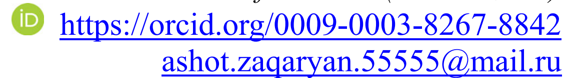
Prospects for the Development of the Institution of Limitation of State Power in a Democratic State

Zaqaryan Ashot G.
The applicant of the Institute of Philosophy, Sociology and Law of the NAS RA
Head of the Legal division of
The Staff of the Head of Avan administrative district of Yerevan (Yerevan, RA)

https://orcid.org/0009-0003-8267-8842
ashot.zaqaryan.55555@mail.ru

UDC: 342.1; **EDN:** JMISDH
DOI: 10.58587/18292437-2025.2-56
Keywords & phrases: state, limitation of state power, human rights, Constitution, principle of subsidiarity, margin of appreciation, legal responsibility, principle of legality

Պետական իշխանության սահմանափակման ինստիտուտի զարգացման հեռանկարները ժողովրդավարական պետությունում

Զաքարյան Աշոտ Գ.
ՀՀ ԳԱԱ Փիլիսոփայության, սոցիոլոգիայի և իրավունքի ինստիտուտի հայցորդ,
Երևանի Ավան վարչական շրջանի ղեկավարի աշխատակազմի իրավաբանական բաժնի պետ (Երևան, ՀՀ)

Ամփոփագիր. Արդի իրավագիտության ուսումնասիրությունների զգալի մասը նվիրված է պետական իշխանության սահմանափակման առանձնահատկություններին: Այս առումով, սույն գիտական հոդվածում, հիմնվելով հայտնի իրավաբանների կարծիքների, միջազգային և ներպետական օրենսդրության ուսումնասիրության վրա, հեղինակը ներկայացնում է պետական իշխանության իրավական սահմանափակման բնորոշ հատկանիշները և դրանց հետագա զարգացումը ժամանակակից ժողովրդավարական, իրավական պետությունում: Սույն գիտական հոդվածում ընդգծվում է, որ մարդու և քաղաքացու իրավունքների և ազատությունների ամբողջությունն, իրավական գրականության մեջ և գործնականում, դիտարկվում է որպես պետական իշխանության սահմանափակման հիմնական իրավական կառուցակարգ: Ավելին, հոդվածում ներկայացված են այնպիսի հասկացությունների էությունը, ինչպիսիք են՝ «իրավական սահմանափակում», «իրավական քաղաքականություն», «սուբսիդիարության սկզբունք» և «հայեցողության ազատություն», որոնց վրա հիմնված է իրավական քաղաքականությունը պետական իշխանության սահմանափակման ոլորտում: Կատարված ուսումնասիրությունների հիման վրա հեղինակը ներկայացնում է ժողովրդավարական հասարակությունում պետական իշխանության սահմանափակման մեխանիզմի հետ կապված առաջարկություններ, որոնց թվին են դասվում՝ պետական իշխանության մարմինների, պաշտոնատար անձանց սահմանադրական, քաղաքական պատասխանատվության ենթարկելը և Հայաստանի Հանրապետությունում պատգամավորների հետկանչի ինստիտուտի ներդրումը:
Հանգուցաբառեր և բառակապակցություններ՝ պետություն, պետական իշխանության սահմանափակում, մարդու իրավունքներ, Սահմանադրություն, սուբսիդիարության սկզբունք, հայեցողություն, իրավական պատասխանատվություն, օրինականության սկզբունք

Перспективы развития института ограничения государственной власти в демократическом государстве

Закарян Ашот Г.
Соискатель Института философии, социология и право НАН РА,
Руководитель юридического отдела Аппарата
Главы административного района Аван г. Еревана (Ереван, РА)

