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Research Article

COMPARATIVE ANALYSIS OF ACTS ON PERMISSIBLE RESTRICTIONS ON THE FREEDOM OF SCIENCE

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ABSTRACT

This article analyzes the legislation of foreign countries, as well as precedents for restricting the freedom of science. The article cites the laws of foreign countries, such as the USA, Sweden, France, Canada and others, which regulate the limitations of the subject of scientific research. In addition, the precedent of the French court on this issue is given. As a result of this article, a comparative analysis of the regulation by legal acts of the Republic of Uzbekistan of the admissibility of restricting the freedom of scientific creativity is carried out.

KEYWORDS

Scientific research, embryo, state secret, license, freedom of science.

INTRODUCTION

"Liberty consists in the ability to do whatever does not harm another; hence the exercise of the natural rights of each man has no other limits than those which assure to other members of society the enjoyment of the same rights. These limits can only be determined by the law.

The law only has the right to prohibit those actions which are injurious to society. No hindrance should be put in the way of anything not prohibited by the law, nor may anyone be forced to do what the law does not require." The cited provisions of the Declaration of the Rights of Man and Citizen of 1789 (Articles 4-5) have for more than two centuries been laying down a kind of philosophy of the permissibility of restrictions on individual freedom in a state governed by the rule of law, applicable, among other things, to the freedom of science.

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Scientific activity is not carried out in an empty space. Therefore, as with other human activities, there is a risk that scientific research or its results will prejudice the rights and legitimate interests of others or the common values and interests represented and protected by the state (for example, public order and security in various manifestations, defense capability, environmental protection), or both together. In these and only in these cases, legal barriers, including prohibitions determined by law, can and should be erected in the way of scientific activity.

No legal system today has a single normative act containing a complete list of permissible restrictions on the freedom of science. Such restrictions are usually fixed by special acts or provisions of the legislation on science, other sectoral legislation in relation to specific types of scientific activities that are potentially dangerous or harmful.

Thus, one of the sources of legislation on science in Switzerland is the Federal Law of September 30, 2011 "On research on a human being", which subject to the licensing regime (obtaining prior permits from specially authorized state bodies) biomedical experiments on living, not yet born and dead people, as well as body parts of living people. Even more stringent restrictions, including prohibitions (prohibition to create a human embryo for research purposes, prohibition to create clones, chimeras or hybrids of humans, prohibition to import or export embryos, etc.), another Swiss special scientific law: Federal Law of December 19, 2003 " About research on embryonic stem cells».

An example of other sectoral legislation that provides for restrictions on scientific activity is the legislation on nuclear safety, protection of human health and the environment from ionizing radiation (radiation).

Radiation risks may arise during the operation of any nuclear facilities, including mega-science infrastructures designed to conduct scientific experiments on the study of the atomic nucleus and elementary particles (colliders, synchrotrons, etc.). In this regard, the commissioning and operation of any such installations must be subject to the permission of the competent authorities authorized to conduct safety checks and suspend their operation in case of violation of established requirements.

In particular, in Canada, mega-science infrastructures and other nuclear research facilities are covered by the Nuclear Safety and Regulation Act 1997 , which is enforced by the Canadian Nuclear Safety Commission. This Commission has repeatedly been involved in the control and issuance of a permit for the operation of the Canadian Synchrotron Radiation Center (an electron accelerator located on the territory of the University of the Canadian province of Saskatchewan): first, during its launch in 2004, then during its modernization in 2015 .

If potentially dangerous scientific research is carried out under the auspices of an international scientific organization enjoying privileges and immunities, then similar restrictions are provided for by the international treaties underlying it.

For example, in the case of the International Fusion Energy Organization ITER, which is building a scientific facility in France called the International Thermonuclear Experimental Reactor (ITER) , the main source of the relevant restrictions is the Agreement of November 7, 2007 between the Government of the French Republic and the International ITER Organization for fusion energy on the headquarters of the ITER Organization and on the privileges and immunities of the ITER Organization on French territory .

