ISSUES OF HUMAN RIGHTS RESTRICTIONS IN CIVIL SOCIETY IN THE DOCTRINE OF PUBLIC ADMINISTRATION

Abstract. This research addresses the problem of human rights limitations within civil society, focusing on the role of state governance in this process. It highlights that restrictions on human rights can be justified only when aimed at protecting the common good. However, it also underscores the risks of state abuse of such measures. The analysis considers various approaches to defining the boundaries of human rights, incorporating both liberal and communitarian perspectives. A critical aspect of this analysis is the relationship between individual rights and the collective interests of society. The paper also emphasizes that in democratic contexts, human rights must be safeguarded against arbitrary restrictions.

The role of state governance in limiting human rights is examined, including legislative and institutional mechanisms. The author provides examples where state intervention was necessary to ensure security and stability but stresses that such restrictions must be transparent and subject to public oversight. The paper explores practical aspects of the interaction between the state and civil society regarding human rights limitations. Specifically, it examines the influence of public organizations on human rights policy-making and the role of media in exposing rights violations.

The findings indicate that human rights limitations in civil society are often justified by the need to ensure national security, public order, and the common good. However, the analysis of legislative and institutional mechanisms reveals that these limitations frequently carry risks of abuse by state authorities, potentially leading to arbitrary actions and violations of citizens' rights. Effective human rights protection is achievable only under transparent state governance and active civil society participation in monitoring and policy formation. The recommendations highlight the necessity of improving control mechanisms and engaging the public to ensure a balanced approach to limiting human rights.
In conclusion, the research provides recommendations for enhancing state policies in the field of human rights protection. The importance of establishing mechanisms for monitoring the activities of state authorities and involving civil society in the decision-making process is emphasized.

**Keywords:** human rights, civil society, state governance, rights limitations, national security, public order, democratic control, legislative mechanisms, institutional mechanisms, human rights protection.

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ПИТАННЯ ОБМЕЖЕННЯ ПРАВ ЛЮДИНІ В ГРОМАДЯНСЬКОМУ СУСПІЛЬСТВІ В ДОКТРИНІ ДЕРЖАВНОГО УПРАВЛЯННЯ

Анотація. У дослідженні розглядається проблема обмеження прав людини в громадянському суспільстві, зосереджуючи увагу на ролі державного управління у цьому процесі. Підкреслюється, що обмеження прав людини може бути виправдане лише в умовах, коли воно спрямоване на захист загального блага, але водночас вказують на ризики зловживання такими заходами з боку держави. Розглядаються різні підходи до визначення меж прав людини, що включають ліберальні та комунітарні перспективи. Важливим аспектом аналізу є співвідношення між правами окремих осіб та колективними інтересами суспільства. У статті також акцентується увага на тому, що в умовах демократії права людини повинні бути захищені від свавільних обмежень.

Аналізується роль державного управління в процесі обмеження прав людини, включаючи законодавчі та інституційні механізми. Автор наводять приклади, коли державне втручання було необхідним для забезпечення безпеки і стабільності, проте підкреслюють, що такі обмеження мають бути прозорими та підлягати громадському контролю. У статті досліджуються практичні аспекти взаємодії держави та громадянського суспільства в контексті обмеження прав людини. Зокрема, аналізується вплив громадських організацій на формування політики в сфері прав людини, а також роль медіа у висвітленні випадків порушення прав.

У результаті дослідження було встановлено, що обмеження прав людини в громадянському суспільстві часто виправляються потребою забезпечення національної безпеки, суспільного порядку та загального блага. Проте, аналіз законодавчих та інституційних механізмів виявив, що такі обмеження нерідко супроводжуються ризиками зловживання з боку державних органів, що може призводити до свавільних дій і порушень прав громадян. Важливо, що
ефективний захист прав людини можливий лише за умов прозорого державного управління та активної участі громадянського суспільства в контролі та формуванні політики. Рекомендації дослідження підкреслюють необхідність удосконалення механізмів контролю та залучення громадськості для забезпечення збалансованого підходу до обмеження прав людини.

У завершенні дослідження надаються рекомендації щодо удосконалення державної політики у сфері захисту прав людини. Науковець наголошує на важливості створення механізмів для контролю за діяльністю державних органів та залучення громадянського суспільства до процесу прийняття рішень.

