



## LEGAL ANALYSIS OF ENSURING THE SAFETY OF PARTICIPANTS IN CRIMINAL PROCEEDINGS

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<https://doi.org/10.5281/zenodo.8017636>

### Annotation

In this article, the concept of safety of the participants in the criminal process, the scientific and theoretical issues related to their legal basis are covered. At the same time, the author's views on the national and international legal norms aimed at ensuring the safety of the participants in the criminal proceedings, their content, and the scientific research carried out in this regard are described in the article. The article was prepared on the basis of scientific research carried out in the field and the analysis of national and foreign legislation.

**Key words:** safeguards, social security measures, security agencies, witness immunity, private prosecution, conciliation, security, complaints and petitions.

### 1. Introduction

Ensuring the safety of the participants in the criminal process is one of the main conditions for the implementation of justice. In our country, the legal basis of this issue was defined for the first time in the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as the Criminal Procedure Code). However, due to the fact that the provisions of the JPK are of a general nature, there have been different approaches to its provision. Later, the legal basis for ensuring the safety of the participants in the proceedings was further improved by the Law of the Republic of Uzbekistan "On the Protection of Victims, Witnesses and Other Participants in Criminal Proceedings".

It should be noted that the articles 170, 270, 375, 38113 of the Criminal Code previously provided for measures to protect victims, witnesses and other participants in criminal proceedings from threats against their persons and property in connection with their participation in criminal proceedings. However, the specific procedure and types of protection were determined by legal documents. With this law, a number of tasks aimed at bringing work in the field to a new level were defined.

First, the list of protected persons has been expanded. According to it, in addition to the victim and witnesses, 17 other participants in the criminal proceedings were included. In essence, except for the witness's lawyer and the persons responsible for conducting the criminal case, they are all participants in the process - the law does not apply to ensure the safety of the investigator, investigator, prosecutor, judge and public adviser.

Secondly, two types of protection measures for the participants of the proceedings have been established by law.

1. Security measures - a total of 8 measures, including guarding a person, temporary placement in a safe place, relocation to another place of residence, exchange of documents, etc.;

2. Social protection measures - compensation for damages caused by participation in a criminal case, lump sum benefits, disability and survivor's pensions.

Thirdly, the list of bodies involved in protection was regulated:

bodies making decisions on providing protection - pre-trial investigation, inquiry, preliminary investigation bodies and the court handling the criminal case;

bodies providing security measures - internal affairs bodies, including the Main Directorate of Penalty Execution of the Ministry of Internal Affairs, bodies of the State Security Service, command of military units and structures of the Armed Forces;

bodies providing social protection measures - public social protection bodies.

Previously, in accordance with the Civil Code, all measures to ensure the safety of the participants in the proceedings were entrusted to the internal affairs bodies.

Fourth, the procedure for applying security and social protection measures has become more detailed.

For example, the need to obtain the consent of the protected person or his legal representative for the use of security measures is directly indicated. The decision-making bodies to ensure protection must check the application (report) about the existence of a threat against the protected persons and make a decision (judgment) about the application of security measures or refusal to use them within 3 days, and in cases that cannot be delayed, immediately.

The decision to refuse protection can be appealed to a higher authority (official) or to a court. 24 hours have been allocated for processing the complaint.

In addition, it is specially noted that the expenses related to the provision of protection cannot be charged to the protected persons. 2017 of President Sh.M. Mirziyoev

In the Decree No. PF-4947 "On the Strategy of Actions for Further Development of the Republic of Uzbekistan" adopted on February 7, ensuring the rule of law and further reforming the judicial system is defined as one of the priority directions of the development of society. The issue of strengthening the guarantees of reliable protection of citizens' rights and freedoms in the action strategy is directly related to the subject of this thesis, because the rights and freedoms of citizens are protected by ensuring personal safety.

## **II. Analysis of the research results.**

The concept of ensuring personal security can be analyzed from different perspectives, that is, the complex concept of security has different semantic, legal, doctrinal and comparative meanings. Security semantically means protection, barrier, means or measures to protect against some danger, bad thing, action [1].

