

Research Article

RIGHT TO A FAIR TRIAL

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ABSTRACT

The study found that human rights violations occur only in the context of procedural law. Specifically, human rights violations are not discussed in the context of substantive law, and human rights violations are often committed during the implementation of norms that ensure and protect them. Also, even if substantive law contains norms that violate human rights, it cannot be considered a violation of human rights if they are not implemented. The criminal procedure laws and regulations clearly specify the sequence of actions aimed at ensuring the rights of participants in the investigation process, who have suffered human rights violations in any crime. Although they are clearly specified, due to practical characteristics, there are still cases where those implementing criminal proceedings interpret and apply the norms of criminal procedure in a way that is beneficial to their functions, and in some cases, do not apply them, thereby violating the rights of others. This study, through an analysis of the content and statistical data of complaints submitted to human rights organizations, has identified that human rights violations within the criminal process are common in the environment of individuals under investigation for crimes. If human rights violations persist, the purpose of the study is to find ways to eliminate them. We conduct research on the implementation of the right to a fair trial, which is a fundamental right of persons under investigation for crimes, relevant statistical data on the issues, the implementation of criminal proceedings, and regulations at the national and international levels, and propose solutions and solutions based on the results.

Keywords: Fair trial, right to a fair trial, rights of the suspect, accused, and defendant.

INTRODUCTION

Ensuring and protecting human rights is a fundamental function of the state. However, the implementation of human rights varies depending on the nature of the various activities of the state, and the lack of a unified understanding of human rights makes their implementation difficult. A common understanding of human rights is useful for creating an effective system for ensuring and protecting them at all times. One specific type of human right is the right to a fair trial. The lack of a common understanding of the right to a fair trial continues to create the risk of human rights violations during criminal proceedings.

The implementation of the right to "freedom from torture" is an important component of the right to a fair trial. The right to a fair trial is a guarantee that the state will not restrict the rights of others in the process of combating crime, and an international obligation. Mechanisms are being developed at both the national and international levels to ensure the right to freedom from torture.

United Nations General Assembly No. 12, 1975 Issue 3452 of 9th of March The resolution "All person torture court and others in the form of cruel, humane otherwise or name the state insulting to deal with from punishment protect" Declaration on "issued and this declaration the purpose realistic to provide in order to and Assembly No. 12, 1984 On the 10th of the month, "Eruden" court and others in the form of cruel humane otherwise human name the state insulting to deal with to punish against convention official according to guarantee issued. Our country in 2000 this at the convention together as entered criminal in the process to smell happened It's a name. out beautiful enlighteners, thinkers, deep wise men person, his rights in trouble special pay attention was.

For example, Germany deep genius I. Kant "... the citizen society the in advance great big right freedom Right freedom right legal root the human rights, rights freedom This is rights, rights freedom inviolable holy to be "it's okay" (С.Жанцан, 2008) that taught by. Professor G.Sovd "man" every inviolable free to be the human therefore destined personal right ... this right if person every time Basic by law confirmed honorable who but love know attack no way absolutely right ..." (Г.Совд, 1999) that his/her right legal content optimal defined.

Torture from the court in class to be "body" physical violence "to act" stereotype by understanding now until arrived the new kind torture court shape unknown, law legal conclusion to give impossible in the state still delivering is. But beaten, abused, threatened joint exactly same seed as a result leads cell by action or participant rights intentionally not to be enjoyed to be said new chin judgment shape to recognize, to judge incompetent It happened. Right in law any new concept, phenomenon login sensitive, immediate to approach It should. the in the extreme human right more from being violated to prevent outside, law implementers right legal consciousness, culture positive seed effective.

Honestly to judge right the jam official rights one same human inseparable rights, rights free problem and only only as prescribed by law grounds and procedures will be checked accordingly as implemented unique right and.

Honestly to judge rights in the field scolded research completed and integrated understanding because of not giving his/her implementation in practice not satisfied still is. Of this bright example the human rights because prosecutor's in the organization case review to solve operation from the participants take out there is complaints and requests number from growing up look will be.