Аннотация. Существенная часть современных юридических исследований посвящена особенностям ограничения государственной власти. В связи с этим, в данной научной статье, на основании изучения мнений известных правоведов, международного и внутригосударственного законодательства, автором представлены характерные признаки правового ограничения государственной власти и их дальнейшее развитие в современном демократическом, правовом государстве. В данной научной статье подчеркивается, что совокупность прав и свобод человека и гражданина, в юридической литературе и на практике, рассматриваются в качестве основного юридического механизма ограничения государственной власти. Более того, в статье представлена сущность таких концепций, как: “правовое ограничение”, “правовая политика”, “принципом субсидиарности” и “свобода усмотрения”, на которых базируется правовая политика в сфере ограничения государственной власти. На основе проведенных исследований, автор представляет предложения связанные с механизмом ограничения государственной власти в демократическом обществе, к числу которых относятся:

привлечение органов государственной власти, должностных лиц к конституционной, политической ответственности и внедрение института отзыва депутатов в Республике Армения.

Ключевые слова и словосочетания: государство, ограничение государственной власти, права человека, Конституция, принципом субсидиарности, свобода усмотрения, юридическая ответственность, принцип законности

Research on the specifics of legal limitations of state power and the problems in this area is of crucial importance for the establishment and development of a modern democratic, legal state.

It is noteworthy, that the concept of "legal limitation" is defined in contemporary legal literature as a legal deterrence of an unlawful act that establishes conditions for meeting the interests of the public and the counter-subject [**8**, p. 85; **18**; **19**]. *Moreover, this concept encompasses not only the legal restrictions that subjects must adhere to, but also the banning of specific human behaviors* [**4**].

It is known that human rights and freedoms are the main means of limiting the power of the modern state. Therefore, within the framework of the topic under discussion, special attention should be paid to the principle of respect for human rights, the provision and protection of which has ceased to be exclusively an internal matter of the state.

It is widely known, that a number of international documents, such as the UN Charter, the European Convention on Human Rights, emphasize the legal nature of the obligations of states to respect fundamental human rights and freedoms. Furthermore, these are the specific obligations of the state to refrain from using or distorting human rights issues as a means of interfering in the internal affairs of other states, exerting pressure on other states, or creating an atmosphere of distrust and disorder within states and between states or groups of states [**6**].

The conducted research indicates, that in the context of globalization, the guarantee and protection of human rights are based on the **principle of subsidiarity**.

The meaning of the principle of subsidiarity is that problems should be solved at the lowest, local level, and the central government should play the role of an assistant, solving only those problems that have not been effectively solved at the local level.

It should be noted that the principle of subsidiarity is one of the fundamental principles of the application of the European Convention on Human Rights (ECHR). Therefore, from this perspective, the principle of subsidiarity confirms that the guarantee of the rights and freedoms enshrined in the ECHR is, first and foremost, the responsibility of the authorities of the Member States, and not of the European Court. In addition, the European Court of Human Rights (ECtHR) is obliged to intervene only in cases where the Member States fail to protect and ensure human rights and fundamental freedoms, or even violate them [**7**; **10**; **13**].

Several foreign jurists (A. Estella, F. Fabbrini) believe that the principle of subsidiarity is a purely legal tool, while others (M. Cahill, J.-V. Louis) view it as an effective means of limiting state power by international bodies [**15**; **16**; **17**; **20**].

It should be noted that before the entry into force of Protocol No.15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms (or the European Convention on Human Rights), the Convention did not contain any reference to the principle of subsidiarity and the discretion of the state.

However, Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms, which has already entered into force, establishes: "Affirming that the High Contracting Parties, in accordance with the **principle of subsidiarity**, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy **a margin of appreciation**, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention" [**21**].

It is obvious, from this Convention definition, that the discretion granted to the state is the ability of the latter to intervene in the exercise of human rights and freedoms in each specific situation. However, the limits of this interference are subject to the control of the European Court of Human Rights.

In our opinion, the enshrining of these two legal principles is a significant step forward in establishing the limitation of state power by human rights. Moreover, many legal scholars rightly point out that a state's sovereignty is also limited when it fails to implement its international obligations. For example, the Committee of Ministers of the Council of Europe supervises the implementation of judgments and decisions of the European Court of Human Rights by the member states of the Convention, and the failure of the respondent state to take all necessary measures in response to the violations found by the Court leads to adverse consequences for the given state.

