

HUMAN RIGHTS AND CRIMINAL PROCEDURE

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Abstract

Human rights in criminal processing are crucial for ensuring justice and protecting individual freedoms within legal systems. This paper examines the integration of human rights standards throughout various stages of criminal processing, from arrest and investigation to trial and sentencing. It highlights key rights, such as the right to be free from torture and inhumane treatment, the right to legal representation, the right to be informed of charges, and the presumption of innocence. The influence of international human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the on Civil and Political Rights (ICCPR), on shaping national policies and practices is explored. Additionally, the paper addresses contemporary issues such as discrimination, wrongful convictions, and the impact of technological advancements on privacy rights. The study underscores the need for continuous reforms and robust oversight mechanisms to ensure that criminal processing aligns with human rights principles, ultimately fostering a fair and equitable justice system.

Keywords: Human rights, principles, legal systems, criminal procedure.

1. Introduction

The protection of human rights within criminal processing is a cornerstone of democratic societies and a critical component of the criminal justice system. Ensuring that individuals are treated with dignity and fairness from the moment of arrest through investigation, trial, and sentencing is fundamental to the rule of law. This introduction examines the crucial role human rights play in criminal processing, highlighting the necessity of balancing state authority with individual freedoms to prevent abuses and maintain public trust in the legal system.

Key human rights principles, such as the right to a fair trial, freedom from torture and inhumane treatment, the right to legal representation, and the presumption of innocence, serve as safeguards against arbitrary and unjust practices. International human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), provide a framework for nations to develop and enforce policies that protect these fundamental rights.

Moreover, this discussion will address contemporary challenges that threaten the integrity of human rights in criminal processing. Issues such as discrimination, wrongful convictions, and the impact of technological advancements on privacy and surveillance underscore the ongoing need for vigilance and reform. By exploring these dimensions, this introduction aims to underscore the importance of integrating human rights protections throughout criminal processing, thereby promoting a more equitable and just legal system for all individuals.

2. Fundamental rights and criminal process

International human rights instruments, notably the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights and Fundamental Freedoms (ECHR), but also such treaties as the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, provide for a number of fundamental human rights that have interrelated links to criminal process, as well as encompassing humanitarian values regarding the inherent rights of individuals as human beings to physical integrity, freedom and self-determination. These set the boundaries of what a state may do in order to achieve the prosecution, trial, conviction and punishment of (suspected) criminals, and therefore the security of society at large. While the rule of law dictates that the state is bound by the limits the law sets upon it, human rights conventions provide the extra guarantee that, in the final event, state activities regarding criminal justice that infringe upon the fundamental rights of individuals be scrutinised by an impartial and independent tribunal a principle that is explicitly guaranteed by the ICCPR (Article 9) and by the ECHR (Article 5) with regard to the deprivation of liberty (habeas corpus).

The same requirement also applies to criminal trials, and both the ICCPR and the ECHR have so-called fair trial paragraphs (Articles 14 and 6 respectively) that enumerate the right to a public trial before an impartial and independent tribunal, and other procedural rights. However, fair trial is not only determined by the fair trial paragraphs and neither do they pertain to court procedure only, although their wording might seem to suggest that they do. The standard interpretation of the European Court of Human Rights (ECtHR) is that, in determining whether.

Fundamental rights are essential liberties and protections guaranteed to individuals, often enshrined in a constitution or similar foundational legal document. In the context of the criminal process, these rights ensure fair treatment and due process for individuals accused of crimes. Key fundamental rights related to the criminal process include:

