Universal Decimal
Classification 342.9

Mel'nikov V. A.

MEANS OF ADMINISTRATIVE-LEGAL RESTRICTION ON CITIZENS' RIGHTS IN ACTIVITIES OF INTERNAL AFFAIRS BODIES OF THE RUSSIAN FEDERATION[1]

Mel'nikov Valerii Anatol'evich,
c.j.s. (PhD in law), Professor of the Chair of constitutional and administrative law at Volgograd Academy of the RF MIA, Associate professor, Volgograd.

Despite the fact that the legal regulation of the content of and grounds for the application of measures of administrative coercion in the Russian Federation shall be the sole competence of the legislator and, therefore, be contained only in federal laws, the author argues that this categoricalness does not apply to the legal regulation of the application of administrative coercion measures. According to the author, "the legal regulation of application of administrative coercion measures can be implemented both by law and by subordinate acts, but only strictly based on the law".

The facts of delegation to the federal bodies of executive power of powers in part of normative determination the order of realization of restrictions imposed by the legislator and determining the amount of a special administrative-legal status of certain groups of citizens.

The means of administrative-legal restriction on the rights of citizens by the internal affairs bodies are listed in the article.

[1]Published on materials of VIII All-Russian scientific-practical conference «Theory and practice of administrative law and process» (Krasnodar — Nebug — 2013)

Keywords: human and civil rights and freedoms, restriction on the rights of citizens, administrative-legal restrictions, activities of internal affairs bodies, mechanism of restriction on the rights of citizens.

The mechanism of implementation of administrative-legal restrictions on the rights of citizens we recognize as a totality of legal ways and means, by which authorized bodies (their officials) establish and (or) implement administrative-legal restrictions on the rights of citizens.

With regard to the mechanism of implementing administrative-legal restrictions on the rights of citizens in the activity of internal affairs bodies, it should be noted that the authorities, which are direct participants of this mechanism, are known to us. They are the bodies of internal affairs. The object of the mechanism impact is also known – it is the rights of citizens that are limited in order to ensure a proper balance between the interests of a citizen and society. And in this sense, within the framework of researching the issues of the mechanism of implementing administrative-legal restrictions on the rights of citizens in the Russian Federation by internal affairs bodies, particular significance is gained by the issue of determining the means of implementation administrative-legal restrictions on the rights of citizens in activity of this one of the federal executive bodies.

The legal means of administrative-legal restriction on the rights of citizens in general we recognize as the totality of means-establishments, expressed in the norms of administrative law (rights establishment level), and means-deeds in the form of an individual legal act (law-enforcement level), which restrict the rights of citizens in order to ensure the proper balance between the interests of a citizen and society.

There is no doubt concerning the legality of attributing internal affairs bodies to the subjects of rulemaking. However, everything is not so simple regarding the possibility of normative regulation by internal affairs bodies of legal relations, the content of which covers restriction on the rights of citizens.

Part 3 article 55 of the Constitution of the Russian Federation [1] lays down that "the rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State".

Literally interpreting part 3 article 55 of the Constitution of the Russian Federation, many authors suggest that "the grounds, conditions and procedure for the implementation of measures of administrative coercion, the list of measures that are acceptable for use in certain cases, authorities responsible for their application, – all this should be defined only by the norms of federal laws. …However, unfortunately, there is still in effect a certain number of subordinate and even departmental acts authorizing various public authorities in certain cases to apply the measures of administrative coercion and determining the order of their application" [7, 520].

"Since the main threat of unreasonable restrictions comes from executive power, the Constitutions generally provide for the possibility of restrictions on fundamental rights only by law or on the basis of law, i.e., by acts, in the adoption which the executive power is not directly involved" – says M. V. Baglai [6, 165-166]. In the above quote the author understands the restriction on fundamental rights on the basis of law only as adoption of acts, "in the adoption which the executive power is not directly involved". Only the forms of indirect participation of executive power in the adoption of such acts remain uncertain.

