



PROCEDURAL ORDER FOR ENSURING PERSONAL SAFETY IN CRIMINAL PROCEEDINGS

Ashurov Nodir Nayimovich

Independent Researcher at the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan

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Abstract: The article thoroughly analyzes the issues of ensuring the safety of participants in criminal proceedings. The author conducts a comparative legal analysis of international legal documents and the safety measures for process participants provided for in the current laws and bylaws of the Republic of Uzbekistan. The author scientifically analyzes the improvement of safety measures for criminal proceedings participants, identifies that the legislation does not provide for ensuring the safety of certain individuals who are participants in criminal proceedings, and develops proposals and recommendations aimed at improving legislation.

Keywords: security, legal security, personal inviolability, suspect, accused, defendant, victim, witness, other persons, evidence.

The procedural foundations for ensuring security in criminal proceedings are the provisions of criminal procedure legislation regulating the security status of objects in the sphere of criminal proceedings. It would not be an exaggeration to say that the rules on the application of security measures are at the center of these provisions. Security measures stipulated by criminal procedure legislation and their direct application are considered one of the main methods of ensuring security in criminal proceedings. These measures include elements of legal protection and legal safeguarding.

According to V.V. Voynikov, "security measures in criminal proceedings are understood as a set or system of lawful actions carried out by authorized persons and aimed at preventing or suppressing threats to the safety of participants in criminal proceedings and restoring the violated state of security"[1].

In our opinion, security measures in criminal proceedings are a system of special methods established by criminal procedure legislation, implemented by authorized state bodies and officials, aimed at protecting and preserving security objects from various threats at all stages of criminal proceedings.

A system of security measures is a complex of security measures consisting of interconnected elements, aimed at achieving a unified goal.

Measures ensuring the state of protection of security objects in criminal proceedings are classified in procedural literature on various grounds:

1) by branch of law: criminal procedure; criminal law; administrative law; criminal enforcement law;

2) depending on the stage of application: pre-trial stages (stages of pre-investigation check, inquiry and preliminary investigation); judicial stage (when scheduling a case for trial; during court proceedings; upon suspension of court proceedings, as well as during the execution of a sentence);

3) depending on the persons to whom it is applied: applied to participants in criminal proceedings; applied to persons who do not have a certain procedural status;

4) depending on the authority to make a decision on the application of security measures: body of pre-investigation check; investigator; inquiry officer; head of the inquiry body; head of the investigative body; prosecutor; court (judge);

5) depending on the body implementing security measures: internal affairs bodies; state security service;

6) by duration of application: temporary (with a clearly defined time interval for their application); permanent implementation (without a fixed period);

7) depending on the source of the composition: ensuring the confidentiality of information about the protected person; protection of the person, housing, and other property; provision of special personal protective equipment and technical means to the protected person; temporary placement in a safe place; relocation to another place of residence, change of place of work (service) or study; exchange of documents; restriction of access to information about the protected person; ensuring additional security measures in relation to the protected person held in custody or places of serving a sentence[2].

The legal nature of ensuring the safety of participants in the process, provided for by the Criminal Procedure Code, differs from the state protection measures provided for by the Law of the Republic of Uzbekistan "On the Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings." However, the grounds and reasons for their application have similarities. Because these measures have a single purpose in the law - to ensure and maintain a certain level of criminal procedural security of objects.

In procedural literature, the following are distinguished as grounds for ensuring the safety of participants in criminal proceedings and state protection: formal and factual[3]; factual and procedural[4]; legal and factual[5];

According to D.S. Sokolov, "two grounds are necessary for the application of security measures and state protection: factual and legal (formal and legal). The author also emphasizes that these foundations should be together"[6].

