УДК 341.231.18

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LIMITATION OF HUMAN RIGHTS IS IN AN INTERNATIONAL LAW

Анотація. У даній статті здійснена спроба встановити поняття обмеження прав людини в міжнародному прав, а також способи їх нормативного закріплення у міжнародних нормативно-правових актах. Встановлено, на основі чинних конституційних актів сучасних європейських країн способи нормативного закріплення обмеження прав людини у міжнародному праві та перспективи їх гуманного застосування.

Ключові слова: права людини в міжнародному праві, обмеження прав людини в міжнародному праві, способи нормативного закріплення обмеження прав людини міжнародному праві.

Introduction

The purpose of this scientific research is determined by the establishment of the content of such a phenomenon as a restriction of human rights in international law.

Investigation of the problems of restrictions of human rights and freedoms requires the conformity of the methods applied to objective realities and specific properties (in the broad sense) of the subject subject.

The method of dialectics made it possible to determine the basic property of limiting human rights and freedoms as being in co-operation with other means of legal regulation and changing in accordance with the general tendencies of the development of society as a whole. An actual use was made of the metaphysical method, which more fully revealed the "internal" features of human and citizen rights and freedoms, as well as the processes related to their provision and their limitations, before all on the international level.For the study and deepening of the conceptual apparatus, in particular the "restriction of human rights", "the limits of human rights restrictions", "criteria of human rights constraints", etc., we used the method of system analysis.

1. Normative fixing of human rights constraints

The criteria for restrictions of rights and freedoms in international law are the basic, fundamental provisions (standards) enshrined in international legal acts, which determine the permissible grounds, conditions and objectives of restrictions of human rights and freedoms and serve as a reference point for the development, amendment and amendment of domestic law by states of international community in the field of the establishment and

application of restrictions on human rights and freedoms.

The admissibility of human rights restrictions is enshrined in the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, as well as the principles of Johannesburg's "National Security, Freedom of Expression and access to information", the Syracuse principles relating to the provisions of the International Covenant on Civil and Political Rights, etc [31, p. 62-65].

In addition to the above-mentioned documents, certain provisions governing the restriction of rights and freedoms can be found in other acts of international law: the Code of Conduct of Law Enforcement Officials, adopted by the General Assembly of the United Nations on December 17, 1979; The principle of the protection of all persons who are detained or imprisoned in any form adopted by the General Assembly of the United Nations on November 9, 1988; The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on December 10, 1984; Minimum Standard Rules for the Treatment of Prisoners adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders of August 30, 1955; The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the resolution of the UN General Assembly of November 29, 1985, etc.

In addition, the Committee of Ministers of the Council of Europe in the participating countries adopted the following recommendations and resolutions: Recommendation No. R(80)11 on detention in court; Recommendation No.R(87)18 on the simplification of criminal justice procedures; Resolution (65)11 on placement in custody, etc [30, p. 116].

Adoption of the listed international legal acts positively influenced the development of the national legislation of countries in the sphere of both the protection of human rights and freedoms and their restrictions.

The scientist V. Kartashkin noted that at the beginning of the twentieth century, this process was hampered by the fact that the relations between the state and the citizen were considered an internal competence of the state [6, p. 87]. And since the middle of the twentieth century, taking into account the opinion of scientist S. Alekseyev, in connection with the growing social significance of rights and freedoms and the need for their protection, the mechanism of their provision and lawful restriction began to develop rapidly [1, p. 312].

The United Nations General Assembly's Universal Declaration of Human Rights, adopted by the General Assembly on December 10, 1948, became the first global international instrument that envisaged the possibility of limiting human rights. Article 29 of this Act provided: "In the exercise of its rights and freedoms, a person shall be subject only to the limitations established by law, solely for the purpose of ensuring the proper recognition and respect of the rights and freedoms of others and the satisfaction of just requirements of morality, public order and welfare in a democratic society".

