

## **Principles of Criminal Justice as Guiding Principles in the Protection of Human and Civil Rights and Freedoms**

Ekaterina Viktorovna Tokareva<sup>1</sup>; Olga Georgievna Chasovnikova<sup>2</sup>; Raisa Evgen`Evna Egorova<sup>3</sup>; Viktor Ivanovich Bezryadin<sup>4</sup>; Elvira Ruslanovna Mirgorodskaya<sup>5</sup>

<sup>1</sup>Leningrad State University named by A.S. Pushkin St. Petersburg, Russia.

<sup>2</sup>Saint-Petersburg University of State Fire Service of EMERCOM of Russia, Moscow, Russia.

<sup>3</sup>St. Petersburg University of the Ministry of Internal Affairs of Russia, St. Petersburg, Russia.

<sup>4</sup>St. Petersburg University of the Ministry of Internal Affairs of Russia, St. Petersburg, Russia.

<sup>5</sup>St. Petersburg University of the Ministry of Internal Affairs of Russia, St. Petersburg, Russia.

### **Abstract**

*The article deals with the problematic aspects related to the criminal procedure regulation of the implementation of the principles of criminal justice. The problematic aspects connected to the implementation of the principles of criminal justice by the participants on the part of the defense, the prosecution, and the court are touched upon. The article considers the features of the implementation of the principle of competition, equality of the parties, a reasonable period of criminal proceedings in the pre-trial stages of the criminal process. The conclusion summarizes all the procedural features which are encountered in the implementation of all the principles as fundamental principles during all stages of the criminal process.*

**Key-words:** Principles, Criminal Proceedings, Court, Adversarial Nature of the Parties, Equality of the Parties.

### **1. Introduction**

According to the Constitution of the Russian Federation, state and municipal authorities act in the interest of protecting human and civil rights and freedoms. The idea that the protection of the rights and freedoms of the individual is the responsibility of any modern state has been repeatedly noted in the special literature (Ramazanov, 2012, p. 12). The maintenance of the rights and freedoms of the subjects (citizens and persons) of the criminal process should correspond to the ideas developed in scientific thought about the person, as well as about his rights and freedoms, which are

understood as the highest value of society. In addition, it must comply with modern international and national standards applicable in the field of human rights.

## **2. Materials and Methods**

The methodological basis is the theory of knowledge of the materialist dialectic, which allows studying the phenomenon in relation to other categories, as well as the integrated use of these methods of cognition, historical (applied in the study of the genesis of the principles of criminal justice), formal-logical, comparative-legal (allowed to reveal the similarities and differences between regulatory principles of criminal proceedings in different countries, in order to formulate proposals on optimization principles of criminal justice in the Russian Federation), system-structural (allowed to study the peculiarities of the implementation of the principles of criminal justice by the defense party in relation to the prosecution, to formulate proposals for optimizing the existing situation), statistical (various empirical material was used to verify the conclusions of the study), sociological (interviewing and questioning were conducted on the problems of the study). The use of these methods is combined with logical techniques and argumentation: analysis, synthesis, induction, deduction.

## **3. Results Analysis**

It should be noted that the modern Criminal Procedure Law of the Russian Federation does not distinguish between such definitions as "the purpose of criminal proceedings" and "the function of criminal proceedings". There is no unambiguous definition of the functional tasks of law enforcement agencies, namely, the power entities that implement the norms of substantive and procedural law. In turn, the tasks of the criminal process can be solved with the help of the functional purpose of law enforcement agencies that carry out criminal proceedings.

The goals of the criminal process can be achieved by solving specific tasks that are assigned to the participants of the criminal proceedings. The task that the preliminary investigation bodies face is the criminal prosecution of the guilty person, which is impossible without achieving the goal of criminal proceedings, which is aimed at ensuring and protecting the rights and freedoms of the individual.

As A.K.S. Ahmed noted: "... fixing the function of the criminal process and the principles of criminal proceedings will contribute to ensuring the mechanism for the implementation of human

rights guarantees, both at the level of the law and in law enforcement practice" (Akhmed, 2017, p. 10).

