

NININS 2020**International Scientific Forum «National Interest, National Identity and National Security»****RIGHT TO FREEDOM OF MOVEMENT AS COMPONENT OF
PERSONAL SECURITY IN RUSSIA**

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Abstract

Currently, the problem of ensuring national security has become especially urgent for the Russian Federation, since state policy is based on the priorities of building a democratic, legal and social state. The change in the focus of state priorities on ensuring and realizing the rights of citizens led to revised and the formation of new approaches to ensuring the national security of the state. The modern structure of national security of the Russian state is based on the totality of personal security, public safety and state security. Personal security is a general category consisting of ensuring the implementation of a set of human rights, including the right to freedom of movement, the inalienability of which is enshrined in the norms of international legal acts. The purpose of the article is to analyze the degree of implementation of international legal acts on personal security in the norms of national legislation of Russia. In the process of the study, the authors used legal, sociological and other methods of scientific knowledge: logical, comparative-legal, method of system analysis, which allowed systematically studying the problems of implementing international standards on personal safety in modern Russian legislation. The study analyzed federal regulations and by-laws (acts of a lower level than federal laws and federal constitutional laws) detailing international standards on freedom of movement.

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1. Introduction

The Russian Federation is an adherent of global trends in countering violations of human rights. The Russian Federation guarantees these rights in the domestic (national) legislation of the country, fixing the grounds and forms of their restriction or deprivation, as well as establishing liability for unlawful acts in this area. Turning to the question of the principled position to ensure the security of all members of the world community, Russia implements a policy to maintain the security of its state, taking into account the observance of the rights of the country's population.

The modern political and legal doctrine of the Russian Federation means by national security the state of protection of the vital interests of the individual, society and the state from external and internal threats. Thus, the national security of the Russian Federation consists of the joint security of the individual, society and the state.

Personal security, as a component of Russia's national security, is a complex concept that consists of many components. Among the components of personal security is the exercise of citizens' rights, one of which is the right to freedom of movement.

Consideration of the peculiarities of the implementation of international legal norms on freedom of movement in the national legislation of Russia allows determining the conformity of national legislation with the requirements of international legal acts, to detail the corpus delicti established by the legislator, and also to determine the state of personal security as a component of the country's national security. The study of the problem under consideration is also crucial because international legal acts are peremptory and are the highest in the system of legal norms, contributing to the compliance of national legislation on personal security with modern requirements of the world community, developing priorities for improving domestic legislation and improving the quality of counteraction to illegal restrictions or deprivations of the right to freedom of movement.

2. Problem Statement

2.1. Ensuring the right to freedom of movement in the Constitution of the Russian Federation

The basis for the consolidation of human rights and the starting point in the formation of areas for ensuring the security of the individual in many civilized, developed, democratic states is the Constitution. The Russian Federation is no exception, the Fundamental Law of which proclaims and guarantees universally recognized principles and norms of international law (Art. 17)¹, since Russia has ratified most international standards on the rights of individuals, including them in the national (domestic) legal system.

Having proclaimed inalienable human rights, the Constitution of the Russian Federation obliged our state to guarantee the security of the individual by securing the right to freedom of movement, allowing arrests, detention and detention only based on a court decision (Art. 22).

¹ Constitution of the Russian Federation. Collected Legislation of the Russian Federation. 26.01.2009. № 4. Art. 445.

This condition for restricting the right to freedom of movement is common for all areas of the state's activity, which the Constitutional Court of the Russian Federation rightly drew attention to, stating that freedom of movement implies the possibility of not being subject to restrictions related to detention, arrest, detention or detention deprivation of liberty in all other forms without statutory grounds, court sanction, or beyond established or controlled time limits².

Thus, the Constitution of the Russian Federation, guaranteeing the security of the individual, proclaimed the right to freedom of movement as one of the fundamental values of a person belonging to him from birth and establishing the possibility of his deprivation based on a court decision (Schmidt, 2017), recognizing otherwise – illegal and criminal.