In foreign countries, the following security measures, recognized by the European Court of Human Rights as not contradicting international legal standards in the field of criminal proceedings, are widely applied:

1) to record the testimony of the protected citizen on video and display it during the trial in the absence of the protected person;

2) restriction of the volume of criminal case materials submitted for review to the accused and his defense counsel after the completion of the preliminary investigation;

3) the use of live video recordings when interrogating persons absent from the courtroom;

4) to interrogate law enforcement officers who, during their official activities, learned the circumstances of the criminal case from the victim and witness in court on behalf of the victim and witnesses;

5) temporary restriction of the right of a defender and a person held in custody to meet[7].

According to the "Crime Control Act" of the USA, adopted in 1970, the court grants the right of "immunity" to participants in the process participating in the case in favor of the state under certain conditions. Through this law, for the first time in the world, a state-funded



program for ensuring the safety of persons assisting in solving serious crimes in court has been launched.

The Law "On the Protection of Victims of Crime and Witnesses," adopted by the US Congress on October 12, 1982, provides that criminal justice cannot operate without the protection of victims and witnesses[8].

Also, according to the Federal Law "On the Rights of Victims of Crime and Restitution," adopted by Congress in 1990, "the Minister of Justice oversees the implementation of the program to ensure the safety of victims of crime"[9]. According to the law, security measures may be established against participants, such as having a personal guardian, changing their place of work and residence, full name, providing new documents, assisting in finding a new job, and allocating the necessary living wage.

In Germany, the Laws "On the Protection of Victims," adopted on December 10, 1986, and "On the Protection of Witnesses," adopted in 1990, were the first steps in ensuring the safety of victims of crime and their families in criminal proceedings. These documents clearly define the tasks of the bodies ensuring the safety of persons assisting in criminal proceedings. The Laws "On the Main Witness" of 1993 and "On the Regulation of Issues of Providing Protection to Witnesses in Threatened Conditions" of 1998 "establish additional measures for the protection of witnesses (a "preferential" procedure for interrogating certain categories of witnesses, etc.) "[10].

In the Law of the Federal Republic of Germany "On Combating Crime" of 1994, "significant importance is attached to the anonymity of witnesses and victims"[11]. In addition, security measures such as "Long-term police protection" and "Confidentiality of the minor's whereabouts"[12] were applied to the minor victims.

In France, there is a whole system of laws regulating the protection of the rights of victims and compensation for damages caused by crime. In particular, laws No. 77-5 of January 3, 1977 "On Compensation for Harm Caused by Bodily Injury to a Victim of Crime," No. 81-82 of February 2, 1981 "On Strengthening the Protection of Personal Freedom and Security," No. 83-608 of June 8, 1983 "On Strengthening the Protection of Victims of Crime" "guaranteed the right of victims to receive compensation for legal, psychological, and social assistance"[13].

In Italy, Decree No. 306 "Anti-Mafia" has been in effect since 1992. According to him, the witness's interrogation will be shown using video recordings. According to this Decree, it was intended to ensure the safety of former members of the Italian mafia Cosa Nostra, who wished to promote justice. The witness's relatives are guarded by the police. The program dealt a crushing blow to Cosa Nostra, and many mafia members were arrested or fled the country based on the testimony of former mafia members.

In Great Britain, assistance to victims of crime is an integral part of the state's criminal justice policy. The largest document in this area is called the "Charter of the Rights of Victims." Ensuring the safety of the participants in the process is among the tasks of the ordinary police, and there are no separate institutions operating in this area[14].

In 2019, the European Union adopted the Directive "On the Protection of Persons Reporting Violations of Union Laws." It states that all member states of the Union must incorporate the main provisions established in it into their national legislation by December 17, 2021. In the USA, the "Qui tam" procedure is established by Federal law. According to it, a person who reports a bribe will be rewarded in the amount of 15-25 percent of the bribe. A

"National Reporters Center" operates to protect them. He reports on this every year. Also, the value of the reward for other types of crimes depends on the severity of the crime and averages about one thousand US dollars. It is noteworthy that to date, reporters have been paid a cash prize of 65 million dollars. Although a number of works are being carried out in our country to improve regulatory legal acts in this area, they are still not yielding positive results in law enforcement practice. In particular, in 2021, the state of material incentives for those who cooperated with investigative bodies in the field of combating corruption was only 0.47 percent.