Basic Law of the Federal Republic of Germany speaking about the restrictions on the rights and freedoms of citizens repeatedly uses the phrase "by law or on the basis of law". For example, part 1 article 12 of the Basic Law of the Federal Republic of Germany states that "exercise of profession may be regulated by law or on the basis of law". On this occasion, German scientist K. Hesse noted that "in the first case the legislator itself implements restriction without need for further exercising of an executive act, in the second – it regulates the preconditions, under which the bodies of executive or judiciary power can or should exercise a restriction" [10, 165]. In the above quote to the restrictions on rights of citizens on the basis of law the author attributes only the cases of adoption by authorized bodies (their officials) of discretionary decisions about the scope and necessity of imposition such restrictions (i.e. decisions on the application of state coercive measures). The existence of such a possibility of actions of authorized persons on the basis of law raises no objections, but it seems to us not the only one.

T. S. Moskalenko notes that "restrictions on the rights of citizens must be applied within a specific mechanism which shall be understood as a certain system, which defines procedures for restricting the rights of citizens. The author includes into this system the following structural elements: 1) the grounds of restriction on the rights of citizens – factual and legal; 2) the subjects of restriction on the rights of citizens; 3) the objects of restriction; 4) the measures of restriction on the rights of citizens – non-recognition of rights, suspension of rights, deprivation of rights

or complication of the procedure for their implementation" [9, 12]. It seems that the definition of the mechanism of restriction on the rights of citizens contained in the citation is unduly narrowed down by the author, and he puts an equal sign between this mechanism and procedure of application these restrictions. Apparently this preconditions the fact that further as one of the common signs of restrictions on the rights of citizens the author notes that "restrictions on the rights of citizens are defined in federal laws, and subordinate normative legal acts and individual acts on application of law norms must contain only the mechanism for their implementation" [9, 12]. In this citation the author also equates the mechanism of restriction on the rights of citizens and the procedure of application these restrictions to citizens. But even in this case, it is difficult to agree with the author that the individual acts on application of law norms may contain the procedure of application to citizens the restrictions of their rights. Since the individual acts, as reasonably pointed out by the author, are always just the acts on application of law norms. But the regulation of the procedure of application to citizens the restrictions on their rights by subordinate normative legal acts seems to us, in some cases possible.

"Of course, the inclusion into the law both the restrictions of right and the procedure for implementation of this restriction can be considered as a perfect option. However, in this case in the absence of legally prescribed procedure for implementation of right restriction the restrictions stipulated by the law, …will have no legal force" – it is, in our view, rightly noted by V. P. Kamyshanskii [8, 47].

It appears that the legal regulation of the content and grounds for the application of measures of administrative coercion in the Russian Federation should be the sole competence of the legislator and, therefore, be contained only in federal laws. Such categoricalness is not applied by us to the legal regulation of the procedure for application measures of administrative coercion. In our view, the legal regulation of the procedure for application measures of administrative coercion can be carried out both by law and subordinate laws, but only strictly on the basis of law.

A number of existing normative-legal acts, which have the force of law and regulate imposition of rights restrictions on citizens, directly provide for the possibility of legal regulation of the procedure (or certain provisions of the procedure) for applying measures of administrative coercion by the bodies of executive authority of the Russian Federation. So, part 2 article 27.6 of the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF) [2] contains a provision according to which "the conditions for holding detainees in custody, nourishment norms and the procedure for medical treatment of such persons shall be determined by the Government of the Russian Federation". However, the conditions for

holding in custody, nourishment norms and the procedure for medical treatment of persons, who have been subjected to administrative detention, is an integral part of the procedure for application such a measure of administrative coercion as administrative detention.

The second paragraph of part 2 article 27.15 CAO RF contains a provision, according to which the delivery shall be carried out "by an internal affairs body (the police) on the grounds of a ruling issued by the mentioned body, another body or official that considers a case concerning administrative offence, in the procedure established by the federal executive body in the area of internal affairs". In this case the legislator has fully delegated to the Ministry of Internal Affairs of the Russian Federation its powers concerning the legal regulation of the procedure for application such measure of administrative coercion as delivery.

Thus, it appears that *the legal regulation of the content of and grounds for the application measures of administrative coercion in the Russian Federation is an exclusive competence of the legislator and, consequently, can be contained only in federal laws. On the basis of law, through delegating by the legislator of its powers to the specifically listed in law federal bodies of executive authority, only legal regulation of the procedure (or certain provisions of the procedure) for application certain measures of administrative coercion is possible.*

However, delegating by the legislator of its powers on legal regulation of the procedure (or certain provisions of the procedure) for application certain measures of administrative coercion to federal bodies of executive authority is not the only legal means of administrative-legal restriction on the rights of citizens by internal affairs bodies. The legislator can also delegate to federal bodies of executive authority the powers concerning the normative determination of the procedure for implementing restrictions that are established by the legislator and determine the volume of a special administrative-legal status of certain groups of citizens.