The multidimensional nature of the category of "personal security" allows including in its content the possibility of free movement, entry and exit from the country, as well as the choice of place of residence, which is reflected in the provisions of the Basic Law of our country.

Thus, the Constitution of the Russian Federation guarantees everyone the right to move freely, to choose their place of residence and residence, as well as the right to freely travel outside the country and return to it (Art. 27).

Paying attention to this right, the European Court of Human Rights (ECHR) in its ruling stated that the lack of registration or registration, replacing the institution of registration, in itself could not serve as a basis for restricting the right to freedom of movement, choice of place of residence or residence³, demonstrating its importance, inalienability and belonging to everyone from birth (Müller, 2010). Not alienation of the right to free movement, choice of place of residence and residence was also noted by the Constitutional Court of the Russian Federation, emphasizing adherence to the norms of international law and indicating its importance for personal development⁴.

At the same time, the proclamation of personal security as the basis of the principles and norms of international law, and the prohibition of its violation in the text of the Constitution of the Russian Federation does not mean the realization of individual rights (Bondar & Dzhagaryan, 2018). The state determined the most effective mechanisms for implementing the provisions of the Constitution of the Russian Federation, fixing priorities for activities in this area and outlining directions to counteract unlawful restriction and deprivation of freedom of movement, including the prohibition of arrests, detention without a court decision (Art. 22) prohibition of forced labour (Art. 37); state and judicial protection of human rights and freedoms (Art. 45, 46); the possibility of restricting the right to personal freedom by federal law (Art. 55), and (Kaplunov, 2019).

² Resolution of the Constitutional Court of the Russian Federation of June 13, 1996 № 14-P "In the case of the verification of the constitutionality of the fifth part of Article 97 of the Criminal Procedure Code of the RSFSR in connection with the complaint of citizen V.V. Schelukhina". Collected Legislation of the Russian Federation. 24.06.1996. № 26. Art. 3185.

³ Decision of the ECHR of March 14, 2017. Case "Yevgeniy Zakharov v. Russian Federation" (complaint № 66610/10). Bulletin of the European Court of Human Rights. Russian edition. 2018. № 5.

⁴ Decree of the Constitutional Court of the Russian Federation of 04.04.1996 № 9-P dated April 4, 1996 No. 9-p "In the case of the verification of the constitutionality of a number of normative acts of the city of Moscow and the Moscow Region, the Stavropol Territory, Voronezh Region and the city of Voronezh regulating the registration of citizens arriving for permanent residence in the named regions". Bulletin of the Constitutional Court of the Russian Federation. № 2. 1996.

Thus, the Constitution of the Russian Federation, referring to universally recognized norms and principles of international law, includes personal security in the "basis" of the national legal system, reinforcing Russia's commitment to universally recognized standards of the international community. Embodying in a legal form the fundamental ideals, values and interests, the provisions of the Constitution of the Russian Federation operate with the category of "personal security" of a high degree of abstraction, serving as the basis for its detailing in normative legal acts of lower levels. That is why the Constitution of the Russian Federation acts as a separate block of normative legal acts, being an exclusive source of law, ensuring the interaction of generally recognized norms and principles of international and national law (Osavelyuk, 2018).

3. Research Questions

3.1. Specialized legislation on freedom of movement

Based on the principles and norms laid down in the Constitution of the Russian Federation, normative legal acts have adopted that detail its provisions and regulate certain aspects of freedom of movement. In particular, the specifics of the implementation of freedom of movement are reflected in the norms of the Law of the Russian Federation "On the right of citizens of the Russian Federation to freedom of movement, choice of place of residence and residence within the Russian Federation."

Based on the implementation of the provisions of the International Covenant on Civil and Political Rights (Art. 12), other international legal acts (Lal, 2018), as well as the provisions of the Constitution of the Russian Federation, the analyzed law proclaims the right of every Russian citizen to free movement, choice of place of residence and residence within the Russian Federation (Art. 1) prohibiting their unlawful restriction or deprivation.