Honestly to judge right the composition characteristic. case characteristic complaint, information since registered from the beginning, from the court force perfect decision to leave until country

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in the distance without form to be satisfied It is necessary . evening in the distance slightly conflict out , him unless justified honestly to judge right not satisfied that see . But unfortunately the criminal case review to solve operation implementers slightly violation to reject attitude mature already It's been a while. This the direction research insufficient, the rights violation identity, law legal conclusion to give knowledge, skills , rights legal consciousness, culture insufficient directly related . The most river the law legal conclusion to give honestly to judge rights about united understanding no the this in the field to study needs and requirements there is will make .

MAIN PART

When the state or its representative organization conducts criminal proceedings guided by the Constitution and the Criminal Procedure Code in order to prove the commission of a crime and its guilt, there is an inevitable legal basis for violating or restricting human inviolability and other rights.

Inviolability is a form of natural and fundamental human rights. The right to inviolability is a special right that is preserved even when a person is being investigated for a crime. Restricting some of the rights of a person who has committed a crime during the investigation is not a violation of the right to inviolability at all, and is a guarantee of the right to inviolability when implemented in accordance with the grounds and procedures specified in the law. The conditions and implementation of restrictions on human rights in accordance with the grounds and procedures specified in the law determine the implementation of his right to a fair trial.

Human rights are inevitably violated during criminal proceedings. However, this is an issue that should only be discussed in cases specified by law.

The limitations of human rights are determined at the constitutional level, and the limitations of restrictions are determined within the framework of criminal proceedings (Х.Эрдэнэбат, 2002). Therefore, human rights, as the most concise expression of the legalized will of a person, need to be considered specifically within the framework of criminal proceedings (С.Жанцан, 2008). "The main thing in protecting human rights and freedoms is to prevent the harmful use of restrictions," (Ж.Амарсанаа, 2000) they stated, emphasizing that clarifying the scope of criminal proceedings is another means of ensuring human rights.

Criminal proceedings are the legal activities of investigators, prosecutors, and judges, who are subjects who implement the goal of promptly and completely detecting any crime, identifying the perpetrators, fairly imposing appropriate punishment on each perpetrator, and ensuring that no innocent person is considered guilty of committing a crime.

It is observed that the true nature of the right to a fair trial has not been accurately defined due to the stereotype that the issue of fair trial is only used in court proceedings or is related to crimes involving torture. The Constitution of Mongolia states: "... oneself defense , law legal assistance to obtain , to prove fact to examine , to be fair by court "to judge ,... " has the right to become declared . And " ... Man every forced any criminal punishment and right duty to define dependent not , side doesn't see by court complete same even basic on openly and honestly to judge "rights ." ¹ , " Court and special court before all person even has the right . every to you forced criminal case review to discuss or civil claim within rights and duties to define

legal according to established right with, dependent not , side no see by court openly and honestly to judge " right "² that help help taught . Of these fair by court to judge right which one or honestly to judge right Is that so ? question sprout The researcher from honestly to judge right the optimal name and court fair to be impossible that seen. Because the court only follow interrogation operation seed as a result there is happened in the folder case within decision If that in the folder in the case taken any in the document information, evidence fact the fair otherwise gathered if to him/her based on to issue any decision fair to be no way. Therefore court decision root happened in the folder case formation, proof operation fair to be about understanding the more realistic because honestly to judge right called name formula the optimal that seen. Honestly to judge rights problem the unit characteristic rights problem not and system In other words in other words , crime case characteristic complaint information from registration first by court finally to be decided until all the time time, place in the distance contained special right is.

National law in the law fair by court to judge right that from definition to court belong to, judge fair to be about perverted opinion concept place got it. This the system crisis to create The court is fair. to be for said slogan under his/her take out there is decision root becomes in the folder case to form there is action operation and quality omitted the secret not is.

Case registration, investigation interrogation operation ten human rights to provide problem the court fair probably directly Contact us . Case registration, investigation interrogation collected only during to prove fact in law specified grounds and procedures according to strengthened be million him/her based on take out there is court decision law legal reason to be determined.

Criminal case review to solve operation in the process implement there is all actions operation the help every time in law specified grounds and procedures according to ongoing or true, fair be seed amount the content for true, fair to be possible. Only That's fair enough. to judge rights and quality exists.