In accordance with the Agreement of November 7, 2007, the ITER Organization and its employees are fully obliged "to comply with French law and French regulations in the field of public health, occupational health and safety, the environment and protection against acts of malicious intent", and must cooperate with the French authorities in the application of these legal provisions (Article 16 "Exceptions to privileges and immunities" and Article 17 "Cooperation with the French authorities").

Restrictions on the implementation of scientific activity, considered as a threat to other individuals or society as a whole, can also be fixed in international treaties and supranational acts that serve as sources of international and European human rights law. Thus, according to paragraph 2 of article 2 “The right to integrity of the person” of the Charter of Fundamental Rights of the European Union of 2000:

“Within the framework of medicine and biology, in particular, the following must be respected:

a) free and adequately informed consent of the person concerned, in accordance with the conditions established by law;

b) a ban on the practice of eugenics, especially those that aim to produce selection between people;

c) the prohibition against turning the human body and its parts, as such, into a source of profit;

d) prohibition of reproductive cloning of human beings.”

The cited provisions of the Charter are the transformation into EU law of international treaties signed within the framework of another European integration organization - the Council of Europe (Convention for the Protection of Human Rights and Dignity in Connection with the Application of Biology and Medicine: Convention on Human Rights and Biomedicine of April 4, 1997. and its Additional Protocol concerning the Prohibition of the Cloning of Human Beings, of 12 January 1998).

In accordance with Chapter V “Scientific research” of the Convention, scientific research in the field of biology and medicine is carried out “freely”, but “subject to the provisions of this Convention and other legislative instruments guaranteeing the protection of the person” (Article 15 “General Rule”). In the same place, in chapter I "General Provisions", a principle is formulated that can also apply to other areas of scientific knowledge: "The interests and welfare of an individual person prevail over the interests of society or science" (Article 2 "Man's priority")..

The evolution of society and science, including the prevailing ideas about good and bad, good and evil (public morality, morality, ethics), can lead to the expansion of existing and the introduction of new restrictions on the implementation of scientific activity.

So, after signing in 1997-1998. Convention on Human Rights and Biomedicine and the Additional Protocol on the Prohibition of the Cloning of Human Beings, the Convention was supplemented by three more protocols: Additional Protocol on Transplantation of Human Organs and Tissues of January 24, 2002, Additional Protocol on Biomedical Research of January 25, 2005. and Additional Protocol on Genetic Testing for Medical Purposes of 27 November 2008.

An example of restrictions on the implementation of scientific activities, the introduction of which is associated with the transformation of the moral foundations of mankind, can serve as restrictions on the conduct of scientific experiments on animals,

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justified by the requirement of humane treatment of them as sensual beings.

Similar restrictions at the pan-European level were recorded in another convention of the Council of Europe, signed on March 18, 1986: the European Convention for the Protection of Vertebrate Animals used for Experimental or other Scientific Purposes17. Recognizing in the preamble that “man has a moral obligation to respect all animals and to take due account of their ability to suffer and remember”, the parties to the Convention of March 18, 1986 committed themselves to limit the use of experiments and other scientific procedures in relation to vertebrate animals that could “ result in permanent injury, pain, suffering or anxiety" in cases where there is no "reasonable and practicable possibility of using another scientifically acceptable method without the use of an animal". These procedures may be carried out “only by authorized persons ... considered to be responsible competent authorities” (arts. 1, 6, 13).

As a follow-up to the Convention of March 18, 1986, the European Union in its supranational legislation has introduced even broader and more detailed restrictions on scientific experiments on animals, enshrined in Directive 2010/63 / EU of the European Parliament and of the Council of September 22, 2010 "On the protection of animals, used for scientific purposes".

The establishment and practical application of restrictions on the freedom of science encounters difficulties in connection with the search for a reasonable balance between the needs of the unhindered development of scientific creativity and scientific debate, from the outside, and other social or individual needs, for the sake of which science is placed in a more or less rigid legal framework.

