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*Research Article*

## HUMAN RIGHTS AND CRIMINAL PROCESS: MODERN TENDENCIES

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*The subject of the research is social relations in the field of ensuring and protecting human rights in the criminal process. The goal is to identify and to describe the factors that determine ensuring and protecting human rights in the criminal process. The hypothesis of the research suggests that there are positive and negative trends that influence ensuring and protecting human rights during criminal proceedings. Also, it is possible to identify basic components of these trends. General scientific methods (analysis, synthesis, a dialectical method) have been applied, as well as Hexagram – a categorical symbol-based approach. As a result, the main factors enabling ensuring and protecting human rights in the criminal process have been identified along with the main obstructions; correlations between them have been found and comprehended; a factor model has been designed to represent both factor groups comprehensively. Conclusions: the factors enabling ensuring and protecting human rights in the criminal process include proper substantiation of the circumstances of the committed crime; the priority of human rights in legal and law enforcement activities; protection of those categories of individuals who cannot pursue their rights to the full extent. The factors preventing ensuring and protecting human rights in the criminal process include a criminal-legal conflict, legislation drawbacks, flaws in organizing law-enforcement activity. Range of applicability of the results: the resulting factor model facilitates the search for a comprehensive solution to the problem of ensuring and protecting human rights in the criminal process.*

**Key words:** *human rights, criminal process, criminal proceedings, procedural safeguards, function of criminal proceedings, principles of the criminal process, criminal procedural legislation, law enforcement practice*

### Introduction

Human rights issues are invariably relevant in the criminal process, which, on the one hand, protects and restores the rights of crime victims and, on the other hand, restricts the rights of citizens – parties to the criminal proceedings. The limits of permissible human rights restrictions for proceedings in criminal cases as well as ways to restore the rights violated by a crime constantly cause some worries for legislators, are a matter of debate for practicing lawyers and a subject for academic research. Ensuring and protecting human rights in criminal proceedings plays an important part in making the right decision on a criminal case. Modern criminal proceedings systems in Europe and in the world establish and announce protection

of rights and freedoms of every person regardless of their nationality, ethnicity, religion, race or any other personal peculiarities. The international legal foundation for this can be found in numerous international documents related to protecting human rights and freedoms.

As an academic literature review shows, the research of almost any criminal process issue eventually leads to the problem of ensuring human rights one way or another. Therefore, a significant part of the scientific publications is dedicated to improving legislation and law enforcement activity in terms of human rights protection in the criminal process that are either not ensured properly or are violated. Academic research is focused on protecting the rights of certain parties to a criminal procedure, mostly plaintiffs and suspects (the accused); ensuring certain rights of parties to criminal proceedings (the right to defense, the right of access to the courts and others); ensuring human rights during enforcement actions; ensuring human rights at various stages or phases of proceedings in a criminal case, proceedings of certain investigative activities or other legal proceedings; ensuring efficacy of an investigation as a way to restore the violated rights of the victim, and in other aspects.

When academicians narrow the matter down to certain violations of human rights in criminal procedural legislation and law enforcement activity, they usually point at imperfection in the existing legislation and suggests that relevant changes should be made. Another area of the academic search is identifying organizational problems that adversely affect ensuring human rights during proceedings in criminal cases. However, when the issues of proper ensuring human rights during the criminal process are worked out, as a rule, certain factors that influence achieving this goal are considered, but the combination of these factors is never studied as a comprehensive problem.

Currently, it can be said that it is necessary to develop some perception of the factors that have a positive effect on ensuring human rights in the criminal process and of those that have a negative effect. The hypothesis of the research suggests that is possible to identify positive and negative trends in ensuring and protecting human rights during proceedings in criminal cases and to find out the most important elements of these trends.

In the course of this research, the academic papers specifically dedicated to exercise of human rights in the criminal process have been studied. Presentation of conclusions on the reasons for human rights violation in the criminal process and the factors enabling exercise of these rights served as the analysis criterion. Generally, the reference retrieval has shown that authors stand for the need to organize the criminal process so that it could ensure the rights and legal interests of a person without causing them any damage with its measures (Mel'nikov, 2010; Kornikov, 2014). That said, a few factors that influence ensuring human rights in the criminal process can be identified, including trends for humanization of criminal procedure legislation, the process of its improvement, elimination of flaws and contradictions existing in the legislation (Mel'nikov, 2010; Gurdin, 2016; Grigor'eva, 2020; Gavrillov, 2021); consolidation and exercise of safeguards for ensuring individual's rights (Davydov & Kachalova, 2018; Gavrillov & Malysheva, 2018); improvement in the quality of crime solution and investigation; proper substantiation of all the circumstances of the case (Bunin, 2010; Kornikov, 2014); improvement in institutional and judicial control and prosecutor's supervision over the preliminary investigation (Mel'nikov, 2010; Gurdin, 2016); improvement in the system of pre-trial and trial proceedings, organization of settlement arrangements between the victim and the offender, particularly for offenses of low-to-medium severity (Mel'nikov, 2010) and so forth. The researchers recite various violations of human rights in the criminal process in their works, but while noting the reasons of these violations they do not see their systemization as a goal. However, identification and systemization of the main factors that enable and prevent ensuring human rights in the criminal process will allow proper organizing of plans and measures for ensuring and protecting them.