Honestly to judge rights sun saying from imagination his/her beam every the criminal process within done there is unit operations that understand They are necessary. unit operations all human rights satisfy be million honestly to judge right provided that See if . nephew beam every time malfunction if it occurs sun to be and quality lost circle moon and will change.

Criminal case review to solve about in law specified grounds and procedures stubborn collected and consolidated to prove fact criminal case review to solve operation on target in accordance with there is whether considering entirely the, or some part is , clearly follow check by operation collected and consolidated to prove fact some to prove according to the facts not considered to be about prosecutor's proposal, participant request court review discuss , make suggestions and requests waiting from taking reject; completely the, or some part to prove according to the facts not considered to be; to be clear follow check by operation collected and consolidated to prove fact some the to prove according to the facts not considered to be degree decision which one to issue right size to court There is . This right size the case registration , investigation interrogation during human rights will not violate to be said gold principle to spoil negative has two sides .

Criminal case review to solve operation implementers always human rights will not violate while special to pay attention to must while legal above regulatory seed as a result beautiful to approach, and then court justify thing you said overnight by attitude anything execute It

¹Universal Declaration of Human Rights. Article 10.

²International Covenant on Civil and Political Rights. Article 14, paragraph 1.

happened. Otherwise in other words, seed as a result aimed law not operation place to take delivered .

Honestly to judge right the detective, prosecutor, judge from take implement there is The basis for any action prescribed by law must be realistic and the procedure implemented must be within the scope permitted by law, and only then can the results be considered as evidence. All actions must be carried out in accordance with the basis and procedure for the results to be fair. In other words, there must be an intention, attitude, and performance that is focused on the truth of the process, not the result.

Any action taken to strengthen any evidence taken in a case should be considered unfair or even a minor act that violates the grounds and procedures set forth in the law as a violation of the right to a fair trial.

Manifestation of the right to a fair trial during an investigation.

The investigation stage refers to the period from the receipt of a criminal complaint or information to the initiation of a criminal case and the prosecution. In this context, all activities related to the receipt of a criminal complaint or information, its registration, monitoring, and implementation in urgent cases must be carried out in accordance with the grounds and procedures specified in the law. In some respects, if there is no detailed legal regulation, it is expressed as a determination to make a specific decision based on a human rights-based approach, attitude, and courage.

In addition to these, this also includes the proper management and organization of investigations into criminal complaints, reports, and inquiries. Currently, the allocation of criminal complaints and information to investigators at the discretion of the head of the unit, rather than the software, still creates some risks. For example, complaints are investigated by naming investigators for personal gain, and cases of certain individuals are investigated by investigators with subjective interests. Therefore, there is still a need to allocate complaints and investigation cases to investigators on a case-by-case basis. In this case, it is shown that there are still conditions in which the right to a fair trial is violated.

Manifestation of the right to a fair trial during an investigation.

The investigation phase covers the time and space from the issuance of a decision to initiate a criminal case and bring an accused person to trial. Although the distinction between an inquiry and an investigation is clear, the content is not defined, and cases of those implementing criminal proceedings restricting the rights of others in order to benefit from their functions are increasing. The distinction between what can be done in an inquiry and what cannot be done has not been legislated. As a result, a tendency to approach the issue of initiating a criminal case and issuing a decision to bring an accused person to justice has taken hold.

This is because the supervising prosecutor who unreasonably initiates a criminal case and issues a decision to bring charges has no legal responsibility. Due to the abnormal system in which the statute of limitations for crimes is counted until a decision is made to initiate a criminal case and bring a person to trial, investigators and prosecutors have no incentive to resolve the case "quickly." A flawed system has emerged in which a person is brought to trial as soon as the statute of limitations approaches. This has turned into a form of torture within the legal framework. A person should be charged based on the fact that the investigation was conducted in a completely objective manner, but the actions that should have been carried out during the investigation are repeated during the investigation phase,

which is considered to be an unjustified charge. In other words, it means that a person has been charged in advance, and then the charge is justified and the necessary evidence is collected.

Also, the fact that the prosecutor has the final authority to resolve a case during the investigation and registration stages directly indicates that there is no need for a law enforcement agency. This is an indication that the prosecutor's agency has become more of a supervisory agency. The right to a fair trial is a manifestation of the right to a fair trial in the court process .

