

# On approaches to the implementation of legal mechanisms ensuring the constitutional rights of citizens to protect dignity and their guarantees

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**Abstract.** According to the results of the study, the main problematic issues of the implementation of the constitutional rights of citizens to protect honor and dignity are highlighted, the main methods of violence that are unacceptable for use in general are highlighted, including those associated with criminal acts (suspects, convicts, prisoners), as well as those not related to criminal acts (falsely accused (falsification of evidence) or provoked (throwing prohibited items), etc.). It is noted that cases of intentional pressure on a person in order to humiliate, suppress or achieve some information or behavior can be qualified as violence. As a result of such actions, life-threatening psychosomatic symptoms may occur, caused by the high stress of the situation, and the mental state of the detainee, the defendant, the defendant, does not allow him to adequately defend himself. The problems of the application of procedural measures by judicial bodies, bodies of inquiry, associated with the restriction of the constitutional rights and freedoms of participants in criminal proceedings are considered. According to the results, it is concluded that the issue of legal regulation and the practice of applying the law require further study in order to develop recommendations for the development of civil society, improving the human rights institution, the institute of inquiry, judicial bodies, including improving the legal norms governing it. Improvement mechanisms are proposed, including organizational and legal ones.

**Keywords:** constitutional rights of citizens, human dignity, human rights activities, civil society, law enforcement agencies

## 1 Introduction

The protection and realization of the rights of an individual who, due to the prevailing circumstances, are unable to fully realize their legitimate interests and protect their rights, is increasingly being discussed in every democratic society.

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The demand for justice is quite high and any event perceived in society or its part (in isolation) as unlawful or unfair can lead to a surge of uncontrollable deconstructive activity, cause social tension in society.

The Universal Declaration of Human Rights [1] uncompromisingly proclaimed a humanity based on peace, justice and human dignity. Human dignity is incompatible with the use of violence against a person. But, despite the universal condemnation of violence against a person, this practice has not been completely eradicated, cases of violation of the rights of citizens are not isolated yet. Most often, such cases take place in cases and places where citizens, due to circumstances, cannot fully exercise their rights. First of all, we are talking about people associated with criminal acts (suspected, convicted, prisoners), as well as those not associated with criminal acts (falsely accused (falsification of evidence) or subjected to provocation (planting prohibited objects), etc.). This topic, due to its relevance, is given attention by public authorities, scientists and practitioners. The existing problems are indicated in the UN Convention of December 10, 1984 [2]. The State Duma is improving legislative norms to counter the use of violence. The scientific works of P. Barenboim, E. Mishina, A.A. Huseynov, S. Nagornaya, A.Yu. Sungurov, A.V. Suchkov, Sh. Khaziev [3-9] and other domestic and foreign scientists Scheltema Martijn, Pakes Francis, Aspinwall Mark [10-12].

This problem is multifaceted. It lies in the plane of development and introduction into the consciousness of citizens and representatives of the authorities of legal culture, legal consciousness, awareness of the inevitability of punishment; development of civil society institutions and their active life position; formation of the legal field and the creation of legal and procedural norms and organizational and legal mechanisms that do not allow the use of any type of violence against a person, actions or inaction that lead to infringement of rights and derogation of human dignity.

Considering the aspect of the use of any type of violence against a person, actions or omissions that lead to infringement of rights and derogation of human dignity, most often they talk about violence against a person, meaning physical violence. This can be explained by the fact that it lies on the surface, it is possible to document it, fix the fact or make public the consequences of physical impact. Along with the indicated method of influence, there is another method of suppression, coercion of a person, a special kind of violence against him – psychological. Applied to persons associated with criminal acts (suspected, convicted, imprisoned), as well as those not associated with criminal acts (falsely accused (falsification of evidence) or subjected to provocation (tossing prohibited objects), etc.), “the psychological impact is veiled and a stronger, more dangerous, sophisticated form of domination of a person over a person, and psychological torture (pressure or coercion on the verge of tolerance) is more effective, long-term and economical than physical torture” - there are no bruises, but the soul is crippled, willpower is broken.

Russia, a democratic state that has proclaimed human rights and dignity as the highest value. In order to ensure human rights, protect his honor and dignity, as well as their guarantees, national legislation is constantly being improved. At the same time, there are issues, the solution of which will make it possible to take a higher level of protection for persons associated with criminal acts (suspect, convict, prisoner), as well as those not related to criminal acts (falsely accused (falsification of evidence) or subjected to provocation (planting prohibited objects) etc.). The problem, which is the basis of this study, relates to the implementation of the right to protection, the exclusion of subjective factors to establish fair results of the consideration (investigation) of the complaints of the above persons and the investigation of cases; conducting procedural actions, taking into account the mental state of the detainee, person under investigation, defendant, does not

allow him to adequately defend himself in view of the complexity of perceiving what is happening.