An illustration of these difficulties can be the disputes on the admissibility of scientific research on the human embryo, which became the subject of the above-mentioned (see section 1 of this article) decisions of the Constitutional Council of France and the European Court of Human Rights.

Recall that the French Constitutional Council questioned the very possibility of conducting such studies, as contradicting, according to their opponents, the constitutional principle of respect for the dignity of the human person from the moment of the birth of life.

When examining the case, the Constitutional Court noted that, along with the mentioned principle, the national Constitution enshrined the obligation of the state to guarantee the protection of human health, the fulfillment of which can be facilitated by embryo and stem cell research.

Since the provisions of the contested law, now contained in the French Code of Public Health, provide for the possibility of conducting research on human embryos and embryonic stem cells “for exclusively medical purposes” and require interested researchers to obtain special permits, the issuance of which is accompanied by “effective guarantees”, these provisions, according to the final conclusion of the Constitutional Council, “do not violate the principle of respect for human dignity”, as well as “no other constitutional requirements”, i.e. are constitutional.

The approach taken in France to authorize scientific experiments with the human embryo is not generally accepted in Europe, as recalled by the European Court of Human Rights when considering the complaint of the Italian citizen A. Parillo against Italy in connection with the refusal of her permission to transfer frozen embryos obtained by artificial insemination from her

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deceased companion, for the purpose of scientific research.

After conducting a comparative analysis of the legislation of the member states of the Council of Europe, the ECtHR noted that different states have different, more or less severe, restrictions on the study of human embryos. Italy is one of the States that takes the most restrictive approach, prohibiting in principle any scientific research on the human embryo (except in special exceptional cases, in particular when it is aimed at protecting the health of the embryo).

Considering the applicant's first argument that Italian law violates her right to respect for private life, the ECtHR agreed with her that the free disposal of one's embryos, including for the purposes of scientific research, is an integral part of private life. Accordingly, the inability to donate one's embryos for scientific purposes constitutes a restriction of the right enshrined in Article 8, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 8 of the ECHR "Right to respect for private and family life").

At the same time, according to paragraph 2 of this article, interference by state bodies in the exercise of the right to respect for private and family life may be recognized as permissible if it is prescribed by law and necessary in a democratic society to achieve legitimate goals, including the goals of "protecting health or morality or the rights and freedoms of others".

Like the French Constitutional Council, the ECHR refrained from answering the question of whether human embryos can be considered as "other persons", i.e. complete people. With regard to the protection of morals, the states enjoy a wide margin of appreciation in this matter: "... when there is no consensus among the member states of the Council of Europe on the relative importance of the interests involved or the best means of protecting them, in particular when the case raises sensitive moral or ethical questions, the limits discretion is broader." The need for States to retain a wide margin of appreciation is also confirmed by the fact that "the right to donate embryos for scientific research does not form part of the solid core of the rights protected by Article 8 of the Convention and does not affect particularly important aspects of the existence or personality of the person concerned", i.e. applicants.

"For the above reasons, the Court considers that the [Italian] Government did not exceed in the case the wide margin of appreciation they enjoy in this area and that the impugned ban was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention."

The applicant's attempt to achieve satisfaction of her complaint with reference to the violation of her right of ownership of the embryo as personal property, protected by Article 1 "Protection of property" of Protocol No. 1 to the ECHR, was also unsuccessful. Considering this argument, the ECHR ruled that the provision could not be applied to her case because it had an "economic and property scope", while "human embryos cannot be reduced to "property" within the meaning of this provision."

Complex legal problems arise in connection with the establishment and application of restrictions on scientific activity in the field of social sciences. Thus, at the beginning of 2018, a law was adopted in Poland amending the Law of December 18, 1998 "On the Institute of National Remembrance – the Commission for the Investigation of Crimes Against the Polish Nation".

