FALSE TESTIMONY: SOME ISSUES RELATED TO INVESTIGATION

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ABSTRACT: This article analyzes the problems of investigating crimes involving knowingly false testimony by witnesses or victims, categorizing them into practical and theoretical issues. Drawing on the best practices of some foreign countries in this regard, legislative proposals have been developed to address gaps in legislation related to the investigation of this type of crime and eliminate shortcomings in law enforcement practice.

Keywords: witness, victim, knowingly, false testimony, practical problems, theoretical problems.

It is evident to all of us that our society and its social relations are destined to move forward continuously. Unprecedented changes are occurring in our lives at an extraordinary pace. Consequently, new social relationships are emerging. Alongside this, new crimes are appearing, and the methods of committing them are becoming increasingly diverse. Therefore, laws should be improved in accordance with the pace of societal development. Otherwise, the standards of justice in society will be disrupted. As Immanuel Kant stated, "Laws and the order of society must be renewed in accordance with the development of human consciousness" [1].

From this perspective, in our country, along with other spheres, continuous reforms are being carried out in the judicial system. The noble idea "For human dignity, for the happiness of the people!" is deeply embedded in the spirit and content of all reforms [2].

Specifically, the Decree of the President of the Republic of Uzbekistan No. UP-4850 of October 21, 2016, "On Measures to Further Reform the Judicial and Legal System, Strengthen Guarantees of Reliable Protection of the Rights and Freedoms of Citizens" [3], No. UP-5268 of November 30, 2017, "On Additional Measures to Strengthen Guarantees of Rights and Freedoms of Citizens in Judicial and Investigative Activities" [4], No. UP-6041 of August 10, 2020, "On Measures to Further Strengthen Guarantees for the Protection of Individual Rights and Freedoms in Judicial and Investigative Activities" [5], and Resolution No. PP-3723 of May 14, 2018, "On Measures to Fundamentally Improve the Criminal and Criminal Procedural Legislation System" [6] serve as prime examples of this.

Systematic and consistent reforms in the judicial and legal sphere during the years of independence are significant, primarily due to their focus on strengthening the principles of humanism in criminal and criminal procedural legislation [7].

It should be noted that the reform should not remain a reform. To achieve the set goals, we need to regularly analyze our legislation, timely eliminate identified errors and shortcomings, and fill in the gaps. As a matter of fact, we will not achieve our goals if we do not call everything by its name, achievements - achievements, and shortcomings -

shortcomings. If we do not correct the mistakes and shortcomings in our work, if we do not solve the problems ourselves, no one will come from abroad and do these things for us [8].

As the President of the Republic of Uzbekistan Shavkat Mirziyoyev noted, "it is necessary to continue the work on further improvement and liberalization of criminal legislation." Therefore, the Criminal and Criminal Procedure Codes were adopted almost 25 years ago. Over the past period, the relationships in society, the way of life of people, their worldview have changed. Therefore, these codes do not meet the requirements of today's time [9].

As President Sh.M. Mirziyoyev noted, "we are well aware that we still have huge tasks to fulfill in full the requirements of our Basic Law." That is, we still have a lot to do to improve the level and quality of life of our people, to ensure human rights and interests in practice. First of all, our people should feel the effect of reforms not in the future, but today in their lives" [10].

To conduct our research in a logical sequence, it is first necessary to analyze the problems that exist in law enforcement practice today before raising the issue of improving the investigation of crimes involving knowingly giving false testimony by a witness or victim. Because the existence of the problem indicates the need for improvement in order to eliminate it.

In our view, if we first highlight the problems related to our research topic and then present its solution, it will be purposeful and mutually beneficial.

We propose to divide the problems of judicial and investigative practice related to the investigation of crimes of knowingly lying by a witness or victim into the following two systems:

1) practical problems related to the investigation of crimes of knowingly giving false testimony by a witness or victim;

2) Theoretical problems related to the investigation of crimes involving knowingly giving false testimony by a witness or victim.