According to part one of Article 270 of the Criminal Procedure Code, "competent state bodies and officials are obliged to take measures to protect the life, health, honor, dignity, and property of participants in criminal proceedings if there is sufficient information to believe that they are threatened with murder, the use of force, the destruction of property, or damage to property, or other unlawful actions, as well as to identify the perpetrators and bring them to justice"[15].

According to Article 16 of the Law "On the Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings," "the grounds for applying security measures are information established by the body making the decision on ensuring protection about the existence of a real threat of murder, violence against the protected person, destruction of his property, or damage to his property in connection with his participation in criminal proceedings"[16].

A deep analysis of the meaning of the above legal norms raises questions for us: what information is considered sufficient, on what criteria is the accuracy and reality of threats assessed, is determining the availability of sufficient information a right or obligation for state bodies and officials conducting criminal proceedings.

In our opinion, the literal interpretation of Article 16 of the Law "On the Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings" allows us to define it as a basis for applying procedural security measures. In other words, security measures can be applied only if they have a dangerous impact in the form of a threat.

The analysis revealed that this legal provision, which defines the grounds for applying procedural security measures, has the following shortcomings:

firstly, this threat does not actually occur, but does not allow the application of procedural security measures in cases of the threat of murder, infliction of bodily harm, intentional destruction or damage to property, and other acts. For example, during the investigation of a criminal case, a witness named "A" is killed by a suspect or accused. However, this circumstance cannot be grounds for applying procedural security measures to witness "B" in order to protect him from the person who committed this crime. Because there were no threats against him.

secondly, the presence of factual data indicating the potential for the commission of dangerous influences in the future, i.e., does not allow the application of procedural security measures for preventive purposes. For example, even if there is no threat, the suspect (accused, defendant) is feared by the participants in the criminal process. Because this person can be a member of an organized group, a person prone to committing a crime, or an authoritative figure in the criminal world.

For the purpose of prevention, additional evidence may be presented to justify the need to apply procedural security measures. Therefore, if a witness is threatened with a criminal

attack on their life, health, or property during criminal proceedings, it will affect their mental state. In this case, the goal can be achieved through influence, and as a result, the witness does not give testimony confirming the accusation or refuses to participate in the criminal proceedings. Moreover, the threat to the witness is known to the affected persons, and the application of certain security measures to this witness will not yield results and effectiveness. In this case, it is necessary to use a pseudonym in accordance with part three of Article 380 of the Criminal Procedure Code[17].

According to some researchers, "every year about 10 million people are involved in criminal proceedings as witnesses, and about two and a half million people refuse to testify in the case due to pressure from criminals"[18].

The elimination of the above-mentioned risks arising in ensuring the safety of participants in criminal proceedings is a pressing issue, both theoretically and practically.

According to V.D.Larichev and P.A.Sustretov, "it is necessary to limit inappropriate meetings between a person assisting in criminal proceedings and participants in investigative actions with the participation of witnesses, specialists, experts, and others, as well as other law enforcement officers." It is also necessary to limit the transfer of a criminal case involving a witness under a pseudonym from one investigator to another. Because in such a case, many witnesses participating under pseudonyms do not want to participate in criminal proceedings due to increased concerns about the expansion of the scope of disclosure of information about them"[19].

In our opinion, these opinions are justified in all respects. Because the expansion of the circle of participants can undermine the security of the participants in the process.

Ensuring the safety of victims and witnesses is also important in increasing the effectiveness of the fight against organized crime. At this point, the opinion of I. Ismailov seems reasonable. In his opinion, "insufficient legal protection of the safety of victims and witnesses in 70-80% of robberies, 65-70% of robberies, 40-50% of thefts, 30-40% of extortion, 20-25% of fraud, and 5-10% of embezzlement and misappropriation committed by organized criminal groups is one of the main factors preventing the detection of these crimes"[20].