At the same time, during its implementation, a violation of the rights of other persons is possible, due to which the right to freedom of movement is not absolute and requires legal regulation, which is implemented by the law under consideration. The provisions of the law under study also apply to foreign citizens residing in the territory of the Russian Federation, limiting the possibility of visiting certain territories (Andrichenko & Plyugina, 2019), organizations and objects for which special permission is required to enter, as well as fixing other grounds for restricting the right to freedom of movement, choice of place of residence and residence (Art. 8)⁵.

Developing the provisions of the right to freedom of movement enshrined in the Constitution of the Russian Federation, the Universal Declaration of Human Rights (Art. 13) and other international legal acts, the Federal Law of the Russian Federation "On the Procedure for Exiting the Russian Federation and Entering the Russian Federation" establishes the right of everyone to freely leave the borders of the Russian Federation and the right of citizens of the Russian Federation to freely return to the country.

The norms of the law under study are fundamental for legal relations related to the entry into the Russian Federation and the departure from the Russian Federation of foreign citizens since they fix the

⁵ Law of the Russian Federation "On the right of citizens of the Russian Federation to freedom of movement, choice of place of residence and residence within the Russian Federation". Russian newspaper. № 152, 10.08.1993.

list of grounds for restricting the right of citizens of the Russian Federation to leave the country (Art. 15), as well as the list of grounds that do not allow the possibility of entry into the country of foreign citizens or stateless persons (Art. 27), and a list of grounds for deciding on the undesirability of the stay (residence) of foreign citizens in the Russian Federation (Art. 25.10, 26)⁶.

The compliance of the provisions of the analyzed legal acts with the fundamental principles enshrined in the Constitution of the Russian Federation and international standards on personal security was repeatedly considered by the Constitutional Court of the Russian Federation, which examined the features of the mechanism for exercising established rights, the grounds and limits of restrictions on freedom of movement, as well as the system of their protection and protection (Alam, 2006).

The implementation and development of the norms enshrined in international legal acts, the Constitution of the Russian Federation and federal legislation, takes place in by-laws and regulations. By-laws and regulations possess a generally binding character. By-laws and regulations regulate the mechanisms for the realization of the right to individual freedom, in particular, special areas of its implementation.

For example, Decree of the President of the Russian Federation № 347 dated July 16, 2019, "On the procedure for entry into the Russian Federation and departure from the Russian Federation of foreign citizens through checkpoints across the state border of the Russian Federation located in the territories of St. Petersburg and the Leningrad Region", regulates private issues entry and exit from the Russian Federation of foreign persons⁷.

By the Decree of the President of the Russian Federation № 626 dated December 16, 2015, "On the Procedure for the Entry into the Russian Federation and the Departure from the Russian Federation of Foreign Citizens and Stateless Persons in Connection with International Sports, Cultural, Scientific, and Business Mass Events", the Government of the Russian Federation was instructed to determine the list of international sports, cultural, scientific and business events, for participation in which it is permissible to enter the Russian Federation and leave it without issuing visa documents⁸.

By-laws, individual officials of federal executive bodies, are not only endowed with the authority to ensure personal security, but also the procedural aspects of this activity are regulated. For example, Decree of the President of the Russian Federation № 814 dated August 01, 2006, "Issues of the Interdepartmental Commission for the Implementation of the State Program for Assisting the Voluntary Resettlement of Compatriots Living Abroad to the Russian Federation"⁹, regulates specific issues of the realization by a person of his right to determine his place of residence and place of residence.

⁶ Federal Law of the Russian Federation "On the Procedure for Departure from the Russian Federation and Entry into the Russian Federation". Collected Legislation of the Russian Federation. 19.08.1996. № 34. Art. 4029.

