

RRI 2016
International Conference «Responsible Research and Innovation»

**CRIMINAL PROCEDURE MECHANISMS OF SOCIAL WELL-
BEING MAINTAINING IN MODERN SOCIETY: CIVIL
PREFERENCES**

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Abstract

Social well-being as the highest social value, according to a preamble to the Constitution of the Russian Federation, is the purpose of the Russian society development. The orientation towards achievement of citizens' social wellbeing was the main task of any democratic state policy at all times and linked with each its member safety. Social safety is considered as an individual's safety state from any infringement on his/her rights and freedoms. It is obvious that in the social sphere, a source of direct threat of social safety, first of all, is the high level of criminalization of society, crime increasing (latent crime monitoring allows one to state: the actual crime more than eight times exceeds the level of the registered crime (2011, 6). Therefore, the major element of the state policy is maintaining personal social security from criminal infringement, which depends on criminal trial efficiency, stability of application of separate criminal procedure institutes and mechanisms. The structurally functional paradigm allowing estimating all phenomena (including multi ordinal) by their interrelation and interdependence became a methodological basis of a research of criminal procedure mechanisms of maintaining social wellbeing, and the questioning method acted as the prevailing method of a research along with others.

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Keywords: Wellbeing; criminal legal proceedings; public opinion; mediation; punishment; participants of legal proceedings.

1. Introduction

One of the authors has carried out questioning of 144 judges, 246 prosecutors, 418 investigators and inquiry officers, 180 lawyers, as well as 2124 citizens in the territory of 18 territorial subjects of the Russian Federation, concerning the purpose of criminal legal proceedings, their importance and ability to

guarantee protection of the vital interests of an individual, a state against criminal infringements and their consequences which is inseparably linked with ensuring wellbeing of society in other spheres of activity. For obtaining the most objective results, we tried to balance respondents according to gender. However, it was not the independent purpose. In relation to citizens among respondents, there were 40,1% of men and 59,9% of women. About a half of interviewed (54,7%) – youth aged up to 30 years old. Respectively, 45,3% of persons are over thirty years old. Such ratio is not casual in view of the fact that the youth is the most radical, active and, at the same time, a perspective part of the population from the point of view of the introduction of any innovations. At last, for receiving a better understanding of the public opinion, citizens of various social status from heads to housewives and the unemployed have been interviewed.

The analysis of the received results allows revealing a number of features of the public opinion prevailing now about the purpose of criminal trial and its capability to guarantee safety and to become the base of wellbeing of the nation.

2. Methods

Methodological basis of research is the system of such general and private research methods as system, historical, statistical, axiomatic, comparative and legal, method of expert evaluations, questioning, etc.

3. Research questions

The structurally functional paradigm of a research allows one to reveal tough connection between problems of society and problems of criminal trial caused by them. Nearly 1/3 of respondents (30,6%) consider that living conditions will naturally lead to improvement of a criminogenic situation in the country. It is interesting to note that 56,9% of the interviewed judges, 75,6% of prosecutors, 60,8% of investigating and inquiry officers, 38,9% of lawyers hold the same opinion.

In general, results of the carried-out questioning are the sufficient proof that social and criminal procedure problems are tightly bound.

Thus, 21,8% of the respondents were asked to participate as witnesses, and 22,9% – as identifying witnesses. From them, 5,8% testified reluctantly, and 6,9% of respondents refused to be witnesses. The reason of such attitude often have a social character (16,8% and 45%, respectively, motivated their attitude as being busy (i.e., in fact, lack of the due mechanisms allowing such participants of a criminal procedure to act as a witness and as an identifying witness and to participate in investigative actions), and also fear of the subsequent frequent challenges in bodies of investigation and court (16,8% and 33%, respectively).