Thus, ensuring the rights and freedoms of the individual in criminal proceedings should be understood as the activity of the investigator, the investigator, the prosecutor, the court, which is aimed at creating the best conditions for the exercise of the procedural rights and obligations of the subjects of criminal proceedings.

In addition, the content of the mechanism for ensuring the rights of the individual in the framework of pre-trial proceedings includes the means and methods of implementing legal relations in criminal proceedings. A detailed analysis of such legal relations arising in the criminal prosecution of persons who have committed crimes in the banking sector was conducted by V. V. Pushkarev (2020a). As for the question of legality, the guarantees of human rights and freedoms must first be respected by the forces of the subjects that have authority.

From the point of view of O.I. Boichenko: respect and ensuring the rights and legitimate interests of subjects of criminal proceedings depend on how much will be in accordance with the law steps in identifying the media through which one can obtain information about the crime as well as by actions such as the collection of information, and their procedural consolidation.

The current Code of Criminal Procedure of the Russian Federation includes a large number of procedural opportunities for a person in the field of protecting their rights and freedoms. However, a number of provisions of the criminal procedure legislation are contradictory and inconsistent, and this creates problems and causes difficulties in law enforcement. In some situations, the criminal procedure legislation has not provided any guidance on the procedure for restricting human rights, as well as their consequences. The issue of restoring the right to inviolability of the person and private life, if the fact of an unlawful restriction is established, is poorly developed.

The issue of presence in the Criminal Procedure Code of the Russian Federation of such heterogeneous concepts as "person", "person", and "citizen" is critical, and it is important to identify their relationship in the criminal process, as well as to give criteria that distinguish them. It is also unclear whose rights, and by whom, should be protected in the first place. The criminal procedure law has the right to appeal against the actions (inaction) of the authorities, but it does not explain what rights and freedoms of the subjects of criminal proceedings, within which limits can be violated, as a result of the procedural actions of the authorities. We believe that understanding and ensuring the rights and freedoms of the individual in the process of criminal prosecution should be recognized as primary, among other things.

There is also a discrepancy in the use of terms such as: "implementation", "provision", "protection" and "implementation". This implies that, in theoretical research and law enforcement activities, they are regarded as synonymous.

In order to ensure the procedural rights of the subjects of criminal proceedings properly, it is necessary to effectively inform them about these rights from the moment they appear in criminal proceedings, due to the fact that the formation of a favorable procedural regime contributes to the absolute and effective realization of rights and freedoms. The set of procedural rights is understood as the right to protect one's subjective rights and legitimate interests.

The disagreement between public security, which is often called the state interest, and the rights and freedoms of the individual remains an endless contradiction.

The duties of the individual in relation to the state are essentially their obligations for the benefit of society, usually called social obligations, but not obligations to the power apparatus. In this sense, the government, as a trustee of the society, controls the implementation of the public obligations of the individual, which are established by the constitutional normative legal acts (Polyakov, 2011, p. 19).

The state's obligations to its citizens, foreign citizens residing in the territory of the Russian Federation, and stateless persons appear in the performance of regulatory, organizational, and protective functions. This task is particularly acute during the transition to democratic public systems. At the same time, the modern step in the development of society and the country sets other tasks that lead to a rich modification and development of the functions of Russia. The functioning of the market economy, the difficult foreign policy situation, and the financial crisis have also made it much more difficult to maintain various functions that are carried out by the state. Therefore, there was a need to streamline the system of functions of modern Russia, their names, systematization, place, and role of the function of civil rights protection (Balayan, 2015, p. 112).

Modern criminal procedure legislation provides for increasing the level of protection of human rights and freedoms, defines the content and direction of the activities of State bodies.

The recognition, observance, and protection of human and civil rights and freedoms is a new reality in modern Russia, one of the areas of its state and public life that attracts and causes concern not only within our country but also abroad (Gushchin, 2007, p. 8).