## 2 Methods

The research is based on the dialectical method of scientific cognition to reveal legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and general scientific methods. The dialectical unity of law and the state, as well as the steadily increasing role of legal principles in public administration, actualizes the question of the legal foundations for ensuring rights and freedoms, protecting honor and dignity. Among the private scientific texts, formal legal and comparative legal were used to study the texts of constitutional international norms regulating the protection of human rights and their guarantees. Legal comparative studies, as a fundamental basis for conducting legal research, allowed the use of comparative legal tools to fill theoretical and practical gaps in the legal regulation of institutions of the modern rule of law, such as law enforcement agencies, the judiciary and the prosecutor's office. The system-structural method was used as general scientific methods. Methods of analysis and synthesis, induction and deduction, the method of analogy, as well as the descriptive method were used to establish the factors influencing legal regulation in this area. The following special methods were used in the work: the method of comparative jurisprudence, the method of generalization of investigative and judicial practice, technical and legal and others, in the aggregate of all conceptual provisions defining the status of an individual, his right to protection of honor and dignity, that is, regardless of his formal recognition as a participant in criminal proceedings.

## 3 Results

Cases of deliberate pressure on a person in order to humiliate, suppress, or achieve some information or behavior can also be qualified as violence. As a result of such actions, life-threatening psychosomatic symptoms may occur, caused by the high stress of the situation, and the mental state of the detainee, person under investigation, defendant does not allow him to adequately defend himself. When considering such episodes, when the defendant has an increase in pressure, blood sugar levels, an asthma attack, a hypertensive crisis, etc., special attention should be paid. referred to the use of violence. Participants of the Round Table [13], P. Barenboim and S. Nagornaya, Sh. Khaziev [4, 8, 9] pay attention to such forms. At the same time, it should be noted that any overcoming of conscious resistance, to say something or not to say something, does not have universal criteria, and it is quite difficult to determine what is violence and what is not, in this case, objectively. Such complex tasks must be solved on the basis of specific conditions and specific cases, taking into account the clarification of information and the state of health of the defendant and his ability to adequately perceive what is happening at the moment.

An analysis of law enforcement practice has shown that there is a real need to introduce legal mechanisms to eliminate the possible impact of subjective factors on an unbiased and fair investigation of cases, if there is reason to believe that violence was used by law enforcement officers. In such cases, it is proposed to send materials to other law enforcement agencies, for example, to send complaints against police representatives to the Investigative Committee or the prosecutor's office, which requires amendments to the current legislation.

The increase in the role of public organizations and representatives of civil society is considered in the study as an important aspect of public control over ensuring the rights of citizens, protecting their honor and dignity. It is noted that there is a legislative unsettledness in the enforcement of the requirements of Article 16 of the Code of Criminal Procedure of the Russian Federation [14] on the implementation of the constitutional rights of participants in the criminal process (ensuring the right to defense of the suspect and the accused, which they can exercise personally or with the help of a defense lawyer and (or) legal representative). It is not possible to fulfill this requirement exactly under certain conditions (if a person is caught by police officers at the time of committing a crime and detained for delivery to the body of inquiry). The right of the detainee from the moment of the actual detention should be understood as the duty of the employees of the body of inquiry who carried out the actual detention to explain to the person his procedural status of the suspect and his rights in connection with the detention, and the opportunity to request a lawyer should be provided to the detainee by the bodies of inquiry immediately after delivery.

The temporary regulation of Part 2 of Art. 224 of the Code of Criminal Procedure of the Russian Federation from the need to draw up an indictment, depending on the moment a measure of restraint in the form of detention was chosen and its method in the context of the fact that if a preventive measure was chosen against the suspect, then the indictment must be drawn up no later than 10 days from the date of its election, and if the suspect was detained and then taken into custody, then no later than 10 days from the moment of detention. The above results of the study allow us to conclude that it is necessary to improve these legislative norms.

## 4 Discussion

As A. Huseynov notes, “As morals became more humane, relations became more democratic and societies began to abandon the livelihood of barbarian eras, psychological torture began to come to the fore as more sophisticated, hidden, difficult to identify, but realizing, although in a different way, the same scheme of discrimination against human dignity, the subordination of one individual to the will of another, which underlies physical torture” [5]. E.V. Vasque proposes to understand psychological influence as illegal psychological influence can be considered purposeful actions of a person with the aim of depriving the object of influence of freedom of choice in decision-making and in the line of his behavior, by changing his emotional response in a situation of interaction through the active use of destructive means and methods (deception, blackmail, insults and threats) [15].

