binding with the help of the law of state power in order to prevent abuse [**8**, pp. 143-144].

Two main components can be emphasized in the legal state: the most complete guarantee and protection of human rights and freedoms, and limitation of state power by law. Moreover, the well-known "general power of competence", or the legal maxim "everything which is not forbidden is allowed" should be a guiding star for a person.

At the same time, the restriction of the power of the state by human rights should not lead to a decrease in the essence and functions of the state, and vice versa, in our opinion, the concept of human rights cannot be absolute.

Although, the Constitution of Republic of Armenia emphasizes, that a person is the highest value, and his inalienable dignity is an integral basis of his rights and freedoms [**24**], nevertheless, a golden mean should be found in limiting state power and maximization of person's rights and freedoms. The essence of the issue is to limit the claims of the state to determine the scope of human rights and freedoms at its own discretion, regardless of the pre-state, inalienable nature of human rights and freedoms.

*It should be noted that in the legal literature**,** two basic concepts of human rights and freedoms are considered in the context of limiting state power: legal positivism and* ***the concept of natural rights.***

Legal positivism asserts the priority of the socially whole society, state over the individual. A person is not considered outside the social community, is absorbed by it and cannot have any unconditional claims towards the community [**3**]. A state based on such a social ideal recognizes a specific range of human rights and freedoms and protects them, as well as struggles against the antisocial consequences of freedom in society. In opinion of N. Alekseev, often such freedom is called "freedom of organic belonging to the whole", while often turns out, that freedom is ideally connected with obedience [**2**, pp. 158-159]. Nevertheless, in Anglo-Saxon law, in the context of interpretation of law by sociological positivism, state power is limited by the ancient rights and freedoms of the people. This means that it is not the monarch (power) that determines the rights of the subjects, but the rights of the subjects that determine the limits of the power of the monarch.

According to the concept of natural rights, human rights are not created by the State, but exist by virtue of their mutual recognition by members of society. At the heart of natural rights are the values of freedom and equality, considered as originally innate properties of people, and therefore as their inalienable rights that determine the limits of state power [**12**].

The modern concept of natural law is directly related to positive law, where the key factor is the right to security. At the same time, the foundations of security are the principles of respect for human rights and the creation of minimum conditions for personal security. These principles are being improved by enshrining the mechanism for the protection of human and civil rights and freedoms in sectoral legislation (constitutional and administrative) [**4**].

The conducted research show, that *the modern concept of human rights* includes both natural rights and rights of positive origin that arise in a person for one reason or another due to the activities of the State. Therefore, along with inalienable rights, a person can also enjoy the rights and opportunities provided by the state [**5**; **16**, pp. 28-29]. For example, housing and food are considered as the main resources for human existence, which must be produced with the help of labor, either one's own or someone else's. A person can satisfy these needs only with the help of the state and society. Consequently, the harmonious relationship between the state, society and the individual is the basis for the formation and development of a democratic state and human rights.

From the standpoint of the domestic libertarian concept of law, the unity of law and human rights is affirmed, and the fundamental principles of legal regulation are derived from the idea of the supremacy of human rights. The goal of legal regulation here is recognized as ensuring personal freedom, and human rights are considered as a manifestation and concretization of the initially and naturally inherent freedom of a person, as "unconditional claims of a person for autonomous self-realization in society and the state" [**9**, p. 314].

In the legal literature, based on the types of state regime, there are three concepts of the relationship between the state and the individual: *statism, liberalism and the concept of cooperation*. ***The concept of statism*** implies the active intervention of the state in the private life of the individual and society, almost total control of the economic and social spheres of society. Consequently, there can be no question of limiting state power by individual rights. However, in nowadays, statism is generally perceived negatively by legal scholars both in terms of international law and the theory of state and law. For instance, M. Bódig emphasizes, that despite varying degrees of awareness, states are well-equipped to handle perceptions of their human rights record by both global partners and other key audiences, which is one of the primary drivers of human rights law development. Moreover, the labeling of a "human rights violator" imposes a burden on international

state interactions [**13**]. Furthermore, human rights law largely facilitates the creation of expansive statutory frameworks, including those related to human rights, by adapting human rights laws that elucidate broader contexts.

The foundational principles of the democratic welfare state underlined not only the protection of basic individual rights but also, importantly, the provision of welfaristic rights denied as equal opportunities to economic well-being and the rights of the disadvantaged to specific measures of welfare and security [**14**].

