

Anti-Corruption And Problems Of Limitation Of Rights And Freedom Human And Citizen In Conditions Of The New Coronavirus Infection In Russia

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Annotation. The article is devoted to the problems associated with combating corruption, restricting the rights and freedoms of man and citizen in the Russian Federation during the period of the situation that arose as a result of the spread of a disease that poses a danger to others, that is, a new coronavirus infection (COVID 19). The normative legal acts concerning the state of emergency and the emergency situation, as well as legislative possibilities for imposing restrictions on the rights and freedoms of man and citizen are analyzed.

Based on the analysis of the current situation in Russia and the world, conclusions about the presence of violations of federal legislation, the article formulates general proposals for the normative consolidation of restrictions on the rights and freedoms of man and citizen introduced in the country.

Keywords: Constitution of the Russian Federation; President of the Russian Federation, Government of the Russian Federation; subjects of Russia; state of emergency; emergency; human and civil rights and freedoms; restriction of rights and freedoms; new coronavirus infection (COVID 19).

Introduction

The current conditions of Russian reality allow us to state the fact that the pandemic of the new coronavirus infection COVID-19 had a significant

impact on all spheres of state and public life. Suffice it to mention the global recession, the cancellation or postponement of mass sports events (including the XXXII Summer Olympic Games in

Tokyo), the change in the mode of education in schools and higher educational institutions, restrictions in the tourism sector, including vacation trips to other countries, etc. Many states, various public organizations have taken a number of vigorous measures to combat the pandemic, mitigate the economic consequences of the spread of COVID-19. For example, the International Monetary Fund (IMF), playing a leading role in the global economy, has committed to use its lending potential and direct one trillion US dollars to reduce the economic consequences resulting from the spread of a new coronavirus infection. Despite the speed of the IMF's response, civil society organizations, including such a respected international organization as Transparency International, have expressed concern about the lack of anti-corruption measures or transparency regarding these emergency loans. At the same time, as IMF Managing Director K. Georgieva noted, in some countries we are seeing an increase in transparency, accountability and the fight against corruption, although this is not everywhere and not always the same [1].

At present, the problem of corruption in all its manifestations remains one of the most acute in our country, and so acute that it has even become a real significant threat to national security [2]. According to Transparency International, in terms of corruption, Russia occupies an "honorable" 147th place in the corruption rating out of 180, that is, after the first hundred developed countries. According to the All-Russian Public Opinion Research Center (VTsIOM), three-quarters of Russians consider the level of corruption in the country to be high or very high. In the media (mass media) there are statements by analysts that the amount of money representing various bribes, "kickbacks", "gifts and offerings" is comparable in size to the country's budget. All this causes enormous economic and moral damage, literally corrupts the country. The population, primarily suffering from corruption, reacts extremely negatively to this situation; hence the real rating of many branches of government is very low [3, p. 16].

As you know, the main efforts of any state are aimed at fighting corruption in state institutions and administrative bodies, which, for obvious reasons, do not provide social services.

As a result, the social sphere that provides such services is left without adequate protection from corruption. All this, according to A.V. Polukarov, ultimately leads to the fact that free socially demanded services, including in the field of health care, are provided to a large number of citizens far from free of charge; that "corruption consistently and systematically ousts citizens from the free system of providing certain social services, which "contributes to an increase in tension in society, as well as undermining citizens' confidence in the social policy of the state" [4], as well as to an increase in social tension and a decrease in trust in the state and its authorities.

These conclusions can be confirmed by demonstrations, unsanctioned rallies in a number of Western European countries, which are explained, first of all, by the various conditions of the introduced enhanced, sometimes severe restrictions, called lockdown, due to the emerging pandemic of a new coronavirus infection, which, certainly influenced the implementation of fundamental rights and freedoms of citizens in these countries [5].

Let us turn to the problems associated with the restriction of the rights and freedoms of man and citizen in Russia in the context of the spread of a new coronavirus infection (COVID-19), and to the issues of combating corruption in this situation in our state.

The Constitution of the Russian Federation [6] fixes the fundamental rights and freedoms of man and citizen (Chapter 2). At the same time, Articles 55 and 56 of the Basic Law of the State provide for the possibility of their restriction in Russia. Thus, part 3 of article 55 of the Russian Constitution states: "The rights and freedoms of a person and a citizen may be limited by federal law only to the extent necessary to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of others, ensuring the defense of the country and the security of the state", and part 1 of article 56 provides for the possibility of establishing individual restrictions on rights and freedoms in a state of emergency to ensure the safety of citizens and protect the constitutional order and in accordance with federal constitutional law. At the same time, in Part 3 of Article 56 of the Constitution of Russia, those rights and freedoms are named that are

“not subject to restriction”, that is, they cannot be limited in a state of emergency.

