

## Research Article

### HUMAN RIGHTS PROTECTION ISSUES DURING THE PROCESS OF REHABILITATION MEASURES

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#### ABSTRACT

As crime increases, it is clear that the number of defendants who are subject to preventive measures will increase. In this regard, it is important to note that different preventive measures are taken depending on the social scale of the crime, rather than on legal grounds. In addition, focus group discussions conducted among investigators, prosecutors, and lawyers revealed that it is common for defendants to take preventive measures during criminal proceedings to investigate and resolve the case. Although the law has adopted and implemented regulations that meet international standards to ensure human rights and freedoms, the fact that sufficient results are not achieved is of course directly related to the subject implementing the law. Therefore, the fact that investigators and prosecutors continue to take preventive measures at the discretion of investigators and prosecutors during the investigation of a crime, depending on the circumstances of the crime and its impact on society, is a serious violation of human rights and, furthermore, an act that violates the right to live in freedom. In other words, the lack of objective assessments and criteria for taking preventive measures led to the need to study this topic.

**Keywords:** Coercion in criminal proceedings, criminal proceedings, normal conditions.

#### INTRODUCTION

The task of combating crime, identifying and prosecuting perpetrators of crimes, and imposing fair punishment cannot be solved without forcibly restricting individual freedom. Although the law provides for the possibility of restricting human rights, there is a legitimate need to implement it within the framework specified in sectoral laws and international normative acts.

Restricting human rights within the scope of state functions may seem inappropriate on the one hand, but it is implemented to protect public interests and ensure public safety. This is not a violation of human rights and is a tool that is used at the international level, provided that certain conditions are met. One of these is undoubtedly coercive measures within the framework of criminal proceedings.

Coercive measures in criminal proceedings include arresting suspects, taking preventive measures, and other types of coercive measures <sup>1</sup>.

In light of all this, we believe that there are the following reasons to study the issue of ensuring human rights during the implementation of preventive measures at the theoretical and practical levels. These include:

1. The legal framework for taking preventive measures is not well developed;
2. There is no common understanding or criteria for taking preventive measures;
3. To study the reasons for the emergence of the desire and attitude towards detention among those implementing the ECHR;
4. The theoretical aspects of preventive measures have not been studied.

The general requirements for the use of coercion in criminal proceedings can be defined as principles. From a legal perspective, the grounds and procedures for the use of coercive measures in criminal proceedings are clear, but the essential requirements that influence and are taken into account in making this decision have been developed only by scientists and researchers in the context of scientific research and studies. These requirements, when considered in conjunction with the nature of the use of coercion in criminal proceedings, have the potential to become a subject of study. Many scholars have developed definitions of preventive measures based on their own research results. We have studied these and aimed to formulate a concept that meets common characteristics. For example,

A.P. Kruglikov <sup>2</sup>, preventive measures are measures taken by authorized state bodies on appropriate grounds and in a certain order to restrict the personal freedom of subjects (suspects, accused, defendants, convicts) specified in the criminal procedure code and to ensure their proper behavior.

A. S. Barabash <sup>3</sup>noted that preventive measures are legally established means aimed at preventing the accused (suspect) from restricting his freedom, causing property damage, involving him in an investigation, hiding from the court session, establishing the truth, and preventing him from committing a new crime.

During the research, there was a need to study the experiences of foreign countries, as there was a lack of national research and definition of the basic requirements for the use of coercive measures in criminal proceedings.

American researcher Charles In his work, Swanson <sup>4</sup>defined the principles of respect for human rights and freedoms, use of coercion in criminal proceedings only in cases of necessity, limitation of time for its use, judicial review, and the principle of guilt. Specifically,

<sup>1</sup>B.Bat-Erdene. Criminal Procedure Law. Ub., 2002. 18 pages., J.Boldbaatar and co-authors. Criminal Investigation and Resolution. Ub., 2022. 45 pages., D.Bayarsaikhan. Coercion and Human Rights in Criminal Procedure. Ub., 2018. 75 pages.

<sup>2</sup>Kruglikov A. P. Criminal process. M.: Norma: NIC INFRA-M, 2015. p. 249.

<sup>3</sup>Barabash A. S. Celi and basis election mayor пресециения в красным process // Actual problem Russian prava 2015. No. 12. S.185.