The liberal approach recognizes the natural, non-state origin of human rights, emphasizing that the rights and freedoms of the individual are the border beyond which the state should not penetrate, with the exception of the need to guarantee and protect the rights and freedoms of the individual [**10**, pp. 68-69]. Moreover, liberals are critical of the authorities and support the idea of pluralism, as well as the political responsibility of citizens. Although the state can both recognize and violate the rights of the individual, it is not in a position to take them away or completely eliminate them. On the basis of the ideas of classical liberalism, a rule of law state is formed, subordinated to law and the core of which is civil and political rights and freedoms of man and citizen. In addition, a stronger proximity can also be created between democracy, human rights and civil society. From the point of view of T. Berger and R. Forst, the meaning of "human rights" emerges in proximity to an understanding of civil society not as a mechanism for the aggregation of individual preferences but as a transformative space in which people and the arguments they make change in processes of deliberation [**11**; **17**, pp.45-47].

The concept of cooperation (democratic model) is based on the convergence of the above concepts, is based on the idea of convergence between the individual and the state, on the idea of harmonizing individual and collective rights, the relationship between the state and society.

The classification of human rights and freedoms has a special role in the context of the relationship between the state and the individual, in limiting state power. It is known that human rights and freedoms enshrined in the constitutions of democratic countries are divided into three main groups: 1) personal (civil) rights and freedoms, 2) political rights and freedoms, 3) economic, social and cultural rights and freedoms.

The sphere of action of the state in relation to these types of rights is different: from the complete non-interference of the state and other entities in the sphere of the private life of the individual to the active promotion of the realization of the rights and freedoms of the individual, their guarantees, and provision. In modern legal literature, it is mentioned that personal human rights, in particular: the right to life, personal integrity, the right to inviolability of the home, are important restrictions on state power. For instance, the right to life is a restriction on the right of a democratic State to use the death penalty, since it is natural and inalienable rights of the person and is not granted by the state, but belongs to a person from birth.

Moreover, this right is enshrined in Article 24 of the Constitution of the Republic of Armenia, according to which: "No one can be sentenced to death or subjected to death penalty" [24]. However, some international and regional documents, conventions leave loopholes for states in this matter. In particular, Article 2 of The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) defines: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law" [**25**]. In its turn, the International Covenant on Civil and Political Rights also rejects the arbitrary deprivation of human life, but at the same time the document indicates: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court" [**18**]. In addition, sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women [**18**].

From our perspective, such approach is not appropriate in the 21st century and every democratic, rule of law state should strive to abolish the death penalty, since the possibility of a miscarriage of justice is always present in this context.

Considering the political rights and freedoms of the individual in the context of limiting state power, we come to the conclusion that the obligation of the state is much higher than that of individuals in terms of personal rights in this case. Since political rights are actively exercised and affect individuals and society as a whole, the state must control the implementation of these rights, including the procedures for holding a referendum, elections and taking office of civil servants. In its turn, people, exercising their civil and political rights, can limit the actions of state power. Thus, according to

Article 6 of the Law of the Republic of Armenia "About Freedom of Assembly", any person has the right to participate in meetings: both citizens of the Republic of Armenia, as well as foreign citizens and stateless persons [**22**].

In our opinion, granting the right to participate in meetings of foreign citizens and stateless persons is a progressive democratic step, since in a number of post-Soviet countries only citizens of this state have this right. For instance, Article 6 of the Federal Law of the Russian Federation "On Assemblies, Meetings, Demonstrations, Processions and Pickets", establishes, that citizens, members of political parties, members and participants of other public associations and religious associations who voluntarily participate in it are recognized as participants in a public event [**15**].

The spectrum of social, economic and cultural rights and freedoms are certain opportunities of the individual in the sphere of production, distribution of public goods. The realization of these rights and freedoms is the satisfaction of both economic and cultural and spiritual needs of the individual. Moreover, in the socio-economic sphere, the state has a wide margin of discretion, the boundaries of which are mobile.

The conducted research shows that the relationship between the state and the individual depends on many important factors, such as: the spectrum of rights and freedoms of the individual functioning in this state, socio-economic and political processes occurring in the state, the level of social and individual needs of the individual, etc.

Summing up the results of explored issues, we concluded that human rights are the main constraints on state power. Moreover, the methods of restriction are different depending on the range of rights and freedoms enshrined in the constitutions and other legal acts of a given state.