Securing the priority of human rights and freedoms at the constitutional level is an important condition for the formation of the legal and moral basis for the existence of democracy, and also contributes to a clear definition of the legal status of the individual in Russia (Butylin, Goncharov, Barbin, 2017, p. 11).

Taking into account the importance of individual rights and freedoms for ensuring the normal functioning of society, it should be pointed out that without state regulation the exercise of human rights and freedoms would be impossible or difficult (Melnikov, 2013, p. 19).

So, the functioning of any state or municipal body is subject to a common goal, namely, to ensure the rights and freedoms of the individual. This goal is recognized as their direct and most important constitutional duty. Functionally, it consists in the formation of organizational, legal, economic, and other conditions for the exercise of legal rights and freedoms. However, it should be noted that in the course of the activity of any state or municipal authority, it is aimed at solving its immediate tasks which ultimately helps to realize human rights and freedoms, due to the fact that a high-quality solution to the problem forms the necessary conditions.

The State should develop and form legal mechanisms to eliminate any violations committed by its bodies and officials in the course of criminal proceedings, and guarantee the priority of individual rights and freedoms. In this regard, procedural terms play an important role as guarantees for the protection of the constitutional rights and freedoms of the individual, which are part of the general concepts: legal guarantees, criminal procedural guarantees, guarantees for solving the tasks of criminal and civil proceedings.

Guarantees do not exist separately from the process of realization of individual rights and freedoms. In this regard, its nature, its system and its types should reflect a specified task. In the specialized legal literature, there is no general opinion on the concept and types of guarantees. The classification criteria are the purpose and official role of guarantees for the implementation and protection of individual rights and freedoms (Sabaeva, 2018, p. 29). There is a widespread opinion about the need to divide guarantees into basic and superstructural, as well as on the basis of the subjects of implementation. Also, there are classifications for such types as objective and subjective; branches of law (constitutional law, administrative law, criminal law, etc.). Traditional is the division of safeguards in the general and special (legal), but a uniform definition of legal (special) guarantees in the theory of law still does not exist.

U.P. Yakubina and A.A Vykhodov offer to mean by "guarantees" the whole multitude of objective and subjective factors towards the implementation and protection of the rights and freedoms of the individual, the elimination of potential causes and barriers to their partial or poor quality of implementation and protection of rights from violations of (Yakubina, Vykhodov, 2018, p. 95).

At the same time, it should be noted that the resolution of these problems is not recognized as the main content of the activities of most state bodies, their activities are subject to the resolution of

the tasks assigned to them by the direct state, and therefore it is only one of the conditions that contribute to its effective operation and the solution of the designated goals.

The obligations of the state, which correspond to the rights and freedoms of the individual, are reflected in a complex of various guarantees enshrined in the legislation, in other words, the conditions and opportunities that it must form and provide the individual for the real realization of rights and freedoms.

Thus, when talking about ensuring the rights and freedoms of the individual by the state, it is said about the formation of conditions by the state and its bodies and the provision of opportunities for their implementation.

It is obvious that the importance of law enforcement agencies in the process of ensuring the rights and freedoms of the individual is diverse. It is determined by various functions, competence, departmental affiliation, forms, methods, working conditions, as well as the availability of forces and means that the bodies have at their disposal (Malakhov, Lanovaya, 2018, p. 7).

The jurisdictional form of protection of individual rights is understood as the activity of state authorities or local self-government bodies, law enforcement agencies, and bodies for managing the restoration of violated rights, carried out within the limits of procedures established by law, the result of which will be the resolution of a criminal case on the merits. Usually, this form ends with the issuance of an act of application and is divided, in turn, into judicial and non-judicial (that is, administrative and public) forms (Ogneva, 2013, p. 177).

At present, the principle of justice manifests itself in the same legal scale of behavior and in the serious proportionality of legal responsibility for a particular offense. It is included in the very content of the law, has a normative and evaluative character, and finds its personification in rights and obligations, measures of encouragement and punishment, etc.

Any branches of legislation are obliged to implement the principles of justice in the public relations regulated by them. The entire legal system is focused on the protection of justice, being a means of its manifestation and fixation, protection and defense.

