Prohibition of abuse of rights in agribusiness

Vitaly Goncharov[1,*], *Tatiana* Mikhaleva[2], *Grigory* Vasilevich[2], *Sergey* Balashenko[2], *Jacek* Zalesny[3], and *Artem* Pukhov[2]

[1]Kuban State Agrarian University Named after I.T. Trubilin, Russia
[2]Belarusian State University, Republic of Belarus
[3]University of Warsaw, Republic of Poland

Abstract. This article is devoted to the constitutional analysis of the institution of a legal prohibition on the abuse of civil and political rights in the exercise of the right to public control. We affirm that comprehension of the constitutional-legal mechanism of public control will ensure the achievement of an actual balance of constitutional values in the process of organizing and implementing this institution of civil society. A research of the institution of a legal prohibition on the abuse of civil-political rights when exercising the right to public control in Russia revealed the need for its institutionalization in the current federal legislation with a detailed definition of the conditions and limits of use in order to ensure full protection of constitutional rights, freedoms and legitimate interests of all participants in public control events, as well as preventing the creation of obstacles to the implementation of the constitutional principles of democracy and the participation of citizens of the Russian Federation in the management of state affairs, which are ensured by the institution of public control.

1 Introduction

Public control as one of the most important civil society institutions in the Russian Federation is widely analyzed in the scientific works of V.V. Grib, L.Yu. Grudtsyna, D.S. Mikheev, T.N. Mikheeva, G.N. Chebotaryov, V.E. Chirkin, G.A. Vasilevich, A.A. Malinovsky, V.I. Kruss, I.A. Karaseva, as well as several other authors. These works provide the basis for the analysis of the theoretical content of the institution of public control in relation to its social essence. However, the share of researches devoted to a comprehensive constitutional and legal analysis of the institution of a legal prohibition on the abuse of civil and political rights when exercising the right to public control is extremely small.

In this regard, the main purpose of this research is a comprehensive research of the institute of a legal prohibition on the abuse of civil and political rights in the exercise of the right to public control, in order to expand and clarify the conceptual and categorical apparatus of the science of constitutional law in the sphere of public control, forming an integrated the concept of public control, and the subject of research is the regulatory framework of public control, as well as scientific views on the place of the institute legal

* Corresponding author: niipgergo2009@mail.ru

prohibition on the abuse of civil and political rights in the implementation of the right to public control mechanism to ensure implementation of the constitutional principles of democracy and public participation in the management of state affairs.

2 Materials and Methods

This article in the process of cognition of state-legal phenomena were used: a) General scientific methods (formal-logical, systemic, structural-functional, concrete-historical); b) General logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); c) private scientific methods (technical and legal analysis, specification, interpretation, etc.) (Zalesny, Goncharov, 2019: 129-142; Zalesny et all., 2019: 51-61; Zalesny, Goncharov, 2020a: 1-6; Goncharov et all., 2020a, 78-90; Goncharov et all., 2020b, 93-106; Moros, Goncharov, 2020, 114-128; Zalesny, Goncharov, 2020b: 1-10).

3 Results and Discussion

The exercise by citizens of the Russian Federation of the right to public control implies the observance of certain boundaries, both in content and in the ways of implementing the opportunities provided for by it. Such boundaries are an inalienable property of all law, for in their absence, law turns into its opposite - arbitrariness. A number of authors rightly notes: "No society can give a person unlimited freedom, since this would lead to the manifestation of selfish willfulness and anarchism, to endless clash and conflicts of individual interests. The system of rights and freedoms of a person and citizen is objectively formed in such a way as to ensure the freedom and legitimate interests of people and to prevent possible violations of their rights as a result of abuse by others" (Constitution, 2003, 191).

In this regard, the legal doctrine uses the principle of prohibition of abuse of law. Since the realization of the right to public control implies the wide participation of subjects of public control in various civil-political legal relations, we are talking about a legal prohibition of abuse of civil-political rights in the exercise of the right to public control. The principle of prohibition of abuse of rights implies the exclusion of unlimited freedom in the use by participants of civil-political legal relations of their rights.

Consider the essence of the concept of "abuse of law" and the limits of its use in the Russian legal system as a whole, and in constitutional and legal relations in particular, including relations on the exercise of the right to public control by citizens of the Russian Federation.