The legal and doctrinal meanings of the concept of security are given in more than twenty normative legal documents adopted in this regard. Security is compared with the words "punishment", "guard", "protection". If the basis for applying a security measure is the presence of a person who poses a threat, the criminality of the act is the basis for applying the punishment. The words "security" and "guard" mean a timely response to a threat, and these terms can be used synonymously [2].

The concepts of security and protection are also close in meaning, but security is primarily a state, impression, experience, and protection is a process. Therefore, it is correct to understand protection as a means of achieving security.

The provisions enshrined in Articles 22, 43, 44 of the Constitution of the Republic of Uzbekistan serve to protect the rights and freedoms of all citizens. Provisions on ensuring the

safety of participants in the proceedings are also reflected in several articles of the Civil Code. According to Article 270 of the Criminal Code, the victim, witness or other persons participating in the case, as well as their family members or close relatives are being threatened with killing, using force, destroying their property or damaging their property, or with other illegal actions. If there is sufficient information about the case, the investigator, investigator, prosecutor, and the court must take measures to protect the life, health, honor, dignity, and property of these persons, as well as identify the culprits and bring them to justice.

The right of the court to conduct a closed court session in cases where it is necessary to ensure the safety of the participants of the process, witnesses, impartial or other participants of the process, as well as their family members or close relatives (Article 19 of the Criminal Procedure Code).

In order to ensure the safety of victims, witnesses, impartial and other participants of the process, the introductory parts of the report of investigative actions may not be made available for review. In such cases, the introductory parts of the reports containing information about the specified participants of the proceedings are kept under seal (Article 375 of the Criminal Procedure Code).

In addition, in order to ensure the safety of the participants in the proceedings, their nicknames may be indicated in the list of persons to be summoned to the court session. The practice of showing pseudonyms is also widely used in criminal proceedings of foreign countries (this will be discussed in detail in the next chapters of the study). In particular, under a pseudonym, the victim who is secretly participating in the criminal proceedings and is not present in the courtroom can be contacted by phone or his opinion can be obtained in writing [3].

The information about the persons who need to be provided with security shall be submitted to the court in a sealed manner together with the introduction of the minutes of the investigative actions conducted with their participation. Only the prosecutor approving the indictment and the judge examining the case can familiarize themselves with them (Article 380 of the Criminal Code). In order to ensure the safety of identification of such persons, their photograph is used (Article 127 of the Criminal Code). Today, in some countries, in order to ensure the safety of witnesses and victims, it is recommended to fundamentally change the process of conducting this investigation [4].

Paragraph 14 of the Decision No. 40 of the Prosecutor General of the Republic of Uzbekistan dated February 17, 2005 "On the radical improvement of the prosecutor's control in the context of ensuring the protection of the rights and freedoms of the individual in the criminal proceedings" states that special attention should be paid to the issues of ensuring the safety of the participants in the criminal proceedings.

It is not for nothing that the victim is mentioned first among the participants whose safety should be ensured in Article 270 of the Criminal Code. Because the purpose of the accused or other persons interested in the end of the case is to pressure the victims with illegal actions: to release the temporarily detained suspect or imprisoned person; to identify the culprits, to reveal the true nature of the case, to lose, change, conceal physical evidence that helps to identify the crime; that false information and conclusions are included in the criminal case materials; ending the criminal case, acquitting the guilty, obtaining a lighter sentence for them, etc.



Some scholars believe that security measures should be applied only if there is sufficient procedural evidence that there is a real threat to the life, health, and property of the victims. In our opinion, in this regard, there is sufficient information to say that the victim, his family members or close relatives are threatened with "killing, use of force, destruction of property or damage to property, or other illegal actions" in this regard. The provision of "to be present" is preferred. Because in order to obtain sufficient information about threats to the victim to become procedural evidence, they must be verified, evaluated and recorded. In the time it takes for the information to become evidence, it is possible that the victim, his family members or relatives will be harmed.

The set of illegal actions directed against the victims and widespread include the following: humiliation, threats to kill, threats to damage personal property; physical violence; blackmail or intimidation by disseminating information damaging to a person's reputation; divert or attempt to divert; intentional loss or damage to personal property; kidnapping relatives or loved ones; committing other illegal actions against the victim and his close relatives.