The goal of this research is to design a model of factors that determine ensuring and protecting human rights in the criminal process. A special method applicable for generating the required factor model is Hexagram – a categorical symbol-based approach developed by V. I. Razumov (Boush, Razumov, 2021: 152–153). This method is applied in planning, since it allows taking into account both the components that ensure achieving the goal (in our case – ensuring human rights in the criminal process) and the components that prevent this. A prerequisite for applying the method is the possibility of identifying two opposite aspects of the studied object: progressive and regressive, while each of them can be represented by three components. Within this research, the group of factors that facilitate ensuring human rights and the group of preventing factors may be examined as these opposite aspects. In each aspect, the factors that

have the most significant influence on the exercise of human rights during proceedings in criminal cases can be identified within the groups of positive and negative factors. Therefore, we can draw a conclusion about the applicability of the aforementioned method to achieving the goal of this research.

### Materials and Methods

The content and logic of the method implies (Boush, Razumov, 2021: 152–153):

- 1) identification of two opposite – progressive and regressive – aspects of the object;
- 2) decryption of each aspect with three components – identification of three major elements within each of them;
- 3) identification of the most progressive element of the ‘positive’ triad and the most negative element of the ‘negative’ triad;
- 4) comprehension and description of the resulting research model.

### Results

It is suggested that the factors that have a positive effect on ensuring and protecting human rights in the criminal process should be considered the ‘progressive’ aspect in this research. The factors that affect these processes should be considered the ‘regressive’ aspect.

The next step in the method application is decryption of positive and negative trends that determine human rights in the criminal process with three components. To that end, the circumstances that have a positive and negative effect on ensuring, protecting and exercising human rights in the criminal process have been classified into two groups. Three circumstances having the most significant influence on the aforementioned processes have been identified within each group.

As for the circumstances that affect the exercise of human rights in the criminal process, it is the criminal-legal conflict causing the conflict of interest that should be noted primarily<sup>1</sup>. A criminal-legal conflict is the result of an infringement against social relations protected by criminal law and is usually already associated with the violation of citizens’ rights. In the absence of a committed crime, there is no need to restore any violated rights. There is also no need to start a criminal procedure, to take any enforcement actions or to restrict the rights of citizens. This factor seems key, the most significant among the circumstances that affect ensuring and protecting human rights in the criminal process.

Another factor that negatively affects ensuring human rights during proceedings in criminal cases is imperfection of both criminal and criminal-procedural legislations. The overwhelming majority of researchers studying the issues of ensuring human and citizens’ rights and freedoms point out the necessity of introducing some changes to the current legislation. These changes can take the form of consolidation of additional rights of citizens, safeguards for exercising these rights, making the national legislation consistent with international standards and so on.

The third factor on a par with the previous one is flaws in organizing law-enforcement activity that also negatively affect ensuring human rights in the criminal process. This factor encompasses special features of law enforcement that cause either a failure to respect or a violation of human rights in the criminal process. For example, a formal approach to explaining rights to the citizens, a failure to provide (or a delayed provision of) information about the procedure for protecting the violated rights to the parties to the proceedings, an unjustified refusal to satisfy petitions, a biased nature of investigation, violations of the law in the course of investigations or legal proceedings. In the academic and professional community, certain disputes often arise regarding the critical matter of procedure associated with legitimacy of the evidence required to conduct and complete criminal proceedings efficiently. Also, this legal issue generates great interest among the public at large (citizens) given that this legal issue is directly associated with the legal safety of citizens and law and order in general. The method of evidence collection as well as jurisdiction of the subjects (courts, public prosecution office, the police and other parties) depends on the

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<sup>1</sup> On Observing Citizens’ Rights during Criminal Proceedings: Headnotes for the Speech of the Human Rights Ombudsman in the Russian Federation at the All-Russian Conference ‘The Criminal Process: Legitimacy, Objectivity, Justice’ on May 28, 2019, RAS Institute of State and Law, available at: [https://ombudsmanrf.org/news/novosti\\_upolnomochennogo/view/o\\_sobljudenii\\_prav\\_grazhan\\_v\\_ugolovnom\\_sudoproizvodstve](https://ombudsmanrf.org/news/novosti_upolnomochennogo/view/o_sobljudenii_prav_grazhan_v_ugolovnom_sudoproizvodstve).

investigation concept that defines the criminal procedural role of all subjects. Considering that in some cases investigative activities encroach on personal rights and freedoms significantly, the legislator has set strict legal rules that need to be complied with on a case-by-case basis. The legislator has practically prevented any arbitrary behavior by law enforcement agencies, provided a proper level of security in rights for citizens, i.e., for each and every person.