⁷ Decree of the President of the Russian Federation № 347 of July 18, 2019 "On the Procedure for Entry into the Russian Federation and Departure from the Russian Federation of Foreign Citizens through Checkpoints across the State Border of the Russian Federation Located in the Territories of St. Petersburg and the Leningrad Region". Collected Legislation of the Russian Federation. 22.07.2019. № 29. Art. 4008.

⁸ Decree of the President of the Russian Federation № 626 of December 16, 2015 "On the Procedure for the Entry into the Russian Federation and Departure from the Russian Federation of Foreign Citizens and Stateless Persons in Connection with International Sports, Cultural, Scientific, and Business Events". Collected Legislation of the Russian Federation. 21.12.2015. № 51. Art. 7314.

⁹ Decree of the President of the Russian Federation № 814 of August 1, 2006 "Issues of the Interdepartmental Commission for the Implementation of the State Program for Assisting the Voluntary

There are a significant number of by-laws and regulations governing certain areas of ensuring personal security and the exercise of the right to freedom of movement, which provide opposition to the unlawful restriction or deprivation of individual rights, the analysis of which is inappropriate.

4. Purpose of the Study

4.1. Restriction of freedom of movement in the legislation of Russia

The implementation of international legal standards on personal security and the right to freedom of movement, as its component, in the norms of domestic law would not be complete without an analysis of the possibilities of limiting or depriving the investigated right, as well as establishing liability for its violation.

The limits of authority of federal government bodies and their officials depend on the norm of part 3 of Art. 55 of the Constitution of the Russian Federation, which provides for the possibility of restricting human rights by federal law only to the extent necessary to ensure national security: protection of the constitutional order, health, the rights of others, ensuring the country's defence and military security of the state.

Creating mechanisms for restricting or depriving a person of their liberty, the legislator provided for subjects, procedures, and grounds for exercising these powers in federal law (Kerr & Xu, 2014). One of the basic regulatory legal acts in this area is the Federal Constitutional Law of the Russian Federation "On the state of emergency," which allows restrictions on freedom of movement, freedom of entry and exit from territories where a state of emergency has been introduced, the ban on rallies, marches, and movement of vehicles (par. "b", "e", "h", Art. 11), a ban on staying in public places at certain times of the day (par. "a", Art. 12), the possibility of extending the period of detention of persons detained on suspicion of committing particularly serious crimes (par. "g", Art. 12), as well as the authority to attract the able-bodied population to mobilization, emergency and rescue operations (par. "e", Art. 13)¹⁰.

In addition to restrictions and deprivations of certain components of individual freedom, the analyzed federal law also provided for mechanisms of direct influence on participants in public relations, including removal from work of heads of state and non-state enterprises (par. "g", "d" Art. 13), the expulsion of persons violating these regimes (par. "e" Art. 12), as well as the temporary resettlement of residents in safe areas (par. "a" Art. 13).

More extensive restrictions on personal freedom are stipulated by the Federal Constitutional Law of the Russian Federation "On Martial Law", which allows the possibility of restricting freedom of movement, traffic, prohibition or restriction of the choice of place of residence and place of residence (Art. 7, 14), as well as restriction of labour (Art. 8)¹¹.

Relocation of Compatriots Living Abroad to the Russian Federation". Collected Legislation of the Russian Federation. 07.08.2006. № 32. Art. 3533.

¹⁰ Federal Constitutional Law of the Russian Federation "On the state of emergency". Collected Legislation of the Russian Federation. 04.06.2001. № 23. Art. 2277.

¹¹ Federal constitutional law of the Russian Federation "On martial law". Collected Legislation of the Russian Federation. 04.02.2002. № 5. Art. 375.

Thus, human rights determine the meaning, context and purpose of laws (Redcay et al., 2019). The norms of the analyzed legal acts are aimed at ensuring the security of the individual, society and the state, allowing for possible restrictions and deprivation of freedom of movement as state guarantees of the protection of national security interests. The provisions of these legal acts provide an exhaustive list of grounds for restricting or depriving freedom of movement, establishing the procedures and limits of these measures.

