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THE RIGHT TO FREEDOM OF SPEECH AS A FUNDAMENTAL RIGHT

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Introduction: the article considers the original constitutional and legal requirements of the right to freedom of speech as one of the fundamental human rights, noting its complex nature as of a personal and political right. **Purpose:** to analyze approaches developed in the constitutional law science and in judicial practice covering the concept of “freedom of speech” and to justify the statement that the right to freedom of speech is one of the fundamental rights of the individual. **Methods:** the methodological basis of the research is based on a set of general scientific (analysis, synthesis, induction and deduction) and specific scientific (formal-legal, comparative law) methods of cognition. **Results:** the use of the right to freedom of speech involves the person’s use of all the powers vested by this freedom: the right to produce and search for information, the right to make up messages out of the information, the right to transfer and disseminate information, the right to use accessible communication channels, the right to receive and decode the transferred messages, the right to hold one’s own opinions and beliefs, the possibility to enjoy the freedom of communication as a commonweal. **Conclusions:** the constitutional right to freedom of speech is classified as the fundamental human right, it is inalienable and is given to everyone since birth. As a fundamental right, the freedom of speech provides protection against arbitrary interference of the state into the important area of the human life – communication.

Keywords: freedom of speech; human rights; fundamental rights;
inalienable rights; indefeasible rights; communication; information

Information in Russian

ПРАВО НА СВОБОДУ СЛОВА КАК ОСНОВНОЕ ПРАВО

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Введение: в статье рассматриваются исходные конституционно-правовые требования права на свободу слова как одного из основных прав человека, отмечается его сложная природа в качестве личного и политического права. **Цель:** проанализировать разработанные в науке конституционного права и судебной практике подходы к понятию «свобода слова» и обосновать, что право на свободу слова относится к числу основных прав личности. **Методы:** методологическую основу исследования составила совокупность общенаучных (анализ, синтез, индукция и дедукция) и частнонаучных (формально-юридический, сравнительно-правовой) методов познания. **Результаты:** использование права на свободу слова предполагает использование лицом всех предоставленных ему этой свободой правомочий, а именно: право производить и искать информацию; право придавать информации форму сообщения; право передавать и распространять информацию; право использовать доступные каналы связи; право получать и расшифровывать передаваемые сообщения; право придерживаться своего мнения, убеждения; возможность пользоваться свободой коммуникации как социальным благом. **Выводы:** конституционное право на свободу слова относится к основным правам человека, оно является неотъемлемым и принадлежит каждому от рождения. Как основное право, свобода слова обеспечивает защиту от произвольного вмешательства государства в важнейшую сферу человеческой жизни – коммуникацию.

Ключевые слова: свобода слова; права человека; основные права; неотъемлемые права; неотчуждаемые права; коммуникация; информация

Introduction

The categories of fundamental rights are considered in legal literature in different aspects. The two principle approaches to this issue, closely related to each other, should be distinguished: all the constitutional rights are qualified as fundamental rights or only the most important rights of a human (those inalienable and indefeasible and given to everyone since birth in accordance with Part 2 of Article 17 of the Constitution of the Russian Federation). Against this background, the RF Constitutional Court's regulations addressing the mentioned task are of special interest.

The Constitutional Court of the Russian Federation considers different constitutional rights to be fundamental rights: the freedom of movement and the freedom to choose the place of living (Part 1 of Article 27)¹, the freedom of information

(Part 4 of Article 29)², the right to private property (Article 35)³, the right to the juridical protection (Article 46)⁴, and the right to the free use of the person's own abilities and property for entrepreneurial activities (Article 34)⁵, the right to be elected to the state power bodies and local self-government bodies (Part 2 of Article 32)⁶ and the right to education (Article 43)⁷.

² Regulation of the Constitutional Court of the Russian Federation of March 4, 1997, No. 4-P. *Collection of Legislative Acts of the Russian Federation*. 1997. No. 11. Art. 1372.

³ Regulation of the Constitutional Court of the Russian Federation of July 14, 2005, No. 9-P. *Collection of Legislative Acts of the Russian Federation*. 2005. No. 30 (Part II). Art. 3200.

⁴ Regulation of the Constitutional Court of the Russian Federation of November 17, 2005, No. 11-P. *Collection of Legislative Acts of the Russian Federation*. 2005. No. 48. Art. 5123.