A comprehensive study of the issues of limiting state power is closely intertwined with the policy pursued by the state authorities in this area, as well

as with the prospects for their development in a modern democratic state. Certainly, the provisions on the limitation of state power are enshrined in the legal acts of a modern legal democratic state, in some cases, even in the Basic Law of the country. However, there is no unified approach or concept dedicated to the regulation of this issue in the issue of legal limitation of state power. This situation is observed in almost all post-Soviet states, from which we come to the simple truth: it is necessary to develop a unified, orderly legal policy aimed at limiting the system of government and its officials.

In modern legal literature, the concept of **"legal policy**" is actively discussed, which is mainly understood as a set of legal ideas, principles, goals, objectives, priorities, as well as legal means, which are aimed at developing social relations and ensuring an optimal level of functioning. In general, legal policy is a scientifically substantiated, consistent and systematic activity of state and private institutions aimed at creating effective legal regulation mechanisms that are used to protect human and citizen rights, strengthen legality, and strengthen human legal awareness [**9**, p. 14]. A distinctive feature of this concept is the reliance on the law, the adoption by the state of relevant regulations and the implementation of law enforcement activities based on them [**3**, p. 22; **11**, p. 81].

It is known, that **civil society** is an active tool for limiting state power. Therefore, for the limitation of state power and the sustainable development of a democratic state, it is necessary to include in the political strategy of the state the mechanisms for legal limitation of state power by civil society. In particular, a full opportunity should be created for civil society representatives especially NGO's, to participate in the processes of state power management [**9**, pp.16-17].

The conducted research indicates, that civil society organizations operating in the Republic of Armenia are concerned about the weakening of the State-civil society cooperation and about the fact, that there is no specific legal document or developed strategy in the Republic of Armenia on fortifying this connection, or developing civil society organizations. Moreover, civil society organizations in the Republic of Armenia, mainly NGOs, continue to be concerned about the decrease in interaction with consultative bodies in ministries.

Nevertheless, there are also positive trends in the context of interaction between the state and civil society. Thus, the Constitutional Reform Council, established in 2022, which included representatives of Civil Society Organizations operating in the Republic of Armenia, convened regular sessions, providing an opportunity to organize active discussions among all participants of the sessions. Moreover, by the decision of the Prime Minister of the Republic of Armenia five NGOs participated in the development "Anti-Corruption Strategy of the Republic of Armenia", which was approved by the Governments decision in 2023 [**1**, p. 23].

It is noteworthy that the principle of **legality** has left its own mark on the development of a policy of limiting state power, since according to Article 6 of the Constitution of the Republic of Armenia, state and local self-government bodies and officials shall be entitled to perform only such actions for which they are authorised under the Constitution or laws [**22**]. Moreover, Article 5 of the Constitution of the Republic of Armenia, by introducing the hierarchy of legal norms, confirms the supreme legal force of the Constitution of the Republic of Armenia, as well as emphasizes, laws must comply with constitutional laws, whereas secondary regulatory legal acts must comply with constitutional laws and laws [**22**].

Consequently, the development of the state's legal system is associated with the problem of improving the quality of laws and regulatory legal acts.

It is obvious that laws that restrict the constitutional rights and freedoms of individuals must comply with the requirements of legal accuracy and predictability of consequences. In other words, norms should be formulated quite clearly and understandable to an objective observer, excluding the possibility of arbitrary interpretation of the provisions.

Considering the issue of ***legal responsibility of public authorities and officials***, we can state positive changes related to the strengthening of coordinated anti-corruption systems in Armenia, its prevention and ethics, which we cannot record in a number of post-Soviet countries (Russia, Kazakhstan, Belarus, etc.). Moreover, considering corrupttion crimes as the most important for maintaining the stability of society, they are presented in a separate list in the new Criminal Code of the Republic of Armenia [**23**].