The Declaration consolidated the four grounds for the restriction of human rights and freedoms:

1. ensuring proper recognition and respect for the rights and freedoms of others;

2. securing fair moral requirements;

3. ensuring the requirements of public order;

4. ensuring the welfare of a democratic society [3].

One of the most important regional documents — the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 — permits the restriction of human rights and freedoms in the presence of appropriate grounds, the most widespread of which are: the interests of public order (Articles 6, 8, 9, 10, 11); provision of national security (Articles 6, 8, 10, 11); provision of morals (Articles 6, 9); economic prosperity of the country (Article 8); protection of the rights and freedoms of other persons (Articles 8, 9, 11); protection of territorial integrity (Article 10); maintenance of authority and impartiality of justice (Article 10); protection of public health (Articles 8, 9, 10, 11) [7].

The significance of the Convention of 1950, which was ratified by Ukraine on 17 July 1997, also lies in the fact that, firstly, she elaborated on and expanded existing in other international instruments criteria for restrictions on rights and freedoms of the individual, classifying them into General and special. Secondly, the Convention has created a special mechanism to protect its declared rights and freedoms and their legitimate limits in the form of an international judicial organ, namely the European Court of human rights.

When listing the restrictions on the rights and freedoms of man in the Convention has always made it clear that they must be "prescribed by law" (paragraph 2 of articles 8, 10 and 11 of the Convention, section 3 of article 2 of Protocol No. 4), "established by law" (paragraph 2 of article 9 of the Convention) or be installed in accordance with the law" (clause 4, article 2 of Protocol No. 4 and clause 1 of article 1 of Protocol No. 7). Thus, these provisions of the Convention contain references to the legal systems of States, which should be a proper regulatory framework for restrictive measures [8].

In turn, the international Covenant on civil and political rights, 1966 declares the possibility of establishing specific restrictions on rights and freedoms only by law and the need to protect state security or public safety (clause 3, article 12) [23].

The Covenant, similar to the Convention of 1950, shall apply the method of fixing constraints directly in the rules that proclaim it a subjective right and freedom, thus ensuring the differentiation of the purposes and methods limitations of each of the rights and freedoms of the individual. For example, article 12 of the Covenant, guaranteeing the right to freedom of movement and free choice of place of residence, in part 2, contained the clause: "...these rights cannot be subject to any restrictions except those provided for by law and are necessary to protect public safety, order, health or morals or the rights and freedoms of others and consistent with other rights recognized in the present Covenant" [23].

In rare cases, when the 1966 Covenant has no reference in the articles for purposes of restrictions of the rights in accordance with General Comment No. 16 (paragraph 4), approved by the UN Committee on human rights should be applied by limiting the aims and objectives of the Covenant itself. Thus, the principle of strict compliance of the target, which is interpreted as follows: the restriction of the rights and freedoms of man shall be in accordance with

the purpose envisaged by a particular restrictive norm, and in their absence — in accordance with the General objectives of legal regulation [5].

A positive factor in the research of the importance of the International covenants of 1966 is that they reinforce the normative list of human rights that cannot be limited under any circumstances. In particular, section 2 of article 4 of the Covenant on civil and political rights 1966 sets out a clear prohibition to derogate from the following articles: article 6 (right to life); art. 7 (Prohibition of torture or cruel, inhuman or degrading treatment or punishment, as well as medical or scientific experiments without consent); Clauses 1 and 2 of Art. 8 (prohibition of slavery, slave trade and maintenance in the state of the enemy); Art. 11 (prohibition of imprisonment as a result of failure to fulfill a contractual obligation); Art. 15 (the principle of legality in the field of criminal law: criminal liability and punishment should be determined by clear and precise provisions only of the law that was in force and applied at the time of the commission of an act or violation, except in those cases when later adopted legislation has established a milder punishment); Art. 16 (recognition of the legal personality of each person); Art. 18 (freedom of thought, conscience and religion) [24].

States Parties ratifying the Second Optional Protocol to the 1966 Covenant on Civil and Political Rights also impose an obligation to abolish the death penalty enshrined in Art. 6 of this Protocol [2].