Bibliography

1. **Ալվազյան, Վ. Ն.** Մարդու իարվունքներ: – Եր., Տիգրան Մեծ, 2022: – 388 էջ:
2. **Алексеев, Н. Н.** Русский народ и государство. – М.: Аграф. 1998. – 640 с.
3. **Варламова, Н. В.** Учение о правах человека в контексте различных типов правопонимания // Проблемы понимания права . Сборник научных статей: Право России: новые подходы. – Саратов: Научная книга, 2007, Вып. 3. – С. 118-142.
4. **Ганиева, Т. И., Кадиева, Л. С.** Безопасность личности в контексте национальной безопасности //Известия вузов Кыргызстана. – 2016. – №6. – С.134-136.
5. **Дидикин, А. Б**. Современные теории естественного права и классическая традиция // ΣΧΟΛΗ(СХОЛЭ). Т. 8.Вып. 2 (2014). - 2014. - №2. - С.418-424.
6. **Еллинек, Г**. Система субъективных публичных прав: пер. со 2-го нем. изд. / Под ред. А. А. Рождественского. – М.: Освобождение, 1913. – 16 с.
7. **Малько, А. В.** Стимулы и ограничения в праве. – М.: Юрист, 2003. – 250 с.
8. **Милушева, Т. В.** Пределы деятельности государственной власти в России: вопросы теории и практики. – Саратов: Саратовская гос. акад. права, 2011. – 297с.
9. **Нерсесянц, В. С.** Право и закон: Из истории правовых учений. – М.: Наука, 1983. – 366 с.
10. Правовое государство, личность, законность /Под. ред. В.**С. Нерсесянца**. – М.: НИИ правовой политики и проблем правоприменения. 1997. – 138 с.
11. **Berger, T**. Human Rights beyond the Liberal Script: A Morphological Approach, International Studies Quarterly, Vol. 67, No. 3, 2023, sqad042, (p.1-8). URL: https://doi.org/10.1093/isq/sqad042 (accessed at 28.07.2023).
12. **Bielefeldt, H.** Muslim Voices in the Human Rights Debate. *Human Rights Quarterly*, Vol. 17, No. 4, 1995, pp. 587-617.
13. **Bódig, M.** Human rights protection and state capacity: The doctrinal implications of the statist character of international human rights law. In *Human Rights in Times of Transition*. 2020. – Cheltenham: Edward Elgar Publishing, pp.64-88. URL: https://doi.org/.4337/9781789909890.00010 (accessed at 28.07.2023).
14. **Chowdhury, S. R.** Neo-Statism in Third World Studies: A Critique. *Third World Quarterly*, *20*(6), 1999, pp. 1089–1107. URL: http://www.jstor.org/stable/3993660 (accessed at 28.07.2023).
15. Federal Law of the Russian Federation "On Assemblies, Meetings, Demonstrations, Processions and Pickets"(adapted on 19.06. 2004 No. 54-FZ, amended 05.12.2022). URL: https://goo.su/xvYIqi(the link is shortened. Accessed at 28.07.2023).
16. **Finnis, J.** Natural law and Natural rights, 2nd ed.,- Oxford: Oxford Univ. Press. 2011. 495 p.
17. **Forst**, **R.** The Right to Justification: Elements of a Constructivist Theory of Justice. – New York: Columbia University Press. 2012. – 446 p.
18. International Covenant on Civil and Political Rights (adapted on 16.12.1966). URL: https://goo.su/VO4kj(the link is shortened. Accessed at 28.07.2023).
19. **Kazanchian, L.** Features Of Fundamental Rights In The Context Of The Philosophy Of Law. *WISDOM*, *14*(1), 2020, pp. 159–165. URL: https://doi.org/10.24234/wisdom.v14i1.323(accessed at 28.07.2023).
20. **Kazanchian, L., Zaqaryan, A.** Some Features of the Manifestation of Legal Limitation of State Power. *"Bulwark of Law" Scientific-Methodical Journal*, 2023, pp.142-153.

21. **Kiikeri, M.** Comparative Law in European Legal Adjudication. In: *Comparative Legal Reasoning and European Law. Law and Philosophy Library*, Vol. 50. 2001. – Dordrecht: Springer, pp. 57-267. URL: https://doi.org/10.1007/978-94-010-0977-5_3/(accessed at 28.07.2023).
22. Law of the Republic of Armenia "About Freedom of Assembly"(adapted on 22.04.2011, amended at 26.10.2022). URL: https://goo.su/5qzZvex (the link is shortened. Accessed at 28.07.2023).
23. **Loth, W**. (1998). *The Division of the World. 1941-1945*. – London: Routledge. – 327p.
24. The Constitution of the Republic of Armenia (adopted on 05. 1995, with amendments approved on 06. 2015) URL: https://www.president.am/ru/constitution-2015/(accessed at 28.07.2023).
25. **The Convention for the Protection of Human Rights and Fundamental Freedoms** (adapted on 04.Nov.1950, as amended by Protocols Nos. 11, 14 and 15). URL: https://goo.su/7QC2f (the link is shortened. Accessed at 28.07.2023).

Сдана/Հանձնվել է՝ 15.08.2023
Рецензирована/Գրախոսվել է՝ 21.08.2023
Принята/Ընդունվել է՝ 28.08.2023