Overcoming conscious resistance, an objective determination of whether this or that action is currently violence, should be decided on the basis of specific conditions and specific cases, taking into account the clarification of information and the state of health of the defendant and his ability to adequately perceive what is happening at the moment.

How not to recall in this regard the concept of “仁” (ren) (the teachings of Confucius around 500 BC), the main idea of which is compassion and love for other people, expressed by Confucius in the famous saying: “Do not wish others what you don’t want”. In our time, it sounds both as a parting word and as a warning to employees who make decisions regarding other people, especially if you give it comprehension in correlation with the Russian proverb “Do not renounce prison and the bag.”

Less complex issues, but no less important, are related to the need to improve legal norms that guarantee the protection of the rights and freedoms of citizens, as well as their

right to an unbiased investigation. The defendant, as a rule, is deprived of the opportunity to influence the choice of the investigative body. We are talking about the opportunity to file a complaint about a violation of the right during the investigation and have the right to an unbiased investigation. It seems appropriate to introduce a rule prohibiting the conduct of an investigation by the same body of a criminal case and the investigation (consideration) of a complaint of a detainee or person under investigation about the use of violence committed against him by any means, including physical and (or) psychological.

In order to create conditions to prevent the possible influence of subjective factors on an unbiased and fair investigation of cases, if there are reasons to believe that violence was used by law enforcement officers, it is necessary to introduce a rule prohibiting the transfer of materials and (or) complaints about the actions of law enforcement officers only to law enforcement agencies. To date, all regulations governing the interaction between medical institutions and the internal affairs bodies of the Russian Federation upon admission (appeal) to medical institutions of citizens with violent bodily injuries (joint order of the Ministry of Health and the Ministry of Internal Affairs 4/8, order of the Ministry of Health and social development of the Russian Federation dated May 17, 2012 N 565n, Order of the Ministry of Health of Russia dated June 24, 2021 N 664n, prescribe informing only the internal affairs bodies, regardless of the information contained in the materials about the subject of the use of violence. These materials could also be sent to other law enforcement agencies, for example, if a detainee complains about the use of physical violence by police officers, send such materials to both the police and the Investigative Committee or the prosecutor's office.

Returning to the role of civil society institutions, they can and should play a big role in developing humane ways of obtaining information or stimulating acceptable standards of behavior on the part of detainees, convicted or imprisoned persons. Legislative conditions for the involvement of civil society institutions in the process of protecting the rights of citizens have been created. However, activity in this direction has not yet reached the required level. The most active public committees for the protection of human rights, legal clinics, human rights teachers. As part of providing assistance to those in need of legal assistance, it is necessary to establish constructive relations with the executive authorities, the Social Insurance Fund, the Federal Penitentiary Service. Formation of a model of sustainable interaction between various actors, their joint actions to achieve a common goal are more effective. Civil participation in solving issues of observance of human rights and freedoms can be institutionalized. The Russian legal profession is considered as a formalized institution of civil society, which is the most active and takes part in human rights activities on a professional basis. Thanks to the research and participation of the legal community, human rights activities are provided professionally, legal norms in this area are being improved [4, 6, 8, 9].

The right to defense, considered as a set of procedural possibilities provided to the accused for challenging the charges, is the most fundamental of the constitutional rights of participants in the criminal process. Art. 16 of the Criminal Procedure Code of the Russian Federation [11] indicates that the suspect and the accused are provided with the right to defense, which they can exercise personally or with the help of a defense counsel and (or) legal representative. The defense counsel is allowed to participate in the case in cases of detention of the suspect (Articles 91 and 92 of the Code of Criminal Procedure of the Russian Federation), and the application of a preventive measure in the form of detention, i.e. from the moment of restriction of freedom of movement when taken into custody in the courtroom when the court considers the corresponding petition (Article 100 of the Code of Criminal Procedure of the Russian Federation). However, as noted above, if a person is

caught by police officers at the time of committing a crime and detained for delivery to the body of inquiry, then the mechanism for implementing this rule is extremely difficult, i.e. the freedom of movement of such a person is restricted at the time of detention. At the moment of actual detention, it is impossible to ensure the involvement of a lawyer in the case. Comparing these norms and in order to fulfill the requirements of the law to familiarize the detainee with his rights, it seems that the right of the detainee from the moment of actual detention should be understood as the duty of the employees of the body of inquiry who carried out the actual detention, to explain to the person his procedural status of the suspect and belonging to him, in connection with detention, rights, including the right to promptly receive qualified legal assistance and the right not to answer questions. The opportunity to request a lawyer should be provided to the detainee by the bodies of inquiry immediately after delivery, if he names someone specifically as the person from whom he would like to receive legal assistance, or to receive legal advice from a lawyer invited by the body of inquiry. The testimonies of the suspect, the accused do not have the value of admissible evidence and, therefore, cannot be used to substantiate the accusation if the interrogation was carried out without a defense counsel (Article 75 of the Code of Criminal Procedure). This rule is an effective guarantee of a suspect's right to defense from the moment of actual detention.