2. The Significance of Syracuse Principles

Similar requirements can be found in the Syracuse principles of interpreting the restrictions and derogations from the provisions of the International Covenant on Civil and Political Rights, which were adopted in May 1984. Despite the fact that these principles are not legally binding, they are an important source of interpretation of the International Covenant on Civil and Political Rights of 1966, namely the provisions on the restriction of human rights and freedoms envisaged by the Covenant.

In the Art. 6 Syracuse Principles states that no restrictions should be applied for purposes other than those for which they are implemented, that is, the limit to the restrictions set forth by the very purpose of the restrictions. Also, this document permits restrictions to ensure the rights and freedoms of others and for the sake of national security.

The UN Human Rights Committee has developed a number of criteria for possible restrictions of human rights and freedoms, and has consolidated them in its general remarks and concluding remarks. In particular, in its General Comment No. 22 (paragraph 8), the UN Human Rights Committee states: "In interpreting the scope of the provisions relating to human rights constraints, States parties must rely on the need to protect the rights guaranteed by the Covenant on Civil and Political Rights political rights of 1966, including the right to equality and freedom from discrimination in any form, enshrined in Art.Art. 2, 3, 26 of this Covenant. Human rights restrictions should be established by law. There are no grounds for imposing restrictions other than those specifically provided for in the law, even for reasons of state security. Restrictions may only be set for specific purposes and must be directly related to the specific purpose

for which they are being implemented. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. Persons subject to statutory restrictions, such as prisoners, continue to enjoy their rights in the most complete manner consistent with the specific nature of the restriction" [4].

3. Criteria and mechanism of limitations of human rights

The listed international legal acts emphasize that the exercise by a person of his rights and freedoms should not be subject to any restrictions. However, despite this, these documents establish clear justifications, specific boundaries, grounds and purposes of possible derogations from certain subjective rights and freedoms guaranteed in international law. On the one hand, it enables the state, by referring to the provisions of the relevant international legal acts, to impose compulsory restrictions on the exercise of certain human rights and freedoms in national law, and, on the other, protects citizens from the arbitrariness of the state with regard to the restriction of their rights.

The criteria for limiting human rights and freedoms are realized through an effective mechanism for the application of such restrictions, which in turn is a system of procedural norms established in the law that determine the procedure for the execution by authorized bodies of power of their powers with regard to the implementation of provisions providing grounds, procedure and conditions of restrictions human rights and freedoms, in accordance with the criteria provided by international and domestic law of a particular state.

The criteria and mechanism of restrictions of rights and freedoms in the legislation of foreign countries are diverse.

Based primarily on a positivist approach to law, restrictions on human rights can be envisaged: the Constitution (Armenia, Belarus, Belgium, Bosnia and Herzegovina, Georgia, Cyprus, Latvia, Lithuania, Malta, Norway, Portugal, Russia, Turkey, Ukraine, Croatia, Estonia etc.); By law (Austria, Azerbaijan, Albania, Andorra, Bulgaria, Lithuania, Luxembourg, Estonia, etc.), international legal acts (Luxembourg) [22, p. 115].

The Constitution, having a universal character, establishes, first of all, the legal foundations in relation to human rights and freedoms, which are realized in other normative-legal acts. Thus, the Constitution of the Federal Republic of Germany in 1949 proclaims in Art. 19 general criteria for applying the restrictions on the rights and freedoms guaranteed by it: "Since, according to the Constitution, the fundamental right may be limited by law or by law, such a law should have general effect, and not apply to a particular case" [18]

The position on the application of human rights restrictions at the level of the law is evidenced by international legal acts. Thus, the Universal Declaration of Human Rights of 1948 stipulates that possible restrictions of human rights and freedoms are regulated by law [3]. The International Covenant on Civil and Political Rights of 1966 binds to the form of the law imposing restrictions on certain social and political rights [23].

A guarantee of the legal implementation of restrictions on human rights and freedoms is the requirements that are established in relation to the legitimacy of the law, such as: general compulsiveness, certainty, accessibility, stability and procedurally.