In addition, legal regulation of the procedure for implementation these restrictions by a federal body of executive authority may be not only an internal (in relation to the federal body of executive authority exercising this regulation), but also of an external orientation.

Examples of delegation by the legislator to federal bodies of executive authority of its powers on legal regulation of the procedure for implementation of the laid down in law restrictions on special administrative-legal status of the staff of these authorities can be provisions of a number of articles of the Federal law "On the Police" [5]. So, in accordance with paragraph 1 article 27 of the Federal Law "On the Police", a police officer is obliged to undergo regular checks of the knowledge

of the Constitution of the Russian Federation, legislative and other normative legal acts in the sphere of internal affairs. Legal regulation of the procedure for undergoing such test is entrusted to the federal body of executive authority in the sphere of internal affairs.

In accordance with paragraph 2 article 37 of the Federal law "On the Police" "police officers, if necessary, may be involved in performing official duties in excess of the duration of weekly work time, as well as at night time, on weekends and public holidays. Legal regulation of the procedure of such involvement is also entrusted by the legislator on the federal executive body in the sphere of internal affairs.

The current legislation has also examples of the delegation by the legislator to federal executive body of its powers on legal regulation of the procedure for implementation of established by law restrictions of special administrative-legal status of not only the employees of these bodies, but also other specified by law groups of citizens (the powers of federal executive bodies of external orientation).

So, part 3 article 16 of the Law of the Russian Federation No. 2487-1 from March 11, 1992 "On Private Detective and Security Activities in the Russian Federation" [3] establishes responsibility of private guards be periodically inspected for suitability to act in situations involving the use of firearms and (or) special means. The powers on legal regulation the content of such periodic inspections, the order and timing of their conduct the legislator delegates to the Ministry of Internal Affairs of the Russian Federation.

Part 3 article 6 of the Federal Law No. 77-FL from 14.04.1999 "On Departmental Security Service" [4] contains a provision stating that "departmental security service personnel are required to undergo annual medical examinations, as well as periodic checks for suitability to act in conditions associated with the use of physical force, special means and firearms". These examinations and checks are also implemented in the order established by the Ministry of Health of the Russian Federation and the Ministry of Internal Affairs of the Russian Federation.

The existing in the current legislation examples of delegation by the legislator to federal executive bodies of its powers on legal regulation of the procedure for implementation of established by law restrictions of special administrative-legal status of not the employees of these bodies, but other specified by law groups of citizens (the powers of federal executive bodies of external orientation), appear to be insufficiently substantiated.

In this case there is a legal regulation of the procedure for restriction on the rights of citizens by a federal executive body, where the body is a party to

the relevant legal relations. It turns out that in these cases the federal body of executive authority implements legal regulation of its own external activity in legal relations on restriction the rights of citizens.

Delegation by the legislator of powers on the legal regulation of restriction on the rights of citizens by any federal executive body to the executive body itself seems unacceptable, or, as an option, possible only in exceptional cases for the higher federal body of executive authority – the Government of the Russian Federation.

Bodies of internal affairs are one of the main bodies that are authorized to apply measures of administrative coercion in the Russian Federation. Each year, internal affairs bodies reveal more than 70 million administrative offences. The number of measures of administrative coercion applied by internal affairs bodies is at times more.

Given the fact that application of measures of administrative coercion is the only possible means to implement the law-enforcement method of administrative-legal restrictions on the rights of citizens, we should admit the existence of such means of administrative-legal restriction on the rights of citizens in the arsenal of internal affairs bodies.

Taking into account the above, as *the first means of administrative-legal restriction on the rights of citizens by internal affairs bodies* acts the establishment of restrictions on the special administrative-legal status of employees of internal affairs bodies by local norms of law relating to the execution of their official duties.