In the modern criminal procedural systems of the Anglo-Saxon type, two critical concepts of evidence legitimacy are recognized: the concepts of absolute and relative exclusion of illegally obtained evidence – for example, in the United States, there is the concept of absolute exclusion of illegally obtained evidence. When it comes to the European continental system of illegal evidence collection, there are different methods of evidence recovery. The European Convention for the Protection of Human Rights and Fundamental Freedoms and case law of the European Court of Human Rights in particular have established certain standards that are critical for the correct understanding of fundamental human rights and freedoms in the criminal process. That is why law enforcement organization based on any other principles leads to violation of human rights.

As for the factors that have a positive effect on respect for human rights in the criminal process, we assume that the most influential circumstance is proper substantiation of all the circumstances of the committed crime reflected in legally collected evidence. In our view, human rights cannot be protected properly in the criminal process if the committed deed is qualified inadequately, if the caused damage or the individual's guilt have not been established correctly. Even if there are no formal violations in a criminal case, improper substantiation of all the circumstances of the case violates the rights of either the victim or the person charged with a criminal offense.

We suggest that the priority of human rights and freedoms in legislative activity and law enforcement shall be considered another factor that has a positive effect on ensuring and protecting human rights in the criminal process. The trend for humanizing the criminal process in the 21st century is the result of modern human aspirations and the government's adequate response to crime in an attempt to restrict excessive application of various kinds of repressions (Simović & Karović, 2020). This means that the rate and efficacy of criminal proceedings should not cause any damage to human rights and freedoms.

Humanizing modern society includes humanizing criminal proceedings, so that now a legislator recognizes the importance of defending human rights and freedoms, as clarifying and solving certain criminal cases is directly determined by and associated with proper protection of human rights and freedoms. First and foremost, the rights of the suspect or the accused include humane treatment, while application of repressive measures and punitive actions should be kept to a minimum, which allows achieving a legitimate legal purpose. Use of repressive means, i.e., measures and actions, comes down to restrictive legal circumstances for the purpose of preventing any arbitrary behavior by law enforcers, as well as various kinds of abuse by public authorities. The procedural roles of the main and minor parties to the criminal process differ and can be achieved or ensured exclusively on the basis of consistent application of legal provisions regulating and establishing the standards for their roles in the criminal process (Karović & Simović, 2020: 61).

An efficacious and vigorous fight against all kinds of crimes forces the law enforcement agencies to meet the restrictive requirements of the legislation. Studying the criminal process through the lens of protecting human rights and freedoms, it is necessary to examine the use of investigative activities. There are two main legal systems in the world – the European continental legal system and the Anglo-Saxon legal system. However, the number of differences between the two legal systems is getting smaller over time, since certain legal decisions of procedural nature (the concepts of investigation, evidence, etc.) are becoming more and more general; they are adapting to the modern needs of crime prevention. The subjects of the criminal process should care about the proper application of the law and, therefore, about protecting human rights and freedoms at all stages of criminal proceedings. Protecting fundamental human rights and freedoms becomes especially obvious during the investigation and evidence collection, deprivation of freedom, investigative activities, detainment, exercise of the right for defense, application of means for legal protection and other procedural measures taken by competent bodies of criminal proceedings.

The third factor that has a positive effect on ensuring and protecting human rights in the criminal process is protecting those categories of individuals who cannot pursue their rights to the full extent. In the modern criminal procedural systems of the world, a legislator is particularly scrupulous about minors, i.e., children, on the part of subjects, i.e., law enforcement agencies, just because of their age. The criminal

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status and the status of minors, i.e., children, can be viewed from three perspectives given that minors can act as crime perpetrators, as crime victims or they can be perpetrators and victims at the same time. In this connection, the legislator has used the protective model in modern criminal procedural systems with the clear intent to protect, i.e., a humane approach, attitude and treatment of subjects and law enforcement agencies in accordance with this very age group. When it comes to minors as perpetrators of some crimes, the legislator does not make punishment a priority, but treatment of minors should be primarily focused on ensuring adequate, i.e., proper development, resocialization, rehabilitation and social integration. Also, a legislator has made provision for application of diversionary or alternative measures in regard to minors in the modern criminal procedural systems – the measures that due to their nature suggest deviation from conventional criminal proceedings typical for persons of majority age that have committed criminal acts. Applying alternative measures that differ from country to country to the juvenile offenders, the legislator has expressed a special protective approach and attitude.

