

## Man Observance of His Rights in Russia

Victor Yu. Melnikov, Y.A. Kolesnikov, A.V. Kiseleva, N.V. Dzhagaryan and S.M. Lyakh  
Department of Municipal Law and Environmental Legislation,  
d.112/1, Apt.112, ul. Taganrog, 344016 Rostov-na-Donu, Russian Federation

**Abstract:** Ensuring the rights of participants in criminal proceedings must meet the ideas of man and his rights and liberties as the supreme value and comply with the international standards of human rights which are an integral part of the Russian legal system. The Russian Constitution recognizes human rights and liberties of the supreme value and their respect for and protection-state is responsibility. Establishment of the institute of human rights fulfill its purpose of criminal proceedings currently pending and continues its search for the real development. Norms concerning human rights remained unsecured due to extremely inconsistent, unsystematic and fragmented regulatory procedures for implementation of these declared rights. The idea of a priority in the criminal proceedings to protect from crime, the rights and legitimate interests of man, society and the state to protect individuals from illegal and unwarranted accusation, limitation of rights and freedoms as a basis for the concept of criminal procedural law. In addition to the disclosure of crimes and exposure of persons who have committed them for which functioning law enforcement system and reformed the current criminal procedure law, the purpose of criminal proceedings lies in the creation of a proper mechanism of legal security, the implementation and protection of the rights and freedoms of participants in criminal proceedings. Improving the efficiency of the legal regulation of the protection of human rights and freedoms in criminal proceedings needs to be improved, first of all in pre-trial proceedings, the application of coercive procedural measures.

**Key words:** Human liberty, the rights of personality, measures of procedural coercion, investigator, prosecutor

### INTRODUCTION

The idea of a priority in the criminal justice protection with crime, rights and lawful interests of individuals, society and the state to protect the individual from illegal and unreasonable charges, restrictions of rights and liberties as the basis of the criminal procedural law. Concept along side with crime detection and exposure of persons who committed it which the law enforcement system operates for a modern reformed criminal procedure law, the purpose of criminal proceedings is in creating a proper mechanism for legal security and protecting the rights and liberties of participants in criminal proceedings. The code of criminal procedure is intended to be the guarantor of human rights and liberties of the abuses committed by the preliminary investigation. Authorities improving the efficiency of the legal regulation of the individuals rights and liberties in criminal proceedings requires improvement, primarily in the pre-trial proceedings, the application of procedural enforcement.

The fact that the human rights is an actual character issue during pre-trial proceedings in the application of procedural enforcement, indicated by the fact that complaints to the European Court of Human Rights (ECHR) in the connection with the violation of the human

right to liberty and security established in Article 5 of the European convention are extremely prevalent for the protection of human rights and fundamental freedoms.

Not less important and urgent is the further development of the functional characteristics of human rights guarantees which suggests a mechanism for implementing the study subjects overbearing measures to promote and protect human rights in criminal proceedings, primarily by the example coercion. Usage it makes necessary studying the theoretical foundations of this mechanism as a means of (forms) of the constitutionally guaranteed rights and freedoms of a person and a citizen.

The main way of improvement of the criminal procedural law is considered to be the democratization of criminal procedure and its subordination to the protection of rights, freedoms, honor and dignity, the orientation of the criminal process to expand opportunities for active participation of the parties in criminal proceedings.

### MATERIALS AND METHODS

Methodological basis of this study is the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. In the process, general-purpose and scientific methods of

