



LIMITS OF HUMAN RIGHTS AND FREEDOMS IN THE CONTEXT OF THE PANDEMIC

Galina Nikolaevna Suslova

Tver branch of the V.YA. Kikot' Moscow University of the Ministry of Internal Affairs of Russia – Russia

<https://orcid.org/0000-0003-4123-8675>

Venera Naimovna Amelchakova

V.YA. Kikot' Moscow University of the Ministry of Internal Affairs of Russia – Russia

<https://orcid.org/0000-0001-9687-9045>

Tatyana Vladimirovna Kuvyrchenkova

Tver State University – Russia

<https://orcid.org/0000-0002-5087-9581>

Galina Yurievna Mitsyk

Moscow Humanitarian and Economic University, Tver Institute (Branch) – Russia

<https://orcid.org/0000-0002-7797-2161>

ABSTRACT

Aim: The article is devoted to the limits of the restriction of human rights and freedoms in the context of the pandemic. **Results and Discussion:** It is revealed that the narrowing of human rights and freedoms is unlikely to help overcome the threats from the COVID-19 pandemic. It is proved that the introduction of perfect institutions will not improve the epidemiological situation, and will unlikely to promote real coordination of efforts between the institutions involved, and people. **Conclusion:** The authors came to the conclusion that it will reduce institutional issues to the human factor, dependent on the human capacity in public administration, which is currently available. It is established that national law should reasonably and clearly define the scope and method of exercising the relevant powers assigned to state bodies to guarantee individuals the minimum level of protection that they are endowed within a democratic society according to the principle of the rule of law.

Keywords: Health Protection Movement; Pandemic; Protection; Society; Rights.



LIMITES DOS DIREITOS HUMANOS E LIBERDADES NO CONTEXTO DA PANDEMIA

RESUMO

Objetivo: O artigo é dedicado aos limites da restrição dos direitos e liberdades humanos no contexto da pandemia. **Resultados e Discussão:** Revela-se que é improvável que o estreitamento dos direitos e liberdades humanos ajude a superar as ameaças da pandemia de COVID-19. Está provado que a introdução de instituições de prefeituras não melhorará a situação epidemiológica e dificilmente promoverá uma coordenação real de esforços entre as instituições envolvidas e as pessoas. **Conclusão:** Os autores chegaram à conclusão de que reduzirá as questões institucionais ao fator humano, dependente da capacidade humana na administração pública, atualmente disponível. Fica estabelecido que a lei nacional deve definir de forma razoável e clara o alcance e o método de exercício dos poderes relevantes atribuídos aos órgãos estatais para garantir aos indivíduos o nível mínimo de proteção que são dotados em uma sociedade democrática de acordo com o princípio do estado de direito.

Palavras-chave: Movimento de Proteção à Saúde; Pandemia; Proteção; Sociedade; Direitos.

1. INTRODUCTION

Human rights in the modern world are a problem, the solution of which is at the center of the practical activities of the international community. Human rights are associated with the ability to act in a certain way to ensure one's normal existence, development, and satisfaction of needs. Human freedom is the initial concept of the problem of human rights – citizen's rights. It is characterized by the following characteristics: all people are born free and equal in their dignity and rights; a person has the right to do everything that is not directly prohibited by applicable law; all people are equal in legal opportunities, legal assistance, and legal protection.

In the current circumstances, a quarantine that restricts the right to freedom of movement may be justified. Therefore, according to international law, measures restricting freedom of movement and other rights must be strictly necessary, proportionate, limited in time, carried out for legitimate purposes, for example, to protect public health, and applied without discrimination.

In these conditions, quarantine can be introduced in compliance with security and with due respect, and voluntarily if possible. The rights of quarantined persons must be respected and protected, in particular, the right to humane treatment, the right to health, the



right to information, the right to access to drinking water, freedom of religion or belief, as well as freedom of expression.

In particular, persons who are quarantined should have access to information and the ability to communicate with the outside world, as far as it is practically possible. Those who suffer from concomitant diseases (HIV/AIDS, diabetes, mental illness) should receive appropriate treatment. At the same time, during the COVID-19 pandemic, among the most vulnerable people are those with low incomes, isolated rural population, people with concomitant diseases, disabled persons, persons of no fixed abode, elderly people who live alone or in social institutions, migrants with limited access to health services, asylum seekers, children, and others.