It is worth noting the possibility of introducing human rights restrictions by subordinate legislation. This point in science is quite controversial. Such acts include Decrees of the President of the Republic of Croatia, Decrees of the Council of Ministers of the Turkish Republic, Decrees of the Government of the Portuguese Republic. Art. 15 of the Constitution of the Republic of Turkey states that "the decisions of the Council of Ministers of Turkey suspend in whole or in part the exercise of fundamental human rights and freedoms and provide the opportunity to take measures contrary to the guarantees provided for by the Constitution"[17].

4. Methods of normative consolidation (formulas) of restrictions of human rights and freedoms in international law

It is also advisable to draw attention to the question of ways of normative fixing (formula) of restrictions on human rights and freedoms in foreign law. Today, legal science distinguishes three main ways.

The first of them (the most common and simple) is the way of the "general clause". This method of securing regulatory restrictions of human rights is to establish basic principles and comprehensive guidelines that define the objectives, bases, borders, procedures and means restrictions of any rights from the list displayed in the legislation. This method was first reflected in the French Constitution of 1791. The use of the method of the "general clause" is monotonous and systemic in use. However, the complexity and diversity of society, diversity enshrined rights and freedoms are not limited to using only "general clause" because there is a need for adjustment and specificity typical formula according to various areas of functioning of society, different circumstances and different content rights [25, p. 317-322].

So far in legal practice increasingly used completely opposite way — a way to "specific reservations" (referential method), the essence of which is the need for each individual human rights grounds and set limits restricting such rights individually. Examples of the use of such a method can already be found in the first documents that proclaim human rights. For example, in the Great Charter of Liberty of 1215, it was guaranteed that everyone would be allowed to leave the kingdom's borders and safely to return, both land and water. The restriction could be introduced only in the interests of the general good and only for a certain short period of time. Also, exceptions to the general rule were made for prisoners of criminality and those who were declared outlawed by the kingdom, as well as peoples from those lands that had waged war with the kingdom [21, p. 119].

This is the way to "specific reservations" is still used in many current Constitution, including Austria in 1920, Belgium in 1831, Venezuela in 1961, Greece in 1975, Ireland in 1937, Italy in 1947, Luxembourg 1868 Japan, Japan in 1947 and many others [9].

A volatile way, or a method of "concrete reservations," has given opportunity to take into account the peculiarities of each human right separately, and therefore has been popularized and widely used in today's political and legal practice. Nevertheless, this method of regulating human rights constraints has not been able to eliminate the potential threat that rights conferred on the constitutional level will be unlawfully reduced or even destroyed by the legislator.

In our opinion, the method of the "general clause" and "specific reservations", unfortunately, act as extreme ways of regulating the restrictions of human rights and freedoms. Each of them has both a number of undoubted advantages and a number of defects, which does not contribute to a qualitative normative settlement of such social value as the basis of the legal status of a person. Therefore, the greatest recognition in the modern legal practice of the vast majority of countries in the world has become a mixed option, more known as a way of combining the "general clause" and "specific reservations."

The nature of this method is to consolidate the constraints of fundamental human rights and freedoms at the constitutional level with the simultaneous establishment of the general principles of such restrictions. In the vast majority of constitutions adopted in the second half of the twentieth century, including the constitutions of all post-Soviet countries, the method of combining the "general clause" and "specific clauses" is used. At the same time, the specifics of the "general clause" remain important, that is, the essence of the general formula for establishing restrictions of rights and freedoms.

After all, on the one hand, it should have independent legal significance, it should be "independent", that is, be able to independently regulate the relevant sphere of social life, and on the other hand, be capable of further development, specification and refinement.

The latest constitutions of the third and fourth generations show a significant number of models of this kind. For example, part 2 and 3 of art. 18 of the Portuguese Constitution of 1976 reflects a detailed regulation of the restrictions on human rights and freedoms, namely: "The law may provide for restriction of human rights and freedoms only under the circumstances envisaged by the Basic Law, and restrictions should have clear limits and apply only to protect the protected persons. rights or interests of other people, society as a whole. Laws that have a law-abiding hawkster must adhere to the law and leave constitutional provisions unchanged. "Such a detailed "general clause" guarantees the unwarranted restriction of the scope of the rights and freedoms provided for in the ruling law and serves as a clear benchmark for the adoption of detailed laws [12].