The basis of jurisdictional activity is the Code of Criminal Procedure of the Russian Federation, which contains an extensive list of procedural means of limiting and depriving freedom of movement (Pomorski, 2006). The freedom of movement measures of procedural coercion and restraint are most significantly affected, including the detention of a suspect (Art. 91), the election of a recognizance not to leave, the prohibition of specific actions, house arrest, detention and others (chap. 13), as well as other procedural measures coercion: drive, suspension (chap. 14)¹².

The establishment of the possibility of a ban to go beyond the premises, to be in certain places, to communicate with certain people, as well as the complete deprivation of freedom of movement associated with isolating it from society, is actively used by law enforcement to protect the individual, society and the state, ensuring the national security of the country.

Further ensuring personal security occurs within the framework of the criminal law of a country containing a significant number of crimes. Criminal law is a severe form of punishment for violating national security in general, as well as its components: security of the individual, society and the state.

5. Research Methods

The research methodology is based on the dialectical method of cognition of social and legal phenomena. The authors used scientific, integrated, organizational, functional, and activity-oriented approaches to studying the category of "national security" and its component "the right to freedom of movement," which allows considering these social and legal phenomena in constant development and interconnection.

In the process of the study, the authors used legal, sociological and other methods of scientific knowledge: logical, comparative-legal, the method of system analysis and modelling, as well as expert assessment methods. These methods made it possible to systematically study the problems of implementing international standards on personal security in modern Russian legislation.

The authors relied on the achievements of the science of philosophy, sociology, international private and public law, and others. In the scientific comprehension of the material obtained, and the content of the study, the fundamental scientific research work of scientists in this field was used.

The conclusions and proposals made are based on the provisions of international regulatory legal acts, as well as the works of Russian and foreign scientists, taking into account the historical experience of existing trends and prospects for the development of modern science.

¹² Code of Criminal Procedure. Collected Legislation of the Russian Federation. 24.12.2001. № 52. Art. 4921.

6. Findings

Ensuring national security has always been the essential activity of any state. At the present stage of development of the Russian Federation, the problem of ensuring national security has acquired particular importance, since Russia has moved to new state policy, the priority of which is the construction of a democratic state of law and the realization of citizens' rights (Koppel, 2017).

Personal security is a priority policy model of many civilized states, acting along with the security of society and the security of the state, one of the components of national security. Guaranteeing the security of the individual, Russia took upon itself obligations to ensure the rights of citizens, including the right to freedom of movement, the inseparability of which is enshrined in many international legal acts (Götz & MacFarlane, 2019).

7. Conclusion

This article analyzed the features of the implementation of international standards on freedom of movement in the legislation of modern Russia. The study indicates the consolidation in the norms of the Constitution of the Russian Federation and federal legislation of the necessary provisions of international law, the recognition and priority of human rights as the highest value, the orientation of domestic legislation on the implementation of human rights and ensuring personal security.

By-laws regulate the provisions of international legal norms, the Constitution of the Russian Federation and the federal legislation of the Russian Federation concerning the implementation of specific provisions of personal security. Having various areas of legal regulation, the norms of domestic legislation implemented the main provisions of international legal acts, detailing their content, securing the legal status of officials and bodies responsible for ensuring freedom of movement, as well as creating procedures and mechanisms for the implementation of this right (Malko et al., 2010).

The analysis of international and domestic legal acts in the field of ensuring national security indicate that freedom of movement can be limited or deprived only based on the law and only within limits established by law (Chatzivassiliou, 2004). The existing mechanism in Russia for implementing the state's preventive measures determines judicial control over its implementation. It is based on the provisions of international legal acts and the Constitution of the Russian Federation. Measures of judicial control of restriction or deprivation of freedom of movement act as a guarantee against unjustified and illegal infringement of this right, ensuring its implementation under the requirements of international human rights standards.

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