In order to prevent information about the victim from spreading, the following measures can be taken: in cases where it is necessary to ensure the safety of the victim, as well as their family members or close relatives, the court will make a decision and consider the case in a closed court session (Article 19 of the Civil Code); to limit the number of persons involved in the investigation or court actions in which such information may be revealed, in order not to disclose the identified information about the personal life of the victim (Article 88 of the Criminal Code); obtaining a receipt from the participants for non-disclosure of information in a criminal case (Article 353 of the Criminal Code); to take measures to prevent the disclosure of these circumstances during the questioning of the victim, when the circumstances that need to be determined reflect state secrets or professional secrets or there is a reason to believe that they belong to the confidential aspects of the lives of individuals (Article 118 of the Criminal Code); in order to ensure the safety of the victims, not to present the introductory parts of the report of investigative actions for perusal and to keep the introductory parts containing such information under seal (Article 375 of the Criminal Procedure Code); in order to ensure the safety of victims, witnesses, impartial and other participants of the proceedings, to indicate their nicknames in the list of persons who should be summoned to the court session (Article 380 of the Criminal Code).

In the legislation of many countries, the right of the victim to request to ensure the safety of himself, his family members and close relatives is one of his basic rights [5].

Witness immunity exists in the legislation of almost all developed countries, in most of them the USA (Amendment 5-6), Canada (Article 11, Clause "c"), Japan (Article 38), Spain (Article 24), France, Russia (Article 51). Witness immunity is constitutionally entrenched. The Criminal Procedural Code of our Republic also provides for this issue, but the decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan did not provide explanations about this important criminal procedural institution. Also, in the legal literature of our country, too little attention is paid to witness immunity. However, witness immunity, by its essence, serves to increase the efficiency of criminal proceedings.

Researcher T. Matkarimov relies on the analysis of the norms regarding witness immunity strengthened in the Criminal Code of the Republic of Uzbekistan and comes to the following practical conclusions: firstly, the presence of witness immunity affects the content

of the interrogation, but does not exclude the obligation of the witness to be present upon the summons of the relevant law enforcement agencies (except for the persons specified in Article 115 of the Criminal Code of Uzbekistan). Therefore, in case of non-fulfilment of the obligation to be present according to the summons, procedural coercive measures (forcible bringing, fine, etc.) may be applied to such witnesses; secondly, the investigator (investigator, prosecutor) interrogating the witness must explain to the citizen that he or his close relatives have the right to refuse to testify about the circumstances that reveal the crime. The essence of the "privilege against self-incrimination" should be explained during any investigative actions involving the witness (victim) (impersonation, presentation for identification, investigative experiment, etc.); thirdly, persons with witness immunity should be warned of criminal liability for perjury in cases where they waive their right not to testify; fourthly, any person has the right to decide at his own discretion the issue of refusing to give testimony or give evidence on behalf of his husband (wife) and close relatives. His decision must be completely voluntary. Law enforcement agencies may not compel a witness to testify against himself, his spouse, and close relatives in any way. The use of intimidation (including threats of criminal responsibility), extortion, coercion in a special way, as well as deception (including concealment of the right to refuse to give statements) to obtain such statements by these bodies is prohibited; fifthly, the absence of the obligation to testify against oneself or one's close relatives implies the right of a person to refuse not only to testify, but also to refuse to provide other evidence discrediting himself to law enforcement agencies, such as: criminal objects and weapons, other physical evidence, documents, etc.; sixth, believes that during the additional or re-interrogation of witnesses (victims), their rights and duties, including the right not to testify, will be fully explained to them again, and an appropriate mark will be placed on the interrogation report[6]. In doing so, he describes the mechanism by which witness immunity is exercised.

It is emphasized by our researchers that the following measures should be strengthened in the legislation in order to ensure the safety of the persons assisting the justice system: official warning to the threatening person; restrict access to information about the protected person; application of a precautionary measure against the accused that does not allow him to commit illegal acts; showing the person who needs to be recognized in such a way that he cannot see the recognizer; separation of materials related to the protected person as a separate case with the consent of the Prosecutor General, etc. Fully agreeing with these opinions, we can say that the additional inclusion of the right to petition in accordance with Article 270 of the Criminal Code to ensure the safety of the victim himself, his family members and close relatives serves to further guarantee the rights of participants in this category.