Both volatile and mixed ways of normative reflection of restrictions on human rights and freedoms presuppose the existence of certain reservations. The first of them is called "a caveat on the law" and consists in the fact that the dominant law establishes only the abstract position, the general formula, referring simultaneously to the fact that the normative legal act (the law) specifies the effect of this norm. For example, he fully uses the "reservation on the law" of the Spanish Constitution of 1978, which, in one of its provisions, states that no one may be deprived of the right to property, except in cases where it is necessary to ensure public benefit or social interests, subject to appropriate reimbursement in accordance with the procedure provided for by law [11].

In addition to the "caveat on the law", a "caveat regarding an extraordinary legal status" may also apply. As an example, art. 63 of the Constitution of the Republic of Belarus in 1996 proclaims that "the realization of human rights and freedoms enshrined in this Constitution may be temporarily suspended only on the basis of the introduction of an

emergency or martial law in the order and within the limits established at the level of the Constitution and the law"[10]. Nevertheless, in this same provision four legal articles of this Constitution are listed, the validity of which can not be limited even during a state of emergency [22, p. 115].

5. Individual restrictions on human rights

Along with the restrictions of rights and freedoms that apply to the whole population or to a part of the population of the state, the legislation of many foreign countries also provides for an individual restriction of human rights and freedoms as a sanction for their abuse. An example can serve again the Constitution of the Federal Republic of Germany in 1949, which in Art. 18 states: "Anyone who abuses the freedom of expression, freedom of press, freedom of assembly, freedom of association, secret correspondence, postal and telegraphic communications, property or the right to asylum to the detriment of the democratic system, deprives these fundamental rights. The issue of deprivation of certain rights is decided by the Federal Constitutional Court" [13].

Finally, it should be noted that both international law and domestic law of foreign countries often provide for the possibility of restricting certain rights and freedoms of a person for a certain period of time in the event of extraordinary circumstances. The main reason for this restriction is the emergence of any emergency. One of the main manifestations and objective consequences of an emergency is a temporary restriction of the rights and freedoms of citizens, which is carried out to eliminate or minimize its negative consequences.

There are three ways to regulate the restriction of human rights and freedoms in a state of emergency in the legislation of foreign countries.

The first method involves consolidating an exhaustive list of rights and freedoms that can be limited. For example, part 2 of art. 103 of the Constitution of the Kingdom of the Netherlands in 1983, lists all fundamental rights that may be suspended during a state of emergency [14].

The second way of regulating the restrictions of human rights and freedoms in a state of emergency is that only those rights that can not be restricted in any way are listed. Thus, according to Clause 6 of Art. 19 of the Portuguese Constitution of 1976, "the introduction of a state of siege or state of emergency in no way affects the right to life, personal integrity, individuality, civil capacity and citizenship, as well as the prohibition of the reversal of the criminal law, the right to defend the defendant and freedom of conscience and religion". The list of rights that can be limited remains open [12].

The third option Regulatory restrictions of human rights during the existence of an emergency situation is quite simple – the ruling law contains provisions on emergency restriction of human rights possible, but does not provide for these rights, and refers to a special law. For example, in accordance with paragraph 16 of the Finnish Act of 1919, "the regulations relating to the fundamental rights of the citizens of Finland do not preclude the establishment of such restrictions as are necessary during the war, the uprising" [19].

In our opinion, the considered ways of regulating restrictions on the rights and freedoms in a state of emergency

option when the ruling law of the country establishes a comprehensive list only those rights and freedoms can be limited, and is the best one that meets the requirements of law.

6. Models of limitation of human rights

It would also be useful to consider models of limiting the rights and freedoms of citizens in the prevailing laws of modern states in general, without emphasizing the state of emergency.

