PROVISION OF HUMAN RIGHTS IN CRIMINAL PROCEEDINGS RUSSIA

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Abstract. Ensuring the rights of participants in criminal proceedings must meet the ideas of man and his rights and freedoms as the supreme value and comply with international standards of human rights, which are an integral part of the Russian legal system. The Russian Constitution recognizes human rights and freedom of the highest value, and their respect for and protection - State responsibility.

Establishment of the institute for human rights and fulfilling its purpose of criminal proceedings currently pending, and continues his search for the real development. Norms concerning human rights remained unsecured due to extremely inconsistent, unsystematic and fragmented regulatory procedures for implementation of the declared these rights.

Keywords: human freedom, the rights of personality, measures of procedural coercion, investigator, prosecutor, law, human rights.

Introduction

The idea of a priority in the criminal justice protection from crime, rights and lawful interests of individuals, society and the state, to protect the individual from unlawful and unreasonable charges, restrictions on rights and freedoms as the basis for the concept of criminal procedural law. Along with crime detection and exposure of persons who committed them, for which the law enforcement system and operates 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 freedoms of participants in criminal proceedings. Code of Criminal Procedure is intended to be the guarantor of human rights and freedoms of the abuses committed by the authorities of the preliminary investigation. Improving the efficiency of the legal regulation of the rights and freedoms of the individual in criminal proceedings requires improvement, primarily - in the pre-trial proceedings, the application of procedural enforcement.

The fact that the issue of human rights during pre-trial proceedings in the application of procedural enforcement is actual character, indicated by the fact that complaints to the European Court of Human Rights (ECHR) in connection with the violation of the human right to liberty and security established in Art. 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, are extremely prevalent.

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 of the use of coercion. This makes it necessary to study the theoretical foundations of this mechanism as a means of (forms) of the constitutionally guaranteed rights and freedoms of man and citizen.

The main direction of improvement of the criminal procedural law is considered democratization 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.

Method

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, also used general-purpose and scientific methods of scientific knowledge: 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 research international legal instruments, scientific sources, investigative and
judicial practices to ensure the rights and lawful 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 Ministry, the Federal Security Service of the Russian Federation concerning to the research topic. The empirical base of the research were published statistics, the results of sociological surveys (questionnaires) investigators, investigators, prosecutors, judges, lawyers. Using questionnaires, participant observation transpired knowledge and application of 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, empirical data collected by the study and generalization of the practice of criminal investigations for the years 1999-2014. A total of 1027 criminal cases for the period from 1999 to 2014. Author conducted a survey of employees investigative bodies and departments of the Russian FSB inquiry, investigators investigatory committee in the Southern Federal District, the heads of investigative bodies and investigators of the Interior Ministry in the territory of the Russian Federation, Rostov Regional Court judges - total 606 employees, as well as suspects, defendants, victims, witnesses. The thesis used the published statistics investigative and judicial practice on the use of coercive measures, support during prosecution of human rights and freedoms.

Results

Analysis and study of the problems of legal regulation of the rights and freedoms of the individual in criminal proceedings permitted the formulation of the author's concept of security and protection of individual rights in the application of coercive measures, scientific and theoretical propositions and conclusions about the nature of security and protection of human rights, based on these proposals to improve legislation and practice enforcement to ensure the rights of subjects of criminal procedure relations.

Key provisions for the defense.

1. Quality and effectiveness of criminal justice should primarily be determined by how effectively protect the legitimate interests of society and the state guaranteed the rights and freedoms of the individual, any damage caused by crime.

2. Under the provision of human rights when they apply the procedural enforcement, in accordance with the purpose of criminal proceedings, the author understands and primarily considers the following participants in criminal proceedings: the suspect, accused, victim or witness. Ensuring human rights and freedoms in criminal proceedings - an activity, investigator, prosecutor, court, aimed at creating optimal conditions for the implementation of the procedural rights and obligations of participants in criminal proceedings.

3. Under the legal guarantees of legality and validity of restrictions on human rights, in the application of measures of procedural coercion, it should be understood set of conditions, means and methods established by the rules of international, constitutional, criminal procedural law and other laws, 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.

4. For proper observance of human rights in accordance with the purpose of criminal proceedings developed 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, p. 460)».