Studying the issues of constitutional and political responsibility of state authorities and officials, the necessity of implementation of the institution of recall of a deputy in the Republic of Armenia should be considered as an effective means of limiting state power.

It is known that the Article 96 of the Constitution of the Republic of Armenia enshrines the immunity of a deputy of the National Assembly, making it impossible to prosecute and hold accountable the liable for an opinion expressed or voting within the framework of parliamentarian activities during his or her term of powers or thereafter [**22**]. Moreover, the Article 96 of the Constitution of the Republic of Armenia empha-

sizes: “Deputies shall represent the whole people, shall not be bound by imperative mandate, shall be guided by their conscience and convictions” [**22**].

As rightly noted in legal literature, the free mandate and wide range of powers of deputies can serve as a basis for the latter to take irresponsible steps. P.A. Astafichev and A. G Vaskova highlight the following types of sanctions applied to deputies: deprivation of powers (the deputy is accused of committing a crime and criminal judgment has entered into legal force, or deputy has not regularly performed his/her duties), procedural sanctions and the application of recall of the deputy by voters. [**2**, p. 45; **5**, p. 77].

In our opinion, the implementation of the institution of recalling a deputy for improper performance of his duties towards the electorate in the Republic of Armenia can be an effective means of legally limiting state power.

In recent years, legal literature has indicated that in order to build an effective system of public administration and prevent abuse of state power, it is necessary to monitor the spheres of implementation of the work of the federation and its subjects, the peculiarities of the distribution of their powers, functions and responsibilities. Such an approach will prevent duplication of functions of central and local bodies, preventing gaps in the laws, overstepping of the powers of officials, failure to exercise or improper exercise of powers [**5**; **12**].

In the process of legal limitation of state power, the requirements for persons holding public office are emphasized, for filling public offices with competent and professional specialists (educational qualification, clear standards of professional knowledge and skills, age threshold, etc.). At the same time, we consider it important to establish legally fixed terms of office for public officials and restrictions on the consecutive holding of a given position by the same person. For example, before the constitutional and legal reforms of 2015, the same person could not be elected to the position of President of the Republic of Armenia more than twice in a row, whereas the current constitutional regulations reserve to a person only a single opportunity to be elected to the position of President of the Republic of Armenia.

It should be noted that in order to ensure the effective operation of government agencies, an assessment of activities is carried out based on clear criteria applicable in each specific area. This provides an opportunity to assess the problems existing in the field, to address the improvement of working conditions, in some cases by reducing the volume of work or redirecting it from one specialist to another in a given field.

Based on the above, we can conclude that in a democratic, legal state it is necessary to ensure procedures for holding all subjects of the highest power politically accountable, as well as it is important to establish criteria for evaluating the activities of state power bodies and officials, and mechanisms for the impeachment process of high-ranking officials. In our opinion, the establishment of political accountability measures for subjects of political legislative, executive and judicial power (including the institution of recall of a deputy, resignation of the government, dissolution of parliament, etc.) contradicts the imperatives of a modern democratic, legal state.