Ключові слова: права людини, громадянське суспільство, державне управління, обмеження прав, національна безпека, суспільний порядок, демократичний контроль, законодавчі механізми, інституційні механізми, захист прав людини.

**Formulation of the problem.** In the realm of global political and legal philosophy, the issue of the universality of human rights encounters diametrically opposed positions: universalism and particularism. Proponents of universalist liberalism, such as John Rawls, argue for the universality of human rights, asserting their applicability across all cultures. This principle of universality, championed by representatives of this viewpoint, holds that all people possess certain inherent rights. In contrast, the denial of this universality stems from various forms of particularism, which emphasize cultural diversity and the protection of cultural identities (e.g., Michael Sandel, Alasdair MacIntyre). For instance, communitarians argue against the universality of human rights by declaring these rights to be merely elements of Western culture, and therefore of only relative value. From their perspective, any claim to the universal value of human rights exposes an imperialism cloaked in the guise of humanism [1, p.221].

Today, no state in the world can exist without adherence to human rights, and human rights cannot exist without civil society as a model for understanding needs—personal, political, social, cultural, economic, environmental, informational, collective, and spiritual [2]. All this requires not only doctrinal consideration in the fields of legal theory, political science, philosophy, and sociology but also must pass through the prism of each nation’s genesis. This prism of genesis will provide not only the universality that contemporary law necessitates but will also acquire a unique national character that will distinguish the development and formation of one nation’s law within civil society from another. In this approach, human rights will have individuality and, thus, a distinct identity.

Numerous studies on the wrongful limitations of human rights highlight the relevance of seeking new solutions to this problem. It is essential to determine the nature of human rights limitations, their admissibility, the boundaries of state
authority intervention, and the selection of the most optimal methodological basis for understanding these issues. It should be noted that scientific doctrine plays a crucial role in shaping current legislation. The fundamental elements of modern human rights law are the result of case law and scientific doctrine, and in judicial decisions, not only are the norms of positive law reproduced, but scientifically grounded arguments that are part of legal doctrine are also utilized and developed [2]. For the theory of state and law, legal practice serves as a factor of refinement, while for legal professionals, new theoretical developments should serve as a stimulus [3, p. 129].

Limitations play a significant role in achieving true freedom for an individual. By limiting each individual’s freedom to a certain extent, the law ensures the unobstructed exercise of their rights, thus guaranteeing freedom within these boundaries. The freedom of each person extends only to the point where the freedom of others begins. By establishing these boundaries, the law contributes to the establishment of order based on freedom in human coexistence [4, p. 57]. This attribute of freedom was considered by the drafters of the French Declaration of the Rights of Man and of the Citizen on August 26, 1789. Article 4 of the Declaration states: “Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights” [5, p. 73].

Analysis of recent research and publications. Issues of Human Rights Restrictions in Civil Society in the Doctrine of Public Administration have been a focal point in recent research and publications. Scholars have delved into various dimensions, shedding light on emerging trends and perspectives within this field. The discourse has expanded to encompass diverse viewpoints, offering critical insights into current challenges and opportunities. These studies have not only enriched our understanding but also fueled further exploration into pressing issues, fostering a dynamic exchange of ideas among academics and practitioners alike.

The purpose of this article is to examine the issue of human rights limitations in civil society within the doctrine of public administration.

Presentation of the main material. The evolution of the concept of human rights from natural rights to positive legal values, which are one of the highest cultural values in general, has been studied by many scholars over the centuries. The process of theoretical reflection on human rights continues to this day, and in recent decades there has been a growing belief that human rights are moral demands on government, not just rights endowed to people from birth, not merely specific opportunities necessary for human existence and development [6, p. 694]. The Bill of Rights of 1689 in England and the corresponding Scottish Claim of Rights Act of 1689 declared some repressive actions of the government illegal [7, p. 616]. In the 18th century, two important revolutions occurred—the American Revolution in 1776 and the French Revolution in 1789. The result of these revolutions was the adoption of the Declaration of Independence of the United States and the Declaration
of the Rights of Man and of the Citizen [8, p. 32]. Both documents established certain legal rights. The formation of ideas and concepts of human rights began from ancient times in human history, from the origins of human civilization. Besides the direct influence on the formation of the concept of human rights and the development of further standards, these acts for the first time reflect the inherent and inalienable nature of rights.