The institutional and government role in overcoming the consequences of the pandemic should be accompanied by appropriate private initiatives. Private initiatives should provide for the provision of one-time financial assistance to employees who have lost part of their wages due to the introduction of quarantine restrictions and to individual entrepreneurs who have lost part of their income due to quarantine.

2. LITERATURE REVIEW

The study of issues related to the limitation of human rights was reflected in many works. Y.N. Adu (2020) and A.A. Vasyaev (2020) note that the mechanism of the legality of limiting human rights is effective in its application and corresponds to the spirit of democracy and the rule of law.

E.N. Doroshenko (2020), T.V. Prikhodko (2020), and Ya.K. Chepenko (2020) emphasize that the very process of resolving a specific case on limitation of the right consists in the fact that each specific situation must be passed through the system by an unapplicable body making an appropriate decision.

I.V. Chechelnitsky (2020), D. Cristiani (2020), and V. Popov (2020) note that in the absence of one of the elements of the system when resolving a specific case, those restrictions on rights are recognized as unlawful that do not comply with the principles of legality and the rule of law.

At that, there are currently no clear determinants of the limits of restrictions on human rights and freedoms in the context of the pandemic.



3. METHODS

The theoretical and methodological basis of the research is the abstract-logical method, methods of induction, deduction, analysis, synthesis, and systematization, used to substantiate approaches to determining the impact of the coronavirus pandemic on human rights and freedoms.

The information base of the article includes statistical data of state bodies, legislative and regulatory documents governing human rights and freedoms in the context of a coronavirus pandemic, and the results of scientific research (D'cruz, Banerjee, 2020; Frolova et al., 2019; Mukhlynina et al., 2018).

In the course of the study, it is planned to systematize the features of human rights and freedoms in the context of the pandemic, develop measures to coordinate activities between the main participants in this process and determine individual human rights and freedoms in the context of recent changes.

Structurally, the study consisted in a consistent analysis of human rights and freedoms, as well as in identifying the components of this process. The documents for the study were selected subject to the presence of key features of human rights and freedoms in a pandemic.

At the first stage of the study, we grouped the selected information according to the type of documents. The first group included information indicating the source of the data obtained. The second group of documents consisted of scientific research on the limitation of human rights and freedoms in a pandemic. At the second stage, we analyzed the penalties for violating the coronavirus quarantine in different countries. At the third stage, we found that further disproportionate restrictions of rights can go beyond the permissible limit.

4. RESULTS

We established that businesses have a certain role to play, in particular, to respond flexibly to the adverse impact of the pandemic on their employees. The economic and social consequences of quarantine and social distancing measures may affect women and men differently. When developing response measures, it is necessary to analyze and take into account the different impacts of these measures on women and men.



Important attention should also be paid to monitoring, analyzing, and countering cases of discrimination related to the COVID-19 pandemic, in particular against people suffering from this disease, people who have recovered, their families, doctors who work with COVID-19 patients, as well as representatives of certain racial, ethnic, or national groups (Pahlman, Tohmo, Gylling, 2010; Shchebetun et al., 2020; Smith, 2020).

Studies show that the COVID-19 outbreak and the response to it are accompanied by a massive infodemic, which makes it difficult for people to find reliable sources of information and the guidance they need. Therefore, it is extremely important to provide, with the support of WHO and other UN agencies, transparent and reliable, fact-based information (both online and offline), and constantly update it.

In the course of collecting data and information, in particular, personal data, to reduce the spread of infection, measures should be taken to ensure the necessity and proportionality of this data to protect public health (Popov, 2020; Shaymardanova et al., 2019; Vinogradova et al., 2018). These measures should also protect the anonymity and confidentiality of personal data, including confidential information about people's health.

Quarantine restrictions pose a serious threat to human rights and fundamental freedoms even in developed democracies, which provide for various penalties (Table 1).

