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**TÍTULO:** Aspectos teóricos del concepto y contenido del derecho constitucional humano a la libertad y la seguridad.

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**RESUMEN:** El problema de la libertad como estado de personalidad es uno de los más importantes, discutibles y relevantes en la ciencia jurídica durante muchos siglos. Está estrechamente relacionado con los problemas del lugar y el papel de una persona en el estado ruso y en el sistema legal emergente, con la implementación individual de los derechos y libertades constitucionales básicos, así como con la necesidad de mejorar los mecanismos legales que garanticen una posición digna de la persona en el mundo.

**PALABRAS CLAVES:** Libertad, inviolabilidad, derechos humanos, derecho.

**TITLE:** Theoretical aspects of the concept and content human constitutional right to liberty and security.

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**ABSTRACT:** The problem of freedom as a state of personality is one of the most important, debatable and relevant in legal science for many centuries. It is closely connected with the problems of the place and role of a person in the Russian state and in the emerging legal system, with the individual's implementation of basic constitutional rights and freedoms, as well as with the need to improve legal mechanisms that ensure a person's worthy position in the world.

**KEY WORDS:** Freedom, inviolability, human rights, law.

**INTRODUCTION.**

According to the data of the General Prosecutor's Office of the Russian Federation, in 2018, prosecutors revealed more than 4 million violations of laws in the framework of supervision of the implementation of laws and the observance of human and civil rights and freedoms. Of these, 2.3 million - in the field of observance of human and civil rights and freedoms, 371.2 thousand - in the rights and interests of minors. Such a development of the situation requires clarification of the reasons, the development of scientifically sound recommendations for improving the situation with the protection of the human right to freedom and personal integrity and determines the relevance of the study (Repyev et al., 2016).

Despite the many attempts made, the problem of individual freedom and personal integrity by domestic legal science has not been studied enough (Kozlova et al., 2008). There are no clearly defined approaches, little fundamental work devoted to it. As a rule, freedom and personal inviolability are considered in the totality of individual rights, without revealing their essence,

mechanisms and conditions for their implementation, and most of the materials published about them are descriptive or are strictly limited by industry or legislation (Utyashev, 2008). This narrows the idea of the object of study, prevents the knowledge of its nature, inextricable connection with other phenomena of legal reality and, ultimately, prevents the search for ways to improve Russian legislation in this area.

Freedom is considered the main value of the individual. Questions on the creation of an effective mechanism for its provision and on the limits of the restriction of individual freedom are leading in the science of constitutional law. Equally important are the issues of using a person's freedom, avoiding the infringement of the legitimate interests of other individuals and society, and abusing a person's freedom (Lukasheva, 2007).

The search for a compromise between the freedom of the individual and the limits of its restriction by state authorities; on the one hand, and the abuse of freedom by the individual, on the other; it is especially relevant in the context of proclamation of personal freedom, as main value of the state, the priority of human rights and freedoms among other principles of constitutional activity.

Freedom from a philosophical concept flows into the plane of political and legal problems and is already becoming a legal concept as a certain complex of personality competencies, as a determining value of its legal status, as the main characteristic of a person and citizen - the subject of constitutional law.

There is no such legal system or legal ideology that would deny individual freedom or openly neglect it. The problem of identifying and realizing human capabilities was a serious step towards the development of our society and state. The modern world cannot be imagined without individual freedom, which is the object of research in many humanities and legal sciences (Zaitseva, 2015).

The constitutional law of the Russian Federation enshrined in its norms the basic provisions providing for a certain autonomy of the individual, its guaranteed independence from other members of society and the state.

In a state of law, a special place is occupied by the right to life, freedom and security of person. In the scientific literature they are usually referred to as personal rights and freedoms. The main purpose of personal rights is to guarantee human life and provide protection against all forms of violence, cruel or degrading treatment; individualize a citizen, create conditions for personal inviolability and non-interference in private and family life; guarantee individual freedom, the possibility of unhindered choice of various behaviors in the sphere of national, moral, religious and other relations, where the individual acts as a biosocial being (Pyatkina,2000). Being fundamental in nature, they are based on international norms and principles and are guaranteed by the Constitution of the Russian Federation.

## **DEVELOPMENT.**

### **Methodology.**

The methodological basis of the research consists of general scientific, private scientific and special methods of cognition. The analysis method was used in the interpretation of regulatory legal acts, the study of special legal literature and the study of materials of judicial practice. The synthesis method was used to substantiate the conclusions of the conclusion of the work.