Bibliography

1. **Հակոբյան Ա., Մարգարյան Տ.** Քաղաքացիական հասարակության կազմակերպության չափիչ 2023 Հայաստան. Հետազոտության զեկույց: – Եր.:ԵՄ հրատարակություն, 2023: – 87 էջ:
2. **Астафичев, П. А.** Институт народного представительства в современной России. – Орел, 2003. – 292 с.
3. **Барсуков, А. Ю.** Правовой прогресс как юридическая категория. / Дисс. канд. юрид. нак. – Саратов. 2004. – 191с.
4. **Варламова, Н.В.** Учение о правах человека в контексте различных типов правопонимания // Проблемы понимания права. Сборник научных статей: Право России: новые подходы. – Саратов: Научная книга, 2007, Вып. 3. - С. 118-142.
5. **Васькова, А. Г.** Соотношение свободного мандата с институтами обязанностей и ответственности депутата современного парламента (зарубежный опыт). // Российский юридический журнал. 2006. № 3. – С. 76-80.
6. Декларация о недопустимости интервенции и вмешательства во внутренние дела государств (прин. 09.12.1981 г., Резолюцией 36/103 Ген. Ассамблеи ООН) https://goo.su/oaEziN7, (ссылка укорочена. Дата обращения: 10.02.2025).
7. **Липкина, Н. Н.** Принцип субсидиарности в системе обеспечения прав и свобод человека, созданной на основании Конвенции о защите прав человека и основных свобод 1950 года: материальный аспект // Вестник СГЮА. 2014. №5 (100). – С.101-106.
8. **Малько, А. В.** Стимулы и ограничения в праве. – М.: Юрист, 2003. – 250 с., (р.85);
9. **Малько, А. В., Саломатин А. Ю.** Основы правовой политики. Уч. пособие. 2-д изд. – М.: ИНФРА-М., 2024. – 172с.
10. **Пименова, О. И.** Принцип субсидиарности в Европейском союзе: перипетии применения // Право. Журнал Высшей школы экономики. 2019. № 4. – С. 144-163.
11. Правоведение: учеб. пособие / Под общ. ред. **Е. Г. Шабловой**.- Екатеринбург: Изд-во Урал. Ун-та, 2016. – 192 с.

12. **Самаруха, А. В.** Проблема избыточных и дублирующих функций исполнительных органов государственной власти региона // Journal Of New Economy. 2008. №2 (21). – С. 74-77.
13. **Стрежнева, М. В.** Наднациональность и принцип субсидиарности в ЕС и за его пределами// Мировая экономика и международные отношения. 2016. Т. 60. № 6. – С. 5-14.
14. The Anti-Corruption Strategy of the Republic of Armenia for 2023-2026 (adopted on 26.10.2023) https://www.moj.am/en/page/583 (accessed at 10.03.2025).
15. **Cahill M.,** Theorizing subsidiarity: A Rejoinder to Gareth Davies. // *International Journal of Constitutional Law*, Volume 15, Issue 1, 1 January 2017, pp. 231–234.
16. **Estella A.** The EU principle of subsidiarity and its critique. – Oxford: Oxford University Press. 2002. – 232 p.
17. **Fabbrini F**. The principle of subsidiarity/In Oxford principles of EU Law(Ed. T. Tridimas. R., Schütze). – Oxford. Oxford University Press, 2016, pp. 13–23.
18. **Kazanchian, L., Zaqaryan** Human Rights and Freedoms as a Means of Legal Limitation of State Power. // Научно-аналитический журнал «Регион и мир». 2023, Vol. XIV, № 4 (47), pp.22-27.
19. **Kazanchian, L., Zaqaryan, A.** Some Features of the Manifestation of Legal Limitation of State Power. // *"Bulwark of Law" Scientific-Methodical Journal*, 2023, pp.142-153.
20. **Louis J.-V.** National parliaments and the principle of subsidiarity: legal options and practical limits. // *European Constitutional Law Review*, 2008, № 3, pp. 429-452.
21. The Convention for the Protection of Human Rights and Fundamental Freedoms (adapted on 04.Nov.1950, as amended by Protocols Nos. 11, 14 and 15), URL: https://goo.su/7QC2f (the link is shortened. Accessed at 10. 03.2025).
22. The Constitution of the Republic of Armenia (adopted on 05. 07. 1995, with amendments approved on 06. 12. 2015), URL: https://www.president.am/ru/constitution-2015/(accessed at 10.03.2025).
23. The Criminal Code of the Republic of Armenia (adopted on 05.05.2021), URL:https://goo.su/mjo7rye (the link is shortened. Accessed at 10.03.2025).

Сдана/Հանձնվել է՝ 24.03.2025
Рецензирована/Գրախոսվել է՝ 31.03.2025
Принята/Ընդունվել է՝ 07.04.2025