



FEATURES OF WITNESS PARTICIPATION IN CONDUCTING INVESTIGATIVE ACTIONS

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<https://doi.org/10.5281/zenodo.16568153>

Abstract

The article addresses issues such as the legal status of witnesses, the concept of an impartial witness, the procedure for involving them in criminal cases, the specifics of witness participation in investigative actions, persons who cannot serve as witnesses, the particular investigative actions that require witness participation, and the rights and obligations of witnesses during investigative actions. The article also examines the rights and obligations of witnesses, the significance of introducing the institution of impartial witnesses in criminal proceedings, and engages in scholarly debate with the views of national and foreign procedural law experts on this matter, while also exploring practical problems related to the institution of witnesses. Additionally, based on international legal norms, proposals and recommendations have been developed to improve the Criminal Procedure Code of the Republic of Uzbekistan.

Keywords: suspect, accused, defendant, witness, specialist, expert, interpreter, attesting witness, defense counsel, investigator, inquiry officer, prosecutor.

The Criminal Procedure Law explicitly mandates the participation of impartial witnesses in conducting crucial investigative actions during the preliminary investigation of a criminal case. During the preliminary investigation, at least two impartial witnesses must be present for the most important investigative actions. These key investigative actions include: search and seizure, exhumation of a corpse, crime scene examination, experiment, verification of testimony at the crime scene, presentation for identification, and others. This is directly stipulated in the Criminal Procedure Code, and the investigator or inquiry officer, when conducting the aforementioned investigative actions, invites impartial witnesses, explains their rights and obligations, and then proceeds with the actions. In some cases, after conducting important investigative actions or when it is difficult to find other evidence, the investigator may interrogate the participating impartial witnesses as regular witnesses. Consequently, if an impartial witness has participated in a criminal case and their testimony needs to be taken as evidence, their statement will be recorded in the preliminary investigation process, specifically in the interrogation protocol. Therefore, in criminal proceedings, we deemed it appropriate to present the status of an impartial witness precisely by regulating the interrogation process.

Therefore, before interrogation, a witness who is to be questioned in a criminal case must first be summoned from their place of work or residence to the investigative body. In some cases, questioning may be conducted at the place of work, residence, or directly at the scene of the crime.

Questioning at a person's place of work or residence may be advisable in the following cases:

a) if several witnesses live or work in the same place;
b) if arriving at the place of interrogation is impossible due to family or other circumstances;

c) if the person is unable to appear for questioning due to illness, and postponing the questioning would lead to negative consequences. Article 96 of the Criminal Procedure Code states that an investigator or inquiry officer questions a witness at the location of the inquiry, preliminary investigation, or where the person being questioned is located.[1]

For urgent reasons, the questioning may also be conducted at the scene of another investigative action (for example, during the inspection of the incident, during a search, etc.). If a person has difficulty recalling the circumstances of the crime when not at the scene, particularly some of the most important details, then the questioning is conducted at the crime scene.

The location for interrogating a witness who needs to be questioned is directly indicated in the interrogation protocol. If the witness lives in a distant place but needs to be interrogated, the investigator has the right to send a request for interrogation to the investigative body located in that area.

Typically, the interrogation is conducted in the premises of the investigative body. If necessary, it can also be carried out at the witness's place of residence, temporary accommodation, or other locations. The reasons for conducting an interrogation outside the investigative body's premises may vary:

a) illness of the person being interrogated;
b) necessity for urgent interrogation;
c) tactical considerations (interrogation at the scene of the incident, at the search site, to prevent the spread of information about the interrogation, etc.).

It is prohibited to simultaneously interrogate two witnesses summoned from the same place for the same case. The investigator, inquiry officer, or prosecutor must ensure that persons summoned as impartial witnesses, who are to be questioned as witnesses in a case, do not exchange opinions, communicate, or consult with each other. The place of interrogation is determined directly by the investigator, inquiry officer, prosecutor, and court. No one has the right to overrule their decision.

According to Article 97 of the Criminal Procedure Code, an attesting witness who needs to be questioned is summoned to the investigator, prosecutor, and court by a summons. The summons is sent by mail or delivered by courier. The summons can also be made by telephonogram, telegram, radiogram, or fax. The summons must specify in what capacity the person is being summoned, to which address and to whom they are summoned, on what day and at what time they must appear, as well as what consequences will arise if they do not appear without valid reasons.[2]

The summons is handed over to the attesting witness, and a receipt is obtained from them. If the attesting witness who needs to be questioned is temporarily absent when the summons is delivered, it is handed over to one of the adult family members living with them, the dormitory administration, the house owner, or a representative of the citizens' self-government body, who then signs a receipt.

A summons for interrogation is sent by the investigator, inquiry officer, or prosecutor as a notification about the direct interrogation of an attesting witness participating in a criminal case, creating appropriate procedural conditions for conducting the interrogation.

Summonses for interrogation can be sent by mail or courier. Summonses can also be sent by telephonogram, telegram, radiogram, or fax.

If it is impossible to deliver the summons directly to these witnesses, the mail carrier or courier may give the summons to an adult family member of this person, or to the chairman or secretary of the mahalla committee, or hand it over to the management of the relevant enterprise, institution, or organization at the summoned person's place of work.

Additionally, the summons must indicate the consequences that will occur if the witness who is to be interrogated fails to appear for questioning without a valid reason.

The summons also has a receipt section. In this section, the summoned witness must write the date and time they received the summons, their full name and surname, and sign it. This document is recognized as direct evidence of the witness being summoned for questioning and is sent to the investigator, inquiry officer, prosecutor, and court to be attached to the case materials.