Thus, in the criminal-procedural legislation of the Republic of Uzbekistan, the issue of guaranteeing the rights of the victim is given a wide place, but it is appropriate to give additional rights to these participants in the issues of private prosecution, reconciliation, ensuring security, filing complaints and petitions.

"Universal Declaration of Human Rights" (Article 8), "International Covenant on Civil and Political Rights" (Article 14), "Justice for Victims of Crime and Abuse of Office" adopted by the UN General Assembly on November 29, 1985 to ensure the safety of the participants in the process. Declaration on Basic Principles", UN Convention against Transnational Organized Crime (Article 24), adopted on November 15, 2000, UN Vienna Declaration on Crime and Justice: Responses to the Challenge of the 21st Century, adopted in 2000, UN 2005 The

Guiding Principles adopted on July 22 (Article 27) and the provisions of other international documents are recognized as a legal basis.

Many international documents ratified by the Republic of Uzbekistan contain provisions on judicial and procedural guarantees of protection of human rights and freedoms. In particular, in the Universal Declaration of Human Rights adopted in 1948, the rights to freedom and privacy (Article 3), equality before the law (Article 7), the right to a fair and transparent trial by an independent and impartial court established in accordance with the law (Article 10 Article), principles of presumption of innocence (Article 11) are strengthened.

The International Covenant on Economic, Social and Cultural Rights and Civil and Political Rights adopted in 1966 guarantee the implementation of five types of human rights - civil, political, economic, social and cultural. The International Covenant on Civil and Political Rights guarantees the right to life (Article 6), the right to liberty and security (Article 9), the equality of all persons before the courts and their right to be tried without unreasonable trial (Article 14) and other rights.

Articles 2-16 of the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 1984, set out the obligations of states in relation to the prohibition of torture, in particular the absolute prohibition of torture and the admission as evidence of statements obtained from the accused under torture. Obligations to establish a non-compliance procedure are stated.

Declaration of Fundamental Principles of Justice for Victims of Crime and Abuse of Power, adopted on November 29, 1985, Fundamental Principles of the Independence of the Judiciary, Minimum Standard Rules for the Treatment of Prisoners, adopted on August 30, 1955, Basic Principles for the Treatment of Prisoners, adopted on December 14, 1990 principles, adopted on December 9, 1988, a set of principles for the protection of all persons arrested or imprisoned in any form, and other international documents embody the provisions that the practice of judicial protection of human rights is a guarantee of all other rights and freedoms.

The principles of criminal procedure reflect the level of guarantee of individual rights and freedoms in criminal proceedings. The Criminal Procedure Code of the UZSSR adopted on May 21, 1959 and entered into force on January 1, 1960 also states the principles of criminal procedure in articles 3, 4, 6-8, 10-14, 21 of the law (obligation to initiate and open a criminal case; inviolability of the person; inviolability of housing, protection of private life of citizens and confidentiality of their correspondence; administration of justice only by the court; implementation of justice on the basis of equality of citizens before the law and court; independence of judges; judicial proceedings the language used; transparency of investigation of the case in court; provision of the right of defense of the accused; comprehensive, full and objective investigation of the circumstances of the case, appeal against the actions and decisions of the court, prosecutor, investigator and investigator). However, in the previous criminal procedural law, these norms were not called principles and tried to mask them by secondary or tertiary norms. And the result is known: individual rights and freedoms were grossly violated, legality was violated, state interests were put above all values, and as a result, many illegal actions were committed, such as mass repression and unjust arrests.

### III. Conclusion

According to the principle of protection of the rights and freedoms of citizens, all state bodies and officials responsible for conducting criminal proceedings are obliged to protect the

rights and freedoms of citizens participating in criminal proceedings, that is, the authorities and officials authorized to conduct criminal proceedings must first of all protect the rights and freedoms of citizens. they should pay attention to the protection of their rights and freedoms. This principle guarantees the prohibition of encroachment on the rights and freedoms of the accused and the defendant, together with other participants in the proceedings.

Illegal threat to the participants of the process is one of the factors that decrease the effectiveness of criminal proceedings, and the current situation of the fight against crime requires special attention to be paid to this issue.

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