Justice has a paired category - "injustice". Anticipating the appearance of injustice is the most important predictive function of legal science. This should also be the goal of the state's activities.

The problems of criminal procedure law include the lack of reasonable criteria for choosing human and civil rights and freedoms, which are fixed in the Constitution of the Russian Federation and reflected in the text of the Code of Criminal Procedure of the Russian Federation. It is obvious that during the preliminary investigation, as well as the trial of a criminal case, the legislation allows quite a large number of restrictions on the constitutional rights and freedoms of the individual.

Originally limited to the rights of the suspect, accused, defendant, convicted, and the degree of this limitation, compared with the measures that exist in other areas of law, seems to be the greatest.

In the Code of Criminal Procedure, it is not mentioned about such rights as the right to freedom of movement, choice of place of residence, free labor and education, private property, as well as several other easily infringed, even if there is full compliance with the principle of legality in the activities of the preliminary investigation bodies and the court.

For example, requirements for the protection of life and health involved in the case of persons are not included in a set of principles, but certain provisions of the Code of Criminal Procedure directly link the possibility of investigation and the lack of danger to their life and health or provide for the duty to apply the security measures to the participants, or others, their close relatives, with proved information that they are at risk of death or injury.

In this regard, we believe that the inclusion of certain individual rights and freedoms as principles of criminal procedure cannot be recognized as an absolute means of maintaining their effective protection.

It seems that it is necessary to develop a special mechanism that extends its effect to all criminal procedural activities, at any stage of criminal proceedings.

Thus, there is an imbalance between the rights of the suspect (accused) and the victim. To date, it has not been eliminated and the rights of the victim are practically not protected. The Russian criminal procedure legislation as a guide uses the European standards that talk about strengthening the protection of the rights and freedoms of the individual (Bezrukov, 2015, p. 29).

It seems that the requirement to protect the rights and freedoms of the individual in criminal proceedings acts as a principle-institution.

This is due to the fact that criminal procedure is a poly-subject activity since it refers to the protection of the rights of any of its subjects. It should be noted that taking into account not only persons who, in accordance with the provisions of chapters 5-8 of the Code of Criminal Procedure assigned to the participants in the process, but to all persons involved in criminal proceedings, as the state protection of the rights and freedoms of the person applies to them. It is important to note that the bodies and officials carrying out state activities must explain and ensure the rights and freedoms of the individual, as this is the main duty of the state on whose behalf they act. Regarding the criminal process, this means that there is an imperative requirement to ensure the rights of all subjects who take part in the criminal proceedings using the forces of the bodies of inquiry, the investigator, the prosecutor, and the court.

So, the requirement to protect the rights and freedoms of the individual is a complex principle that determines the general direction of the criminal process in Russia towards ensuring and protecting the rights of the individual. The specified pattern for these principles-norms of equality of all participants of the process before the law and the court, the dispositivity, the administration of justice only by the court, respect for honor and dignity, the presumption of innocence, integrity, ensuring that suspects, accused persons the right to protection, transparency, and justice, a reasonable period of criminal proceedings, the adversarial principal language of the criminal proceedings (Nguyen et al., 2020).

The main result of the development of the adversary criminal process is the legal definition of the adversarial principle in criminal procedure and its distribution not only at the trial stage of criminal proceedings but also to pre-trial proceedings (Pushkarev et al., 2020b).

Taking into account the absence of a definition of the concept of competition, it is concluded that competition is a set of criminal procedure regulations, methods of their execution, goals, and interests that provide competitive beginnings in the actions of the parties to the criminal process.

Taking into account the norms of the Criminal Procedure Code and the Constitution of the Russian Federation, it seems that the entire criminal process is based on the principle of competition, however, at present, competition in the pre-trial stages, although established by law, has problems in implementation.

It is generally accepted that the principle of competition in the pre-trial stages is an effective legal tool to ensure equal opportunities for participants in criminal proceedings to justify their position in the dispute and protect their legal rights.