One of the important guarantees of the right to a fair trial is the independence of the judiciary. While state intervention is important in strengthening the independence and autonomy of the judiciary, the judiciary itself must take the initiative.

Although there are certain internationally recognized methodologies for strengthening judicial independence, their lack of implementation in our country continues to have negative consequences.

Although there have been many changes in the legislation related to the courts over the past 5 years, we decided to consider two changes of principle that are relevant to the content of the study. This is because the researcher believes that these changes have led to more human rights violations.

First, the regulation that prohibits the case from being returned for additional investigation from the guilt trial stage. With the amendments made to the Criminal Procedure Code, it is no longer possible to return a case from a guilt trial stage for additional investigation ³.

This regulation seems to be important for the speedy resolution of cases, but on the other hand, it increases the risk of human rights violations in a time when legal culture and awareness within the criminal process are not yet developed in the classical sense. This can lead to situations such as the violation of the rights of others due to the inability to reverse incompletely proven cases.

The court's courageous decision-making in any situation of doubt will help change the attitude of investigators and prosecutors who are too presumptuous to leave the decision to the court, and will help foster a legal culture that is governed solely by the law.

Secondly, the requirements for reviewing cases in the supervisory court have been increased, and the special procedure for reviewing the decisions of the supervisory court has been canceled. International human rights organizations recommend that the more open the possibility of reviewing cases in a higher court, the more human rights are protected. On the contrary, in our country, the higher the threshold for the supreme court of the country is, which violates human rights.

Regarding the system of reviewing the decisions of the Supreme Court, Article 50, Section 2 of the Constitution of Mongolia states: "... If State top court decision in law allergic him/her State top court himself invalid will make ..." Articles 40.10-40.12 of the Constitutional Court of the Kyrgyz Republic, which provided for the implementation of the Constitutional Court, were repealed by the Law on Amendments of 2021.01.15. As a result, there is no system for reviewing the decisions of the Supreme Court of the Kyrgyz Republic, regardless of their content (even if they violate the law).

As mentioned above, there is no way that the court can be impartial. In this era where the court is represented by a certain number of

³Amendments to the Criminal Procedure Code dated June 3, 2022.

judges, the risk of conflict of interest cannot be ruled out. Specifically, the court of appeals decides cases by a majority of 5 judges. If 3 of the 5 judges can be united for the sake of interest, it is possible to issue a decision of any content. In other words, the legal and legal environment in which the Mongolian judicial authority and institution exist is created at the discretion of 3 judges. Judicial authority should not be so vulnerable.

However, under the previous legal regulation, if a review court decision was determined to be in violation of the law, it was open to review and justification by a meeting of all judges.

Thus, due to the lack of a common understanding of the right to a fair trial, the issue of recognizing its violations and ensuring this right has been neglected. The implementation of the right to a fair trial is not sufficient to strictly adhere to the provisions of the law, but should begin with the implementation of human rights-based criminal proceedings.

CONCLUSION

The results of the study led to the following conclusions:

1. The paradox of the concept of "fair trial" is determined by the results of research conducted on national legal systems and criminal procedure models. In other words, the soul of any decision is the judge's inner conviction, and he makes any decision only within the framework of the case file, guided by his legal conscience. If evidence is collected in the case file by unfair means, then the decision based on them cannot be fair in any way. Therefore, it is more appropriate to call it the right to a fair trial.
2. The right to a fair trial is a unique, not a unitary, right. It encompasses a broad range of characteristics that are expressed in a systematic, law-abiding, human rights-based approach to all stages of the state's criminal prosecution, from the moment a crime is first reported.
3. The right to be free from torture is an essential part of the right to a fair trial.
4. The results of the study clearly show that the clear legality of criminal proceedings is extremely important for ensuring the right to a fair trial. Because the lack of clear boundaries and limits on the violation of human rights in criminal proceedings leads to the arbitrariness of the implementer, who tends to interpret the norms in a way that benefits their functions.

SOURCE USED

1. Mongolia State Basic law (1992);
2. Criminal cabbage punish about law (2002);
3. Criminal case review to solve about law (2017);
4. Human rights popular Declaration (1948);
5. Civil and country state rights about many country pact (1966);
6. Torture court and others in the form of cruel humane otherwise human name the state insulting to deal with to punish against convention (1984);
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