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### LIMITS OF ACCEPTABLE STATE INTERVENTION IN THE PRIVATE SPHERE

*The article analyzes the acceptable limits of state intervention in the private sphere. The standards of international and domestic laws are considered to limit the human and civil rights in the private sphere, as well as the limits of possible government interference in private life and conditions of such intervention. Some problems of legal regulation in this area are singled out and solutions are suggested. The author suggests amending certain regulations governing the activities of the state restricting the right to privacy.*

**Keywords:** constitutional right to privacy, rights and freedoms of man and citizen, restrictions on the right to privacy, limitation of rights.

The ability of the State to invoke State security considerations to justify a reduction in the protection provided in the field of human rights is inevitably as a matter of concern, since the risk of abuse cannot be completely excluded. National security is often mentioned in the context of terrorism threat and in our society that survived September 11, 2001, it is developing (and is sufficiently supported by the population) to legitimize various restrictions on the certain rights. Of course, the threats of espionage and terrorism that threaten a democratic society today require the States to take effective protective measures, but the States cannot take any measures under the struggle of such a fight. Thus, we are talking about the assessment of national security as a reason for the use of extraordinary powers by States that allow them to limit the normal protection of fundamental rights.

According to the Presidential Decree of the Russian Federation, dating from 31.12.2015 N 683 "About the Strategy of National Security of the Russian Federation": national security of the Russian Federation (hereinafter - national security) - the state of individual protection, society and the state from internal and external threats, that ensures the implementation of the constitutional rights and freedoms of citizens of the Russian Federation( hereinafter-citizens), decent quality and standard of living, sovereignty, independence, state and territorial integrity, sustainable socio-economic development of the Russian Federation. National security includes the defense of the country and all types of security provided by the Constitution of the Russian Federation and the legislation of the Russian Federation, primarily state, public, information, environmental, economic, transport, energy security, and personal security.

To protect the privacy of citizens, the limits of the State interference in private life should be established. It is established that no one should be subjected to unlawful interference with the implementation of the right to privacy, family, home or correspondence, attacks on honor and dignity. Everyone has the right to the protection of law against such encroachments. The functions of the State to interfere in private and public life are thus limited to defense [1, c. 34], determining the measures of freedom to everyone by establishing the same rules for all and ensuring justice as the means of resolving social conflicts between the members of society [2, c. 11-12] and organizing institutions that cannot be created by individuals, but which are necessary for all of them, for example, the post office, the police, etc. [3, c. 67-71] However,

a lot of this depends on the regulation of the economic basis. If the liberal model assumes that the economy should be regulated itself, the socialist model assumes the planning of the entire economy, the nationalization of society. In practice, neither the principles of liberalism nor the principles of total state power in the economy have been fully implemented anywhere. Although such attempts have been made, they have not brought any complete success in any country. It seems that we should talk about the synthesis of these principles, that is, not about removing the state from economic life, but about the necessary restriction of its interference in the market economy. At the same time, the function of social protection of the population lies totally on the state.

Thus, there is a need for the state to interfere in the life of society and individuals. It is obvious that such an intervention should be carried out within no more than sufficient limits. These can be considered the areas that cannot be regulated without the state, in which the state's activities pursue an objectively and obviously useful goal. At the same time, legal relations by nature arise only where and when private life affects public life, or it is developing into public life, competes with the socially significant interests of the whole society or its individual part. The private life of a citizen itself under no circumstances can be the subject of legal regulation, the object of any state intervention. There should be no grounds and no limits for legal interference in private life. The private life of a citizen should be even outside the sphere of legal influence, and not only legal regulation. The private life of a citizen belongs exclusively to the sphere of his/her internal, independently established and controlled life. Consequently, the only sphere of state intervention is public life and socially useful goals, that is quite consistent with the public nature of state power.

The international acts prohibit the State to interfere in the sphere of private life. Thus, the European Convention for the Protection of Human Rights and Fundamental Freedoms prohibits "interference by public authorities in the implementation of this right, except the cases where such interference is provided for by law and necessary in a democratic society in the interests of national security and public order, the economic well-being of the country, the prevention of riots or crimes, the protection of health, morals or the protection of the rights and freedoms of the others».