⁵ Regulation of the Constitutional Court of the Russian Federation of July 18, 2003, No. 14-P. *Collection of Legislative Acts of the Russian Federation*. 2003. No. 30. Art. 3120.

⁶ Regulation of the Constitutional Court of the Russian Federation of April 25, 2000, No. 7-P. *Collection of Legislative Acts of the Russian Federation*. 2000. No. 19. Art. 2102.

⁷ Regulation of the Constitutional Court of the Russian Federation of April 8, 2004, No. 167-O. *Collection of Legislative Acts of the Russian Federation*. 2004. No. 19. Art. 2099.

¹ Regulation of the Constitutional Court of the Russian Federation of April 4, 1996, No. 9-P. *Collection of Legislative Acts of the Russian Federation*. 1996. No. 16. Art. 1909.

It is necessary to pay attention to the fact that the Constitutional Court does not use the notion of the “fundamental right” defining the freedom of speech. On account of the successive use of the “fundamental right” characteristic each time when mentioning the right to juridical protection¹, and in particular in connection with the acknowledgment of the freedom of entrepreneurial activities and the right to education as fundamental rights, this circumstance can hardly be called accidental.

In this relation, three regulations of the RF Constitutional Court are indicative: 1) Regulation of November 30, 2003, No. 15-P², 2) Regulation of November 14, 2005, No. 10-P³ and 3) Regulation of June 16, 2006, No. 7-P⁴. In all the three cases the claims were associated with the freedom of speech restriction. It may seem to determine the necessity to express the standpoint concerning the nature of the freedom of speech as a fundamental right.

However, in no single regulation was the freedom of speech called a fundamental right. In other cases, the RF Constitutional Court, mentioning the freedom of speech, limited itself to such wording as the “constitutionally meaningful purpose”, or, for example, the “constitutional right”⁵. Such a “position” requires clarifications.

This means that the necessity to research the constitutional right to the freedom of speech as a fundamental right should be considered compelling.

Nature of Fundamental Rights

The question about the fundamental right criteria is widely discussed in juridical literature. In spite of the disputable nature of the question, researches find various characteristics which basically do not contradict each other but reveal different angles of one and the same notion.

The meaning of the regulation of Part 2 of Article 17 of the RF Constitution is that it legally settles the fundamental relationships between an

individual and the state, thus fixing one of the fundamental principles of such relations. Based on that, this regulation of the RF Constitution should be understood in the following way: each individual since his birth and till he dies possesses the most important (fundamental) rights. No one and under no circumstances can be deprived of these rights.

Having regard to the above, let us make it clear that understanding of fundamental rights is primarily defined by Part 2 of Article 17 of the RF Constitution, which runs that fundamental rights are indefeasible rights and are granted to each individual naturally.

International law classifies the right to freedom and the equality of men as rights acknowledged naturally and the right to life is settled as an indefeasible right. The RF Constitution categorizes the right to the personal dignity (Part 1 of Article 21), the right to freedom (Part 1 of Article 22), the right to privacy (Part 1 of Article 23) and some others as indefeasible rights, along with the right to life. For this reason, they are called fundamental.

From our point of view, fundamental rights have a number of typical features. Fundamental rights and their guaranteeing are associated, first of all, with providing and protection of the most important or most assailable spheres of a person's activities; secondly, the original constitutional values, i.e. an individual, his freedom, equality and personal dignity, privacy are directly represented in other rights (these, for example, include appendant and special fundamental rights); thirdly, the RF Constitution assigns the highest guarantees to fundamental rights and freedoms.

As is known, not all personal rights comply with the mentioned characteristics, but the most important of them and first of all those serving as indefeasible and manifesting the original constitutional values and their principal guarantees.

The described approach is compliant with the doctrinal provisions of K. Hesse. The author notes that, in their origin and historical development, fundamental rights are the guarantees that secure and protect separate, particularly important or constantly attacked spheres of life; and in the subjective understanding, fundamental rights of the constitutional states of the West are super-positive legal values and the basis of legal awareness [5, pp. 151, 159].

The concept of K. Hesse was supported by the domestic constitutionalists. As E. A. Lukashva notes in her work, the list of fundamental rights

¹ Regulation of the Constitutional Court of the Russian Federation of April 14, 2002, No. 4-P. *Collection of Legislative Acts of the Russian Federation*. 2002. No. 18. Art. 894.