In the scientific and educational literature, there are several approaches to the definition and use of the concept of "abuse of law": 1) denial of the correctness of the use of this concept in the regulation of legal relations (Bratus, 1967: 79-86; Agarkov, 1946: 427); 2) classifying it as a guilty illegal act (Ioffe, Gribanov, 1964: 76-85; Emelyanov, 2002: 67); 3) considering it as behavior that fits within the legal framework, but harms third parties and (or) violates the intended purpose of the legal norm, as well as the principles of reasonableness and good conscience (Tarasenko, 2004: 56-59; Malinovsky, 2002); 4) attributing it to a special type of behavior, which is neither an offense, nor lawful behavior (Theory, 2003: 402-412); 5) considering it as a behavior that may be both unlawful and not violating legal norms (Zaitseva, 2002: 33; Kruss, 2002: 46-54).

Proponents of the first approach believe that the use of this term is incorrect due to the fact that there are no forms of abuse of the law, and if the law exists, it is impossible to abuse it. So, according to S.N. Bratusya: "A departure from the use of law from its social

purpose is a departure from the law with all the ensuing consequences" (Bratus, 1967: 79-86). M.M. Agarkov, in turn, notes that "Those actions that are called abuse of law are actually committed outside the law" (Agarkov, 1946: 427). Consequently, proponents of this approach consider abuse of the law as an offense with all the ensuing consequences. However, this point of view is controversial, due to the fact that the abuse of the right implies the action of a person to exercise his right within the framework of legal requirements (that is, permissible and possible), but with the onset of consequences unfavorable to third parties, or to an indefinite circle of persons (society and the state as a whole).

According to other authors, the abuse of law reflects the essence of this phenomenon, being, on the subjective side, a guilty act with a deliberate or careless form of guilt, and on the objective side, a wrongful act (Ioffe, Gribanov, 1964: 76-85). Thus, according to this approach, the abuse of the right is always associated with the violation by the person of the obligation not to violate the limits of the exercise of the right. As V.I. Emelyanov notes, abuse of the right is always an offense (Emelyanov, 2002: 67). However, this approach is criticized fairly. So, according to I.V. Sovetnikov, it is partially applicable only to civil law (Sovetnikov, 2010: 17). Indeed, for example, if the subjects of public control initiated a public audit of an organization performing separate public powers, not with the aim of identifying, preventing and suppressing violations of the last rights, freedoms and legitimate interests of citizens, but with the goal of its subsequent liquidation, or the removal of public authority from it, in case of violations of the current legislation, the activity of subjects of public control cannot be considered guilty of an unlawful act, even in the presence of a conflict in the subject and object of public control.

The authors of the third approach consider abuse of law as an act of a person authorized by the rule of law, carried out within the boundaries of the granted right, but harming third parties and (or) violating the purpose of the rule of law, as well as the principles of rationality and good conscience (Tarasenko, 2004: 56-59; Avakyan, 2019: 18-21; Kalinin, 2020: 14-23). According to A.A. Malinovsky, the abuse of law is such a form of exercise of the law in contradiction with its purpose, through which the subject causes harm to other participants in public relations (Malinovsky, 2002).

At the same time, reasonable and conscientious behavior should be understood as the behavior of a person who exercises his right, which corresponds to a person who has a normal, average level of intelligence, knowledge, life experience and mental attitude to foreseeable harm or the possibility of its foresight.

Supporters of the fourth approach attribute abuse of law to a special type of legal act that is neither an offense, nor lawful behavior. So, A.S. Shaburov identifies 4 types of legally significant behavior (offense - abuse of law - "objectively wrongful behavior" - lawful behavior), believing that the investigated phenomenon is different in that in the absence of a sign of wrongfulness, the malicious use of subjective law is accompanied by causing harm that is unacceptable from the point of view of the legal system (Theory, 2003: 402-412).

However, it seems that this approach is controversial, it is based on a somewhat far-fetched classification of types of legally significant behavior, since the person's behavior either violates legal norms or is lawful, and no other way is given.

The authors of the fifth approach believe that the abuse of the right can also be an offense, or it can be legitimate behavior within the framework of the requirements dictated by the rule of law (Theory, 2003: 402-412). According to this approach, the criterion for classifying behavior as an abuse of law is not its compliance with legal norms, but the consequences of this behavior that third parties are forced to undergo, having an adverse character.