### **Discussion and results.**

According to Art. 3 of the Universal Declaration of Human Rights, everyone has the right to life, liberty and security of person. As a member of the Council of Europe, the Russian Federation enshrines European human rights standards in its domestic law, since in the modern world human rights are becoming a formal legal source of a legal norm.

In accordance with Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, no one may be deprived of their liberty except in the following cases and in the manner prescribed by law:

- 1) The lawful detention of a person convicted by a competent court.
- 2) The lawful detention or detention (arrest) of a person for failure to comply with a court decision made in accordance with the law or for the purpose of ensuring the fulfillment of any obligation prescribed by law.
- 3) The lawful detention or detention of a person so that he would appear before the competent authority on reasonable suspicion of an offense or in the case when there are sufficient grounds to believe that it is necessary to prevent the offense or prevent him from hiding after his commission.
- 4) The detention of a minor on the basis of a lawful order for educational supervision or his lawful detention in order to bring him before the competent authority.
- 5) The lawful detention of persons in order to prevent the spread of infectious diseases, as well as the lawful detention of mentally ill, alcoholics, drug addicts or vagrants.
- 6) The lawful detention or detention of a person in order to prevent his illegal entry into the country or of the person against whom measures are being taken to expel or extradite him.

Everyone who is arrested is promptly informed, in a language that he understands, of the reasons for his arrest and of any charge against him (Komarov, 2014).

Each detainee or detainee is immediately brought before a judge or other official who is vested with judicial power in accordance with the law and is entitled to a trial within a reasonable time or to release pending trial. Release may be subject to guarantees of appearance in court.

Everyone who is deprived of his liberty as a result of his arrest or detention shall have the right to an immediate review by the court of the lawfulness of his detention and to release if his detention is declared unlawful by the court (Komarov et al., 2014).

The right to liberty and security of person is established by Part 1 of Art. 22 of the Constitution of the Russian Federation. This right means that a person has the right to perform any actions that are not contrary to the law, and at the same time he should not be subject to restrictions. A person has the right to physical and spiritual integrity.

Personal inviolability implies the inadmissibility of any outside interference in the field of individual life activity of a person and includes physical (bodily) inviolability, sexual and mental integrity. In accordance with Part 2 of Art. 22 of the Constitution of the Russian Federation, arrest, detention and detention are allowed only by a judicial decision.

Prior to a court decision, a person cannot be detained for more than 48 hours. Free actions (or abstention from them) of an individual are permissible, since they cannot be harmful to other individuals, organizations, society, and the state. To this end, industry laws (criminal, civil, family, administrative, labor, etc.) establish permissions and prohibitions within which everyone is free to choose behaviors. Ensuring the physical integrity of the person implies the creation of sufficient state guarantees against any encroachment on her life, health, sexual integrity, freedom of physical activity both on the part of the state in the person of its organs and officials, and on the part of individual citizens (Voevodin,1997).

In the concept of “freedom of the individual” the emphasis is on the term “freedom”. If the concept of “personal freedom”, having received a legal expression, retains a certain psychological content and requires analysis and consideration of the psychological laws of the personality, then the concept of “freedom”, due to its ontological and epistemological universality, initially required philosophical and legal reflection (Faryma et al., 2014).

In our opinion, in constitutional law, freedom is a complex conceptual concept, which includes the following status meanings:

1. Freedom as the basis of the constitutional order. In this sense freedom is reflected in the Constitution of the Russian Federation, which enshrines the free development of man (Article 7), the free movement of goods, services and financial resources (Article 8), freedom of economic activity (Article 8), etc.

2. Freedom as a principle of legal regulation. Law as a measure of freedom acts as a regulator of social relations taking shape in the field of constitutional law.

3. Freedom as the competence of the subject of constitutional law. Freedom is an inalienable property of all subjects of law: individuals regardless of the citizenship of the individual, people as a collective subject, state and state-territorial entities that exercise freedom as authority through elected representatives, officials and associations of citizens (for example, political parties), within their competence defined by the current legislation of the Russian Federation.