Obviousness of these socially caused problems has predetermined the corresponding objective assessment of other groups of the interviewed respondents for readiness of specified persons to render assistance to investigation (Table 1):

Table 1. Assessment of the readiness of the victim, witness and attesting witness to facilitate the proceedings

| Groups respondents | Degree of readiness to help proceedings of the following participants in % (according to the interviewed groups of respondents): | | |
|-----------------------------------|--|---------|---------------------|
| | victim | witness | identifying witness |
| Judges | 19,4 | 4,2 | 6,9 |
| Prosecutors | 27,6 | 0,8 | 8,9 |
| Investigators and inquiry officer | 33,3 | 6,9 | 7,4 |
| Advocates | 38,3 | 4,4 | 6,1 |

It is thought that misunderstanding of mechanisms of the events, the role in case and other similar reasons influences significantly the fact that less than 1/3 of respondents (573 people, i.e. 27%) perceive law enforcement officers as the defenders. On the contrary, 50,3% of the interviewed citizens believe that those are representatives of the state (i.e. represent state interests), and 32,3% of citizens consider that they use the provision to their own advantage.

As one can see, efficiency of application of criminal procedure regulations, their due interpretation in many respects depend on the public opinion, existing in the society of mental sets. It is demonstrated, for example, in the following:

- on the one hand, it is good that most of respondents are familiar with such institute of civil society as jury trial (1671 people, i.e. 78,7%); another 19% heard something about it. At the same time, inactivity and passivity of the population demonstrate unwillingness of citizens (58,9%) to be jurors. At the same time, 62% from them directly specified that they do not wish to take the responsibility for destinies of other people. It should be noted that from the persons which showed willingness to be jurors, only 3% were guided by mercantile interests. The overwhelming majority (63,6%) noted that they would fulfill the duties objectively, and 68,9% of respondents emphasized their concern.

It is known that despite one's own unwillingness to be involved in criminal legal proceedings, 47% of the interviewed persons (999 people) have an unambiguously positively supported need to expand possibilities of citizens to participate in justice.

- the existing myths of the present have an extremely stable character and have a significant effect on various spheres of public activity including criminal legal proceedings. So, only 1/5 of respondents (22,1%) honestly admitted the case of a bribe. On the contrary, 77,9% denied the case of giving a bribe, and 80,2% never took it. However, anyway, more than 90% of the interviewed citizens consider that in law enforcement agencies, bribe takers can be met ("many", "the majority"), and 6,5%– could not answer. Concerning such phenomenon as bribery in courts, the negative public opinion has made up 79,5%.

The negative attitude to judicial authority was demonstrated also by the fact that only 7,6% of citizens have acknowledged the possibility to establish justice and correctness in courts. Nearly 1/4 respondents (26,7%) noted the political nature of judicial activity.

The attitude of the persons performing certain procedural functions with the issue is shown in Table 2:

Table 2. Social view of court activity in proverbs and sayings

| Possible answers | Groups of the interviewed respondents (in %): | | | |
|---|---|-------------|-----------------------------------|-----------|
| | Judges | Prosecutors | Investigators and inquiry officer | Advocates |
| You do not know how to consider case, consider it under the law | 45,8 | 29,3 | 33,0 | 22,8 |
| One law — for the rich, and another — for the poor | 12,5 | 32,5 | 30,0 | 36,1 |
| Our court – the most righteous and fairest court | 20,8 | 19,5 | 17,7 | 5,5 |
| Court – the tool of the political power | 12,5 | 17,1 | 20,3 | 40,0 |
| You cannot find truth in courts | 4,2 | 4,1 | 5,7 | 6,7 |

At the same time, in spite of the fact that those proverbs which have a little negative character were chosen from the ones that were offered to respondents for assessment of court, estimating the level of the trust, citizens, in general (79,7%) expressed the positive relation (but, at the same time, more than 50% noted only the satisfactory nature of judicial activities, and only 3,1% of persons estimated the trust perfectly well).

Results of past national history imply the fact that the right is associated with a penalty because of the committed socially dangerous act in ordinary view of Russians which requires the punishment. So, more than a half of respondents (61,4%) see the efficiency of criminal trial in punishment of the guilty person.

On the contrary, 66,5% of respondents associate the criminal procedure efficiency with justice restoring; 49,7% see it in protection of the rights and legitimate interests of participants of the process, and 36,9% of citizens – in compensation of the harm done by a crime.

Moreover, for improvement of a criminal situation in the country, the greatest number of respondents offers:

- to toughen criminal liability (56,4%);
- to apply capital punishment (41,7%).