<sup>4</sup>Criminal Investigation//6<sup>th</sup> edition. USA. 1996. p. 45.

## 1. The principle of respecting individual rights and freedoms.

Restrictions on human rights and freedoms during criminal proceedings should be made only in cases of necessity and in accordance with the grounds and procedures specified in the law. It is necessary not to violate human rights as enshrined in the Constitution and international human rights treaties and covenants.

## 2. The principle of proportionality.

Preventive measures should be the least restrictive measures appropriate to the circumstances of the case and the individual's personality. More severe measures should only be used in cases of necessity.

## 3. The principle of limiting the period of use.

The measure must be implemented within a specific period of time and not be excessively prolonged. Indefinite detention of a suspect or accused is considered a violation of the law.

## 4. The principle of judicial review.

The court will decide on the preventive measure, or the prosecutor/investigator will make a proposal and confirm it with the court. Judicial review is particularly necessary for measures restricting freedom, such as arrest and detention.

## 5. The principle of innocence.

When applying preventive measures, the conditions must be met to ensure that the person concerned is not considered guilty. The measures must not violate the fundamental principle of respect for the innocence of the person.

The Criminal Procedure Code includes new regulations in line with international standards on the legal basis, types, and application of preventive measures. However, difficulties and contradictions in practical implementation indicate the need for a re-analysis from a theoretical and conceptual perspective.

In our country, in order to determine the principles governing the use of preventive measures in criminal proceedings, a study was conducted and analyzed on the legal framework and practical application of national legislation. In this context, the following concepts are adopted in accordance with Mongolian legislation, the Constitution, and international treaties. These include:

- Respect for human rights and freedoms;
- Legality principle;
- The principle of necessity and proportionality;
- Judicial review;
- Guarantee of the right to a defense.

**Respect for human rights and freedoms.** Ensuring human rights is the highest priority of any state or country. It is precisely by implementing this duty that a country's human rights indicators increase and a satisfying, democratic, and secure society is created.

Human rights are the rights we have simply because we are human. They are not granted by any state. Universal human rights are the inalienable rights of each of us, regardless of race, sex, national or ethnic origin, color, religion, language or any other characteristic. They are<sup>5</sup> defined as including fundamental rights such as the right to life, and rights that make our lives worthwhile, such as food, education, work, health and freedom, which aptly describes its content.

<sup>5</sup><https://www.ohchr.org/> accessed : 2024.06.17

Also, the fundamental subject of legal philosophy, "rights," is a system of social norms that legitimize and enforce the common aspirations of all major groups of a given population, or the unique aspirations of a group within them that is in a dominant position in state governance<sup>6</sup>. The modern trend towards human rights is inextricably linked to the creation of the Universal Declaration of Human Rights. However, it did not reflect new rights that did not exist before, but rather, it was the first to declare and apply to the entire world the most urgent human rights issues of the time.

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, was the first document to establish fundamental human rights that should be protected by all, regardless of where they are. It was a clear recognition of the need for a global commitment to human rights during World War II. Despite the emergence of a universal human rights instrument, human rights and their implementation remain a challenge for each country.

Article 3 of the Universal Declaration of Human Rights, adopted by the UN General Assembly, states that "everyone has the right to liberty and security of person...no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Articles 9 and 17 of the International Covenant on Civil and Political Rights provide for the right to security of person in detail. For example, it is important to emphasize that the right to security of person "shall not be violated even in times of public emergency when the life of the nation is threatened."<sup>7</sup>The UN General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Resolution 3452 of 9 December 1975. In order to effectively implement the objectives of this Declaration, the UN General Assembly officially adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 10 December 1984. Our country joined this Convention in 2000, which made it a milestone in criminal proceedings. Famous intellectuals, thinkers, and philosophers paid special attention to the issue of man and his rights. For example, the German philosopher I. Kant wrote : " ...civil society is originally a great freedom. "The legal basis of freedom is human rights and freedoms. These rights and freedoms must be inviolable and sacred,"<sup>8</sup>he taught.

Before we can develop a sound system for ensuring human rights, it is important to understand and understand human rights. In other words, we need to define the nature of human rights and respond to them in a way that is more realistic.

Many concepts have emerged regarding human rights. However, there is still no consensus among researchers and scholars. Therefore, it is appropriate to study the concepts related to human rights in order to understand and define them.