Corporal immunity and sexual freedom are protected by criminal law (criminal liability for murder, bodily harm, rape, etc.), civil law (obligations arising from causing harm, in particular, a source of increased danger), administrative law (liability for offenses under occupational safety and health), criminal procedure legislation (prohibition of harassing the testimony of the accused and other persons involved in the case through violence, threats and other illegal measures, the production of an investigative experiment, provided that this does not create a danger to the health of the persons participating in it).

The physical integrity of a person in the field of medicine is protected by the rule that any medical intervention, whether an operation, a complex diagnostic procedure or an ordinary injection, is allowed only with the consent of the patient.

Based on the legal position of the Constitutional Court of the Russian Federation, authorized bodies, and above all the court, can make decisions relating to their jurisdiction regarding the choice of a preventive measure in the form of detention, its cancellation or amendment, as well as the extension

of the term of detention only with taking into account whether or not sufficient evidence is given for the grounds for applying this preventive measure mentioned in the criminal procedure law. Moreover, it is the court that makes the decision to elect custody as a measure of restraint or to extend the period of detention in custody that is responsible for assessing the sufficiency of the materials submitted by the parties to make a lawful and informed decision.

For the first time, by the norms of the Constitution of the Russian Federation, a court is granted the right to decide on the arrest, detention, and also the detention of persons suspected and accused of committing crimes. This provision corresponds to paragraph 4 of Art. 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates that everyone who is deprived of their liberty by arrest or detention has the right to trial, during which the court immediately decides on the lawfulness of his detention and decides on his release if detention is illegal.

Ensuring the fundamental rights of a person and citizen is inconceivable of a non-rule-of-law state that is responsible to citizens for ensuring freedom, inviolability of the person and private life, for observing the rights and legitimate interests of everyone. Assessing this, S.A. Komarov, for example, concludes that there are no essential differences between the terms “private life” and “personal life”, which is an equivalent terminology (Komarov et al., 2014).

What is the essence of the right to liberty and security of person? In the book “Human Rights” edited by E. A. Lukasheva, the right to personal inviolability is considered inextricably linked to the right to freedom and is understood as the right to independently determine one’s actions, to have oneself, one’s own time (Lukasheva, 2007). M. M. Utyashev considers the right to liberty and security of person as the inadmissibility of arbitrary interference by anyone, including government agencies, in individual life, in the person’s physical or mental identity (Utyashev, 2008).

Thus, many modern scholars, examining the right to personal inviolability, consider it in conjunction with the right to freedom, since both these fundamental rights are constitutionally enshrined in a single legal formula. However, to determine the right to personal inviolability and the sphere on which it affects, it is necessary to distinguish it from this legal formula, identifying the main features and content attached by the legislator.

An article-by-article commentary on the Constitution of the Russian Federation, E. Kozlova offers to understand the right to personal inviolability as the inadmissibility of outside interference in the field of individual life of an individual, which includes physical (bodily) inviolability and mental integrity (Kozlova et al., 2008). Such an understanding seems to be very justified, since it has several advantages. Immunity is considered as “inadmissibility of outside interference,” which very capaciously defines the essence of this concept. The distinction between “physical” and “mental” immunity is also significant, since without the “mental” component the definition would be incomplete. Thus, constitutionally enshrined rights to privacy, personal and family secrets, protection of one's honor and name (part 1 of article 23), the right to secret of correspondence, telephone conversations, postal, telegraphic and other messages (part 2 of article 23), as well as the right to inviolability of the home, guard the private sphere of human life.

The minus of this definition is seen as linking "inadmissibility of interference" to the "field of individual personality activity." It is assumed that the term “personality” is not completely chosen here, since it is a category that denotes more psychological properties an individual, not his socially significant traits. However, it is quite possible that a person may be deprived of such traits. For example, there are people suffering from mental illness, accompanied by depersonalization or split personality, to which this terminology not applicable. This indicates an unreasonably narrow circle of subjects to which this definition applies, because not every person can be a person in the full sense of the word, and, accordingly, a certain circle of subjects falls outside the scope of this law.

## CONCLUSIONS.

In view of the foregoing, personal integrity can be defined as inadmissibility of outside interference in the sphere of individual human life, including physical and mental integrity.

The legality and validity of restricting the inviolability of the person largely depends on the establishment and implementation of the totality of the relevant legal guarantees of the inviolability of the person: international legal, constitutional, criminal procedure, criminal law and civil law guarantees.

Thus, the most important human rights and freedoms in Russia are guaranteed by the Constitution of the Russian Federation and are ensured by the coercive power of the state.

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