The federal constitutional law “On the state of emergency” [7] contains a definition of a state of emergency, which means a special legal regime introduced throughout the territory of the Russian Federation or in its individual areas. This legal regime applies to the activities of public authorities, local governments, organizations, public associations, their officials, and also allows for certain restrictions on the rights and freedoms of citizens of the Russian Federation and other persons, the rights of organizations and public associations and the imposition of additional duties on them (from part 1 of article 1). In addition, the said Federal Constitutional Law defines the circumstances that are the basis for the introduction of a state of emergency. Such circumstances, in particular, include: 1) attempts to forcibly change the constitutional order of the Russian Federation, terrorist acts, blocking or seizure of especially important objects or individual areas, training and activities of illegal armed formations, etc.; 2) natural and man-made emergencies, environmental emergencies, including epidemics and epizootics (paragraphs “a” and “b” of Article 3, respectively).

In the basic concepts fixed by the Federal Law “On the Protection of the Population and Territories from Natural and Technogenic Emergencies” [8], an emergency situation is understood as “the situation in a certain territory that has developed as a result of an accident, a dangerous natural phenomenon, a catastrophe, the spread of a disease that poses a danger to others (highlighted us - the authors), a natural or other disaster that may or have caused human casualties, damage to human health or the environment, significant material losses and violation of people's living conditions [9].

It should be clarified that neither the Federal Constitutional Law “On the State of Emergency” nor the Federal Law “On the Protection of the Population and Territories from Natural and Technogenic Emergencies” define an emergency situation as a separate legal regime, that is, an emergency situation is considered precisely as a situation, which develops under certain conditions.

Based on the above legal norms, the pandemic of a new coronavirus infection should be considered as a situation that has developed throughout Russia as a result of the spread of a disease that poses a danger to others, that is, as an emergency. And since an emergency is one of the components of the state of emergency, in this situation, taking into account the existing regulatory legal acts, a state of emergency should be introduced.

The procedure for introducing a state of emergency is regulated by the Federal Constitutional Law “On the State of Emergency” and includes the issuance of a decree of the President of the Russian Federation, its approval by the Federation Council and the publication of this document (Articles 4–7). In addition, the named Federal Constitutional Law defines measures and temporary restrictions that can be applied in a state of emergency in general and in the event of an emergency in particular (Articles 11 and 13). It should be noted that the rights and freedoms of a person and a citizen, which, in accordance with the constitutional norm, cannot be limited, of course, are not included in the list of these measures and temporary restrictions.

The first document that outlined the problem associated with the spread of a new coronavirus infection at the federal level was the address of the head of state “To the citizens of Russia”, held on March 25, 2020 [10]. As a result of the appeal, Decree of the President of the Russian Federation dated March 25, 2020 No. 206 “On the announcement of non-working days in the Russian Federation” [11] was issued, which established non-working days from March 30 to April 3, 2020 with the retention of wages for employees, as well as some issues related to the introduction of data on non-working days were resolved. Then, on April 2, 2020, the second appeal of the head of state “To the citizens of Russia” [12] followed, and the President of the Russian Federation issued a second Decree of April 2, 2020 No. 239 “On measures to ensure the sanitary and epidemiological welfare of the population on the territory of the Russian Federation in connection with the spread new coronavirus infection (COVID 19)” [13], which deals with the new period of non-working days and the organizational issues associated with this decision.

As you can see, in the mentioned acts of the President of the Russian Federation, the state of emergency is not introduced either throughout the country or in a certain part of it. Nor is an emergency situation declared as a situation in a certain territory that has developed as a result of the spread of a disease that poses a danger to others.

Subsequently, in late April - early May 2020, two more acts of the head of state were issued regarding the extension of measures to ensure the sanitary and epidemiological well-being of the population in connection with the spread of a new coronavirus infection, in which an emergency situation is also not declared, a state of emergency is not introduced [14].