scientific knowledge are used as well historical and legal, systemic, structural-functional comparative legal, statistical, sociological, specifically the formal-logical, logical-legal and others. The legal framework and information base includes the research of international legal instruments, scientific sources, investigative and judicial practices to ensure the rights and law ful interests of individuals in the pre-trial proceedings. The thesis analyzes international legal acts, the constitution, decisions of the Constitutional Court and the Supreme Court of the Russian Federation, criminal procedure, criminal and administrative legislation of the Russian Federation, laws of foreign countries, regulations of the prosecution, the Interior Affairs Ministry, the Federal Security Service of the Russian Federation concerning to the research. The empirical base of the research are published statistics, the results of sociological surveys (questionnaires) of investigators, prosecutors, judges, lawyers, by using questionnaires, participant observed she knowledge and application by interrogators, investigators, prosecutors, judges, law enforcement practice standards, ensuring compliance, implementation and protection of human rights and freedoms during the pre-trial proceedings. In addition, collected empirical data consists of the practice of criminal investigations 1999-2014. Period 1027 criminal cases in the period from 1999-2014. In total researcher conducted a survey of employees investigative bodies and departments of the Russian FSS inquiry, investigators investigative committee of the Southern Federal District, the heads of investigative bodies and investigators of the Interior Affairs Ministry in total of the Russian Federation, Rostov Regional Court judges 606 employees as well as suspects, defendants, victims, witnesses. The thesis used the published statistics of the investigative and judicial practice on the use of coercive measures, support during prosecution of human rights and liberties.

## **RESULTS**

Many modern legal and theoretical design, fashion-stimulating institutions of criminal procedural law, do not provide an answer to the question: how to ensure the protection of human rights in the criminal process. They do not contain a clear delineation of the purpose and goals of criminal proceedings, they mixed the concepts of "goals" and "objectives" of the criminal process.

To the problem definition, the objectives of the criminal process was addressed by many scientists, average. A.S. Barabash notes that judicial reform and the adoption of the code turned the interest of researchers to

global issues criminal justice: its essence, forms, principles, systems (Barabash, 2005). M.A. Tkhakushinov considers that Article 6 of the code of criminal procedure are specified and the goals and tasks of criminal proceedings which merged into one the term "purpose of criminal procedure" (Tkhakushinov, 2003).

V.A. Azarov does not agree with these assertions. D.A. Kerimov noted: "activity, devoid of purpose, is pointless, meaningless". K.I. Migulina notes: "the crime to uncover the perpetrators of these crimes to denounce. And such a task cannot but be a fundamental principle of the criminal process". The final result-uncovering and bringing to justice the perpetrators of the crime. A.R. Belkin notes, "so important for the company's activities as criminal proceedings was deprived of the main landmarks established objectives, replacing them with a vague "purpose" to". S.F. Shumilin noted that the system-forming factors of criminal procedures of activities (investigators) are objective, i.e., established by the criminal procedure law results that should be obtained at a certain stage of pre-trial proceedings.

"The goal, ideally, the activity of thinking put the result and to achieve it are being undertaken certain activities; their ideal, internally impelling motive". The tasks are performed if they are on the one hand, clearly defined and on the other hand, recognized the performer. The decision of concrete tasks (number of tasks) approximates the goal. M.V. Bason said: "the goal is not only the specific result that would get the man. It also allows you to define a series of actions whose implementation is necessary for its achievement" (Bovsun, 2002).

S.I. Wiktorski wrote: "the Maintenance and protection of the legal order through the application to guilty punishments are strictly public nature, criminal proceedings, obviously cannot be based on a private early...". We should agree with M.I. Abdulayev that human rights should be based on the following principles: the priority of human rights in the relationship "person-state" and the state's obligation to recognize, respect and protect them; the rule of law, ensure law and order; the principle of mutual responsibility of person and state (Abdulaev, 1998).

The term "ensure" most successfully characterizes desirable from the point of view of the individual state of its rights and legitimate interests. A significant contribution to the study made by A.P. Guskova. Using in the law the wording "ensuring the rights of the individual", the researcher emphasizes that the identity and defining its qualitative properties are in this case the direct object of legal protection.

The guarantee of rights and freedoms in the criminal process is the activity of the investigator, prosecutor, court, advocate, directed including on creation of optimum conditions for implementation of the procedural rights and obligations of participants in criminal proceedings.

V.A. Shadrin noted that: under the protection of human rights in the investigation of crimes in a broad sense, may imply ensuring the rights of all involved in the investigation. Ensuring the rights of the individual covers all forms conducive to the parties in the enjoyment of rights including: rights; create the necessary conditions to assist in the implementation of the rights; protection against violations of rights; protection rights; restoration of rights.

Some researchers have pointed out the problems in ensuring human rights during criminal proceedings. A.N. Akmanov believes that the purpose of the safeguards system of participants in criminal proceedings is seen in the fact that she has to “work” as *pravohranitelnoi* factor if there was a violation of the law in respect of a person.