On the other hand, minors often serve as plaintiffs, i.e., crime victims, including cases when there is a whole series of criminal offenses with prominent destructive consequences (international human trafficking, drugs and other criminal offenses). In these specific situations, it is critical to emphasize the importance and significance of specialization of law enforcement agencies and agencies working with this age group. Lengthy negative consequences for minors as crime victims make specialized juvenile judiciary bodies (public prosecution office, court, police, social protection authorities and other agencies) act professionally and in a timely manner considering the age and individual features of minors.

Minors as a special age group deserve special attention from the academic and professional communities as well as of the public at large in terms of protecting fundamental human rights and freedoms when it comes to proper treatment and availability of specialized law enforcement agencies and structures in accordance with this particular category (Karović & Igrački, 2022: 84).

## Discussion

Thus, the most important factors that influence ensuring and protecting human rights and freedoms in the criminal process are: commission of a crime and, therefore, initiation of a criminal-legal conflict, which causes violation of human rights; and proper substantiation of all the circumstances of the committed crime that enables restoration and protection of these rights. A crime is a socially dangerous act that violates the victim's rights, requires state response in the form of investigation and judicial examination of the criminal case with coercive actions intrinsic to the criminal process, charging the citizens with certain responsibilities and restrictions of their rights. The proper substantiation of all the circumstances of the committed crime in its turn leads to the scenario where the guilty is actually held liable for their actions, and the innocent is not charged with a criminal offense. Thus, the rights of both the accused (the suspect) and the plaintiff are respected and safeguarded to the fullest extent (Bunin, 2010: 247). These factors are antagonists. Raising the crime level leads to an increased number of cases when citizens' rights are violated, to a need for coercive actions and poses a threat to ensuring and protecting human rights. Only efficacious crime investigation and exposure of guilty persons can oppose this process. In its turn, the positive dynamics in the field of ensuring citizens' rights and freedoms will be enabled with efficacious crime prevention and simultaneous improved quality of investigation.

Two other groups of antagonist factors are the drawbacks of the legislation and law enforcement activity that negatively affect ensuring and protecting human rights, and legislation humanization along with a priority of human rights and protection of those categories of individuals that can not pursue their rights to the full extent that have a positive effect. Thus, legislation improvement and organization of proper law enforcement should be arranged towards humanization and the priority of human rights as well as protecting the most vulnerable categories of individuals (minors, people with special needs).

The resulting factor model allows consideration for major trends in observing human rights in the criminal process. For example, in our view, in terms of a balance between the objective of a crime investigation and ensuring rights and legal interests of parties to the proceedings in a criminal case (Mel'nikov, 2010: 32) the priority should still be given to the proper substantiation of the circumstances of the case, which is more important as the more progressive component of the system. A failure to substantiate or wrong substantiation of the circumstances that characterize the crime restricts the right of the accused to defense

and to a fair trial (Kornykov, 2014: 63). At the same time, the task of crime solution may not be opposed to the task of ensuring human rights in the criminal process, since proper crime solution is one of aspects of the issue of ensuring and protecting human rights during criminal proceedings.

In general, the obtained result is coherent with the existing scientific concepts of human rights in the criminal process; it complies with the suggested hypothesis and can serve as the basis for planning activities on ensuring human rights in the criminal process. Besides, the obtained result can serve as the basis for further theoretical research – identification of the most promising areas for improving legislation and organizing proceedings for criminal cases.

### Conclusions

Thus, as a result of this research, a model of factors that determine ensuring and protecting human rights in the criminal process has been suggested that contributes to developing the theory of human rights in the criminal process. As a contribution to the methodology of legal research, the work presents intermediate deductions about the performance of categorial symbol-based methods for examining various aspects of the object of research as components of a single system that can be balanced by establishing a manageable and efficient balance between its ‘progressive’ and ‘regressive’ aspects.

When planning activities to ensure human rights in the criminal process, the practical value of the results can be seen in the possible consideration of obstacles preventing such activities and the priority development trends. The prospects for further research seem to lie in further decryption of the opposite aspects of the object with the purpose of identifying priority areas for legislation improvement, organization of law enforcement activities. The resulting factor model facilitates the search for a comprehensive solution to the problem of ensuring and protecting human rights in the criminal process.

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