Structural organization of the mechanism of human rights include: 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 to ensure the content of human rights during the pre-production includes set of means and ways of relations with the criminal proceedings.

5. Realization of human rights shows the sequence of commission of certain "technical steps" in its functioning. At the first stage mechanism to ensure, implementation and protection of human rights starts from the party to criminal proceedings providing access to justice in accordance with their legal status. The second stage of the mechanism of human rights is to study and establish the rule of law, guarantees of their realization, factual circumstances. The third stage is the realization and protection, primarily overbearing subjects of rights and freedoms, including the application of the coercive procedural measures.
6. The limits of human rights - 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 legal restrictions. Legitimate restriction of human rights must meet the following requirements: strict legal regulation; limited number of people who can use it and for which data can be used according to legal restrictions; temporary in nature; exceptional; alternatively, humanism and justice.

7. First stage of realization of human rights in the application to it of coercive procedural measures is to ensure that all participants in the criminal justice access to justice. Subject to the protection of their rights and freedoms 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 party to the criminal proceedings.

8. Criminal Procedure Law should contain procedural safeguards implementation is ensured by appropriate governmental entities responsibilities, as well as the suspect, accused and other participants in criminal proceedings. It is advisable to avoid a repetition of the individual responsibilities that are not provided with appropriate means, and subsequently determine their placing in a norm that establishes the legal status of each of the participants in the criminal proceedings. Breach of duty or improper performance of their duties, if this resulted in a violation of human rights and freedoms, 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.

9. 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 shall be a violation of the criminal procedure law and, in particular, illegal or unjustified use of coercive procedural measures (Volodina, 2006, p. 120)».

10. To further ensure effective human rights seems appropriate to create a specialized judicial system as a unit investigating judges, the selection of judicial review as a separate activity areas of judicial legislative regulation of 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 on the materials submitted by the prosecutor legality and validity of the charges involving the parties, the sufficiency of the grounds for the criminal proceedings in the trial.

11. The prosecutor should have the right not only to demand and verify the legality and validity of the decisions of the investigator or the head of an investigative body to refuse to initiate, suspend or discontinue the criminal proceedings (paragraph 51, Part 2 of Art. 37 Code of Criminal Procedure), but also to indict. Arraignment proposed for the prosecutor when considering associated with the procedure of the preliminary hearing of the criminal case, the question of the adequacy of the grounds for the criminal proceedings in the trial. The author 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.

12. As an immediate measure should 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, 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 this 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 still in pre-trial conciliation agreement as a result of mediation (mediation) and the termination of criminal proceedings in connection with accused or suspected of certain conditions.
13. Ensuring human rights when applied to him coercive procedural measures 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; remedy. In connection with this proposed legislation to impose, investigator duty acquaintance of the victim with his rights by handing him a written list of rights.

14. The conclusion is that on the facts of any and all criminal law of torts to make a preliminary investigation in the form of inquiry difficult and inexpedient differently. 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 individuals and legal persons who are victims of crimes.

Application Acronym inquiries can also ensure the investigation in the shortest time the main body of minor offenses subject to allocation by the legislator «criminal offense». Prosecution for a criminal offense shall not entail judge dependence with its negative effects. Basis for the formation of categories of criminal offenses 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 three years in prison.

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 legal theory, implementation and protection of constitutional rights and freedoms in the pre-trial proceedings, identified its components, given the limits of the notion of restriction of rights man contain the conclusions of the essence to ensure and protect the rights of the individual (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 considered and justified questions concepts, content and classification of human rights and freedoms in the context of criminal procedure on 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 to study 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 freedoms 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 freedoms during the pre-trial proceedings.

Based on a systematic analysis of the Constitution, the Criminal Procedure and other laws, investigative and judicial practice has developed a system of criminal procedure provide funds, implementation and protection of human rights and freedoms in criminal proceedings, provides information on the practical use of research results obtained. Investigated the effectiveness of the criminal procedure regulating the use of the most coercive procedural measures - arrest, detention and house arrest, bail; the analysis of practices and identify ways to address the issues that cause difficulties for investigators and investigators in their application; proposed new application options grounds of detention, including in relation to the accused; necessity exception indefinite concept of "other data" as a basis for the application of measures of procedural coercion.

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

References