At the end of the 18th and the beginning of the 19th centuries, philosophers Thomas Paine, John Stuart Mill, and Friedrich Hegel worked on the issue of human rights. The term "human rights" itself emerged in the period after Thomas Paine's book "The Rights of Man" and William Lloyd Garrison's article in the newspaper "The Liberator" in 1831, in which the author asserts that he is trying to draw the reader into the great cause of human rights [9, p. 165]. In the 19th century, one of the most important legal issues related to human rights was the issue of abolishing slavery. The abolitionist movement led to the abolition of slavery in Britain by the Slave Trade Act of 1807 and the Slavery Abolition Act of 1833. In the United States, northern states abolished slavery between 1777 and 1804 [10, p. 95]. Under pressure from numerous movements, profound social changes occurred, including in the field of human rights. In Western Europe and North America, trade unions secured laws guaranteeing workers the right to strike, established minimum requirements for working conditions and hours, and secured the prohibition or legislative regulation of child labor. The women's rights movement achieved equal suffrage for representatives of all statuses, while national liberation movements led to the expulsion of colonizers from many countries [10, p. 96].

World wars, great loss of life, and significant human rights violations led to the creation of new institutions aimed at protecting human rights. The League of Nations was established in 1919 with the signing of the Treaty of Versailles, aiming for disarmament, preventing wars through collective security, settling conflicts between states through diplomatic means, and improving the lives of people worldwide [11, p. 48]. At the Yalta Conference in 1945, the Allied states agreed to create a new organization inheriting the role of the League—the United Nations [12]. Immediately after its establishment, the UN began to play an important role in establishing international law, particularly in relation to human rights. Accordingly, human rights, alongside peace, justice, and freedom, are one of the foundational principles of the United Nations. The Universal Declaration of Human Rights (1948), based on more than 80 conventions and declarations protecting human rights, recognizes human rights as the foundation of freedom, justice, and peace. Other historical documents on human rights protection, such as the universally adopted Vienna Declaration and Programme of Action, also affirm that democracy, development, and recognition of human rights are interdependent and mutually reinforcing. Almost completing the work on establishing human rights standards, the United Nations changed its direction towards monitoring the implementation of human rights laws.
In this regard, existing civil society models have been studied. The first model focuses on 'social capital.' This model is widely prevalent, based on the idea that society possesses resources through relationships, trust, and collective action, which can be mobilized for social development. At its core is social capital, the development of which is stimulated by both the state and business. The second model is that of democracy and the rule of law, applicable to transformational changes, as it considers the mechanisms for creating effective and independent institutions whose activities aim to strengthen civil society. This model represents two key approaches to organizing, limiting, and functioning within modern society, political systems, and human rights, based on democratic principles and societal values applied in many modern democratic states.

The next model is focused on community development and involves support from authoritative structures, local initiatives, community groups, and organizations capable of independently making decisions and addressing community-level issues. This model has found application at the local level of governance.

The fourth model is the model of global integration, which presupposes active state participation in international organizations and projects, facilitating the exchange of experiences and resources to enhance stability, development, and human rights protection [13, p. 30].

Based on the study of existing civil society models, we can construct an abstract model, the main components of which include:

- The first block, — the central element of this model is citizens, who are the main participants and actors within this model.
- The second block of the model, — this includes civil organizations, activists, volunteers, and public forums.
- The connecting block, — this comprises the interaction, cooperation, and partnership between different civil society groups.
- The dynamism of the model demonstrates various ways citizens participate in civil society, such as voting, activism, and petitions.
- The foundation of the model is a system of societal values formed on principles of democracy, cooperation, human rights protection, and freedom of speech.

The problem of using the concept of human rights for civil society primarily lies in the fact that they are considered both as a component of such society and as a measure of its conformity to the ideal model of civil society [14]. Defining the content of human rights is further complicated by their identification with specific international standards or provisions of domestic legislation. The degree of protection of human rights and the opportunities for their realization serve as indicators of the effectiveness of civil society [15, p. 7]. Granting specific rights to every member of society is insufficient for it to be considered civil. Therefore, to fulfill these rights not just declaratively, bodies, primarily judicial, and organizations
are created to protect human rights, restore them, and provide compensation in case of violations [16, c. 257]. Human rights serve as guarantees for individuals, thus, when properly implemented, they provide confidence in protection against arbitrariness from both other individuals and the state.