² Regulation of the Constitutional Court of the Russian Federation of October 30, 2003, No. 15-P. *Collection of Legislative Acts of the Russian Federation*. 2003. No. 44. Art. 4358.

³ Regulation of the Constitutional Court of the Russian Federation of November 14, 2005, No. 10-P. *Collection of Legislative Acts of the Russian Federation*. 2005. No. 47. Art. 4968.

⁴ Regulation of the Constitutional Court of the Russian Federation of June 16, 2006, No. 7-P. *Collection of Legislative Acts of the Russian Federation*. 2006. No. 27. Art. 2970.

⁵ Regulation of the Constitutional Court of the Russian Federation of November 22, 2000, No. 14-P. *Collection of Legislative Acts of the Russian Federation*. 2000. No. 49. Art. 4861.

consists of the rights contained in the fundamental international acts (the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, the International Covenant on Civil and Political Rights of 1966 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950). In the author's opinion, fundamental rights are the backbone of the legal status of a person and they allow for the emergence of other numerous rights necessary for a normal life of a person [3, pp. 135–136].

M. V. Baglai points out such characteristics as the importance, the depth of fundamental rights, their ability to uncover the natural state of freedom, as well as their being covered by the supreme juridical protection [1, p. 167].

T. Ya. Habrieva and V. E. Chirkin give such a characteristic as the connection of fundamental rights enumerated in the RF Constitution with the universal human values and other universally acknowledged rights and freedoms of a person [4, p. 136] (Part 1 of Article 55).

Thus, a complex nature of fundamental rights is revealed in juridical literature: their essence and content (the original constitutional values, guaranteed rights necessary for human existence, the backbone of the legal status of a person) as well as the juridical aspect (establishment of the human rights and freedoms which are indefeasible and belong to a person since birth in the basic international legal acts and constitutions of democratic countries) are defined.

Content of the Freedom of Speech as a Right

The original fundamental human rights are closely connected with the appendant and special rights. In these relation, the latter increase the protective force of fundamental rights. Special rights themselves gain the essence of fundamental guarantees. In other words, the indefeasible guarantees acquire the quality of fundamental rights and thereby can be viewed as fundamental ones.

The understanding of the problem under research can be improved through considering it within the framework of the “negative liberty” concept. The attributed author of the notions “negative” and “positive” liberties is I. Berlin. The negative liberty if defined by the researcher as the individual's minimum freedom protected from the external interference. This freedom from something differs from the “positive liberty”, which is the freedom for something. The essence of the negative liberty was defined by I. Berlin himself as the area

within which a person or a group of persons are to be left to do or be what they are able to do or be [6].

It is worth noting that yet at the beginning of the previous century constitutionalists, when categorizing fundamental rights, accepted them as having a negative character. Fundamental rights were unanimously viewed as the guarantees against the state's interference into the individual liberty sphere.

For example, V. F. Matveev, analyzing the ideas of the German constitutionalist O. Gierke, states that the fundamental rights concept, as the latter understands it, implies the existence of a personal liberty kingdom, which is untouchable even for the supreme mode of communication. That is why the object of fundamental rights is not the freedom of worship, not the freedom of press or the freedom of meetings, but the fact that the state agrees to recognize the disputable set of actions contained in these notions as a non-state sphere of the individual self-activity, and correspondingly the state agrees not to interfere in this sphere [2].

It appears that the guarantee of the negative liberty can be regarded as one of the principal criteria of the fundamental human rights. It is because human rights in their social and political essence are the rights of protection. These are the rights of protection from the despotism of the state power, from the excessive interference in the sphere of personal freedom [5, p. 169].

Furthermore, the attention should be paid to the fact that fundamental rights are classified as the so-called first-generation rights [3, p. 137]. With this, some of the researches incline to assign all the “negative freedoms” particularly to the first-generation rights.

The first generation rights are traditionally considered to be the rights which were the first to get the legal acknowledgement as natural, inherent and belonging to each person since birth in the basic constitutional documents of the bourgeois revolutions epoch. The Bill of Rights of 1791, the Declaration of the Human and Citizen Rights of 1791, the first constitutions of the world's countries are among them.

V. F. Matveev makes it prominent that fundamental rights got their name basically because they are declared in triumph when establishing the constitutional form of government and because they are enshrined in the constitutional charters and documents of inaugural character [2].

In view of the foregoing, one should admit that fundamental rights are the “negative freedoms” which define the human activities sphere

free from the state's interference. These rights are characterized by such features as the fundamental nature and ability to protect (guarantee) the minimum freedom necessary for the existence and development of any person.