V.O. Gladyshev considers the concept of “security”, as the criminal procedure category which has mixed content and can be used with different semantic content. Ensuring the rights and freedoms of the individual presupposes the existence of procedural means of implementation, protection and security. Under the criminal procedural guarantees of a person she understands procedural measures defined in the criminal procedure law in the system of relationships that help to effectively protect legitimate interests to exercise to protect and safeguard the subjective rights of man and citizen.

To ensure the procedural rights of participants in criminal proceedings is of primary importance as his awareness of their rights since the introduction in criminal proceedings and the creation of favorable procedural regime of their complete and full realization. Set of procedural rights is not that other as the right to protection of their subjective rights and legitimate interests.

Under tools in ensuring that human rights are understood as the procedural actions of the subjects of criminal proceedings, their decisions which are implemented through individual rights. Under methods refers to the way in which these participants may act or make decisions independently or through officials.

The formation of appropriate conditions for the realization of human rights in criminal investigations requires not just the creation of new terms and additional guarantees. Necessary to observe the optimal designs

and shapes of the investigation, the formation of the totality of means, procedures, restrictions of individual rights and due process of registration.

The security of human rights in criminal proceedings is determined by the number of procedural form clearly constructing procedure of the proceedings. In criminal proceedings, it is advisable to unify the system of security measures for the protection of human rights. First of all we are talking about the order of notifications received in the course of the proceedings the decisions; the procedure for appealing the actions and decisions of bodies and officials carrying out the proceedings.

Thus, in particular, the duty to explain the law is suspected, the person is suggested to install exactly from the moment of actual deprivation of freedom of movement. In this situation, even before the moment of drawing up the Protocol of detention, the detainee must explain the essence of suspicion, the main fundamental rights, subsequently giving him the opportunity to fully exercise their right to defense.

Substantiates the view that the main purpose of the safeguards in criminal proceedings in the protection, promotion, realization of rights and legitimate interests of man and in the proper performance of his duties prescribed by law. The effectiveness of the system of human rights is determined by the presence of each procedural rights appropriate procedural safeguards, the connection between the general and special guarantees.

The purpose of the system of guarantees of rights and lawful interests of a person is reflected in the fact that in criminal proceedings they, first are the means, allowing to minimize errors in relation to the mentioned participants in criminal proceedings, thereby to implement the requirements of Article 6 of the code. Secondly, it is a means of ensuring the possibility of actual use of their rights and give them real character.

V.V. Lazarev makes two important clarifications: first, within the theory guarantees it is necessary to consider the negative impact of knowledge without which we cannot effectively strengthening the rule of law, human rights; secondly, real guarantees are applicable as the aggregate of any phenomena, processes including both positive and negative impacts.

E.F. Kucova understands the guarantees of individual rights in criminal proceedings, specific rights and obligations of participants of criminal procedure relations. Warrant should be considered as established by rules of the criminal procedure law different in content means, collectively its designed to give participants the opportunity to realize the rights they possess. To the specified it is possible to add, under what legal

guarantees should be understood and defined the ways of realization of rights and freedoms of the participants of those or other relations.

According to P.A. Lupinskaya, procedural and legal safeguards is contained in law legal tools that enable all subjects of criminal procedure the ability to perform the duties and use of law.

Timely informing of a person involved in criminal proceedings as a participant, the rights belonging to it must be regarded as one of the guarantees of human rights and explanation of rights as an integral part or element of their components. Key ideas for the defense:

The quality and effectiveness of criminal justice should primarily be determined by effectiveness protection of the legitimate interests of society and the state guarantee the individuals rights and freedoms, any damage caused by crime.

According to the provision of human rights they apply for the procedural enforcement in accordance with the purpose of criminal proceedings, the researcher understands and primarily considers the following participants in criminal proceedings: the suspect, accused, victim or witness. Ensuring human rights and liberties in criminal proceedings is an activity of investigator, prosecutor, court, aimed at creating optimal conditions for the implementation of the procedural rights and obligations of participants in criminal proceedings.