Table 1. Penalties for violating the coronavirus quarantine in the different countries

Country	Type of punishment
Georgia	Forced return to quarantine by compulsory measures
Israel	Imprisonment for a term of 3 to 7 years.
Italy	Imprisonment for up to 3 months.
Kazakhstan	The fine starting from 5 monthly indicators (the equivalent of 160 US dollars).
China	Imprisonment for a term from 10 years to life imprisonment, and in some cases the death penalty.
Kyrgyzstan	A fine for adults – 1,600-1,900 US dollars, for other categories of citizens – 3,500-4,100 US dollars or imprisonment for up to 5 years with a ban on holding positions or engaging in certain activities for up to 2 years.
Moldova	The fine for individuals – 1,300-1,400 US dollars, and for legal entities – 2,800-4,300 US dollars.
Russia	If the violation of the quarantine restrictions led to a mass infection – a fine of 1,100 US dollars, deprivation of the right to hold certain positions, mandatory work for up to 360 hours, or imprisonment for up to a year. If the violation resulted in the death of a person, then mandatory work for up to 480 hours or imprisonment for up to 5 years.
USA	The fine – 100,000 US dollars and a year of imprisonment, if there were no deaths. If the violation resulted in death, the fine increases to 250,000 US dollars, and a year of imprisonment.

Source: Compiled by the authors based on (Adu, Yeo, 2020; Vasyaev, 2020; Doroshenko, 2020; Prikhodko, 2020; Chepenko, 2020; Chechelnitsky, 2020)



At the moment, six states have applied to the Secretariat of the Council of Europe with relevant statements under Article 15 of the European Convention on Human Rights on the restriction of certain convention rights on their territory, namely: Armenia, Moldova, Georgia, Romania, Latvia, and Estonia. In addition, according to media reports, a similar statement was adopted by the Bulgarian Parliament.

What exactly are the rights restricted by the relevant government statements, and what are the threats posed by the relevant statements? The authors believe that the statements of states can be divided into three individual groups which include soft, medium, and hard provisions.

The first group includes the statements of Estonia and Latvia, whose declaration text is more of proposed nature than imperative. In particular, according to these states, the main measures include restriction of the right to education through the transition of the educational process to a distance learning basis; closure of mass events and cultural institutions (cinemas, museums); to a certain extent restriction of freedom of assembly; certain restrictions concerning border crossing, in particular regarding the crossing of the border by foreigners; restrictions on the operation of international transportation; restrictions on movement to certain regions; as well as a special operation mode of closed-type special facilities (pre-trial detention centers, prisons), including establishing a ban on visiting prisoners. Besides, the Latvian application explicitly provides for the possibility of postponing court sessions, as well as restrictions on the work of bailiffs and notaries.

The second group includes states, such as Georgia and Romania, which, in addition to the above-mentioned measures, provide for restrictions on the operation of mass public transport, the suspension of the operation of enterprises, and the prohibition of strikes, as well as possible restrictions on the right on private property.

The third group includes states, such as Moldova and Armenia. According to the authors of the present research, a characteristic feature of the proposed restrictive measures in these states is the prediction of state censorship according to media reports on morbidity, or coordination of the media, that is, a significant restriction of human rights to freely receive or disseminate information. Moreover, based on the content of their statements, Moldova and Armenia are going to apply restrictive measures stated by other countries in a more stringent form.

In particular, restrictions in these two countries provide for the establishment of a special mode of movement throughout the country. The introduction of a special operation



mode of all economic entities provides for the possibility of introducing a curfew and coordinating the distribution of certain primary necessities among the population. At that, under such coordination of the distribution of goods, using coupons is not excluded.

5. DISCUSSION

It is necessary to understand that the restrictions imposed through the pandemic pose a threat to human rights, and therefore states are obliged to take urgent measures to minimize this threat. Among them, quarantines can be distinguished, in particular those that affect the rights to freedom and security of the individual. They are acceptable only if they are applied on a non-discriminatory basis (Vinogradova et al., 2018; O'Leary, Tsui, 2020). If they are already in effect, as is currently the case, then such measures should be appropriate to the situation and have a legitimate justification. They should be limited in time and periodically reviewed. If there is a choice between several possible options for restrictive measures, it is worth choosing less stringent ones. The same applies to travel restrictions and prohibitions that affect the right to freedom of movement. For the period of introduction, such measures must be legal, justified, and appropriate to the situation.

States should ensure that all affected individuals and communities have access to clear, accessible, timely, and meaningful information on the nature and extent of the health threat; possible application of risk reduction measures; possible consequences, and measures to respond to the pandemic.