Consequently, in accordance with the first model, the prevailing state law establishes the purposes, forms and proportionality of restrictions on human rights and freedoms, as well as the grounds, methods and procedures for such restrictions. In particular, in the Russian Federation, the basic regulation of restrictions is prescribed in Part 3 of Art. 55 of the RF Constitution of 1993, which states that "the rights of citizens may be restricted by law only in order to protect the constitutional order, health and morals, rights and guaranteed interests of third parties, in the interests of national security" [16].

In accordance with the second model of the restriction of human rights and freedoms, the prevailing law of a particular state contains a general reservation regarding the possibility of restricting rights and freedoms only by lawful means. As an example, the Constitution of Bahrain 1973, the Iraqi constitution of 2005 and other countries can be deduced.

The third model suggests that constitutional provisions on restrictions of human rights and freedoms are established only with respect to specific rights and freedoms and do not contain general reservations. In particular, this model is reflected in the current prevailing laws of Ireland, Italy, India, Kuwait, Denmark, Singapore, Azerbaijan, Georgia, Ukraine, Finland, Afghanistan, etc. [9].

Again, we believe more appropriate to use it the first model of restriction of rights and freedoms in the prevailing law, since it is the Constitution has the highest legal force, is a landmark in the further legislative process and should contain the basic criteria for restriction of rights and freedoms that the legislators did not will be able to violate the adoption of new laws, minimizing the possibility of abuse, violation or unlawful restriction of human rights and freedoms. Having analyzed the international legal acts and legislation of foreign countries for the purpose of research, namely the restriction of human rights and freedoms, one must also pay attention to an equally important source of international law – the practice of the European Court of Human Rights.

The European Court of Human Rights (hereafter "the Court") is an international judicial body in Strasbourg, whose jurisdiction extends to all member states of the Council of Europe that have ratified the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and includes all matters relating to interpretation and application of the Convention [7].

To date, the Court has repeatedly found that Member States of the Council of Europe have violated their obligations under international law in the field of human rights and freedoms, which are based on the provisions of the 1950 Convention. Such States, in turn, implement the Court’s decision by making the necessary changes. to legislation, judicial procedures, as well as to compensate injured persons for damages incurred [8].

It should be noted that the interpretation of domestic laws is the prerogative of local government and is properly perceived by the Court, except in cases where there was a clear mistake in the application of the law. At the same time, the Court has no right to consider whether the law complies with domestic, including constitutional, norms. This does not mean that the Court must automatically agree with the position of the respondent State, on the basis of the fact that one or another restrictive measure was based on domestic law. In this case, it is not about the interpretation or application of the relevant law, but about the interpretation or application of the terms "in accordance with the law", "established by law" and "prescribed by law" contained in the 1950 Convention itself. However, in this case, the Court Human rights gives the government a fairly broad "discretion": "... it is primarily in the national authorities, and in particular the courts, that national law should be interpreted and applied; by nature, its local authorities are much better equipped to deal with the issue".

As a starting point in interpreting the above-mentioned terms ("in accordance with the law", "established by law", "prescribed by law") the Court proceeds from the following: "The expression" in accordance with the law "is not only a simple reference to internal law, but also applies to the quality of the law, requiring that it does not contradict the rule of law, which is clearly enshrined in the Preamble of the Convention" [20, p. 15-16].

For a more in-depth analysis of the decisions taken by the Court to establish whether the rights and freedoms guaranteed by the Convention are legitimate or unlawful, we will give a few concrete examples from the Court's practice. First, consider the decisions of the Court in cases concerning restrictions of human rights and freedoms to ensure public morality.