The function of the prosecution is a legally established type of activity of a participant in the criminal proceedings, the content of which is criminal prosecution, in particular, it is a procedural activity carried out by the prosecution to expose a suspect accused of committing a crime.

In the course of the analysis of the legislation, the features of the prosecution function performed by the investigator (the inquirer) and the prosecutor are revealed.

It appears that it is impossible to include explicitly investigator for the prosecution in connection with its powers and function when criminal proceedings, in particular, the implementation of not only the criminal prosecution of the charges, deciding on nature and harm caused by the crime (Ivanov et al., 2020a; 2020b; 2020c), but the study of all the circumstances of the case. Due to it, the investigator performs the function of the preliminary investigation, which includes all the activities of the investigator at the stage of the preliminary investigation.



It is established that the adversarial principle is implemented by the defense party during the preliminary investigation by providing the legislator with the opportunity to collect evidence. However, at the same time, the inequality of opportunities of the defense and the prosecution is clearly evident, which has a negative impact on the adversarial nature of the parties during the preliminary investigation.

The analysis of legislation and law enforcement practice revealed a number of problematic issues in the implementation of the adversarial principle by the defense party. In this regard, the conclusion that the law on lawyers' request for a pre-trial investigation needs to be improved in terms of reduction of the period of provision of information on request, and also there is a need to regulate the procedure for obtaining an attorney for legal permission to receive attorney's request information containing secret protected by the law, therefore, it is advisable:

- To add in part 3 of article 86 of the Code of Criminal Procedure of the Russian Federation the right of the defender to require from the officers of the prosecution (prosecutor, or investigator) timely and reasonable satisfaction of the motions are in order, which does not contradict the law.
- In Part 2 of Article 6.1. of the Federal Law "On Advocacy and the Bar in the Russian Federation", replaced the word "thirty-day" with "ten-day".
- In Chapter 22 of the Criminal Procedure Code of the Russian Federation, introduce Article 165.1. "The judicial procedure for obtaining a lawyer's permission to access information containing a secret protected by law".

As it can be seen, on the one hand, the court wishes to be "an impartial, independent arbitrator" making a conclusion based on the evidence of the parties, i.e. to act in an adversarial proceeding, and on the other hand, seeing as the ultimate goal of its activities, the truth and the purpose of just punishment of the guilty, it can't be passive, while remaining within the framework of the classical understanding of competition, when the parties themselves determine the motion vector of the process.

#### **4. Conclusion**

It seems that we can point to several possible ways of developing the principle of competition in the criminal process of Russia.

First, to agree with the already existing special understanding of competition in Russian legislation and law enforcement practice, recognizing that legal traditions should form the basis of current legislation. In this case, by adversarial proceedings, we mean a form of criminal justice where the parties are present, but they are nominal, the main role belongs to the court, which directs the process, and only it determines its movement.

Second, it is possible to abandon the use of the term "competitiveness". For example, in Switzerland, the principle of competition is denied. At the same time, the prosecution principle is applied, which provides for the separation of the procedural functions that belong to the police and the prosecutor's office from the function of the court to resolve the case. This principle is very similar to the principle of competition, which operates in our state. The division of procedural functions is a procedure within which justice is carried out, in this sense, adversarial nature ceases to be a principle and is only a means by which the case is considered at the pre-trial and judicial stages of the process.

Third, to follow the path of European law enforcement practice based on the legal positions of the European Court of Human Rights. As we have already pointed out above, adversarial proceedings are one of the elements of the right to a fair trial and allow the parties to be informed about the available evidence in the case, to have the right to challenge it, and to present their vision of the event that occurred. And these individual rights are exercised by the parties so that the court, based on the information received from them, can make a fair and lawful decision. In this case, the question inevitably arises about the disclosure of the concept of "justice" which is the basis of the law as a whole. Moreover, there is a question of equalizing the possibilities of the defense in relation to the prosecution in terms of collecting evidence; introducing the institution of an investigating judge; in general, increasing the role of the defense lawyer in the process.