According to some evidence (Drinan, 1998; Firsov, Kamensky, Chernikova, 2020; Afzali, Ryazantsev, Shakeri, 2020; Saif, Ruan, Obrenovic, 2021), some states, such as China and Iran, in response to the coronavirus infection, have imposed restrictions on the dissemination of information about the disease and underestimate the risks and scale of its spread. If the state's response to the coronavirus infection is based on limited access to information, insufficient transparency, and censorship, then the government risks undermining the right to search, receive and disseminate information and ideas of any kind, as well as the right to access health-related information. States should ensure that everyone has access to social protection tools, i.e. paid sick leave; medical services; parental leave, etc. Some of the measures taken to improve public health may negatively affect the right to work.

At the same time, health care workers are at the forefront of the fight against the pandemic, as they must continue to provide services, despite the risks that exist for them



personally and their families. Such risks are associated with the possibility of contracting coronavirus in the line of duty, overtime workloads, as well as psychological stress, and exhaustion. To ensure the work of doctors, mid-level medical personnel, and other persons involved in the fight against the pandemic, it is necessary to provide them with suitable and high-quality equipment, information, training, and psychological support.

Some authors (Shchebetun et al., 2020; Afzali, Ryazantsev, Shakeri, 2020; Saif, Ruan, Obrenovic, 2021) note that medical care should be available to everyone. This means that to achieve this goal, states should cooperate with all parties concerned, including pharmaceutical companies, provided that this process is based on respect for human rights.

States should ensure the provision of psychosocial support to respond to the possible impact of the coronavirus pandemic, and ensure that measures are taken to reduce anxiety and depression in people.

Governments, having economic and technical capabilities should help those with fewer resources to prepare for and overcome the outbreak of the disease. States should also provide other states and international organizations with updated information on the level and consequences of the spread of coronavirus infection at the national level, as well as information on possible treatment.

Special attention should be paid to women and other persons who may become victims of domestic violence or are at risk of such violence since quarantine and similar measures can increase their vulnerability. It is also necessary to take into account the medical needs of persons without a fixed place of residence, taking into account that it may be impossible for them to isolate themselves. At that, any actions aimed at meeting their needs should not be punitive and should comply with the principles of protecting their right to health.

Special attention should be paid to the needs of older people, especially those who live on their own or have health problems, for example, cognitive decline/dementia or other mental illnesses. Elderly people should be provided with accurate and accessible information about the COVID-19 outbreak and, if necessary, instructions on how to use protective means (masks, disinfectants), how to order food online, and the like. Harm reduction services should continue to be provided to ensure that their clients receive vital assistance. Despite the closure of borders and other similar restrictions, it is necessary to ensure the supply of sufficient quantities of opioid substitutes (for example, methadone).

As concerns children, it is necessary to provide the following measures: ensure the availability of guardians who will provide care if one of the parents or another primary



guardian is hospitalized; provide the availability of comprehensive psychosocial support for hospitalized children to counteract any negative psychological consequences, and develop an emergency action plan for children who face long periods of absence of formal education. In epy appropriate cases, based on age and the availability of appropriate technologies, it is necessary to continue classes on a remote basis employing information technology solutions so that children can continue to study and use the opportunities of the education system.

6. CONCLUSION

Thus, it is worth noting that even in the case of a certain redundancy of restrictive measures, especially concerning the total cancellation of public urban and intercity transport, the state should pursue a legitimate goal. At the same time, further disproportionate restriction of rights, for example, introducing a total ban on leaving their own homes for all persons, or an absolute restriction of freedom of movement between settlements may cross the permissible border from a human rights perspective. At that, the apparent failure or unjustifiably slow adoption of measures to provide doctors working with infected persons with personal protective equipment (doctor's suits) may constitute a violation of their convention rights.

The pandemic has also sparked panic among shoppers, temporarily emptying supermarket shelves and increasing losses due to unused fresh produce. The inability of farmers to sell food has resulted in product losses and waste. The poor already experience limited economic access to food, especially fresh fruits and vegetables. There is also a global rise in food basket prices, driven by disruptions, temporary shortages, stockpiling, and speculation in the retail value chain.

Online business support is also becoming a priority area. This is the development and maintenance of online stores because sellers need to sell their goods and buyers demand these very goods. In this case, entrepreneurs are encouraged to start doing business on the Internet with active advertising.

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