According to Ronald Dworkin, personal rights are political assets in the hands of individuals and minimize the issues of human rights restrictions. Individuals have rights when, for a specific reason, collective goals are not sufficient justification to deny them what they wish to have or do, or to avoid causing them harm or damage [17, p. 771]. It is precisely based on personal rights that individuals can demand not to be hindered in obtaining or doing something, as well as to be compensated for harm in case of violation of such demands.

It should be noted that it is through rights and freedoms that members of civil society maximally realize their needs and interests, both independently and through relevant organizations and associations. Civil society relies on citizens endowed with freedom of thought, action, and choice regarding whom, when, and for what purpose to unite in various spheres of public life [18, p. 43]. The problem in our transitional society is the insufficient activity of rights holders themselves. However, such a situation is not characteristic of civil society, as rights holders are ready to defend them, and involvement by other individuals, public organizations, and government bodies is seen as means of protection, albeit alternative. This situation is also typical for our transformational society, where the realization of human rights is complicated by individuals' 'double value orientation,' meaning the simultaneous existence of old ideals that no longer fit reality and new ones not yet adapted to our reality [19, p. 53]. Moreover, a trend typical of transitional societies, in general, is the mechanical adoption of foreign standards and ideals without proper adaptation.

As an example, under the limitation of human rights and freedoms, J. Carter understands the intervention of public authority into the sphere of individual autonomy solely based on law, introducing specific measures aimed at balancing private and public interests to protect national security, public order, the lives and health of others, and the authority of justice [20, p. 107]. The sphere of individual autonomy is defined solely based on law, introducing specific measures aimed at balancing private and public interests to protect national security, public order, the lives and health of others, and the authority of justice [21]. The scholar notes that the features of human rights implementation in civil society include the availability of diverse, alternative means of their protection through appeals to the courts and government and local self-government bodies, as well as the use of influential public institutions for this purpose, along with the corresponding public activity of rights holders, their self-awareness as owners, and the perception of rights as grounds to treat another member of society as an equal [22, p. 105].

Limitation of rights and freedoms is the lawful, purposeful quantitative and (or) qualitative application in the process of rights implementation of possible
behavior models (rights), which are the main right of a person, on the part of other individuals [23, p. 57]. Regarding this definition, it should be noted that such limitation of possible behavior models occurs not by all individuals, but only by the state and public authorities in accordance with basic principles and criteria."

Today, in the majority of countries worldwide, the issue of compliance, protection, and limitation of human rights and civil rights is very acute. The institution of human rights protection has become particularly active in recent centuries. In this regard, at the international level, there exist numerous normative legal acts that establish human rights and the procedures for their protection. Each modern state with a democratic form of government has enshrined in its national constitutions and other normative legal acts the rights, freedoms, and responsibilities of individuals and citizens, as well as mechanisms for their implementation and protection [24, p. 321]. Based on this, it can be reasonably asserted that the system for ensuring the rights and freedoms of individuals and citizens is a set of interconnected elements aimed at achieving a unified goal — ensuring the rights and freedoms of individuals and citizens.

The foundation of the mechanism for protecting the rights and freedoms of individuals and citizens consists of legal principles, norms (legal guarantees), as well as the conditions and requirements for the activities of government bodies, local self-government bodies, their officials, and citizens, collectively ensuring the observance, implementation, and protection of the rights and freedoms of citizens [25, p. 54]. It is believed that this system comprises interconnected constitutional norms that establish the fundamental rights and freedoms of citizens, establish guarantees for their implementation, and also includes a system of state authorities, local self-government bodies, and other state institutions that ensure, protect, and defend the fundamental rights and freedoms of citizens.

The institutional framework of the mechanism for ensuring the principle of equality of rights and freedoms of individuals and citizens arises from the procedural-legal normative component and includes a system of state authorities, local self-government bodies, political parties, and public organizations, as well as citizens themselves, whose activities are aimed at implementing, safeguarding, and protecting equality. All of these can be divided into two groups: those endowed with the function of protection on behalf of the state, and those that ensure the principle of equality of rights and freedoms of individuals and citizens as institutions of civil society [26, p. 43].