Thus, abuse of law should be understood as an action that has a number of signs: this action is permissible and possible, that is, it does not contain violations of legal norms; it is aimed at the implementation of subjective law, enshrined in existing legal norms; as a result of such exercise of subjective law, the rights, freedoms and legitimate interests of third parties are violated; in the case that this behavior is responsible of the illegality, that is violation of the limits on the exercise of subjective rights. As certain types of abuse of law: Chicane, the hallmark of which is the fact that as the main target behavior is not the exercise of a subjective law, but deliberate infliction of harm to third parties, or a wide range of people, or the achievement of other goals.

The Russian legal doctrine does not have a common understanding regarding the limits of application of the institution of abuse of law within the framework of individual branches of law. As rightly notes I.A. Karaseva, in the domestic legal literature a strong opinion was formed that abuse of law can be considered in the context of civil law relations, while almost nothing is said about other areas of application of this phenomenon (Karaseva, 2013: 9). At the same time, supporters of this approach insist that the institution of the prohibition of abuse of rights was formed within the framework of private law regulation and can only be used outside the framework of public law relations (Maleina, 2001: 36; Kiseleva, 2018: 61-69; Maslovskaya, 2020: 46-52).

However, this approach does not seem justified, moreover, it is refuted by the current legislation containing a number of examples of fixing a legal prohibition on abuse of rights in the framework of public law relations. For example, a ban on abuse of the right is provided for in Article 68 of the Federal constitutional law dated 28.06.2004 № 5-FCL "On the Referendum of the Russian Federation" (inadmissibility of abuse of the right to campaign in referendum) (On, 2004).

The institution of a legal prohibition on abuse of law is quite actively applied by the highest judicial bodies in Russia. In particular, the decisions of the Constitutional Court of the Russian Federation often use the concept of abuse of constitutional rights. Thus, in a decision of the Constitutional Court of the Russian Federation dated 09.11.2009 № 16-P, it was established that there was no political party abusing the applicant from the regional list of candidates nominated by this regional branch of the Legislative Assembly of the Krasnodar Region for abuse of his rights against the applicant who appealed against the decision of the election commission to remove him from the electoral list, based on the specified actions of a political party (In, 2020).

Thus, the concept of abuse of rights was actively included both in constitutional law and in the practice of constitutional judicial bodies, which is of great importance for the development of this institution in Russian legislation as a whole.

In this regard, I.A. Karaseva rightly notes: "First, it is the constitutional and legal norms that set the vector for the development of the rest of the legislation. Secondly, it is practically impossible to make a list of rights that a subject can abuse, and it makes no sense to refer to them in each industry act. The prohibition of abuse of rights should be enshrined in the fundamental law of the state as a general legal principle" (Karaseva, 2013: 9).

It seems that it is precisely the absence of the institution of the prohibition of abuse of rights in the Constitution of the Russian Federation that creates conflicts in the definition of its concept, as well as the limits of application in various branches of Russian law. At the same time, international law is quite actively using the construction of a legal prohibition of abuse of rights. For example, the prohibition of abuse of rights is established in Article 17 of the Convention for the Protection of Human Rights and Fundamental Freedoms ETS № 005 dated 04.11.1950: "Nothing in this Convention shall be construed as meaning that any state, any group of persons or any person has the right to engage in any activity or perform any action aimed at abolishing the rights and freedoms recognized in this Convention or at

restricting them to a greater extent than is provided for in the Convention" (Convention, 2020).

Thus, the process of realization of the constitutional rights of citizens of the Russian Federation, including the right to public control of power, should provide for a legal ban on the abuse of civil and political rights.

In this regard, V.I. Kruss gives the following definition of abuse of law in the framework of constitutional relations: "Abuse of law ... is an unscrupulous act aimed at the realization of intentions (goals) contrary to the idea of a constitutional order, including the unfair (unconstitutional) acquisition of benefits through: 1) violation of constitutional principles of law enforcement in their current (casual-situational) combination; 2) violation of the fundamental rights and freedoms of a person and citizen (in the meaning radically different from the positivist understanding of the offense); 3) deformation (derogation) of constitutional values due to the actual violation of their current constitutional balance" (Kruss, 2010, 28).