The powers of the head of state and the highest executive body of state power of Russia in the field of protecting the population and territories from emergencies are defined by the Federal Law "On the protection of the population and territories from natural and man-made emergencies": The President of the Russian Federation has the right to impose "in emergency situations ... on the territory of the Russian Federation or in its individual areas a state of emergency" (paragraph "c" of Article 8), and the Government of the Russian Federation to issue "on the basis of and in pursuance of the Constitution of the Russian Federation, federal laws and regulations of the President of the Russian Federation, resolutions and orders in the field of protection of the population and territories from emergency situations" (clause "a" of Article 10).

Thus, in accordance with the above legislative norm, the state of emergency associated with the emergency situation resulting from the spread of a new coronavirus infection was not declared by the President of the Russian Federation, which, in our opinion, is inconsistent with the statement in the appeals about a serious threat from the new coronavirus infection coronavirus infection, codenamed COVID 19.

Federal Law "On Amendments to Certain Legislative Acts of the Russian Federation on the Prevention and Elimination of Emergencies" [15], which entered into force on April 1, 2020 after publication on the official Internet portal of legal information <http://www.pravo.gov.ru>, the functions of the Russian Government provided

for by the Federal Law "On the protection of the population and territories from natural and man-made emergencies" were clarified. According to this document, the Government of Russia received the following additional rights:

1) make a decision on the introduction of a high alert regime or an emergency situation throughout the territory of the Russian Federation or in part of it in the event of a threat of the emergence and (or) occurrence of an emergency situation of a federal or interregional nature;

2) establish rules of conduct binding on citizens and organizations in the event of the introduction of a high alert regime or an emergency situation (paragraphs "a¹" and "a²" of Article 10).

However, neither the high alert nor the state of emergency was introduced or declared by the country's highest executive body of state power. The Government of the Russian Federation only approved the Rules of Conduct, binding on citizens and organizations, in the event of the introduction of a regime of high alert or an emergency [16], containing general norms that do not contain a specific list of rights and freedoms that are limited or may be limited when a regime of high alert is introduced preparedness or emergency.

In accordance with the norms of the Federal Law "On the Protection of the Population and Territories from Natural and Man-made Emergencies", the state authorities of the constituent entities of the Russian Federation have the right to make decisions on classifying emergencies that have arisen as regional emergencies, namely: to introduce a "high alert or emergency situation for the relevant authorities and forces of the unified state system for the prevention and elimination of emergency situations" (subparagraph "m" of paragraph 1 of the article).

It should be noted that when one of these regimes is introduced, the highest official of a constituent entity of the Russian Federation (head of the highest executive body of state power of a constituent entity of the Russian Federation) has the right to:

– take additional measures to protect the population and territories from emergency situations, in particular, "to take measures due to the development of an emergency situation that do not restrict the rights and freedoms of a person

and a citizen (highlighted by us - the authors) and aimed at protecting the population and territories from an emergency situation, creation of the necessary conditions for the prevention and liquidation of an emergency and minimization of its negative impact" (subparagraph "e" of paragraph 10 of Article 4¹);

- establish additional rules of conduct binding on citizens and organizations when introducing a high-alert regime or an emergency situation, taking into account the specifics of an emergency situation on the territory of a constituent entity of the Russian Federation or the threat of its occurrence (subparagraph "f" of paragraph 1 of Article 11).

Since COVID 19 has become very widespread, as a result, a high alert regime was introduced in all 85 constituent entities of the Russian Federation, that is, in fact, since March 2020; this regime has covered the entire territory of the state [17]. Since the situation with the spread of a new coronavirus infection has completely captured the territory of the country, the high alert regime should have been declared by the Government of the Russian Federation throughout the Russian Federation, which is provided for by clause "a¹" of Article 10 of the said Federal Law. Unfortunately, this was not done, which directly violates the norms of the legislation regulating issues related to the state of emergency in general and the emergency situation in particular.

Decisions of the highest officials or the highest executive bodies of state power of the constituent entities of the Russian Federation, along with the introduction of a high alert regime, establish restrictions on individual rights and freedoms of a person and citizen [18], including: the right to move freely; the right to assemble peacefully, to hold meetings, rallies and demonstrations, marches and picketing; the right to apply personally to state bodies and local self-government bodies; right to work; the right to education, which is provided for by Articles 27, 31, 33, 37, 43 of the Constitution of the Russian Federation. It should be noted that the right to work and the right to education are limited to a certain extent, but this does not exclude the infringement of a person and a citizen when using these rights.