In this respect, fundamental rights are the basic legal values forming the centerpiece of the person's legal status in any democratic society. Fundamental rights are enshrined in the principal (universal) international acts. Historically, fundamental rights were acknowledged as a result of bourgeois revolutions and were included into the first constitutions of the world's countries.

The nature of fundamental rights is not limited to the mentioned features. The right to juridical protection, for example, needs to be included into the list of fundamental rights in spite of the fact that it does not comply with the above characteristics of this group of rights. With this, in relation to fundamental rights, it acts as an inherent guaranteed right.

For example, the RF Constitutional Court stated that the right to juridical protection refers to fundamental inherent human rights and freedoms being simultaneously the guarantee of other rights and freedoms¹. One should agree with this because the right to juridical protection in a democratic society is an indefeasible guarantee of the fundamental rights protection, which was repeatedly stated in the foreign [8; 9] and domestic literature.

The group of fundamental rights includes the freedom of speech. As a rule, researchers limit the freedom of speech to the right to freely distribute opinions, views, ideas, including or excluding the freedom of information and the freedom of press into/from its content. Such an approach seems to be restrictive. In our opinion, the freedom of speech as a fundamental right is a guarantee against the state's interference into the most important sphere of the human life – into communication.

In the communicative sense, the freedom of speech includes a number of freedoms and prohibitions. These are: a) the freedom to produce and to search for information; the freedom to make up messages out of the information; the freedom to transfer and disseminate information, the freedom to use the accessible communication channels, the freedom to receive and decode the transferred mes-

sages; b) the right to hold to opinions and beliefs; c) the right to protection of all the persons involved into the communication activities; d) prohibition for the authorities to interfere in communication activities; e) prohibition on limitation of the means of disseminating information; f) prohibition on forcing anyone to express opinions, ideas, beliefs; g) prohibition on interference in activities of the communication service providers; h) prohibition on censorship.

The historical experience shows that communication, being an important sphere of life, is constantly under the threat from the state authorities. Without the freedom of communication, a person is not able to exist and progress harmonically. The opportunity to communicate guaranteed by the freedom of speech means the possibility of the total development and application of all the human qualities, intellect, talents, and meeting the spiritual and other needs. That is why the freedom of speech is defined in juridical literature as one of the key freedoms in the society, and first of all of the society's political and spiritual spheres [5, p. 196]. Thus, it is not by chance that the Preamble of the Universal Declaration of Human Rights proclaims the freedom of speech and beliefs as the highest aspiration of the common people. A special value of the freedom of speech is recognized in different legal systems.

For example, in the West European countries of the continental system, the right to the freedom of speech is characterized as an inalienable right intrinsic to a person's nature [10], in the American legal doctrine – as one of the major and fundamental freedoms [9]; the legal doctrine of Great Britain points out that the freedom of speech results from the personal freedom and is a derivative of it [8]. The right to the freedom of debating for the members of the English Parliament was stipulated already in the English Bill of Rights of 1689, and the freedom of speech and press for all the persons was settled in the first amendment to the American Bill of Rights of 1789 and in the French Declaration of Human and Citizen Rights of 1789. Today the freedom of speech is legitimized in all the basic international acts on human rights and is traditionally viewed as a universal legal and human value. The value essence of the freedom of speech can be studied in its subjective and objective meanings.

The freedom of speech as a subjective right was not always unambiguously treated in legal science. For example, in the opinion of G. Jellinek,

¹ Regulation of the Constitutional Court of the Russian Federation of May 11, 2005, No. 5-P. *Collection of Legislative Acts of the Russian Federation*. 2005. No. 22. Art. 2194.

the state's recognition of some known sphere of freedom for the citizens is mainly explained by the fact that the actions taken by the citizens within this sphere are not juridically interesting for the state; and if someone, practicing the freedom of printing, publishes his work, then this action has to do with the state's rights in the same way as drinking of the person's own wine or walking on the person's own piece of land [2].

However, de-facto the state construction proves the contrary: fundamental rights, inevitably facing the public power authority, become very as-sailable. Therefore, the necessary conclusion was made that fundamental rights require having the authority to force the state to at least abstain from interference. At present, the constitutional theory and practice, including that of Russia¹, conferred the meaning of the protective subjective rights on the fundamental (constitutional) rights.