As *the second means of administrative-legal restriction on the rights of citizens by internal affairs bodies* acts the establishment of restrictions on the special administrative-legal status of employees of internal affairs bodies that are not related to the performance of their official duties, which are created by delegating by the legislator to a federal executive body of its powers in the area of internal affairs.

As *the third means of administrative-legal restriction on the rights of citizens by internal affairs bodies* acts legal regulation of the procedure (or certain provisions of the procedure) for application certain measures of administrative coercion carried out on the basis of law, and created by delegating by the legislator to a federal executive body of its powers in the area of internal affairs.

The fourth means of administrative-legal restriction on the rights of citizens by internal affairs bodies is a legal regulation of the procedure for implementing of established in law restrictions on the special administrative-legal status of employees of internal affairs bodies, which is created by delegating by the legislator to a federal executive body of its powers in the area of internal affairs.

The fifth means of administrative-legal restriction on the rights of citizens by internal affairs bodies is application of measures of administrative coercion by employees of internal affairs bodies.

Delegation by the legislator to federal executive bodies in the area of internal affairs of its powers on legal regulation of the procedure for implementation of established by law restrictions of special administrative-legal status of not the employees of these bodies, but other specified by law groups of citizens (the powers of federal executive bodies of external orientation), appears to be unacceptable. Possibility of legal regulation of the content of and grounds for the application measures of administrative coercion in the Russian Federation also cannot be the legal means of administrative-legal restriction on the rights of citizens by internal affairs bodies. Such legal regulation should be an exclusive competence of the legislator and, consequently, should be contained only in federal laws.

Determination of the list of means of the mechanism for implementation of administrative-legal restriction on the rights of citizens in the Russian Federation by internal affairs bodies provides possibility of a comprehensive study of theoretical problems of legal regulation the activities of internal affairs bodies concerning the application by their officials of measures of administrative coercion of various groups.

References:

1. The Constitution of Russian Federation: adopted by popular vote 12.12.1993 [Konstitucija Rossijskoj Federacii : prinjata vsenarodnym golosovaniem 12.12.1993]. *System GARANT* [Electronic resource], Moscow: 2013.
2. Code on Administrative Offenses of the Russian Federation from December 30, 2001, No. 195-FL [Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh ot 30 dekabrya 2001 № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2013.
3. Law of the Russian Federation No. 2487-1 from March 11, 1992 "On Private Detective and Security Activities in the Russian Federation" [Zakon RF ot 11 marta 1992 g. № 2487-1 «O chastnoi detektivnoi i okhrannoi deyatel'nosti v Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2013.
4. Federal law No. 77-FL from April 14, 1999 "On Departmental Security Service" [Federal'nyj zakon ot 14 aprelja 1999 g. № 77-FZ «O vedomstvennoj ohrane»]. *System GARANT* [Electronic resource], Moscow: 2013.
5. Federal Law No. 3-FL from February 07, 2011 "On Police" [Federal'nyi zakon ot 7 fevralya 2011 № 3-FZ «O politsii»]. *System GARANT* [Electronic resource], Moscow: 2013.

6. Baglai M. V. *Constitutional Law of the Russian Federation. Textbook* [Konstitutsionnoe pravo Rossiiskoi Federatsii. Uchebnik]. Moscow: 1998.

7. Bakhrakh D. N., Rossinskii B. V., Starilov Yu. N. *Administrative Law: Textbook. 3rd revised and enlarged edition* [Administrativnoe pravo: uchebnik. 3-e izd., peresmotr. i dop.]. Moscow: 2007.

8. Kamyshanskii V. P. *Limitations and Restrictions of Ownership* [Predely i ogranicheniya prava sobstvennosti]. Volgograd: 2000.

9. Moskalenko T. O. *"Constitutional and Legal Grounds for Restricting the Rights and Freedoms of Man and Citizen in Order to Ensure the Security of the Russian Federation"*. Thesis abstract of a candidate of legal sciences [«Konstitutsionno-pravovye osnovaniya ogranicheniya prav i svobod cheloveka i grazhdanina v tselyakh obespecheniya bezopasnosti Rossiiskoi Federatsii». Avtoref. dis. ... kand. yurid. nauk]. Moscow: 2012.

10. Khesse K. *Foundations of Constitutional Law of FRG* [Osnovy konstitutsionnogo prava FRG]. Moscow: 1981.