

CERCO's responsibilities

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4 April 2023

Background

The Criminology Section of the Faculty of Law Vrije Universiteit Amsterdam and the Netherlands Institute for the Study of Crime and Law Enforcement ('NSCR') conduct empirical research involving persons (natural or legal) as research subjects. Other sections of the Faculty of Law, too, are increasingly performing empirical research involving persons (natural or legal) as respondents. This trend has accelerated substantially since the faculty selected Empirical Legal Studies as a research theme. At the same time, more and more commissioning parties, grant providers, stakeholders and academic journals to which research is submitted for publication require proposals for empirical research to be subjected to ethical testing. Researchers themselves may also require possible ethical aspects in their research to be subjected to a critical and in-depth examination. This is why the Law Faculty board decided in 2010 to set up the Ethics Committee for Legal and Criminological Research ('CERCO').

Originally the committee members comprised two lawyers, an empirical researcher and an official secretary and met several times a year, i.e. whenever a research proposal was submitted. In recent years, however, the sharp rise in the number of research proposals being submitted has resulted in a substantial increase in the number of committee members, with half of the members now having a background in empirical research. CERCO also includes some NSCR staff members. The way the committee operates has also been changed on various occasions to ensure the work remains feasible for the individual members and the secretary. Information on members and the procedures for submitting research proposals can be found on CERCO's website ([Commissie Ethiek RCH - Vrije Universiteit Amsterdam \(vu.nl\)](https://www.vu.nl/commissie-ethiek-rch)). It should be noted that, in principle, the committee only examines proposals for future research.

Most submissions to CERCO are requests to assess research proposals, although researchers sometimes request answers to specific questions. CERCO does not give permission for research, but instead informs researchers of possible ethical objections and risks, and suggests ways to deal with these objections. If CERCO has no (or no more) objections, it can issue positive advice and a declaration of no objection. Respondents participating in research on which CERCO has issued positive advice can submit a complaint to CERCO; to date, this has happened on one occasion.

The scope of advice issued by CERCO, and more specifically the question of which ethical aspects in a research proposal are or should be covered by the advice, has repeatedly been found to be unclear. This memo therefore discusses various ethical aspects of research and then examines whether and, if so, when these aspects fall within the scope of the responsibilities assigned to CERCO. The purpose of this memo is to clarify CERCO's

responsibilities and to provide guidelines to researchers on possible ethical objections that can arise in research proposals (and whether CERCO should be asked for an assessment).

Ethical aspects arising

Ethical issues can arise in various aspects of empirical criminological and legal research. These issues can roughly be divided into five (partly overlapping) categories:

1. Possible harmful consequences for respondents

A respondent participating in research commits time and effort to the research by, for example, filling in a questionnaire or being interviewed about possibly sensitive matters. Taking part in the research may be an unpleasant experience for a respondent because it may trigger distressing feelings or traumatic memories. In such situations, the importance of the academic knowledge to be gained from the research must be sufficiently proportional to the distress that may be caused. The researcher must ensure that participation causes as little distress as possible to the respondent. Potential respondents must be free to decide whether to participate in research, based on full and correct information. Respondents must also be properly informed and able to take a well-considered decision and be aware that participating in the research will not affect their personal situation or case, either positively or negatively.

Other examples of possibly harmful consequences for respondents include damaging someone's interests in legal action (if, for example, new facts come to light), reputational damage or disrupting private relationships or relationships at work or school. Participants' physical safety can also be compromised. In many cases, therefore, anonymity must be guaranteed. Researchers have to make clear how they will guarantee anonymity and specify any situations in which anonymity could possibly be lifted. Harmful consequences can also conceivably arise if respondents are unaware that they are participating in research (if, for example, they are being observed or case files are being studied).

Harmful consequences can arise as soon as a researcher contacts a respondent as this may evoke painful memories from the past or stigma. In some situations, even contacting potential respondents can directly endanger them, such as when contact is sought with people in a dangerous domestic situation or an unsafe country.

2. Researchers' safety

Researchers' own safety can also be compromised during their research. This may be their direct physical safety if, for example, they are gathering data in a potentially dangerous environment, such as when participating in observations within certain subcultures or visiting people's homes for interviews. Their safety can also be compromised if they are gathering data under a regime where human rights are insufficiently safeguarded. Researchers' safety may also be compromised at a later stage of their research, such as when their results are

published. Researchers' safety has increasingly come under threat since the outbreak of the corona pandemic.