The freedom of speech as a subjective right is defined as a legally guaranteed type and degree of the possible behavior of a person, including three elements:

1. A possibility for the positive behavior (right to personal actions/ failure to act). The freedom of speech suggests both its positive usage and refusal to practice it (failure to act). Only on the condition of the availability of the mentioned alternative, one can speak about the real freedom of the realization of the right [5, p. 153].

The positive use of the freedom of speech involves the person's use of all the authorities imposed by this freedom: the right to produce and to search for information, the right to make up messages out of the information, the right to transfer and disseminate information, the right to use the accessible communication channels, the right to receive and decode the transferred messages, the right to hold to opinions and beliefs, the possibility to enjoy the freedom of communication as a commonweal. On the other hand, the freedom of practicing the subjective right means a freedom to refuse to use it.

Part 3 of Article 29 of the RF Constitution settles the corresponding guarantee norm, according to

which no one can be forced to express his opinions and beliefs or to abandon them. The refusal to practice the freedom of speech is a kind of "the right to remain silent" and "the right for silence", i. e. the freedom to refuse to transfer or distribute messages.

Moreover, the refusal to exercise a right means also the right to refuse to receive messages. This right is established, in particular, by the USA Supreme Court. In case *Rowan v. United States Post Office Dept.* the court declares: "There is nothing in the Constitution that makes us listen to or watch the undesired communication no matter what its quality is"². This statement can also be referred to the guarantees of Part 3 of Article 29 of the RF Constitution, it may be made currently relevant by the fact that the freedom to refuse to receive the transferred messages is the constitutional grounds for solving such a problem as "spam".

The right to refuse to receive messages is not an absolute right, it can be restricted for protecting other values contained in the Constitution. In particular, the RF Constitution restricts the freedom of communication in the sphere of criminal procedures, setting the obligation of witnessing. The exceptions from this requirement are settled in Part 1 of Article 51 of the RF Constitution, which runs that nobody shall be compelled to be a witness against themselves, against their spouse and close relatives defined by the federal law. With this, a possibility to refuse to witness in the mentioned cases is provided by the general regulation of Part 3 of Article 29 of the RF Constitution, which establishes the prohibition to compel to express one's own opinions and beliefs.

2. A possibility to demand the corresponding behavior from the right-bound person (the right to other people's behavior).

The right-bound persons are: firstly, an individual and a citizen; secondly, associations of citizens, their bodies and authorized persons; thirdly, state power and local self-government bodies and their officials. All the mentioned persons can create conditions of restricting the freedom of speech by their illegal actions. Therefore, holders of the right to the freedom of speech are entitled to demand from them to observe the existing legislation in order to avoid the infringement of rights.

¹ Regulation of the Constitutional Court of the Russian Federation of May 31, 2005, No. 6-P. *Collection of Legislative Acts of the Russian Federation*. 2005. No. 23. Art. 2311; Regulation of the Constitutional Court of the Russian Federation of November 29, 2004, No. 17-P. *Collection of Legislative Acts of the Russian Federation*. 2004. No. 49. Art. 4948.

² *Rowan v. United States Post Office Dept.* (1970). Available at: <http://www.openjurist.org/397/us/728> (accessed 23.09.2015).

3. The possibility to resort to the state coercion in case the party fails to perform obligations. In case the right-bound person infringes the right to the freedom of speech, the subject of right can go to the court for protecting the infringed right.

The named elements in their unity define the content of the right to the freedom of speech as a subjective right.

Objective and Legal Meaning of the Freedom of Speech

The value essence of the freedom of speech is not limited to the subjective-legal meaning. Fundamental rights are, on the one hand, subjective rights of an individual, and on the other hand, they are the elements of the objectively existing social order [5, pp. 148–158]. They constitute the content of the general public order, thus receiving the objectively legal meaning. Through the realization of the subjective rights, the corresponding constitutional order is formed. Thereby, the latter obtains its actual existence. The principal elements of the democratic constitutional legal order are included into the legal basis of the constitutional system, thus being objectively manifested. The objective legal meaning of fundamental rights is taken into account by the RF Constitutional Court when taking decisions on specific cases.

For example, in one of its decisions, the RF Constitutional Court formulated the following position: due to the interrelated regulations of Articles 1 (Part 1), 3 (Part 3) and 32 (Parts 1 and 2) of the RF Constitution, voting rights, being subjective rights, act as an element of the voter's constitutional status. With this, these rights are the elements of the public legal institution of elections¹, which is one of the foundations of the democratic constitutional legal order.