These opinions have found their manifestation among professional participants of criminal legal proceedings as well (Table 3):

Table 3. Public attitudes to the death penalty

| Groups Respondentov | To stiffen criminal responsibility (in %) | To apply death penalty (in %) |
|-----------------------------------|---|-------------------------------|
| Judges | 41,7 | 31,9 |
| Posecutors | 57,7 | 41,5 |
| Investigators and inquiry officer | 69,0 | 48,8 |
| Advocates | 38,3 | 18,3 |

4. Discussion

What can cause such attitude? We believe it is necessary to recognize interrelation of the criminal procedure with stability and safety. The population poll in this regard revealed the following picture:

- The vast majority of respondents (73%) considers that among all benefits, the life and health of an individual require additional protection by the Criminal Law. On the second place, there is public

safety and public order (49,6%) that, as we know, is also directly connected with interests of certain individuals. At last, the importance of the peace and safety for all people (39,7%) is on the third position. Running ahead, we can emphasize that professionals of the criminal procedure believe that an individual's life and health need more effective protection. Thus, 72,2% of judges, 55,3% of prosecutors, 70,1% of investigating officers and inquiry officers and 43,9% of lawyers hold this opinion.

- 2. 52% of the respondents noted that the victim's rights are not enforced during proceedings (73,6% of judges, 40,7% of prosecutors, 38,7% of investigating officers and investigators and 59,5% of lawyers have the same point of view). Probably, the same circumstances determine the public image towards lawyers without whom, according to 70,4% of the interviewed citizens, it would be impossible to protect the rights in the process.

Necessity for additional protection and safety determines the search of an alternative way to the existing order of the criminal and legal dispute resolution that could be realized by means of the choice. Thus, 50,1% of respondents spoke out, in general, positively concerning the rights of out-of-court dispute resolution (we mean mediation). In this regard, the famous French scientist, J. - K. Soyer, notices fairly that protection of the person against illegal prosecution is performed by observance of a presumption of innocence and a right for defense. At the same time, other fundamental values, the need for victim's protection cannot be mitigated. Elimination of these contradictions is not always easy, especially in the society in which there are serious changes. In this case, a criminal procedure comes to the rescue (Soyer J. - K., 2008, p.22). Therefore, criminal legal proceedings can act not only as the sphere of the conflict of interests, but also as an instrument of reconciliation. Here, we try to solve the dilemma: the implementation of mediation basics in a procedural nature. We believe that it will help the criminal legal proceedings to execute the educational function, which is a missing one at the moment. Currently, in the world practice, mediation is used not only (and not so much) in the case of the criminal and legal conflicts resolution. For example, mediation is widespread in the Civil Law (Funken, 2011) as the strategy of mediation in employment disputes (Cotte, 2005, p.83-92; Martinez-Pecino, Munduate, Francisci, 2005), in pedagogical activity (Lerbert-Sereni, Violet, 1999, p.17-24), etc.

According to the Fundamental Decision of the Council of the European Union of March 15, 2001, "About the place of the victims of crimes in criminal trial" (p.1 Art. 10), each member state shall try to promote mediation in criminal cases for offenses which it will consider suitable for such measure. Neither the Europe, nor world communities dictate to the certain states in what categories of cases the programs of conciliation are admissible. So, a number of programs include mediation in the cases of rape and other attacks using violence; besides, conciliatory programs are carried out between murderers and victims' families. More often, mediation is used to help with life recovery of the survived members of the families and offenders committed auto-pedestrian accident being alcoholic intoxicated (Price M., 2011). Thus, Faget, in the system of target coordinates of mediation notes, both victim's interests and guilty persons' interests can be satisfied when carrying out mediation in the case of simultaneous goal achievement of legal logic and public pedagogical activities of the most various organizations, societies and unions (association of the assistance to the victims of crimes, public councils of crime prevention, committees of a probation and assistance which are conditionally released committees of legal social and educational control, labor unions of protection of the rights of minors, etc.) (Faget, 1993, p.226-227). Russian scientists also emphasize that when carrying out mediation, first of all, the interests of the parties

(Guskova, 2010, p.98) and, as a result, communities are satisfied thanks to what the corresponding social relations are recovered (Markvicheva, 2010, p.197) as an effective remedy of early prevention of juvenile delinquency (Koryagina, 2012, p.47-50) and etc.