Practical problems related to the investigation of crimes of knowingly giving false testimony of a witness or victim include problems arising in the process of revealing these types of crimes, preparing for the conduct of an investigative action, its conduct, recording the results, moreover, today most of the investigators and investigators serving in investigative offices do not have sufficient knowledge and skills, skills and abilities to master them, they do not have the necessary knowledge, skills and abilities, they do not have the necessary knowledge and abilities, they do not have the necessary skills, they do not have the

Theoretical problems related to the investigation of crimes related to the deliberate false testimony of a witness or victim can be attributed to gaps, misunderstandings, contradictory circumstances in the norms of legislation and normative legal acts related to the investigation of these types of crimes.

Based on the above, it is necessary to pay special attention to the current state of the investigative process and some errors and shortcomings identified as a result of the analysis of judicial and investigative practice, discussion of problems and proposals aimed at improving the legislation put forward to eliminate them.

Firstly, as we all know, Part 1 of Article 117 of the Criminal Procedure Code states that "after establishing the identity of the witness or victim and explaining to him/her procedural

rights and obligations, he/she is warned about criminal liability for refusing to testify and knowingly giving false testimony, and a statement or statement of inquiry is made about it in the minutes of the court session." However, today, in investigative practice, especially in crimes related to infliction of bodily harm, crimes related to the infliction of bodily harm by both parties are very common. Because we are a curious circle. A person who has been beaten for the first time will never think of calling the DIA or going to the hospital. He will answer as much as he can. In such cases, if as a result of the victim's return to the suspect, he was slightly injured, according to part 1 of Article 334 of the Criminal Procedure Code, the relevant documents collected in relation to him are sent to a state body or official who has the relevant powers to take measures in an administrative manner. However, what will happen if, as a result of a retaliatory blow by the victim, the suspect also suffered a mild (JK 109) or moderate (JK 105) injury that caused a violation of his health? Here, we draw attention not to the criminal side, but to the criminal procedural side. That is, in this case, both parties are involved in the case as both victims and suspects. Both parties are not warned of criminal liability for refusal to testify and knowingly false testimony at the time of questioning as a suspect, but both parties are warned of criminal liability when questioning as a victim. What logic could there be? It is known that the deliberate false testimony of a witness or victim is considered completed from the moment the witness or victim is interrogated in court, inquiry or preliminary investigation (i.e., from the moment the statement of interrogation is signed)[11]. However, the suspect has the right to refuse to testify[12].

The suspect may also lie knowingly, and this is not a basis for prosecution. More precisely, it should be clarified that in order to protect himself, the victim is involved in the participation of the suspect in the form of a defendant under the relevant article of the Criminal Code in the form of a defendant and participates in the case both as a victim and as an accused. In this case, we cannot accuse him of knowingly lying when he initially testified as a witness or victim, but we cannot accuse him of lying under Article 238 of the Criminal Code. Where is the logic of the law here?

Furthermore, another problem arising in law enforcement practice is the investigation of crimes committed by a group of individuals. It is known that when one of the suspects refuses to appear in the investigation and hides with an unknown party during the investigation of crimes committed by a group of persons in a preliminary criminal conspiracy, the part of the criminal case in relation to him is divided into separate proceedings in accordance with Article 332 of the Code of Criminal Procedure, is selected to participate as an absentee accused, and the measure of restraint is announced in the prescribed manner, the preliminary investigation is carried out in accordance with Article 364 of the Code of Criminal Procedure The part of the investigation is referred to the court on general grounds. The court considers the case on its merits and imposes the appropriate punishment. In this case, if after a certain period, the wanted person is caught by the investigative body, the preliminary investigation is resumed in accordance with Article 371 of the Code of Administrative Procedure, and investigative actions are carried out. In this process, if contradictions are found in the testimony of the accused caught in the search with the convicted person serving a sentence, in the course of the investigation, the convicted person is summoned to the investigation as a witness, interrogated, and then interviewed with the person caught in the search. The convicted person is warned of criminal liability for refusing to testify and

knowingly giving false testimony both during interrogation as a witness and during confession. However, no one can be convicted twice for the same crime[13].

Also, Article 116 of the Criminal Procedure Code states that close relatives of the suspect, the accused, the defendant may be questioned as witnesses or victims only with their consent about the circumstances related to the suspect, the accused. According to Part 2 of Article 117 of the Criminal Procedure Code, close relatives of the suspect, the accused, the defendant are not warned of responsibility for refusing to testify. Based on the logic of these two articles, it can be concluded that if the close relatives of the suspect, the accused, the defendant agree to testify as a witness or victim under Article 116 of the Criminal Procedure Code, they should be warned under Articles 238 and 240 of the Criminal Code. However, in investigative practice, they are not warned even in such cases.