The objective legal meaning of the freedom of speech is determined by its direct connection with the fundamentals of the constitutional system. The realization of the freedom of speech is one of the conditions for the ideological diversity provided for in Part 1 of Article 13 of the RF Constitution. This is because the ideological diversity in the society is not possible without the freedom of communication.

Ultimately, providing the freedom of speech is one of the guarantees of the true people power and democratic state power established as the basis of the constitutional system by Article 1 and Article 3 of the RF Constitution. As the RF Constitutional

Court notes, elections as one of the democratic institutions can be considered to be free only in case the right to objective information and the freedom of expressing opinions are guaranteed².

Based on the mentioned above, one must admit that the freedom of communication activities is removed from the competence of the state authorities which are not entitled to cancel it or interfere in this sphere of life with no reasons. The general constitutional guarantee of the freedom of speech is the ideological diversity as one of the constitutional system fundamentals protected by the direct prohibition on the establishment of the state or any other mandatory ideology (Part 2 of Article 13 of the RF Constitution).

With this, the objective legal aspect of the freedom of speech excludes the unrestricted freedom of an individual. When practicing the freedom of speech, protection of other constitutional values (fundamentals of the constitutional system, morality, health, legitimate rights and interests of other persons, country's defense, national security) should be observed in accordance with Part 3 of Article 55 of the RF Constitution. For this purpose, the RF Constitution establishes direct prohibitions. These are the principal ones of them: the prohibition on creation and promotion of public entities whose purposes and actions are aimed at the incitement of social, ethnic, national and religious conflicts (Part 5 of Article 13 of the RF Constitution); the prohibition on agitprop leading to social, ethnic, national and religious hatred and antagonism; the prohibition on the declaration of social, ethnic and religious supremacy (Part 2 of Article 29 of the RF Constitution).

Taking into account the mentioned above, one should agree that for the purpose of protecting the constitutionally secured values, the freedom of speech can be restricted by definite constitutional prohibitions. In the law enforcement practice, these restrictions should be reasonable, fair and proportionate; if they are followed, the guarantees of the freedom of speech are strengthened, and their normative meaning gets constitutional justification.

Conclusions

1. The constitutional right to the freedom of speech is one of the fundamental human rights, it is infeasible and belongs to everyone since birth. As a fundamental right, the freedom of speech

¹ Regulation of the Constitutional Court of the Russian Federation of November 29, 2004, No. 17-P. *Collection of Legislative Acts of the Russian Federation*. 2004. No. 49. Art. 4948.

² Regulation of the Constitutional Court of the Russian Federation of October 30, 2003, No. 15-P. *Collection of Legislative Acts of the Russian Federation*. 2003. No. 44. Art. 4358.

provides protection from the voluntary interference of the state in the most important sphere of a person's life – the sphere of communication.

The freedom of speech is one of the most important guarantees of the original constitutional rights (life, freedom, reputation and dignity). The freedom of speech itself is legalized in all the basic international acts on human rights and in the constitutions of the world's countries.

2. The content of the freedom of speech as a subjective right includes the following elements: a) a possibility for a positive behavior (right to personal actions/ failure to act), which involves the freedom to produce and search for information, the freedom to make up messages out of the information, the freedom to transfer (disseminate) information, the freedom to use the accessible communication channels, the freedom to receive and decode the transferred messages, the freedom to hold to opinions and beliefs; b) a possibility to enjoy the freedom of communication as a public weal; c) a possibility to demand the corresponding behavior from the right-bound person (the right to other people's behavior); d) a possibility to resort to the state coercion in case the other party fails to perform obligations.

In addition, the subjective right to the freedom of speech also includes the right to refuse to transfer and distribute messages and the right to refuse to receive messages.

3. The objective legal meaning of the freedom of speech lies in the fact that the realization of the freedom of speech is implemented in the fundamentals of the constitutional system. The freedom of speech is one of the principal elements of the democratism (Article 1 of the RF Constitution), the power of people (Article 3 of the RF Constitution), the ideological diversity (Part 1 of Article 13 of the RF Constitution).