The mechanism and procedure for restricting rights stem from the provisions of the Universal Declaration of Human Rights, specified by the practice of the European Court of Human Rights [27, p. 1269]. This mechanism is called the triangle of legitimacy in restricting human rights. It forms the basis for the activities of the European Court itself, national courts, and ensures the lawful restriction of human rights. This mechanism consists of three mandatory components: legality of
restriction, i.e., the existence in national legislation of grounds for such restriction of rights; legitimate aim — protection, provision, and implementation of the rights and interests of others, society, national security, and other goals primarily provided for by legislation; necessity in a democratic society, i.e., the impossibility of resolving the situation differently without such restrictions, as well as achieving proportionality between restricting the rights of one person and protecting the rights of others [28, p. 26].

According to scholars, the mechanism of the triangle of legitimacy in restricting human rights is effective in application and conforms to the spirit of democracy and the rule of law. The process of resolving a specific case of restricting rights involves passing each specific situation through this triangle by the law enforcement body and making the corresponding decision. In cases where one of the elements of the triangle is absent in the decision on restricting rights, such restrictions are recognized as unlawful and inconsistent with the principles of legality and the rule of law.

Another contradiction concerns the impossibility of defining the term 'public morality.' This is a rather vague concept that, in a certain way, can provide discretionary powers to authorities to restrict certain information, thus establishing officially prohibited censorship [29, p.211] (Hruzevskyi, 2023, p. 63). In addition, the difficulty in defining necessity arises from the practice of the European Court, somewhat contradicting the provisions of Article 10(2) of the Convention. That is, on the one hand, Article 10(2) of the Convention allows for the restriction of freedom of speech to protect public morality; on the other hand, it provides for the possibility of disseminating shocking information that may contradict morality.

Restricting human rights and freedoms is a necessary component of the legal system of any state and modern society, which objectively leads to its legislative regulation and the creation of a separate cross-sectoral legal institute. Such restrictions must have a legal character and be imposed only in accordance with the common interest — national security, public order, protection of moral norms, protection of the rights and freedoms of others, where the right of another person in a lawful balance predominates.

Conclusions. The necessity to observe legal restrictions on these rights to ensure the safety of others and society as a whole is paramount. However, it should be noted that any restriction of rights must be based on principles such as legality, truthfulness, and proportionality. Human rights defenders encourage and protect the rights of groups such as indigenous communities. This definition does not apply to individuals or groups resorting to violence or promoting it. Importantly, within the UN Human Rights Council, there exists a UN Special Rapporteur on the situation of human rights defenders and corresponding regional mechanisms for the protection of human rights defenders.

Restrictions entail specific legal and factual consequences in the form of 'uncomfortable' conditions for the exercise of the legal interests of the relevant
natural and/or legal persons whose rights and freedoms are restricted, satisfying certain lawful interests of the authority imposing these restrictions or the interests of a third party interested in the imposition of such restrictions. Furthermore, in every case, restrictions always lead to a reduction in the scope of permissible behavior or actions regulated by law for the subjects. Implementing restrictions in response to emergencies always establishes lawful limits to their implementation, particularly in spatial or temporal terms. Legitimate restriction under emergency conditions is established only by duly authorized entities following specific procedures defined by legal norms.

Another characteristic is that restrictions applied during emergencies are always associated with an expansion of the competence of state authorities or local self-government responsible for mitigating the negative consequences of the emergency situation. It should be noted that such expansion occurs at the expense of reducing the scope of implementation of rights, freedoms, and lawful interests of natural and legal persons.

References:


19. Nalivayko, L., Stepanenko K. (2019). International legal standards of human rights. Tutorial. Dnipropetrovsk State University of Internal Affairs. 184 p. URL: https://er.dduv.su/bitstream/123456789/3716/1/%D0%9C%D0%9F%D0%A1%D0%9F%D0%9B%D0%BD%D0%B0%D0%B2%D1%87.%20%D0%BF%D0%BE%D1%81%2096%D0%B1%D0%BD%D0%B8%D0%BA_05.06.19.pdf


Література:


19. Nalivayko, L., Stepanenko K. (2019). International legal standards of human rights. Tutorial. Dnipropetrovsk State University of Internal Affairs. 184 p. URL: https://er.dduvs.in.ua/bitstream/123456789/3716/1/%D0%9C%D0%9F%D0%A1%D0%9F%D0%9B%D0%BD%D0%B0%D0%B2%D1%87.%20%D0%BF%D0%BE%D1%81%D1%96%D0%B1%D0%BD%D0%B8%D0%BA_05.06.19.pdf