1. The times, when citizens believed it to be possible to ask criminal structures for the protection of the violated rights, have passed. Such opportunity was allowed only by 12,1% of respondents (258 people). It specifies the increasing outspread and popularity of civilized mechanisms of the relations settlement in society.

2. Probably, in view of the fact that the European Court of Human Rights is both the radical and efficient mechanism in human and civil rights protection, 34% of respondents recognized its activities as the most effective. At the national level, the prosecutor's office (26,7% of citizens) enjoys the trust. Such preference which citizens give to prosecutor's office, but not courts, in our opinion, can be explained by the fact that the speed of the response of the prosecutor's office to violation of the law is higher than that the courts have. Therefore, the social value of criminal trial can be increased by proceedings speeding up. Thus, 25,7% of the respondents noted that efficiency of the criminal procedure is a speed of proceedings.

5. Results

In the analysis of the public opinion, it is extremely interesting to carry out comparison of the points of view of various groups of respondents. Such approach allows showing the available contradictions, looking at a problem from inside out.

So, features of a professional view of the modern criminal procedure consist of the following:

1. It is necessary to recognize that negative attitude of society to justice really is an important factor for law-enforcement practice since it disturbs efficient protection of public and personal interests. 23,6% of judges, 10,6% of prosecutors, 17,5% of investigating officers and investigators have the same point of view. More over this tendency is typical not only for Russian companies. According to a survey conducted in France, 66% of respondents had a negative attitude to justice, and 18% — very negative (Moatti, 2000).

Moreover, in general, the specified groups of respondents estimate the negative attitude to public agents as one of the essential reasons of unwillingness of witnesses to cooperate with investigative bodies and courts in criminal proceeding.

In general, it is necessary to recognize that the opinion of the defense, prosecution and justice is substantially predetermined by the professional functions carried out during the process.

2. Citizens positively estimate a possibility of entering alternative methods of the dispute resolution.

3. The fact that the opinion of professionals is determined not only by specifics of own activities, but also by the main characteristics of the public opinion in general, whereas the fact of the relation to punishment is specified as well. In this case, it is also traditional. As well as citizens, the allocated groups of the respondents believe that efficiency of the criminal procedure includes punishment of the guilty person (66,7% of judges, 87% of prosecutors, 70,8% of investigating officers and investigators, 62,8% of lawyers), and solving all crimes (36,1% of judges, 43,9% of prosecutors, 38,5% of investigating officers and investigators, 27,8% of lawyers).

It is not surprising that 4,5% of the respondents allow a possibility of tortures for receiving evidence during criminal proceeding. Moreover, 5,6% of judges, 6,5% of prosecutors, 12,7% of investigating

officers and investigators and even 3,3% of lawyers recognize this fact as possible. Apart from deformation of the sense of justice, this situation can be determined by admitting (though indirectly) helplessness of the existing order of criminal proceedings.

Perhaps, for this reason, highly estimating the importance of own activities for safety and protection of society and the personality, groups of professionals in legal proceedings believe that society does not estimate highly their activities.

Thus, for example, judges estimate their activities from the point of view of its importance for society and the personality (Table 4):

Table 4. Assessment by judicial community of the importance of its own activity in modern society

| | 1 | 2 | 3 | 4 | 5 |
|---|-----|-----|------|------|------|
| Assessment by judges of the importance of judicial activity | 4,2 | 8,3 | 12,5 | 23,6 | 51,4 |

And in their opinion, society estimates them as follows (Table 5):

Table 5. Assessment by judges of the public opinion on the importance of their own activity in modern society

| | | | | | |
|--|-----|------|------|------|------|
| Opinion of judges on assessment of the importance of their judicial activity by citizens | 8,3 | 20,8 | 34,7 | 16,7 | 19,5 |
|--|-----|------|------|------|------|

(data are provided in tables 4 and 5 in percentage of a total quantity of the interviewed persons).

Thus, it is possible to state that the mistrust between the population and competent officials of criminal trial has a mutual character.

At last, it is impossible to ignore such conceptual questions as a value of criminal trial and a possibility of optimization of the state of criminal trial.