As A. Kovalets rightly notes, “a person who finds himself face to face with the judicial and law enforcement system, in a position close to that of a helpless child, often emotionally regresses to this state. He is frightened and disoriented, regardless of whether he is guilty or not, and regardless of the degree of guilt and the severity of the deed. And in addition to the formal legal side of protection, he, of course, urgently needs another, invisible protection and support. He needs a guide, a guide – someone who will lead him through the labyrinth like a blind man. The right to care and protection is probably the first and most profound human right [9].

## 5 Conclusion

Thus, according to the results of the study: 1. the main methods of violence are identified that are unacceptable for use in general, including against persons associated with criminal acts (suspected, convicted, prisoners), as well as those not associated with criminal acts (falsely accused (falsification of evidence) or subjected to provocation (tossing prohibited objects), etc.). It is noted that cases of deliberate pressure on a person in order to humiliate, suppress or achieve any information or behavior can be qualified as violence. As a result of such actions, life-threatening psychosomatic symptoms may occur, caused by the high stress of the situation, and the mental state of the detainee, person under investigation, defendant does not allow him to adequately defend himself. Attention is drawn to the inadmissibility of conducting investigative actions or a trial in conditions of a deliberate difficulty in perceiving by the person under investigation or the defendant the events of the proceedings or the court session (the person under investigation or the defendant has an increase in blood pressure, blood sugar levels, an asthma attack, a hypertensive crisis, etc.). At the same time, it should be noted that any overcoming of conscious resistance that does not have universal criteria, and to determine objectively what is violence and what is not, in each specific case, is quite difficult and should be decided on the basis of specific conditions and specific cases, taking into account clarification information and the state of health of the person under investigation or defendant and his ability to adequately perceive what is happening at the moment.



2. An analysis of law enforcement practice has shown that there is a real need to introduce legal mechanisms to eliminate the influence of subjective factors in the course of an investigation. It is proposed that in order to create conditions to prevent the possible impact of subjective factors on an unbiased and fair investigation of cases, if there are grounds to believe that violence was used by law enforcement officers, it is necessary to introduce a norm prohibiting the transfer of materials and (or) complaints about the actions of law enforcement officers only to the same bodies. This also concerns the order of interaction between medical and preventive institutions and the internal affairs bodies of the Russian Federation when citizens enter (apply) to medical and preventive institutions.

3. According to the results of the study of legal norms and law enforcement practice, the application of procedural measures by judicial authorities, bodies of inquiry, it is noted that there is a legislative lack of regulation in the enforcement of the requirements of Article 16 of the Code of Criminal Procedure for the implementation of the constitutional rights of participants in criminal proceedings. The impossibility of ensuring the right of a suspect caught by police officers at the time of the commission of a crime and a detainee to bring him to the body of inquiry and enter into the case of a lawyer at that moment implies the obligation of the employees of the body of inquiry who carried out the actual detention to explain to the person his procedural status of the suspect and the rights belonging to him in connection with the detention, including the right to immediate qualified legal assistance and the right not to answer questions. The opportunity to request a lawyer should be provided to the detainee by the bodies of inquiry immediately after delivery, if he names someone specifically as a person from whom he would like to receive legal assistance, or to receive legal advice from a lawyer invited by the body of inquiry.

4. The study of Article 224 (2) of the Code of Criminal Procedure of the Russian Federation on the time of drawing up an indictment, depending on the moment of choosing a preventive measure in the form of detention and its method, showed the need to improve the norm by extending the time of drawing up an indictment within 10 days for cases of any preventive measure to clarify the starting point. If a preventive measure has been chosen against a suspect, then an indictment is drawn up no later than 10 days from the date of its election, and if the suspect was detained and then taken into custody, then no later than 10 days from the moment of detention.

The above-mentioned results of the study allow us to conclude that when a high degree of development and introduction of legal culture, legal consciousness, awareness of the inevitability of punishment into the consciousness of citizens and representatives of authorities is achieved; the development of civil society institutions and their active life position; the formation of the legal field and the creation of legal and procedural norms that do not allow the use of any kind of violence against a person, actions or omissions that lead to infringement of rights and diminution of human dignity will ensure the protection of citizens' rights, human dignity and their guarantees.

The considered problems of the application of procedural measures by judicial bodies, bodies of inquiry, involving restrictions on the constitutional rights and freedoms of participants in criminal proceedings, allow us to conclude that the issue of legal regulation and the practice of applying the law require further study in order to develop recommendations for the development of civil society, improving the human rights institution, the institute of inquiry, judicial bodies, including improving the legal norms governing it.

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