As well as physical safety, researchers can also suffer psychological harm because of facts revealed by their research. This can cause secondary traumatic stress.

3. Researchers' independence

It is essential in empirical academic research for researchers to be independent. Their independence can be compromised if research is funded by parties or organizations with a vested interest in specific results, such as commissioning parties with political or commercial interests. It can also be compromised if respondents or parties on whom the researcher relies for obtaining information impose conditions, such as demanding influence going beyond the right to correct factual inaccuracies.

4. Research itself is unethical

People may believe that certain subjects should not be allowed to be researched or that conclusions should not be allowed to be published. This is usually because the research or the conclusions are or could be hurtful for or further stigmatize certain groups. Views on such aspects are often person-specific and reflective of a particular period in time.¹

5. Academic fraud

Researchers may act unethically when performing or reporting on their research. Academic fraud can include adjusting, omitting or inventing data or intentionally conducting incorrect statistical analyses. Plagiarism and wrongly insisting on being listed as a co-author also constitute academic fraud.

¹ To illustrate: The criminologist Wouter Buikhuisen was heavily criticized in the 1970s because of his research into biosocial backgrounds in criminality. The neurobiologist Dick Swaab faced demonstrations outside his home after he announced in the late 1980s that (by chance) he had found a difference between brains of homosexual and heterosexual men.

Scope of CERCO's advice

Most of CERCO's comments and questions on research proposals in recent years have related to the first of the above issues, i.e. to the possibility of research having harmful consequences for respondents. CERCO seeks to anticipate whether consequences for respondents could conceivably be disadvantageous or even harmful and assesses such situations critically. Its assessment also takes account of any data management plan that has been drawn up, the anonymisation process and the question of informed consent. If respondents are not going to be asked to consent to taking part or to their data being used, CERCO assesses the exceptions to the GDPR asserted by the researchers.

CERCO also regularly provides advice on the second aspect (i.e. the physical and psychological safety of researchers themselves and any junior researchers or students involved in collecting data).

With regard to the third point (researchers' independence), researchers have contacted CERCO for advice on specific issues on various occasions. The questions asked have included a request for advice on how to deal with specific requests from commissioning parties or other stakeholders. When assessing research proposals, CERCO has on various occasions warned about the possibility of a researcher's independence becoming compromised (and so also about the possibility of damage to the reputation of the VU or the NSCR).

There is no clear answer to the question of whether the fourth aspect (i.e. whether the research itself is unethical) is included in CERCO's responsibilities. Creating barriers to conducting research into certain subjects on the grounds that this research could be hurtful to or cast people in an unfavourable light adversely impacts on researchers' independence (see point 3). Opposing research into certain subjects can also damage the reputation of the VU or NSCR as institutions. CERCO is consequently very careful about issuing such advice, although it may draw researchers' attention to possible sensitivities and risks, including advising on how the media could portray the research or how third parties such as politicians could take certain aspects of it out of context.

CERCO is not responsible for dealing with issues relating to the fifth aspect, i.e. academic fraud. Allegations of academic fraud are *not* handled by CERCO. Instead, such matters can be reported to the VU's Academic Integrity Committee. Before contacting this committee, parties who suspect a colleague of academic fraud can contact their line manager, the faculty board or a confidential adviser.

The final aspect to be considered is research quality. This, too, is a subject that is not, in principle, a matter for CERCO. Researchers and their supervisors are responsible for research quality. Any gaps or opportunities for improvements identified by CERCO members may be included in the advice, but it is up to the researchers to decide whether and how to respond. Sometimes, with the other committee members' consent, a committee member may contact a researcher informally. In practice, however, it is not always possible to assess the quality of research separately from the ethical aspects. If research is of poor quality and so will not produce valid results, respondents will have participated in the research for nothing. This is undesirable and even unethical, certainly in situations where the research

may cause respondents distress. In such cases, this will be taken into account in the advice given by CERCO. If CERCO has serious concerns about the quality and independence of the research (and maybe also about the researcher's integrity and reasons for wanting to conduct the research), it may discuss this with the researcher and ultimately also with the researcher's supervisor or even the faculty board or the NSCR's MT. Fortunately, CERCO has never yet had to deal with such situations.