4. The freedom of speech as a complex right is restricted by general constitutional prohibitions: a) prohibition on the creation and promotion the public entities whose purposes and actions are aimed at the forced changing of the existing constitutional system and damage to the integrity of the Russian Federation, undermining of the national security, organization of armed groups, incitement to social, ethnic, national and religious conflicts (Part 5 of Article 13 of the RF Constitution); b) the prohibition on agitprop leading to social, ethnic, national and religious hatred and antagonism; the prohibition on the declaration of social, ethnic, religious and language supremacy (Part 2 of Article 29 of the RF Constitution).

Moreover, the freedom of speech can be restricted by the federal legislative authorities for the purpose of protecting the constitutionally secured values: the fundamentals of the constitutional system, morality, health, legitimate rights and interests of other persons, ensuring the country's defense and national security (Part 3 of Article 55 of the RF Constitution).

References

1. *Baglay M. V. Konstitutsionnoe pravo Rossiyskoy Federatsii: uchebnik dlya vuzov* [Constitutional Law of Russia: Textbook for Higher Educational Institutions]. Moscow, 2004. 816 p. (In Russ.).
2. *Matveev V. F. Pravo publichnykh sobraniy. Oчерk razvitiya i sovremennoy postanovki prava publichnykh sobraniy vo Frantsii, Germanii i Anglii* [The Right to Public Meetings. A Sketch of the Development and Current State of the Right to Public Meetings in France, Germany and England]. Available at: <http://www.allpravo.ru/library/doc117p0/instrum2988/> (accessed 23.09.2010). (In Russ.).
3. *Prava cheloveka. Uchebnik dlya vuzov* [Human Rights: Textbook for Higher Educational Institutions; ed. by E. A. Lukasheva]. Moscow, 2001. 573 p. (In Russ.).
4. *Khabrieva T. Ya., Chirkin V. E. Teoriya sovremennoy konstitutsii* [The Theory of Modern Constitution]. Moscow, 2005. 320 p. (In Russ.).
5. *Hesse K. Osnovy konstitutsionnogo prava FRG* [Fundamental Principles of the FRG Constitutional Law]. Moscow, 1981. 368 p. (In Russ.).
6. *Berlin I. Two Concepts of Liberty. Four Essays on Liberty*. London, Oxford University Press, 1969. Pp. 121–134. (In Eng.).
7. *Newman R. K. The Constitution and Its Amendments*. N. Y., 1999. Vol. 4. 214 p. (In Eng.).
8. *Rosenfeld M., Sajo A. The Oxford Handbook of Comparative Constitutional Law*. London: Oxford University Press, 2012. 288 p. (In Eng.).
9. *Trybe L. H. American Constitutional Law*. 3 ed. New York: Foundation Press, 2000. Vol. 1. 1340 p. (In Eng.).
10. *Wichman M., Heinz W. Freedom of expression and human rights protection*. Friedrich Naumann Foundation, 1997. 320 p. (In Eng.).

References in Russian

1. *Баглай М. В. Конституционное право Российской Федерации: учебник для вузов*. М.: Норма, 2004. 816 с.
2. *Матвеев В. Ф. Право публичных собраний. Очерк развития и современной постановки*

- права публичных собраний во Франции, Германии и Англии. СПб [По изданию 1909 г.]. URL: [http:// www.allpravo.ru/library/doc117p0/ instrum2988/](http://www.allpravo.ru/library/doc117p0/instrum2988/) (дата обращения: 23.09.2010).
3. *Права человека: учебник для вузов* / отв. ред. Е. А. Лукашева. М.: Норма, 2001. 573 с.
 4. *Хабриева Т. Я., Чиркин В. Е.* Теория современной конституции. М.: Норма, 2005. 320 с.
 5. *Хессе К.* Основы конституционного права ФРГ / пер. с нем. Е. А. Сидоровой. М.: Юрид. лит., 1981. 368 с.
 6. *Berlin I.* Two Concepts of Liberty // Four Essays on Liberty. L.: Oxford University Press, 1969. P. 121–134.
 7. *Newman R. K.* The Constitution and its amendments. N. Y., 1999. Vol. 4. 214 p.
 8. *Rosenfeld M., Sajo A.* The Oxford handbook of comparative constitutional law. L.: Oxford University Press, 2012. 288 p.
 9. *Trybe L. H.* American constitutional law. 3 ed. N. Y.: Foundation Press, 2000. Vol. 1. 1340 p.
 10. *Wichman M., Heinz W.* Freedom of expression and human rights protection. Friedrich Naumann Foundation, 1997. 320 p.