At the same time, constitutional law enforcement should be understood as the main form of exercising rights in the Russian Federation, aimed at ensuring a system of constitutional and legal principles, the main of which is the constitutional principle that proclaims a person, his rights, freedoms and legitimate interests as the highest value in Russia, which is a legal, social state with a democratic form of government.

Through constitutional law enforcement, any person and citizen in the Russian Federation carries out the positive and objectively manifested receipt and use of the totality of benefits that expresses his legitimate (constitutional) interests. They can be acquired and realized by a person and a citizen to the extent that corresponds to the level of internationally fixed standards of human and civil rights and freedoms (in the UN Charter, the Universal Declaration of Human Rights, numerous covenants and conventions on human rights adopted within the UN), as well as the degree of socio-economic, state-legal and socio-political development of Russia.

As rightly noted by V.I. Kruss: "The practical mechanism of constitutional law enforcement is called upon to provide the appropriate mechanism of normative mediation, the reality and effectiveness of which depends on the strategic implementation of its model (design) in the system of federal laws. This mechanism is fundamentally different from the mechanism of legal regulation, since it legitimately includes regulatory means, which (from the point of view of legal understanding) are not legal, but at the same time, they express the general idea of constitutional obligation" (Kruss, 2004).

With regard to the process of exercising the right of citizens of the Russian Federation to public control, abuses of civil and political rights are acts committed by subjects of public control aimed at not achieving the goals specified in the legislation on public control (in particular, in Part 1 of Article 5 of the Federal law dated 21.07.2014 №212-FL "On the Foundations of Public Control in the Russian Federation" (On, 2014); in Article 2 of the Federal law dated 04.04.2005 № 32-FL "On the Public Chamber of the Russian Federation" dated 04.04.2005 № 32-FL (On, 2005), in Article 6 of the Federal Law dated 10.06.2008 № 76-FL "On Public Control over the Provision of Human Rights in the Forced Detention Places and on Assistance to Persons in the Forced Detention Places" dated 10.06.2008 № 76-FL etc.) (On, 2008), and for purposes contrary to the constitutional legal order (for example, for one's own benefit, self-promotion, because of a negative attitude to objects of public control, etc.), by violating the constitutional principles of law enforcement, including the rule of law, freedoms and legitimate interests person and citizen, and leveling of constitutional values.

In the process of realizing the right of citizens of the Russian Federation to public control, various civil-political rights can be abused, for example: 1) to implement measures of public control; 2) to use the information received in the course of public control

measures, as well as from public authorities; 3) to visit public authorities, as well as organizations and institutions under their control (for example, the right to visit persons in places of detention); 4) to file complaints, petitions with the court, to the Commissioner for Human Rights in the Russian Federation, the Commissioner for the Rights of the Russian Federation for the Rights of the Child and for the Protection of the Rights of Entrepreneurs, the Commissioner for Human Rights, the Rights of the Child, the Protection of the Rights of Entrepreneurs, and the Rights indigenous peoples in the constituent entities of the Russian Federation, to the prosecution authorities, etc.

The current legislation on public control contains a number of rules prohibiting the abuse of civil and political rights.

In particular, it is of interest to have a legal ban on the admission of a public inspector, public expert, or other representative of a subject of public control to exercise public control in the event of a conflict of interest in the exercise of public control, contained in Article 11 of Federal Law dated 21.07.2014 № 212-FL "On the foundations of public control in the Russian Federation" (On, 2014).

At the same time, a conflict of interest refers to a situation where the admission of an interested person (public inspector, public expert or other person of a public control entity) to conduct a public audit violates the constitutional principle of legal use in its current (casual-situational) combination due to the fact that this interest affects or may affect the objectivity and impartiality of public control and in which there is or may arise between the personal interest of representatives of the subject of public control and the legislatively established goals and objectives of public control.