In our view, the main reason for such irrational actions in investigative practice is the lack of a solution to such situations in our criminal procedural legislation.

Based on the discussion and analysis of the issues, it is advisable to put forward the following proposals:

To set out part two of Article 117 of the Criminal Procedure Code of the Republic of Uzbekistan in the following new edition and to supplement it with parts three and four of the new edition:

Close relatives of the suspect, accused, defendant are not warned of responsibility for refusal to testify, but in cases where they consent to testify as a witness or victim with their consent, they are warned of responsibility for knowingly giving a false testimony.

In cases where a person is involved in participation as a victim, as well as a suspect or accused within the framework of a criminal case initiated in connection with one act, as a witness or victim, a convicted or acquitted person shall not be warned of criminal liability for refusal to testify and knowingly false testimony in connection with the part of the case terminated or sentenced for special proceedings.

Attraction of a witness to criminal liability for knowingly giving a false testimony shall be allowed after the entry into force of the verdict or ruling of the court on his testimony or the termination of this case.

Secondly, as we partially highlighted in the first paragraph of the second chapter of our research, the fact that knowingly giving false testimony by a witness or victim leads to criminal liability encompasses not only interrogation, as most investigators understand, but also all investigative actions related to testimony. In our opinion, such investigative actions include targeting, identification, inspection at the scene of the incident, and an experiment. It is interesting to note that during the investigation of testimony at the scene of the incident and the conduct of experimental investigative actions, witnesses or victims were warned about criminal liability for refusing to testify and knowingly giving false testimony. However, the issue of warning witnesses or victims during the conduct of identification and identification investigative actions remained open. For example, while the Code of Criminal Procedure states that the general rules of interrogation provided for in Articles 96-108 of the Code of Criminal Procedure are observed when conducting a confrontation, Articles 96-108 of the Code of Criminal Procedure do not state that a witness or victim is criminally liable for refusing to testify and for giving a warning of knowingly giving a false testimony.

In our opinion, it would be appropriate to point out that during the course of the pre-trial investigation, the witness or victim should be warned of criminal liability for refusing to

testify and knowingly giving false testimony. However, while paragraph 22 of the annex to the Law of the Republic of Uzbekistan "On Normative Legal Acts" states that..."each article and paragraph, as a rule, must contain one legal norm and have a complete and completed content"; according to paragraph 38, it is stated that the law should include a declarative mechanism that ensures the uniformity of the interpretation of existing norms, the need to develop and adopt legislative acts that require them in detail; the need to ensure that the existing norm does not have a declarative mechanism that ensures the uniform interpretation of existing norms

[14].

In this regard, when analyzing the criminal procedural legislation of neighboring states, whose legislation is close to us, it can be concluded that in accordance with Article 218 of the Criminal Procedure Code of the Republic of Kazakhstan [15], in Article 230 of the Criminal Procedure Code of the Republic of Kazakhstan, the indication of a crime for the purpose of identification and the indication of a crime, as well as in accordance with Article 258 of the Criminal Procedure Code of the Republic of Turkmenistan, the indication of a crime for the purpose of

Based on the above, in order to fill in the gaps in the law and eliminate contradictions, we propose the following:

Part two of Article 123 of the Criminal Procedure Code of the Republic of Uzbekistan shall be stated in the following new edition:

Before a cross-examination, the investigator, the investigator or the presiding judge in a court session shall in turn ask each questioner whether they are acquainted or not, what their relationship was, and listen to their answers. If a witness or victim participates, they shall be warned of criminal liability for refusal to give testimony and for knowingly giving false testimony, with the exception of persons under the age of sixteen. After that, each questioner is asked in turn to answer questions about the circumstances in which contradictions arose. If the contradiction relates to several issues or several circumstances, when each of the two interlocutors gives an indication on one issue or one situation, they may be asked questions about the next issue or next situation.";

To set out part five of Article 131 in the following new edition:

"The testimony of the acknowledger, as well as the questions and returned answers to him by the investigator, the judge, the parties or other persons shall be recorded in the protocol in compliance with the rules provided for in Article 106 of this Code. In the case of witnesses or victims, they, with the exception of persons under the age of sixteen, are warned of criminal liability for refusal to give testimony and for knowingly giving false testimony, which is recorded in the protocol and certified by their signature.