In the Handyside case against the United Kingdom, the applicant, Richard Handyside, who owns the Stage publishing house in London, applied to the Court. In connection with the publication by Richard of the book titled "Little Red Textbook", the English judiciary charged the applicant, explaining this as a violation by the applicant of the Law on Inappropriate Publication. Handisaid was prosecuted in the form of a fine and confiscation (destruction) of the unrealized circulation of this book. The court found that the measures that were taken with regard to the publication of the book and its publisher were not indispensable, since the United Kingdom was tolerant of publications that were "pure pornography" or deprived of intellectual or artistic value. In resolving this case, the Court noted that, "since the rules of morality differ in different countries, it is necessary to respect with great respect the measures taken by the national authorities necessary for the protection of morality." Consequently, the European Court of Human Rights ruled on December 7, 1976, that, in the circumstances of this case, violation of the requirements never there were at the Art. 10 [32].

Similar arguments the court brought in Müller and others v. Switzerland. This case concerned the cantonal power of the artist and those who contributed to the art exhibition, for displaying their pornographic materials to account. The Swiss Federal Court, in the course of considering this criminal case, came to the conclusion that the paintings presented at the exhibition depict "the organization of obscene sexual

practices, shown grossly in large-format pictures" [26]. The applicants were punished in the form of a fine, and the paintings themselves were ordered by the Federal Court to be transferred to one of the museums for storage. After examining the case file, the Court ruled on May 24, 1988, that there was no violation of Art. 10 of the Convention. The court took into account that the rules of morality have changed in recent times, but having read the pictures, it agrees with the opinion of the Swiss judges that the above pictures violate all the requirements of decency. In such circumstances, in the opinion of the Court, according to paragraph 2 of Art. 10 of the Convention, the judgment of the Federal Court of Switzerland on imposing fines and confiscation of indecent material on the applicants is justified in order to ensure public morality [27].

In the analysis of Müller and others v. Switzerland 1976 and Handyside against the United Kingdom in 1988, it is a mistake to conclude that they are practically identical to the changes. In fact, the Court adopted diametrically opposed decisions on each of the above-mentioned cases. This is due to the fact that the Court examines the specifics of the domestic laws of each country individually, and the dominant morality in different countries is not identical. It is likely that if the situations mentioned in these cases took place in the states with other moral attitudes, then the position of the Court would be quite different. Let's look at the example of the Court's decision on the case concerning the restriction of human rights in the area of its private and family life.

In the case of Dujen v. The United Kingdom of Great Britain and Northern Ireland, the applicant, who is a citizen of the United Kingdom, claimed that, since he is a homosexual, the existence in Northern Ireland of the laws proclaiming homosexual acts committed by adult men by mutual consent, a crime, violates his right to private and family life. The applicant complained that, according to the legislation of Northern Ireland, he was liable to criminal responsibility for his unconventional sexual orientation and suffered from constant fear of being subject to prosecution and blackmail. He also complained about a search in his house in January 1978, during which the police removed his personal belongings, which had never been returned. Having carried out a study of the materials of the case, the Court ruled on October 22, 1981, in which it held that there had been violations of Art. 8 of the Convention. In the Court's opinion, the applicant suffers from a permanent unobtrusive violation of his right to respect for private life. At the same time, the Court unequivocally recognized the need for state control over homosexual behavior in a democratic state, primarily to prevent sexual exploitation and abuse of particularly vulnerable segments of the population, in particular young people who are most easily negatively affected. We agree with the Court's judgment in this judgment, in which it concludes that the restrictions imposed on Mr. Daejen, in accordance with the law of Northern Ireland, are not, in view of the broad scope of his action and absolute character, proportional to the purpose stated in art. 8 of the Convention [28].

It is also appropriate to draw attention to the Court's practice in deciding cases where restrictions on freedom of expression are challenged, which in turn guarantees Article 10 of the Convention.