## References

- Akhmed, A.K.S. (2017). *Guarantees of individual rights in pre-trial proceedings under the criminal procedure legislation of Russia and Iraq*: author's abstract dissertation. Krasnodar.
- Balayan, E.Yu. (2015). Constitutional and legal aspects of human rights protection in the context of the functions of a modern state. *Bulletin of the KemSU*, 2-2(62), 111-118.
- Bezrukov, S.S. (2015). Constitutional rights and freedoms of man and citizen in the system of principles of criminal procedure. *Vestn. Tom. state un-that. Right*, 1(15), 29-38.
- Bezrukov, S. S. (2015). Constitutional Rights and Freedoms of a Person and a Citizen in the System of Principles of Criminal Procedure. *Vestnik Tomskogo Gosudarstvennogo Universiteta-pravo-tomsk State University Journal of Law*, 15(1), 29-38.

- Butylin, V.N., Goncharov, I.V., & Barbin, V.V. (2017). *Ensuring human and civil rights and freedoms in the activities of internal affairs bodies (organizational and legal aspects)*. Moscow.
- Gushchin, V.Z. (2007). Some aspects of the protection of constitutional rights and freedoms of man and citizen. *Constitutional and municipal law*, 21, 8-9.
- Ivanov, D.A., Esina, A.S., Fadeev, P.V., Chasovnikova, O.G., & Zorina, E.A. (2020). Crime victim compensation. *Revista Gênero e Direito*, 9(4), 753-759.
- Ivanov, D.A., Fadeev, P.V., Alimamedov, E.N., & Dung, V.K. (2020b). Provision of the rights and legitimate interests of legal entities that have been victims of crimes. *Revista Turismo Estudos & Práticas*, 55, 1-7.
- Ivanov, D.A., Tokareva, E.V., Shepeleva, O.R., Chasovnikova, O.G., & Statsyuk, D.N. (2020c). Compensation for damage caused by a crime in pre-trial proceedings in criminal cases: issues of theory and practice. *Revista Inclusiones*, 7(4-7), 255-263.
- Malakhov, V.P., & Lanovaya, G.M. (2018). Constitutional and legal guarantees: the essence and role in ensuring the rights and freedoms of man and citizen. *State power and local government*, 2, 7-12.
- Melnikov, V. Yu. (2013). The need to create a mechanism for ensuring, implementation and protection of human rights in criminal proceedings. *Advocate practice*, 2, 19-22.
- Nguyen, T.L.H., Tuyen, T.V., Pushkarev, V.V., Fadeev, P.V., & Khmelev, S.A. (2020). Criminal prosecution of persons who do not speak the language of criminal process. *Revista Inclusiones*, 7(Especial), 121-125.
- Ogneva, E.A. (2013). The system of human rights protection in modern Russia: legal matrix. *Izvestiya TulGU. Economic and legal sciences*, 3-2, 177-185.
- Polyakov, S.B. (2011). *The principle of mutual responsibility of the state and the individual: theoretical, legal and applied aspects: dissertation*. Nizhny Novgorod.
- Pushkarev, V.V., Boziev, T.O., Esina, A.S., Zhamkova, O.E., & Chasovnikova, O.G. (2020). Criminal prosecution for crimes committed in the banking industry. *Laplage em Revista (Sorocaba)*, 6(ExtraC), 244-248.
- Pushkarev, V.V., Trishkina, E.A., Tokareva, E.V., Cuong, B.T., & Shepeleva, O.R. (2020b). The adversarial approach in the pretrial phase of prosecution. *Cuestiones Políticas*, 37(65), 281-287.
- Ramazanov, G.S. (2012). *Theoretical and legal problems of judicial protection of human and civil rights and freedoms* (based on the materials of the Republic of Dagestan): author's dissertation. Makhachkala.
- Sabaeva, S.V. (2018). Criteria for the observance and protection of human rights and freedoms in the Russian Federation: problems of methodology. *Constitutional and municipal law*, 5, 29-35.
- Yakubina, Yu. P., & Vykhodov, A.A. (2018). Content of the principle of protection of human and civil rights and freedoms in criminal proceedings. *Modern Law*, 3, 95-98.