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Amendments to the section "Criminal Provisions" of the Law of December 18, 1998 included a new article 55a with the following content:

"1. Who publicly and contrary to facts ascribes to the Polish people or the Polish state responsibility or responsibility for the Nazi crimes committed by the Third German Reich, described in Article 6 of the Charter of the International Military Tribunal [Nuremberg Tribunal] ..., or for other crimes that are crimes against peace, humanity or military crimes, or in any other way blatantly diminishes the responsibility of the true perpetrators of these crimes, is liable to a fine or the penalty of imprisonment for up to three years. The verdict is submitted for public promulgation.

2. If the perpetrator of the act described in paragraph 1 acted unintentionally, he shall be liable to a fine or imprisonment.

3. The perpetrator of the prohibited act described in paragraphs 1 and 2 does not commit a crime if he committed this act within the framework of artistic or scientific activity.

According to the following (also new) Article 55b, Article 55a was extended to all Polish citizens and all foreigners, regardless of the place where they committed the acts in question and the legal norms in force in that place.

The cited provisions have caused a lot of questions and comments both in Poland itself and abroad. What does “contrary to the facts” mean, and how is the attribution of responsibility for Nazi and similar crimes expressed? Do not references to the Polish people and the Polish state imply a ban on criticism, even erroneous, of the actions of individuals or groups of persons who held public office in Poland, were Polish citizens and (or) ethnic Poles? What if the defendant, in accordance with the last paragraph of Article 55a, declares that he acted “within the framework of artistic or scientific activity”, and the Polish criminal justice authorities consider his articles, books, films to have nothing to do with art and science (anti-artistic or pseudoscientific)? And, finally, is it right to give the state apparatus, represented by its institutions of national memory, criminal prosecution bodies or the court, the right to make a final judgment on issues of historical truth, all the more so to sentence those who express a different point of view to criminal liability up to imprisonment? Isn't all this the introduction of state censorship in relation to historical science?

Based on the results of the domestic and international discussion that followed the adoption of amendments to the Law of December 18, 1998 "On the Institute of National Remembrance - the Commission for the Investigation of Crimes Against the Polish Nation", the Polish authorities decided to cancel the controversial provisions, and already in the summer of 2018 with a new series amendment to the Law of December 18, 1998, articles 55a and 55b were removed from its text.

Nevertheless, in the field of social sciences, situations are possible when the imposition of restrictions on certain statements by states is recognized as justified and receives the support of international instances. An example of such situations is the case considered at the beginning of the XXI century. European Court of Human Rights on R. Garaudy v. France (European Court of Human Rights judgment on the admissibility of application no. 65831/01 submitted by Roger Garaudy v. France).

The French philosopher, writer and politician R. Garaudy in 1995 published the book “Myths of the Founders of Israeli Politics”, which included chapters under such titles as “The Myth of the Nuremberg Justice” (meaning the Nuremberg Tribunal, which

judged Israel in 1945-1946). Nazi criminals) and The Myth of the Holocaust.

In connection with the numerous statements in the book that justify Nazi crimes or downplay their severity, R. Garaudy was prosecuted under article 24 bis of the French Law of July 29, 1881 "On the freedom of the press", included in his text in 1990. Under article 24 bis, persons who publicly dispute "the existence of one or more crimes against humanity, as defined in Article 6 of the Statute of the International Military Tribunal annexed to the London Agreement of August 8, 1945, which were committed by members of an organization declared criminal under Article 9 of the said Statute, or by a person found guilty of such crimes by a French or international court."

After unsuccessful attempts to obtain his acquittal in the French courts, R. Garaudy filed a complaint with the ECHR, referring, in particular, to the violation by the French authorities of the freedom of historical research arising from Article 9 "Freedom of thought, conscience and religion" and Article 10 "Freedom of expression" European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (recall that the ECHR does not contain an article specifically devoted to the freedom of science).

While acknowledging that Article 10 ECHR allows for the imposition by States of restrictions and sanctions that are "necessary in a democratic society", the Applicant argued that Article 24 bis of the French Press Law does not refer to such measures. According to the Applicant, "Article 24 bis, by penalizing those who dispute the existence of crimes against humanity, renders impossible any historical debate about these crimes and imposes a single version of the historical truth", "Article 24 bis thus introduced the offense capable of hindering free historical research.