Human rights are rights inherent in the nature of man, without which man cannot exist<sup>9</sup>. He also said that human rights are the first rights that are inherent in all people from birth, regardless of whether they are citizens of the country in which they live<sup>10</sup>. He also concluded

<sup>6</sup>Gombosuren, Ts. The beginning of the development of an integral /unifying/ version of the philosophy of society. Ub., 1999. Page 30.

<sup>7</sup>Human Rights : Many country contract of agreements compilation . UB., 1990. UNO. 3rd side

<sup>8</sup>3. Lundeejantsan D., Jalbajav N. Erkh sofa philosophy , UB., 1998 , pp. 137-142 side

<sup>9</sup>International Pravo . Slovar-spravochnik / Pod general editorial office academica MAI , d.yu.n. V.N. Trofimova . M., 1997. S. 234

<sup>10</sup>Baglai M.V., Leibo Y.I., Entina L.M. Constitutional right foreign country M., 2013. S. 120

that they are absolute, inalienable, natural, and unlimited rights that belong to a person (non-citizens) by virtue of their birth as an individual <sup>11</sup>.

Human rights are inalienable, meaning that the state has no right to interfere in a person's private life. As stated in the Universal Declaration of Human Rights, these rights flow from the inherent dignity and freedom of all members of the human family <sup>12</sup>.

Human rights are an inalienable value for every person. The state does not grant these rights, but only provides all possible means to implement them in domestic legislation. Only in this case can it be called a state of law. If the state does not grant its citizens their natural rights, hinders their implementation, or grants these rights only to certain groups of people, creating a situation of discrimination, it can be described as anti-democratic.

Human rights are the natural abilities of a person that ensure his personal dignity and freedom of life in all spheres of social life. In addition to the term "rights", the term "freedom" is also used: freedom of conscience and religion, freedom of opinion, speech, publication, movement, etc. In general, these concepts can be considered homogeneous. In science and legislative acts, there are such types as "civil rights" and "individual rights", but they are used in the same context <sup>13</sup>.

Human rights, whether or not they are enshrined in domestic law, cannot be limited to the domestic or national context, because they are not only objects of international law, but also natural and inalienable. If a country enshrines human rights in its laws, they become the rights of citizens of that country <sup>14</sup>.

Individual rights are the rights that a person has in a given situation. The extent of these rights depends on the living conditions, work, socio-economic status, and socio-political situation. The concept of "individual" includes citizens of a given country, foreigners, stateless persons, and refugees. Individual rights determine the level of human development, the characteristics of the individual, the ability to control one's own actions, and to recognize the legality of their actions <sup>15</sup>.

A person does not have to be a particular type of person or a member of a particular nationality or religion to enjoy human rights. People have inherent and inalienable human rights, regardless of whether their rights are enshrined in the customs, morals, or laws of their country. Humans are entitled to human rights by virtue of their birth, but as social units, they must meet the following requirements. These include:

First, some rights, such as the right to vote, are held only by adult citizens or residents and apply only to voting in one's own country.

Second, some rights can be suspended. For example, the right to free movement is temporarily suspended during riots and fires.

Third, some human rights treaties emphasize the rights of specific groups, such as minorities, women, indigenous peoples, and children, rather than the rights of everyone.

<sup>11</sup>Chirkin V.E. Constitutional right foreign country . M., 2014. P.54.

<sup>12</sup>Shahrai SM, Klishas AA. Constitutional right Russian Federation. M., 2010. S. 135.

<sup>13</sup>Peter G. Kirchsclaeger . Human Dignity and Human Rights: Fostering and Protecting Pluralism and Particularity. Interdisciplinary Journal for Religion and Transformation in Contemporary Society. 02 Jul 2020. R. 90–106.

<sup>14</sup>Sainbayar, N. Human Rights-Based Investigation. Ub .,2025. Page 15.

<sup>15</sup>The Stanford Encyclopedia of Philosophy. Human Rights. First published Fri Feb 7, 2003; substantive revision May 31, 2024. <https://plato.stanford.edu/> Accessed : 2024.06.30.

The above requirements may be increased or decreased depending on the specifics of the legal system of each country. However, in both cases, the principles and requirements for the publication of human rights must be met.