- Right to a Fair Trial: Ensures that an accused individual receives an impartial trial with a competent tribunal. This includes the right to be informed of the charges, the right to legal representation, and the right to present evidence and call witnesses.
- Right to Legal Representation: Guarantees that defendants have access to legal counsel. If they cannot afford an attorney, one must be provided for them at the state's expense.
- Right to Remain Silent: Protects individuals from self-incrimination, allowing them to refuse to answer questions or provide information that could be used against them in court.
- Right to Be Informed of Rights: Requires that individuals are informed of their rights upon arrest, such as the Miranda rights in the United States.
- Right to a Speedy and Public Trial: Prevents unnecessary delays in the criminal process and ensures transparency by allowing the public to observe proceedings.
- Right to an Impartial Jury: Ensures that the jury selected for a trial is unbiased and representative of the community.
- Protection Against Double Jeopardy: Prohibits individuals from being tried twice for the same offense after either an acquittal or a conviction.
- Protection Against Cruel and Unusual Punishment: Ensures that punishments for crimes are proportionate and humane, prohibiting torture and other inhumane treatment.
- Right to Appeal: Allows individuals to challenge convictions or sentences if there were legal errors or violations of rights during the trial.
- Right to Be Presumed Innocent: Establishes that individuals are considered innocent until proven guilty beyond a reasonable doubt.

-Protection Against Unlawful Searches and Seizures: Requires law enforcement to obtain a warrant based on probable cause before conducting searches or seizing property.

These fundamental rights form the backbone of a just and equitable criminal justice system, protecting individuals from abuse of power and ensuring that the legal process respects human dignity and fairness.

3. Right to a Fair Trial

Although not required under any statute, anyone who is arrested must immediately be informed verbally of the reasons for the arrest (cf. Articles 5 § 2 ECHR, and 9 § 2 ICCPR) police custody or pre-trial detention is applied, the offences of which the defendant is suspected will be contained in the detention orders. In case a judicial preliminary investigation is conducted, the charge shall be stated as specifically as possible at the start of the investigation. The charge on which the trial will eventually be based (the tenlastelegging) shall be precisely, which must be served on the defendant in principle 10 days before the start of the trial in court.

If the case comes up before a District Court judge sitting alone a term of 3 days applies. These terms may be shortened if the defendant agrees. If the suspect is caught in the act, he or she can be brought to trial that same day. The charge may be amended during the trial in first instance as well as in appeal, provided that the charge in essence is about the same criminal fact as the original allegation. (Electronic Journal of Comparative Law, vol. 13.2 (May 2009), <http://www.ejcl.org>)

4. Right to Be Presumed Innocent

Suspects have the right to remain silent. Prior to any interrogation of a person who must be considered a suspect the authorities need to caution that person that he or she is under no obligation to answer questions (Article 2 CCP). This applies equally during the pre-trial investigation stage and in court. A statement by the defendant that has been made without such prior caution may not be used in evidence against him or her, unless it can be considered that he or she shall not be harmed by the omission. A defendant's refusal to give a statement cannot as such be used as evidence against him or her. However, in conformity with the case law of the ECtHR, in situations which clearly call for an explanation from the accused, silence may be taken into account when assessing the persuasiveness of the evidence against him or her. The burden of proof rests completely with the prosecution. In ordinary criminal trials this cannot be reversed under any circumstances. However, in criminal procedures concerning offences of a somewhat administrative nature (such as traffic law, environmental law, and financial defendants can sometimes be in the factual or even legal position that they have to prove the innocence. (Antonino et al. 2023).

It is considered a breach politicians or important public officials make statements on individual cases that are before the courts. It might even constitute a violation of the presumption of innocence or the right to a fair trial in Article 6 ECHR. Under very exceptional circumstances this could lead a court to render the prosecution inadmissible (Electronic Journal of Comparative Law, vol. 13.2 (May 2009), <http://www.ejcl.org>)

Persons whose human rights are guaranteed in criminal proceedings

The Constitution's provisions on human rights should be first of all implemented in favor of the following parties:

The first group consists of criminally charged persons, including arrestees, persons held in custody, the accused and defendants, who are guaranteed by the Code with specific procedural rights, including the rights to defense counsel (self-representation or hiring of legal counsels to provide defense) and to participate in the adversarial process (proving, cross-questioning, confrontation, argument), and to file complaints and denunciations against illegal acts of proceeding-conducting persons. These rights of criminally charged persons correspond to the obligations of proceeding-conducting persons, especially in applying deterrent measures and conducting court hearings. (Piet Hein van Kempen, 2009)

Though, in theory, everyone is equal before law and court and entitled to fair trial, persons in different circumstances and conditions should be subject to different procedural provisions. The Code prescribes specific procedures applicable to criminally charged persons who are aged under 18, limitations on the application of deterrent measures, custody and temporary detention, compulsory presence of representatives in litigation proceedings and people's assessors who are youth union leaders or teachers in trial panels, etc.

As deterrent measures are likely to restrict freedom rights of suspects, the accused and defendants, the State must prevent abuse of powers of proceeding-conducting bodies in violation of human rights. Thus, the Code requires these bodies to refrain from applying deterrent and coercive measures in a spontaneous and abusive manner. It is a universal trend today that the criminal procedure law encourages the application of "soft" measures such as bail and ban on travel out of residence instead of custody and detention. In addition, penalties are also imposed to deter proceeding-conducting persons from taking acts of excessively or illegally arresting or holding in custody persons. (Israel et al. 2003).

The second group includes individual victims who directly suffer physical, spiritual or property damage or agencies or organizations that suffer property or reputation damage caused or threatened to be caused by offenses. Under the criminal procedure law, victims have the rights to request proceeding-conducting bodies to protect their human rights, to present their claims, documents and objects to protect their lawful rights and interests, to participate and supervise activities of these bodies, and to file complaints and appeals against procedural decisions, rulings and judgments of investigative bodies, procuracies and courts. Particularly, victims of sexual crimes are entitled to protection of their personal safety, honor, dignity, privacy and secrets in proceedings and behind-closed-doors trial (Antonino et al. 2023).

The third group includes witnesses whose duty is to make truthful statements about facts of criminal cases though this duty might place themselves and their families in danger of being threatened by criminals. In return, proceeding-conducting bodies that summon them to make statements at court hearings are obliged to protect their and their families' life, health, honor, dignity, property and other lawful rights and interests for the ultimate purpose of verifying and clarifying facts of criminal cases and strictly handling offenders. (Israel et al. 2003).

5. Conclusions

Human rights and criminal procedure are inextricably linked, with the former serving as a cornerstone for the latter. A fair and transparent criminal procedure is essential to uphold the rule of law and ensure that justice is not only done but seen to be done. Key human rights principles, such as the right to a fair trial, protection from arbitrary detention, and the prohibition of torture and inhumane treatment, must be rigorously observed in all criminal proceedings.

The right to a fair trial includes several critical components: the presumption of innocence, the right to be informed of charges promptly and in detail, the right to adequate time and facilities to prepare a defense, and the right to legal assistance of one's choosing. These elements are vital in preventing miscarriages of justice and ensuring that individuals are not wrongfully convicted.

Moreover, human rights frameworks demand that criminal procedures be free from discrimination, providing equal protection and due process to all individuals regardless of their background. This universality is crucial for maintaining the integrity and fairness of the justice system.

The protection against self-incrimination and the right to remain silent are other vital aspects of human rights in criminal procedures. These rights help to prevent coercive interrogation practices and ensure that confessions and evidence are obtained lawfully and voluntarily.

Additionally, human rights standards emphasize the importance of a speedy trial to avoid prolonged detention without trial, which can lead to significant personal and social harm. Timely justice is a key aspect of the right to a fair trial, balancing the need for thorough investigations with the individual's right to liberty and security.

In conclusion, the integration of human rights into criminal procedures is essential for a fair, just, and effective legal system. It ensures that individuals are treated with dignity and respect, protects against abuses of power, and strengthens public trust in the justice system. Upholding these standards is not only a legal obligation but also a moral imperative to ensure justice for all.

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