The value of criminal trial seen by the interviewed persons is as follows (Table 6):

Table 6. Axiological essence of criminal legal proceedings

| Possible answers | judges | prosecutors | investigators and inquiry officer | advocates |
|---|--------|-------------|-----------------------------------|-----------|
| In justice restoration | 58,3 | 71,5 | 62,6 | 46,7 |
| In settlement of an order of involvement of the guilty person to criminal liability | 18,1 | 28,5 | 33,0 | 25,0 |
| Criminal trial – the sphere of realization of criminal precepts of law | 11,1 | 16,3 | 17,9 | 21,7 |
| In provision of guarantees for legality and justification of coercion | 16,7 | 18,7 | 10,3 | 46,7 |
| In an opportunity to restore and protect the rights of the victims | 45,8 | 43,9 | 45,5 | 50,0 |
| In an opportunity to rehabilitate the innocent | 29,2 | 22,8 | 22,0 | 46,7 |
| In providing an order in society | 38,9 | 43,9 | 40,9 | 37,2 |
| In a harmonious combination of private, public and state interests | 13,9 | 7,3 | 7,4 | 18,9 |

The marked groups of respondents in the majority believe that at the expense of optimization of the state relatively the criminal procedure, the most optimal variants are:

– proceedings simplification (56,9% of judges, 61,85 prosecutors, 29,9% of investigating officers and investigators, 56,1% of lawyers);

– implementation of alternative methods of out-of-court criminal legal disputes resolution (34,7% of judges, 19,5% of prosecutors, 16,7% of investigating officers and investigators, and also 37,8% of lawyers).

It should be noted that the civil society supports toughening of repressive law policy of the state (probably, without feeling security of the vital interests). On the contrary, professional participants of criminal trial actively defend the necessity of decriminalization of a number of acts: 45,8% of judges, 20,3% of prosecutors, 13,4% of investigating officers and investigators, 46,7% of lawyers hold such opinion.

6. Conclusions

1. Inactivity of social thinking, stability of a number of myths in public consciousness show that currently citizens actively and objectively recognize the necessity of development of democratic institutes of civil society (for example, jury, restorative justice) and are well informed of them. At the same time, the most part of the population is not ready to take part in the activity of these institutes independently. Therefore, it is necessary to implement such mechanisms in criminal trial that, on the one hand, will rely on opportunities of law enforcement agencies, and, on the other hand, on the most active part of civil society. As represented, it is possible to do by implementation of mediation and transaction.

2. The repressive, retaliatory attitude of public consciousness does not allow realizing now the ideas of decriminalization of a number of acts because of the retrogressive attitude of the society. Therefore, the result received in case of implementation of such measures can be unpredictable. On the contrary, implementation of the mechanisms stated above, the mediation mechanisms and transaction are necessary, because it will allow balancing a repressive and aggressive attitude of the public, concerning guilty persons; to speed up the proceedings, to provide compensation of the caused harm; at last – to provide high-grade security and protection of an individual in criminal trial.

3. The fact that citizens see close connection of the social well-being and the crime rate allows us to state that criminal trial is now extreme. Therefore, it is more reasonable to include also others, more socially determined means of the reaction to crimes, control of crimes, prevention.

Despite the mistrust existing in society, the problems connected with proceedings, all groups of respondents by their answers show that the value is not only real usefulness (in this case criminal trial), but also that expectation, which is connected with it, and also the idea of it which is developed and dominates in society. Now three of these specified components are not matched. Despite legal nihilism, society still expects from criminal trial of justice a recovery of the violated rights, protection and safety. And the positive social effect shall be reached in the shortest terms. Therefore, the public opinion of a layman and the opinion of the listed above groups of participants of criminal trial matches on key social, moral points. However, it often differs on issues of using means to achieve the global purpose. From our point of view, improving proposals of the criminal procedure should take into account these peculiar features. Otherwise, forced innovations can yield unexpected results. Thus, for the purpose of simplification and speeding up the legal proceedings, the institute of transaction will be harmoniously included in criminal procedure matter. Mediation as the procedure that does not have rejection neither of the society, nor of professionals and directed to restore the infringed rights and harmonization of all groups of interests, will also give a positive effect.

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