If a person who is to be questioned as a witness refuses to accept the summons, the courier or mail carrier may record this fact on the summons in a written information note and present it to the investigator, inquiry officer, prosecutor, and court. Such an information note can serve as grounds for compulsory delivery if the person fails to appear for questioning. The information note should indicate the full surname, first name, patronymic of the person to be interrogated as a witness, the date and time when the summons was presented to that person, and that they refused to sign this document.

The information certificate must indicate the full position, surname, first name, and patronymic of the person who compiled it, and include their signature. An investigator, inquiry officer, or prosecutor who summons a witness for questioning is obligated to explain the witness's rights and obligations.

According to Article 98 of the Criminal Procedure Code, before interrogating an attesting witness, the investigator must establish their surname, first name, patronymic, date of birth (year, month, day), place of birth, place of residence, place of work, position, occupation, education, and marital status. The investigator must then compare this information with the data in the criminal case file or the witness's personal documents, or otherwise verify that the attesting witness is indeed the person they claim to be. Failure to comply with this procedure leads to an unresolved question about the identity of the attesting witness and uncertainty about the source of the information obtained. This circumstance results in the loss of legal validity of the information contained in the testimony of an unidentified person, and such testimony is not recognized as evidence.[3]

The passport of an attesting witness who is to be questioned as a witness based on personal documents, or an identity certificate containing a photograph of this person issued by the relevant state authority, is recognized. If the identification of an attesting witness who is to be interrogated as a witness is connected with measures to ensure their personal safety, information characterizing their identity may be recorded by the investigator, inquiry officer, or prosecutor using a pseudonym without inclusion in the official record. In these cases, information that helps to establish the identity of the attesting witness who is to be interrogated as a witness must be protected by the investigator, inquiry officer, or prosecutor.

We considered it necessary to draw attention to another circumstance, namely

in accordance with the requirements of Article 99 of the Criminal Procedure Code, if the question arises whether the attesting witness who is to be questioned as a witness knows the

language in which the proceedings are conducted, and in which language they can give testimony, this issue must be clarified. In the cases provided for in Article 71 of the Criminal Procedure Code, an interpreter is summoned, and the interrogation is suspended until their arrival.

The issue arises of determining whether the witness who is to be questioned knows the language of the proceedings and has the ability to testify in it. The resolution of this issue must be directly reflected in the interrogation record, and the witness must personally sign a statement confirming their knowledge of the language of the proceedings and their ability to testify in it. If this requirement is not met, the testimony given by the witness in the language of the proceedings may be called into question and such testimony may lose its legal force.

If the witness who is to be questioned does not know the language of the proceedings, an interpreter must be called to assist them, and the interrupted interrogation can be resumed after the interpreter arrives at the place of questioning.

The interrogation record must contain an entry stating the witness's lack of knowledge of the language of the proceedings, signed by both the witness and the interpreter. Additionally, the interpreter must sign a statement confirming that they have been explained their rights and obligations as specified in Article 72 of the Criminal Procedure Code, if such an explanation has been provided.

After establishing the identity of the witness to be questioned, they are explained their rights and obligations as stipulated by the Criminal Procedure Code. The explanation of these rights and obligations is recorded in the interrogation report or the court session minutes.

According to Article 100 of the Criminal Procedure Code, it is required that the witness to be interrogated understands the composition of their procedural rights and obligations, and a corresponding entry is made in the record about this. This is characterized by the fact that the witness has been explained their rights and obligations, and they must sign to confirm that they understand them and will comply with the requirements of the law.[4]

If the person being interrogated as a witness does not understand their rights and obligations, then the investigator, inquiry officer, prosecutor, and court shall conduct a repeated process of familiarizing them with their procedural rights and obligations.

According to the requirements of Article 101 of the Criminal Procedure Code, a witness who is to be questioned should be asked to testify about the circumstances of the case known to them. After they have spoken freely, questions may be asked aimed at supplementing and clarifying their testimony.

It should be noted that before giving testimony, witnesses are warned by the investigator, inquiry officer, prosecutor, and court in accordance with the requirements of Article 117. This is recorded in the interrogation report or the minutes of the court session. After that, they are required to speak freely about the circumstances of the case. After the completion of the free narration process, the investigator, inquiry officer, prosecutor, and court have the right to ask relevant questions.

During the process of free narration, the investigator, inquiry officer, prosecutor, and court should listen to the witness to be interrogated without unnecessary interruption. If needed, they may suggest clarifying certain circumstances without deviating from the content of the case.

According to Article 102 of the Criminal Procedure Code, leading questions are defined as those that convey the content of a specific answer to the witness to be interrogated,

directly guiding them towards that answer. Such questions are prohibited during interrogation.

During the interrogation process, the investigator, inquiry officer, prosecutor, and court must analyze the answers recorded in the testimony and pay attention to non-existent facts, contradictions, and whether the testimony corresponds to assumptions.[5]

Every witness to be interrogated has the right, upon being summoned, to bring to the interrogation any notes and figures they had during the previous interrogation. The investigator, inquiry officer, and prosecutor must create conditions for the witness to use these records. The investigator, inquiry officer, and prosecutor attach the notes and figures from the witness to be interrogated to the case materials.

The above requirements establish the general rules for interrogating an attesting witness and are directly applied in their questioning. This raises a valid question: why have we presented these rules in this thesis? The reason is that without them, the interrogation of an impartial witness who should be questioned as a witness would lead to a gross violation of criminal procedural law and should be recognized as contrary to the fundamental principles of criminal procedure. Therefore, adhering to these rules in practice is of great importance, because otherwise, information obtained from witnesses that is crucial for the criminal case and has evidentiary value will lose its legal force and be rendered invalid, which does not directly resolve the issue of holding the person who committed the crime accountable.

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