These and other arguments of the applicant were rejected by the European Court of Human Rights, which fully supported the position of the French authorities and declared R. Garaudy's complaint inadmissible. The key fragment of the reasoning part of the ECtHR decision in this case is as follows:

"There can be no doubt that the contestation of clearly established historical facts, such as the Holocaust, as the applicant does in his work, has nothing to do with the work of historical research aimed at finding the truth. The purpose and result of such a demarche are completely different, since in fact we are talking about the rehabilitation of the National Socialist regime and, as a result, the accusation of falsifying the history of the victims themselves.

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The Court considers that much of the content and general tone of the applicant's work, and therefore its purpose, is clearly negationist and thus runs counter to the fundamental values of the Convention as expressed in its preamble, namely justice and peace. It [the Court] considers that the applicant is attempting

to abuse Article 10 of the Convention by using his right to freedom of expression for purposes contrary to the letter and spirit of the Convention. Such aims, if admitted, would contribute to the destruction of the rights and freedoms guaranteed by the Convention."

Based on a comparative analysis of the constitutions of foreign countries, we will consider the consolidation of this right in the Constitution of the Republic of Uzbekistan. Article 42 of the Constitution of the Republic of Uzbekistan guarantees everyone the freedom of scientific and technical creativity, the right to use the achievements of culture. As we have already indicated above, this provision of the Constitution of the Republic of Uzbekistan obliges state bodies to support research in the field of science and technology. The freedom of creativity, as defined in the Constitution, is fully guaranteed. The creator has the right to create works on the theme he wants, to publish these works. The creator has a number of personal and property rights in relation to his work. These rights are secured by law. All users of creative works must strictly observe the personal and property rights of the creator. The laws establish criminal, administrative, civil liability for appropriation of other people's creative works, their unauthorized use, publication.

Restrictions on this freedom are allowed only on the basis of a federal law and only for the purposes directly specified in the Constitution: Human rights and freedoms may be restricted only in accordance with the law and only to the extent necessary to protect the constitutional order, public health, public morality, the rights and freedoms of others, ensuring public safety and public order. (Article 21 of the Constitution of the Republic of Uzbekistan) .

The most common form of restrictions provided for by laws is the establishment of a permissive regime, i.e. the need to obtain prior permits (licenses) from the competent authorities to carry out certain types of scientific activities. Such laws include the Law of the Republic of Uzbekistan "On Licensing, Permitting and Notification Procedures". This law approved the list of licensed activities.

For certain types of activities, the requirement for licensing related scientific research is provided for by special laws. So, in accordance with the law of the Republic of Uzbekistan "On the use of atomic energy for peaceful purposes" , the conduct of scientific research in this area is a type of activity in the field of the use of atomic energy. The use of atomic energy is included in the licensed activity.

The need to obtain prior permits may also apply to access to scientific information constituting a state secret, in particular, information includes "official secrets constituting information in the field of science, technology, production and management, the disclosure of which may harm the interests of the Republic of Uzbekistan." (Law of the Republic of Uzbekistan "On the protection of state secrets").

But in accordance with the Decree of the President on the State Program of 2020 "Year of Development of Science, Education and the Digital Economy", in order to prevent unreasonable restrictions on access to information necessary for the development of science and education, information technology, labor relations and entrepreneurship, as well as taking into account international standards, by September 1, 2020, take measures to review the list of information classified as state secrets, with its subsequent declassification.

In addition to acts of domestic legislation, restrictions on certain types or methods of scientific activity may be introduced by international treaties ratified by the laws of the Republic of Uzbekistan. Thus, the

Convention of the Commonwealth of Independent States of May 26, 1995 on human rights and fundamental freedoms, although it does not contain provisions on the freedom of science (see 4.3.1), provides for restrictions on scientific and medical experiments without obtaining the consent of the people participating in them: "No one may be subjected to medical or scientific experiments without his free consent" (Article 3 of the Convention of May 26, 1995).

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