The States recognize some – even broad-discretion in assessing threats to national security and selecting measures to address them. However, the Court has a tendency nowadays to require national authorities to ensure that the existence of any threat was reasonably justified in a particular case. In addition, the Court carefully monitors both the need for intervention and its proportionality to legitimate a pursued aim, in this case, the interests of national security. In cases involving national security issues, the States no longer enjoy broad discretion. In other areas, the Court has significantly restricted the freedom of States, for example, with regard to possible existence of measures less detrimental to freedoms (*Van Mechelen et al. v. Netherlands* [*Van Mechelen et autres c. Pays-Bas*]) [4, c. 89], or requirements for the independence of the courts (*Incal v. Turkey* [*Incal c. Turquie*]) [5, c. 34-38]. The Court has also limited the margin of appreciation in certain areas, such as the right to freedom of expression in the army.

Speaking more specifically, in cases involving covert surveillance, the Court becomes more flexible in determining the status of a "victim". As for the condition, that the interference must be "provided for by the law", the Court considers that the law, accessible and predictable, must be sufficiently detailed. The court, in particular, insists on guarantees that should regulate measures of surveillance and storage of information. With regard to the condition of necessity in a democratic society, the Court finds a balance between the Respondent of the State's interest in protecting national security and the seriousness of the interference with the appli-

cant's right to respect the private life, the extreme necessity that means that there must be adequate and effective safeguards against abuse, and the effective control that should normally be provided by the judicial system, at least as the last resort, or at least by the independent supervisory authorities (Klass et al. v. Germany [Klass et autres c. Allemagne]) [6, c. 249-280].

In the case of "whistleblower" connected with the hidden illegal surveillance (Bucur et Toma c. Roumanie v. Romania [Bucur et Toma c. Roumanie]) [7, c. 70-99], the Court held that civil society was directly affected by the public information, since now everyone could think that they might be exposed to wiretapping of their telephone conversations.

In addition to the fact, that this information was concerned abuses of the democratic foundations of the State, it dealt with very important issues arising from political debates, about which the society had a legitimate right to be informed. Thus, it was necessary to establish whether the public interest in maintaining the confidentiality of information exceeded the public interest in being aware of illegal interception of communications.

The realization of the right to privacy confronts individual and public interests. Hence, there is a need to distinguish the rights of the individual and the interests of the state and society as a whole.

The Universal Declaration of Human Rights provides that: "in the realization of their rights and freedoms, everyone should be subjected only to such restrictions that established by law solely for the purpose of ensuring due to recognition and respect for the rights and freedoms of the others and meeting the requirements of morality, public order and the general welfare in a democratic society" 11, paragraph 2 of Article 291.

The Constitution of the Russian Federation (hereinafter - the Constitution of the Russian Federation), focusing on international standards in the field of human rights, allows certain cases in their restrictions: "The rights and freedoms of a person and a citizen may be restricted by federal law only to the extent necessary to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of other people, to ensure the defense of the country and the security of the state", Part 3 of Article 55.

Thus, based on the fact that this position is relevant to all human rights, it applies, in particular, to the right of privacy.

In order the restriction of privacy considered to be legitimate, it is necessary to comply with the following conditions: the rights and freedoms of a person and a citizen can be restricted only by federal law; restrictions of privacy can be established "only for the purpose of protecting the foundations of the constitutional system, morality, health, rights and legitimate interests of other people, ensuring the defense of the country and the security of the state»; the privacy right may be restricted only to the extent that is necessary for the above-mentioned purposes; " restrictions of the constitutional rights must be necessary and proportionate to the constitutionally recognized purposes of such restrictions; in cases where constitutional norms can allow the legislator to establish restrictions for the rights enshrined in them, he cannot carry out such a regulation that would infringe on the very essence of a right and would lead to the loss of its real content.

Making a conclusion about the permissibility of restricting a particular right, in accordance with the constitutionally approved goals, the state should ensure a balance of constitutionally protected values and interests, should not use excessive, but only necessary and strictly conditioned by these goals measures; public interests listed in part 3 of Article 55 of the Constitution of the Russian Federation - they can justify legal restrictions of rights and freedoms only if such restrictions meet the requirements of justice, are adequate, proportionate, proportionate and necessary for the protection of constitutionally significant values, including the rights and legiti-

mate interests of other people, do not have retroactive effect and do not affect the very essence of constitutional law, that is, do not limit the limits and application of the main content of the relevant constitutional norms; in order to exclude the possibility of disproportionate restrictions of human and civil rights and freedoms in a particular law enforcement situation, the norm must be formally defined, precise, clean and clear, not allowing an extensive interpretation of the established restrictions and, consequently, their arbitrary application.

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