As noted, the possibility of restricting the rights and freedoms of man and citizen in the

Russian Federation is provided for in Articles 55 and 56 of the Constitution of the Russian Federation, which clearly indicate that such restrictions can be implemented either by federal law or by federal constitutional law. There is such a law regarding the state of emergency. As for the emergency situation, in our opinion, a separate federal law is needed, defining it as an independent legal regime, as well as establishing the procedure for the actions of state bodies during the introduction of the emergency situation regime, as well as defining the rights and freedoms of man and citizen in the Russian Federation, which, under certain conditions, may be limited by decisions of the President of the Russian Federation, decisions of the Government of the Russian Federation, acts of senior officials and (or) the highest executive bodies of state power of the constituent entities of the Russian Federation. As a temporary and relatively quick solution to this problem, it is possible to amend the Federal Law "On the protection of the population and territories from natural and man-made emergencies".

At the same time, since there is no federal law that allows restrictions on the rights and freedoms of a person and a citizen in the Russian Federation in the event of an emergency situation, including those caused by the spread of a disease that poses a danger to others, formally legally the establishment of acts of state bodies of the Russian Federation and subjects of Russia restrictive measures against rights and freedoms is not legal. It should again be noted that the norm set forth in subparagraph "e" of paragraph 10 of Article 4¹ of the Federal Law "On the protection of the population and territories from natural and man-made emergencies" allows officials to take measures due to the development of an emergency, not limiting the rights and freedoms of man and citizen. The only legal opportunity is provided to election commissions, which, in accordance with Article 11² of the said Federal Law, have the right to postpone voting in elections and referendums when a high alert or emergency situation is introduced, that is, they can officially restrict the electoral rights of citizens of the country.

The absence of clearly formulated legislative norms that allow, within strictly defined limits, to restrict the rights and freedoms of a person and a citizen in the social sphere, including

healthcare, especially during the spread of a disease that poses a danger to others, leads to permissiveness, and hence to an increase in corruption. It happens, as noted by A.B. Artemiev and S.A. Komarov S.A., “strengthening administrative regulation with a simultaneous strengthening of the administrative apparatus of the state itself”, specifying that “any strengthening of the administrative apparatus, any expansion of its rights inevitably leads to infringement of the rights of the individual, and as a result, to even greater corruption of the state apparatus” [19, p. 18].

So, the penalties established in all constituent entities of the Russian Federation, designed to force citizens to comply with the rules aimed at reducing the spread of a new coronavirus infection, in our opinion, did not solve the main task, which was supposed to bring to the consciousness of citizens the danger of a new coronavirus infection, the need to comply with elementary sanitary and epidemiological standards, that is, they did not affect the psyche of the individual in the way it was supposed to, in order to mitigate the danger of a pandemic.

Problems of a person’s awareness that, on the one hand, failure to comply with the requirements to reduce the spread of various diseases that pose a danger to others will lead to large-scale health problems for a particular person and the collapse of the entire healthcare system, and on the other hand, it will allow strengthening of public administration, which, in turn, will increase the already significant corruption component in the country, can be solved on the basis of a deep scientific study of the problems expressed, both of a legal and psychological nature.

Based on the above, it is proposed:

1. For the purposes of legislative regulation:

- establish an independent legal regime of an emergency situation, separating it from the legal regime of a state of emergency, for which purpose it is necessary to adopt a separate federal law or make appropriate changes to the Federal Law “On the Protection of the Population and Territories from Natural and Technogenic Emergencies”, as well as to the Federal Constitutional the law “On the state of emergency”;

- before resolving the issue concerning the legislative establishment of a separate

emergency regime and organizational issues related to this regime, declare a state of emergency in the country by issuing an appropriate decree of the head of state, which will legally legitimize the restrictions on the rights and freedoms of man and citizen in the Russian Federation, especially that the norms of the Federal Constitutional Law “On the state of emergency” provide for the possibility of introducing temporary restrictions on precisely those rights and freedoms that are already limited at the level of the constituent entities of the Russian Federation.

2. For the purposes of legal education and psychological response:

- organize compulsory education in Russian law not only at the secondary school level, but also in all higher and secondary educational institutions (primarily technical), and in a volume that allows you to understand the basics of the constitutional system, the rights, freedoms and duties of a person and citizen, to realize liability for non-compliance with legal requirements;

- to create a system of psychological research to understand the nature of corruption tendencies, to develop practical recommendations for influencing the personality of employees of the state apparatus, as well as other participants in public relations, to minimize the illegal behavior of the individual associated with corruption.