In the case of Lingens v. Austria, the applicant (journalist) was prosecuted because, when he wrote articles published in the journal "Profil" on October 14 and 21, 1975, some expressions were used, namely, "immoral" and "unworthy", In relation to the person who at that time occupied the position of the Federal Chancellor. The contents and the tone of the articles was expressive, but it was quite significant, without the use of abnormal vocabulary. Despite this, the Widen Appellate Court ruled that the above expressions would damage the reputation of the Federal Chancellor and imposed a fine on Mr. Lingens and confiscated the relevant issues of the Profil journal. The applicant lodged a complaint with the Court, which made a decision on July 8, 1986, in which he stated that in this case, Art. 10 of the Convention. The court found that the state unjustifiably intervened in the exercise of the freedom of expression of the applicant, since it was "not necessary to protect morality in a democratic society" and "does not meet the foreseen purpose". That is, the Court concluded that the public discussion of political issues and political figures was important for the existence of a democratic society and a rule of law, and therefore not all negative statements could be considered illegal [29].

In our opinion, such grounds for limitation as "the need for a democratic society" may also be applied quite differently by the Court depending on the specific socio-political situation in a particular country or from other factors.

7. Conclusions

Consequently, the research leads to the conclusion that currently international legal criteria for the restriction of human rights can be considered in at least two aspects:

in the narrow one – as a system of international legal norms containing mandatory regulations for states regarding the possibilities of restricting universally recognized rights and human freedoms

as well as in the broad – as a set of requirements of the world community, reflected in the sources of international law and documents of authoritative international institutions and organizations, on possible restrictions of universally recognized rights and human freedoms.

In the first case, the emphasis is on the legal force of the relevant standards, while in the second one – on the strength of the authority of those entities that have established them.

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Заморская Л.И.

Ограничения прав человека в международном праве.

Аннотация. В данной статье предпринята попытка установить понятие ограничения прав человека в международном прав, а также способы их нормативного закрепления в международных нормативно-правовых актах. Установлено, на основе действующих конституционных актов современных европейских стран способы нормативного закрепления ограничения прав человека в международном праве и перспективы их гуманного применения.

Ключевые слова: права человека в международном праве, ограничения прав человека в международном праве, способы нормативного закрепления ограничения прав человека международном праве.

L. Zamorska

Limitation of human rights is in an international law.

Summary. Taking into account the recognition of Ukraine of the priority of international law over nationality and the declaration of the highest social value of a person, the provision of its rights and freedoms, the issue of elucidation of the entire system of international legal criteria regarding the restriction of human rights and freedoms is relevant.

The criteria of restrictions of rights and freedoms in international law are the main , the fundamental provisions (standards) enshrined in international legal acts, which determine the permissible grounds, conditions and objectives of the restrictions of human rights and freedoms and serve as a guide for the development, introduction changes in internal law by the states of the international community in the area of the establishment and application of restrictions on human rights and freedoms.

The purpose of this scientific research is determined by the establishment of the content of such a phenomenon as a restriction of human rights in international law.

Investigation of the problems of restrictions of human rights and freedoms requires the conformity of the methods applied to objective realities and specific properties (in the broad sense) of the subject subject.

The method of dialectics made it possible to determine the basic property of limiting human rights and freedoms as being in co-operation with other means of legal regulation and changing in accordance with the general tendencies of the development of society as a whole. An actual use was made of the metaphysical method, which more fully revealed the "internal" features of human and citizen rights and freedoms, as well as the processes related to their provision and their limitations, before all on the international level.For the study and deepening of the conceptual apparatus, in particular the "restriction of human rights", "the limits of human rights restrictions", "criteria of human rights constraints", etc., we used the method of system analysis.

The United Nations General Assembly's Universal Declaration of Human Rights, adopted by the General Assembly on December 10, 1948, became the first global international instrument that envisaged the possibility of limiting human rights.

Consequently, the research leads to the conclusion that currently international legal criteria for the restriction of human rights can be considered in at least two aspects: in the narrow one — as a system of international legal norms containing mandatory regulations for states regarding the possibilities of restricting universally recognized rights and human freedoms as well as in the broad — as a set of requirements of the world community, reflected in the sources of international law and documents of authoritative international institutions and organizations, on possible restrictions of universally recognized rights and human freedoms.

In the first case, the emphasis is on the legal force of the relevant standards, while in the second one — on the strength of the authority of those entities that have established them.

Keywords: human rights in international law, restriction of human rights in international law, ways of regulating the restriction of human rights to international law.