According to law guarantees of legality and validity of human rights restrictions, in the application of measures of procedural coercion, set of conditions, means and methods established by the rules of international, constitutional, criminal procedural law and other laws, should be understood as well as carried out on the basis of their procedural activities, ensuring the protection of the human physical, moral and mental integrity, individual freedom and personal security against arbitrary encroachments in criminal proceedings.

For proper observance of human rights in accordance with the purpose of criminal proceedings it develops and discusses the concept of «security mechanism, implementation and protection of human rights». «This mechanism during pre-trial proceedings is defined as a structured set of procedural and legal means and methods as well as a certain sequence of realization of human rights (Voskobitova, 2004)».

Structural organization of the of human rights mechanism includes the participants and their prosecution of criminal procedural powers; procedures for the implementation and protection of human rights in criminal proceedings; rights, duties and responsibilities of participants in criminal proceedings for the implementation purpose of criminal proceedings.

Mechanism ensuring the content of human rights during the pre-production includes she set of means and ways of relations with the criminal proceedings.

Realization of human rights shows the sequence of certain “technical steps” commission in its functioning. At the first stage mechanism ensuring, implementation and protection of human rights starts from the participants of criminal proceedings providing access to justice in accordance with their legal status. The second stage of the human rights mechanism is studying and establishing the rule of law, guarantees of their realization, factual circumstances. The third stage is the realization and protection, primarily overbearing subjects of rights and liberty including the application of the coercive procedural measures.

The limits of human rights are the statutory provisions allowing to determine the nature and degree of intervention methods in the sphere of individual rights and interests, the application of statutory law limits. Legitimate restriction of human rights must meet the following requirements: strict legal regulation; limited number of people who can use it and for whom can be used law limits data; temporary in nature; exceptional.

First stage of human rights realization in the application coercive procedural measures is to ensure that all participants in the criminal justice access to justice. Subject to the protection of their rights and liberty and legal interests must be specified directly and recognized not only the victim but also the suspect, the accused and any other person who is a participant the criminal proceedings.

Criminal Procedure Law should contain procedural safeguards implementation ensured by appropriate governmental entities responsibilities as well as the suspect, accused and other participants of criminal proceedings. It is desirable to avoid a repetition of the individual responsibilities that are not provided with appropriate means and subsequently determine their placing in a norm establishing the legal status of each of the participant in it is criminal proceedings. Breach of duty or improper performance of their duties if this resulted in a violation of human rights and liberties, should be classified as a significant breach of the law. Not only a decision, action (inaction) which can cause damage to the constitutional rights and freedoms or to impede access to justice but also a direct failure to perform or improper performance of duties by officials should be subject to appeal.

The notion of participant status in criminal proceedings should include not only certain legal rights and duties assigned to it but the responsibility for their failure or improper execution. «The basis of liability will be

a violation of the criminal procedure law and in particular, illegal or unjustified use of coercive procedural measures».

By fairness in the criminal case in the application of coercive measures in its criminal-procedural aspect, the author understands the presence of procedural rules set necessary for the protection of human rights in criminal proceedings as well as strict observance of these rights in the criminal case. Fairness in the criminal proceedings should be regarded as a principle as a logical continuation of criminal proceedings destination.

To further ensure of effective human rights seems appropriate to create a specialized judicial system as a unit of investigating judges, the selection of judicial review as a separate activity areas of judicial legislative regulation in its own chapter in the code. In addition to traditional forms of judicial review, the investigating judge must address issues related to the procedure of the preliminary hearing of the criminal case to check the materials submitted by the prosecutor legality and validity of the charges involving the parties, the sufficiency of the basis for the criminal proceedings in the trial.

The prosecutor should have the right not only to demand and verify the legality and validity of the investigators decisions or ones of the head of an investigative body to refuse initiating, suspending or discontinuing code the criminal proceedings (paragraph 51, Part 2 of Article 37 Criminal Procedure) but also to indict. Arraignment proposed by the prosecutor considering associated with the procedure of the preliminary rehearsal of the criminal case involving the parties, the question of the adequacy basis for the criminal proceedings in the trial. The researcher defends the position that the prosecution function should be carried out successively by the public prosecutor, the act of accusation (conclusion, judgment) should be imposed before the court only that official.