Thirdly, according to the sequence of interrogation in the Code of Administrative Responsibility of the Republic of Uzbekistan, the first, additional and repeated types of interrogation are listed. Our legislation specifies in which cases additional questioning should be conducted, but there is no procedural basis for repeated questioning in which cases. Only Article 121-5 of the Code of Civil Procedure states that "the re-interrogation of witnesses, victims (civil plaintiffs) whose testimony has been previously confirmed is allowed when new issues of significant importance for the case arise, which should be given to the person whose testimony has been previously confirmed at the stage of further pre-trial proceedings or

during the trial" [16]. From this point of view, the purpose of the additional and repeated questioning, and how they differ from each other in terms of tactics, remained open.

According to R.S. Belkin, during a re-interrogation, the investigator again addresses all or some of the circumstances in the testimony of the interrogated person. The purpose of re-interrogation is: to clarify details of previously obtained testimony; to obtain new testimony to compare with the initial testimony in order to identify possible contradictions; to persuade the interrogated person to change their position and give truthful testimony; in cases where partial or complete falsification of information obtained during the initial interrogation is discovered, a re-interrogation may be conducted. An additional interrogation, unlike a re-interrogation, is a process of clarifying case circumstances that were not previously discussed. Its task is to supplement already received testimony. Therefore, an additional interrogation may be based on a question-and-answer format without free narration.[5] When analyzing the norms of the Criminal Procedure Code, we can see that Article 176 is entitled "Additional and Repeated Examinations" and Article 1879 is entitled "Additional or Repeated Inspection." However, it is curious why the legislator did not include the circumstances under which a re-interrogation may be conducted. The meanings of the words "additional" and "repeated" are fundamentally different from each other. We can see the true meaning of this in the examples of examination and inspection mentioned above. If there is doubt about the truthfulness of a witness's or victim's original testimony, they should be re-interrogated, not given an additional interrogation. Based on the essence of the issue discussed above, we propose the following: To revise the title of Article 108 of the Criminal Procedure Code of the Republic of Uzbekistan as follows and to supplement it with a new second part: "Article 108. Additional and Repeated Interrogation Re-interrogation shall be conducted in the following cases: 1) when procedural norms and requirements were not observed during the first interrogation; 2) when new questions arise that are important for the case, which should be asked to a person whose testimony has been previously recorded; 3) if the interrogated person retracts their previous testimony and expresses a desire to give new testimony; 4) if there is reasonable suspicion that the information in the previous testimony of a witness or victim is partially or completely false"; We believe that our proposals and recommendations will serve to further improve the norms of the current Criminal Procedure Code, thereby increasing the effectiveness of investigating crimes involving knowingly false testimony by witnesses or victims in the practice of judicial and investigative bodies. REFERENCES USED

At the same time, when analyzing the norms of the Code of Civil Procedure, we can see that Article 176 is entitled "Additional and Re-examinations" and Article 1879 is entitled "Additional or Re-examination." However, it is very interesting why the legislator did not include the possibility of repeated interrogation in which cases. Because the meaning of the words "additive" and "again" is fundamentally different from each other. The true meaning of this can be seen in the example of the above-mentioned examination and inspection. If there is a doubt about the truth of the witness's or victim's original testimony, it should be re-interrogated, not supplemented.

Based on the essence of the issue discussed above, we propose the following:

To set out the title of Article 108 of the Criminal Procedure Code of the Republic of Uzbekistan in the following wording and to supplement it with part two in the new edition:

"Article 108. Additional and repeated questioning

Requests shall be conducted in the following cases:

1) at the time of the first interrogation, procedural norms and requirements were not complied with;

2) when new questions arise that are important for the case, the testimony of which should be given to a person whose testimony has been previously confirmed

3) if the interrogated person refuses to give previous testimony and expresses a desire to give a new testimony;

4) there is a reasonable suspicion of partial or complete falsity of the information contained in the previous testimony of a witness or victim";

We believe that our proposals and recommendations will serve to further improve the norms of the current Code of Criminal Procedure, thereby increasing the effectiveness of the investigation of crimes involving knowingly giving false testimony by a witness or victim in the practice of judicial and investigative bodies.

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