Personal interest, as a rule, is material in nature and is expressed in the possibility of a representative of the subject of public control receiving any income (money, valuables, other property, including property rights, or services for himself or for third parties). Moreover, the admission of an interested person to conduct a public audit violates the rights, freedoms and legitimate interests of objects of public control, as it poses a threat to the objectivity, impartiality of its organization and conduct, as well as the correct interpretation of the results of a public audit. In this regard, the legislator not only prohibits interested parties from participating in a public audit, but also obliges them to inform in writing about a conflict of interest to the subject of public inspection, as well as to other organizational structures specified in Part 2 of Article 9 of the Federal Law dated 21.07.2014 № 212-FL "On the Foundations of Public Control in the Russian Federation" (On, 2014).

Similar rules on conflicts of interest between representatives of subjects of public control and legislatively established goals and objectives of public control are contained, for example, in Part 3 of Article 21, in Part 3 of Article 23 of the above Federal law. At the same time, information on a conflict of interest is made public, including by posting on the Internet.

In turn, Article 17 of the Federal Law dated 10.06.2008 № 76-FL "On Public Control over the Ensuring of Human Rights in the Place of Forced Detention and on Assistance to Persons in the Place of Forced Detention" prohibits the abuse of the rights of members of the public monitoring commission during the exercise of public control in the place of forced detention if their close relative (spouse), parents, children, adoptive parents, adopted children, siblings, grandfather, grandmother, grandchildren) are kept there, as well as in the event that a member of the public monitoring committee is a victim, witness, defense counsel or other person participating in criminal proceedings involving a person in a place of forced detention (On, 2008).

A ban on the abuse of civil and political rights in the implementation of public control measures is contained in regional laws, as well as municipal regulatory acts on the regulation of public control. For example, Part 9 of Article 4 of the Law of the Krasnodar

Region dated 25.12.2015 № 3305-KL "On Public Control in the Krasnodar Region" prohibits members of the public inspection or public control group from exercising public control of bodies and organizations, as well as acts issued by them and adopted by them decisions in the event that a close relative (spouse, parents, children, adoptive parents, adopted, siblings, grandfather, grandmother, grandchildren) of a member of the public inspection, public control group is an official Believing body or organization, or he or his close relative had previously worked in this body or organization (On, 2020).

It seems that the legal ban on the abuse of civil and political rights in the exercise of the right to public control by citizens of the Russian Federation acts, on the one hand, as an additional guarantee of the rights, freedoms and legitimate interests of participants in public control events (both objects of public control and third parties), and on the other hand, allows to achieve an actual constitutional balance of constitutional values in the process of implementing the principle of constitutional legal use.

Nevertheless, it seems necessary to consolidate in the current federal legislation the institution of a legal ban on the abuse of civil and political rights when citizens of the Russian Federation exercise the right to public control, defining its concept, setting conditions and limits for use. This will allow for the full protection of constitutional rights, freedoms and legitimate interests of all participants in public control events.

It seems that an effective and multi-level system of public control of power in our country acts as the main socio-economic condition for the preservation and development of Russian statehood in the era of the global economic crisis (Zalesny, Goncharov, 2020: 1-6; Vasilevich et all., 2019: 85-92).

At the same time, studies show that the majority of Russian citizens do not support restrictions on the rights of citizens to exercise public control: (Poyarkov, 2009c: 4-8)

Table 1. The level of support of citizens of the Russian Federation for the prohibition and restrictions on the exercise of the right to public control.

Age categories of Russian citizens	Support (in % of the total number)	Do not support (in % of the total number)	Undecided on the choice (in % of the total number)
18-30 years old	11	70	19
31-40 years old	10	69	21
41-50 years old	12	67	21
51-60 years old	15	66	19
61 years and older	17	65	18

4 Conclusions

The right of citizens of Russia to exercise public control, which is a relative, public-political right to protect the rights of the people to exercise democracy and participate in the management of state affairs, is not unconditional.

The exercise of this right in certain cases may be limited if there is an abuse of the civil and political rights of citizens of the Russian Federation in the exercise of this right.

A research of the institution of a legal prohibition on the abuse of civil-political rights when exercising the right to public control in Russia revealed the need for its institutionalization in the current federal legislation with a detailed definition of the conditions and limits of use in order to ensure full protection of constitutional rights, freedoms and legitimate interests of all participants in public control events, as well as preventing the creation of obstacles to the implementation of the constitutional principles of democracy and the participation of citizens of the Russian Federation in the management of state affairs, which are ensured by the institution of public control.

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