We fully support these opinions. Due to the insufficient protection of the safety of victims and witnesses who were direct witnesses to these crimes, the detection of these crimes remains at a lower level compared to other crimes.

Therefore, the bodies of inquiry and preliminary investigation, as well as the courts, must pay serious attention to ensuring the safety of victims, witnesses, and other participants in the process, and preventing various influences on them.

In our opinion, today ensuring the safety of participants in the process does not meet the requirements of the time, and it is necessary to further improve these rules. In order to ensure the safety of victims and witnesses, audio and video equipment should be widely used in law enforcement practice.

According to B.I. Ismailov, "in foreign, especially developed Western countries, a number of legal mechanisms have been developed to ensure the safety of victims and witnesses in criminal proceedings, and these mechanisms are effectively used in the fight against organized crime"[21].

In the course of our research, we witnessed a serious approach to this issue in some CIS countries and other developed countries. In particular, in the Russian Federation, the Law on

State Protection of Victims, Witnesses, and Other Participants in Criminal Justice has been adopted[22]. The adoption of the "Program for the Protection of Witnesses"[23] in the Republic of Kazakhstan is commendable.

In our opinion, in order to increase the effectiveness of the fight against crime in our republic, it is necessary to develop a special law or program to ensure the safety of victims and witnesses.

In addition, it is important to study the experience of the USA on this issue. An effective system for ensuring witness safety has been developed in the USA. Its legal basis is the "Witness Security Reform Act"[24], adopted on October 12, 1984. In accordance with this law, the following measures may be taken to ensure the safety of witnesses: exchange of personal documents, change of residence, ensuring relocation, allocation of funds for accommodation in a new place of residence, assistance in employment, confidentiality of information about the person giving testimony, etc. In this case, an agreement is signed with the witness, which indicates the witness's obligation to provide information on solving the crime and exposing the perpetrators. Failure by a witness to fulfill these obligations may lead to the cancellation of security measures.

In Canada, there is also a law on the witness protection program, which provides for measures for the protection of witnesses: change of residence, temporary placement in a safe place, exchange of personal documents, counseling, and financial support.

In France, in order to ensure the safety of witnesses, the procedure for using "anonymous testimony" at the stage of inquiry is also applied. In this case, information about the person who gave the testimony is not indicated in the interrogation report, and a special note is made in it that these testimony were obtained by a "trustworthy person, but who wished to keep his identity confidential"[25].

In our opinion, such norms cannot be directly applied to the law enforcement practice of our Republic. For this reason, measures to ensure the safety of participants in the process can be divided into: 1) procedural measures; 2) protection measures implemented by the state.

Procedural measures are defined in the Criminal Procedure Code of the Republic of Uzbekistan, i.e., measures that, by their nature, constitute procedural actions (listening to telephone conversations, using special interrogation rooms when presenting for identification, hearing a case in a closed court session, familiarization with preliminary investigation documents).

State protective measures include protecting victims, witnesses, attesting witnesses, and their relatives, ensuring the confidentiality of information about them, and exempting individuals who testify against criminal groups and associations from criminal liability.

Currently, in order to ensure the safety of witnesses, most countries are working on the widespread introduction of the issue of obtaining testimony using audio and video equipment (anonymous testimony) without their participation in court. However, there are different views on whether the fact that the witness does not directly participate in the trial, and the defendant and defendants do not know who he is, and cannot ask him questions, complies with the norms of international law, in particular, the International Covenant on Civil and Political Rights.

There is also no unified practice on this issue in international judicial practice. In particular, in the decision of the European Court of Human Rights of November 20, 1989, the indictment of the national court against the accused K. was found to be based on the

testimony of two "anonymous" witnesses whose testimony was presented without questioning in court, and since the judges did not see the witnesses with their own eyes and could not have an idea of their identity, the accused's rights were violated[26].