Human rights are inalienable and inherent, and the main role of the state created by mankind is to respect, protect, and ensure human rights and freedoms. Since they are inseparable from man, the modern state is not allowed to deny human rights at all, but only to limit them under specific conditions.

**Respect for human rights:** This means not interfering with or violating the enjoyment of a given right. The state should not restrict people's ability to exercise their rights or take actions that violate the law.

**Human Rights Protection:** It refers to the adoption of sound legislation to prevent human rights violations, restore violated rights, remedy harm, and create structures and systems.

**Ensuring human rights:** Positive steps should be taken to ensure the realization of human rights in a progressive manner. In particular, measures should be taken to facilitate (make it easier to access services), promote (inform) and implement (prioritize vulnerable groups and promote equality) <sup>16</sup>.

**The principle of legality .** This principle is not only used in the context of criminal proceedings to take preventive measures, but is also used at all levels of the legal sphere. The main essence of this principle is expressed in the observance of legality in all environments where state functions are carried out.

The rule of law is also related to the principle of justice. The principle of law is a broader concept than the mere application of the law. A public official must adhere to the law in his actions, but he must also be fair and humane in implementing it, which is what defines the rule of law in the classical sense.

The principle of legality is reflected in the Criminal Procedure Code as follows: When conducting criminal proceedings, the court, prosecutor, and investigator shall strictly observe the provisions of the Constitution of Mongolia, this law, and other laws.

If a person conducting criminal proceedings violates Part 1 of this Article, his or her decision shall be considered invalid in accordance with the grounds and procedures specified in this Law and he or she shall be held liable as specified in the law.

If the court finds that the applicable law is inconsistent with the Constitution of Mongolia, it will suspend the proceedings in the case and submit a proposal to the Supreme Court. The Supreme Court will consider the proposal and, if it finds it justified, will submit a request to the Constitutional Court.

If the prosecutor believes that the law applied during the investigation and registration process is not in accordance with the Constitution of Mongolia, he/she shall submit a proposal to the State Prosecutor General, and if the State Prosecutor General finds the proposal justified, he/she shall submit a request to the Constitutional Court.

The regulations issued in accordance with the Criminal Procedure Law shall be consistent with the principles and content of this Law. It is prohibited to issue regulations that establish norms for the

<sup>16</sup>Human Rights Commission. Human Rights Series. Compilation. Ub .,2013. Page 9.

implementation of criminal proceedings other than those provided for in this Law <sup>17</sup>.

**The principle of necessity and proportionality** . This principle is expressed in the fact that preventive measures are necessary and appropriate. According to practical research, investigators and prosecutors are willing to take preventive measures to detain the accused in any case. For this, it was determined during the research that insignificant conditions are used when taking preventive measures. This should also be expressed in conjunction with the principle of legality, of course.

**Judicial review** . Each preventive measure should be subject to judicial review. In Mongolia, the adoption of certain types of preventive measures is a matter for the investigator or prosecutor. The court can only implement preventive measures that are specifically provided for by law, that is, those that are adopted by the court. In other words, it is impossible for the court to review the legal basis of preventive measures other than those implemented by the court.

**Guarantee of the right to a defense** . The right to legal assistance and the right to a lawyer are among the inalienable rights of suspects, accused persons, and defendants. This right is an important segment of the right to a fair trial. In addition to the mandatory participation of a lawyer in the Criminal Procedure Code of Mongolia, an amendment dated June 27, 2025, prohibits the investigation of a case involving a suspect, accused person, or defendant without a lawyer, which is now in effect.

## CONCLUSION

The results of the study led to the following conclusions:

1. It is clear that the purpose of criminal proceedings is achieved by restricting the rights of others during the criminal process.
2. When using coercion in criminal proceedings, a practical approach based on the desire of investigators and prosecutors to detain the accused has prevailed.
3. In the case of restrictions on human rights, the justification is very clear, or the fact that the implementer has limited the will is an important feature of coercion in criminal proceedings.
4. The lack of a clear definition of the appropriate standards to be followed when applying preventive measures has created conditions for unjustified restrictions on human rights and freedoms. Therefore, when implementing preventive measures, it is necessary to adhere to the following principles: respect for human rights and freedoms; the principle of legality; the principle of necessity and proportionality; judicial review; and guarantees of the right to a defense.

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