## **DISCUSSION**

Scientific novelty of the solution is determined by a major scientific problem which is important, first of all the fact that the nation's first legal science developed a mechanism to ensure a legal theory, implementation and protection of constitutional rights and liberties in the pre-trial proceedings, identified its components, given the limits of the notion of human rights restriction contain the conclusions of the essence to ensure and protect the individuals rights (the suspect, accused, victim or witness) as an example of applying the most stringent measures of procedural coercion proved optimal organization of criminal procedure in order to ensure human rights.

Theoretically, it is considered and justified that questions and concepts, content and classification of human rights and liberties in the context of criminal procedure in the use of coercive measures, principles of due process and the problems of their implementation in a criminal prosecution. Based on analysis of the investigative and judicial practice the main provisions of international law in the field of human rights and the legal regulation of the preliminary investigation, prosecution, court to ensure the rights and liberties of the individual in criminal proceedings.

The study formulated theoretical propositions that can be the basis for the characteristics guaranteed by the Constitution of the Russian Federation to ensure human rights and liberties during the pre-trial proceedings.

Based on a systematic analysis of the constitution, the Criminal Procedure Code and other laws, investigative and judicial practice has developed a system of criminal procedure provide funds, implementation and protection of human rights and liberties in criminal proceedings, providing information on the practical use of research by obtained results. The researcher investigated the effectiveness of the criminal procedure regulating the usage of the most coercive procedural measures such as arrest, detention and house arrest, bail; the analysis of practices and identification of ways to address the issues that cause difficulties for investigators in their application; proposed new application options for bans grounds of detention including their regard to the accused; the necessity of exception indefinite concept «other data» as a basis for the application of measures of procedural coercion.

Formulate regulations defining responsibilities of an investigator, a prosecutor, a judge, aimed at the promotion of human rights as well as their responsibilities and the consequences of improper performance of their duties.

## **CONCLUSION**

Improving the rules regulating the limitation of rights of participants in criminal proceedings, should be recognized as one of the effective means of implementing the principle of legality and the requirements of fairness in criminal proceedings.

Analysis and study of the problems of legal regulation of individuals rights and freedoms in criminal proceedings permitted to formulate the researcher's concept of individual rights security and protection in the application of coercive measures, scientific and theoretical propositions and conclusions about the nature of human rights security and protection, based on the given

proposals to improve legislation and practice enforcement to ensure the rights of subjects in criminal procedure relations.

As an immediate measure she legislate provision stating that failure of the investigator, the investigator in making and to adduce as evidence objects, documents that are relevant to the criminal case, should be adopted as well as necessary for a decision on the election of procedural enforcement in terms of relevance, reliability, affordability, presented by the defense to provide for the acceptance of legislative regulation of these particulars, address the issue of liability for breach of the given duty.

It is proposed to extend the application of elements of restorative justice, alternatives to criminal prosecution for the resolution of criminal law conflict, conciliation procedures involving a mediator in the presence of the victim in the criminal case and other forms of conditional cessation of criminal prosecution in a criminal case if the victim is absent, the conclusion is still in pre-trial conciliation agreement as a result of mediation and the termination of criminal proceedings in connection with accused or suspected under certain conditions.

Ensuring human rights by applying measures to it coercive procedural should include information about the person possessing all the rights given to him under the law, understanding their meaning; create the conditions necessary to support implementation of the rights; protection of rights; means. In connection with this proposed legislation to impose she investigator the duty to make victims acquaintance with his rights by handing him a written list of rights.

The conclusion is that the facts of any and all criminal law of torts to make a preliminary investigation in the form of inquiry can be differently difficult and

inexpedient. Further improvement in the abbreviated form of inquiry can significantly increase the effectiveness of procedural activity of the preliminary investigation and the judicial system to ensure immediate protection of the rights and lawful interests of victims of crimes both individuals and legal persons.

Application of shortened inquiry can also ensure the investigation in the shortest time the main body of minor offenses subject to allocate by the legislator «criminal offense». Prosecution for a criminal offense shall not entail judge dependence with its negative effects. Basis for the formation of criminal offenses categories in Russia can make an act not of great public danger as well as a number of crimes classified as small and medium-gravity which provides a maximum penalty of up to 3 years in prison.

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