In another case, the European Court of Human Rights indicated that witnesses are not required to be questioned directly in court, stating that "questions by the accused and defense counsel are not required to be asked directly in court. The demonstration of audio or video recordings or the reading of the interrogation record is sufficient to refute the witness's testimony and question its accuracy"[27].

In our view, in order to ensure equality of interests between the parties in court, more attention should be paid to the question of interrogating "anonymous witnesses" in court using technical means, and not limiting themselves to reading the interrogation protocol.

L. Brusnitsyn believes that "if the answer to the question leads to the disclosure of the interrogated person's identity, his testimony is not presented in full or in part, and when interrogating using video broadcasting, questions about the interrogated person's identity should be rejected"[28].

In our opinion, the decisions of the European Court of Human Rights regarding "anonymous testimony" cannot be directly applied in our law enforcement practice. However, after studying its positive experiences, the Supreme Court of our country may provide explanations regarding the application of procedural protection measures for witnesses.

The main reasons for giving false testimony include kinship or other close relationships between the participants in the process, interest in the outcome of the case, fear of influence from the interested party, citizens' distrust of law enforcement agencies, and the lack of attention in practice to procedural norms aimed at ensuring the safety of the participants in the process.

When applying liability for false testimony, special attention should be paid to the witness's immunity. Because it is impossible to implement the constitutional principle of citizens' right to defense in criminal proceedings without implementing the provision that "a person is not obligated to testify against themselves"[29].

It is necessary to create a legal system for the protection of witnesses and victims. This is important in preventing harassment of witnesses by persons interested in giving testimony.

Based on the above analysis, measures to ensure the safety of the participants in the process should be developed:

a) socio-economic (biographical data, the possibility of changing the place of residence and work, profession, material support of family members in the event of the death of the protected person, etc.);

b) legal, in turn, these measures are divided into: criminal-legal (establishment of liability for encroachment on the life, health or property of protected persons) and criminal procedural (improvement of the procedure for collecting evidence, ensuring the safety of participants in the process);

c) physical (personal protection, protection of residential and office premises, etc.).

Today, in order to ensure the safety of witnesses, the practice of obtaining testimony using audio and video equipment without their participation in court is being widely implemented in most countries. The use of such methods in the law enforcement practice of our republic yields positive results.

Testimony differs in its content from expert opinion and translation, and coercion to give false testimony using various methods is another crime in its objective aspect. Therefore, liability for these acts should be established in separate articles.

As L.V. Brusnitsyn noted, "the issue of the procedural basis for ensuring the safety of witnesses is mainly related to the concept of protecting human rights and freedoms in criminal proceedings regarding the personal data of witnesses." The procedural basis for ensuring security includes the personal and property security of the participant in the proceedings and their close relatives"[30].

Some procedural scholars emphasize that "on the contrary, in order to ensure the safety of the person who reported the criminal event, it is not permissible to conceal information relating to their personality, as well as to use a pseudonym instead of the information of the person who reported the crime in the decision to initiate a criminal case." It is appropriate to protect the safety of the reporting person at the next stage of criminal proceedings - the preliminary investigation [31].

Supporters of this view justify their opinion in three ways:

firstly, at this stage, the issue of initiating or refusing to initiate criminal proceedings is mainly resolved. Therefore, the legal status of the person who reported the crime is also unclear.

secondly, citing a pseudonym, not a real person, in the decision to initiate a criminal case can cause many objections and mistrust on the part of the defense;

thirdly, can create serious difficulties in the performance of the burden of proof by authorized persons conducting criminal proceedings.

It is necessary to resolve the issue of which procedural rule or security mechanism should be activated by the reporting person (applicant) if there is a need to keep their personal data confidential. If, when it is necessary to ensure the safety of a witness or other participants in criminal proceedings, the person conducting the pre-investigation check must make a certain procedural decision, for example, a decision, then it is necessary to grant the procedural subject carrying it the authority to make a decision on taking measures to ensure the safety of the person, in contrast to the decision to initiate or refuse to initiate criminal proceedings.

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