Bibliography

1. IMF COVID-19 emergency loans: a view from four countries // Official website of Transparency International [Electronic resource] // URL: <https://www.transparency.org/en/news/imf-covid-19-emergency-loans-cameroon-ecuador-egypt-nigeria> (Accessed 10 April 2021).

2. Counteracting corruption in modern Russian legal life (Review of the materials of the “round table” of the journals “State and Law” and “Legal Culture”) // State and Law. 2021. No. 3. P. 147–159.

3. Biryukova G.M. Psychological aspects of the study of corruption // Legal Thought. 2020. No. 3 (119). Pp. 16-24.

4. Polukarov A.V. Administrative and legal security of counteracting corruption in the

social sphere // Russian Justice. 2017. No. 12. P. 45–48.

5. Protests in Europe (2019–2021) // Free Encyclopedia Wikipedia [Electronic resource] // URL: [https://ru.wikipedia.org/wiki/Protests_in_Europe_\(2019–2021\)](https://ru.wikipedia.org/wiki/Protests_in_Europe_(2019–2021)) (Accessed April 10, 2021).

6. Official Internet portal of legal information (<http://www.pravo.gov.ru>). 2020. July 4th. No. 0001202007040001. The Constitution of the Russian Federation may also be referred to hereinafter as the Fundamental Law of the State, the Fundamental Law of the Country.

7. Collection of legislation of the Russian Federation. 2001. No. 23. Art. 2277.

8. Collection of legislation of the Russian Federation. 1994. No. 35. Art. 3648.

9. The definition is given taking into account the amendments made by the Federal Law “On Amendments to Certain Legislative Acts of the Russian Federation on the Prevention and Elimination of Emergency Situations” (adopted by the State Duma on March 31, 2020, approved by the Federation Council on March 31, 2020, signed by the President of the Russian Federation April 1, 2020 No. 98-FZ) // Collection of Legislation of the Russian Federation. 2020. No. 14 (part I). Art. 2028.

10. Russian newspaper. March 26, 2020.

11. Collection of legislation of the Russian Federation. 2020. No. 13. Art. 1898.

12. Russian newspaper. April 3, 2020.

13. Collection of legislation of the Russian Federation. 2020. No. 14 (part I). Art. 2082.

14. Decrees of the President of the Russian Federation of April 28, 2020 No. 294 “On the extension of measures to ensure the sanitary and epidemiological welfare of the population in the Russian Federation in connection with the spread of a new coronavirus infection (COVID-19)” and of May 11, 2020 No. 316 “On determining the procedure for extending the validity of measures to ensure the sanitary and epidemiological well-being of the population in the constituent entities of the Russian Federation in connection with the spread of a new coronavirus infection (COVID-19)” // Collected Legislation of the Russian Federation. 2020 No. 18. Art. 2875; No. 20. Art. 3157.

15. Collection of legislation of the Russian Federation. 2020. No. 14 (part I). Art. 2028.

16. Decree of the Government of the Russian Federation of April 2, 2020 No. 417 “On Approval of the Rules of Conduct Mandatory for Citizens and Organizations When a High Alert or Emergency Mode is Introduced” // Collected Legislation of the Russian Federation. 2020. No. 15 (part IV). Art. 2274.

17. Background information “Coronavirus (COVID-19). The introduction of a high-alert regime in the constituent entities of the Russian Federation. Recognition as force majeure” // Reference and legal system “ConsultantPlus”.

18. Order of the Head of the Udmurt Republic of March 18, 2020 No. 42-rg “On the introduction of a high alert regime and on certain measures to reduce the risk of the spread of a new coronavirus infection (2019-nCoV) in the territory of the Udmurt Republic”; Decree of the Government of the Leningrad Region dated March 13, 2020 No. 117 “On the introduction in the territory of the Leningrad Region of a high alert regime for the authorities and forces of the Leningrad Regional Subsystem of the RSChS and some measures to prevent the spread of a new coronavirus infection COVID-19 in the territory of the Leningrad Region”; Decree of the Mayor of Moscow dated March 5, 2020 No. 12-UM “On the introduction of a high alert regime”; Decree of the Government of St. Petersburg dated March 13, 2020 No. 121 “On measures to counteract the spread of a new coronavirus infection (COVID-19) in St. Petersburg” // ConsultantPlus legal reference system.

19. Artemiev A.B., Komarov S.A. Corruption as an objective phenomenon: the concept of research // Legal Thought. 2010. No. 4. P. 14–19.