



IMPROVEMENT OF ENSURING THE SAFETY OF PARTICIPANTS IN CRIMINAL PROCEEDINGS AT THE PRE-TRIAL STAGE

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Annotation: The article comprehensively analyzes the issues of ensuring the safety of participants in criminal proceedings. In the article, the author conducted a comparative legal analysis of international legal acts, the security of participants in the process provided for by the current legislation and by-laws of the Republic of Uzbekistan. In the article, the author scientifically analyzes the improvement of ensuring the safety of participants in criminal proceedings, the fact that the legislation does not provide for ensuring the safety of individual persons who are participants in criminal proceedings, and develops proposals and recommendations aimed at improving legislation.

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

Ensuring security in society and guaranteeing it by legal norms is one of the important factors in the sustainable development of any society. Therefore, one of the main tasks of the state is to eliminate threats to social security and create decent conditions for the life and development of society.

Ensuring security is the main means of ensuring a free, prosperous life in society, as well as its comprehensive development.

In the Criminal Procedure Code, the inclusion of issues of ensuring the safety of participants in the process, procedural obligations in the inquiry, preliminary investigation, and court, as well as responsibility for violation of order, in the types of procedural coercion is one of the controversial and debatable issues in criminal proceedings.

In our opinion, "ensuring the safety of participants in the process" and "procedural duties and liability for violation of order in the inquiry, preliminary investigation and court" are different institutions of criminal procedural law. Because in the essence of these institutions there are no elements of procedural coercion.

According to the requirements of Article 213 of the Criminal Procedure Code, "in cases and in the manner prescribed by this Code, the investigator, inquiry officer, prosecutor, and court have the right to apply coercive measures if the participant in the criminal proceedings obstructs the performance of investigative or judicial actions; fails to fulfill the obligations imposed on him; and is also necessary to prevent the further criminal activity of the suspect, accused, and ensure the execution of the sentence"[1].

The need for a comprehensive study of the institution of ensuring the security of participants in the process, a unified system for applying, if necessary, security measures to other persons participating in or not involved in criminal proceedings, the introduction of new types of security measures into law enforcement practice, the development of methodological foundations for understanding, researching, applying, and canceling the concepts of these measures, and the creation of legislative foundations for strengthening

guarantees of human rights and freedoms in the application of certain security measures is of urgent importance.

In this regard, considering that the issues of ensuring the safety of participants in criminal proceedings are legally regulated within the framework of the section of procedural coercion in criminal procedure legislation, it is necessary to study this procedural institution from this point of view.

According to some authors, "if a participant involved in a criminal case doubts their reliable state protection, they do not give the necessary testimony or present acceptable evidence necessary for fulfilling their duties to the criminal process. In this regard, the study of issues of ensuring the safety of participants in criminal proceedings is one of the most pressing topics of our time"[2].

Chapter 32 of the Criminal Procedure Code "Ensuring the safety of participants in the process. Responsibility for violation of procedural obligations and order in the inquiry, preliminary investigation and court." According to Article 270 of the Criminal Procedure Code, "if there is sufficient information to believe that the victim, witness, or other persons participating in the case, as well as their family members or close relatives, are threatened with unlawful acts, the investigator, inquiry officer, prosecutor, and court are obliged to take measures to protect the life, health, honor, dignity, and property of these persons, as well as to identify the perpetrators and bring them to justice" [3].

G.Z.Tulaganova " expressed the opinion that a separate law should reflect a system of measures applied in the presence of a threat of encroachment on the life, health, and property of victims, witnesses, and other participants in criminal proceedings, contributing to the prevention or detection of crimes, including security and social protection measures, as well as the grounds and procedure for their application"[4]. These same issues are also stipulated in the Law of the Republic of Uzbekistan "On the Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings"[5].

On the basis of the above-mentioned norms of both laws, relations aimed at ensuring the security of participants in criminal proceedings are regulated in order to ensure the state's security of the victim, witness, and other persons assisting in criminal proceedings, as well as to create additional conditions for the administration of justice. In the course of our research, an analysis of the norms of current legislation regulating the safety of participants in the process revealed that there are some unregulated norms among the norms of the law:

Firstly, The second section of the Criminal Procedure Code, entitled "Participants in Criminal Proceedings," divides participants in criminal proceedings according to their procedural status into four types: state bodies and officials responsible for criminal proceedings; public associations, collectives, and their representatives participating in criminal proceedings; persons defending their interests in criminal proceedings; and other persons participating in criminal proceedings.

Article 270 of the Criminal Procedure Code states that "the safety of the victim, witness, or other persons participating in the case, as well as their family members or close relatives, is provided for, and the investigator, inquiry officer, prosecutor, and court have the right to give written instructions to the internal affairs bodies to take the necessary measures"[6].

However, this norm does not provide for ensuring the safety of all participants in the process, and also does not reflect the types of security measures and the mechanism for their application, the determination of the duration, amendment, and cancellation of security

measures. Article 1 of the Criminal Procedure Code stipulates that "the procedure for conducting criminal cases in the territory of the Republic of Uzbekistan is determined by the Criminal Procedure Code, and the procedure for conducting criminal cases established by this Code is uniform and mandatory for all courts, prosecutor's offices, investigative bodies, inquiry bodies, the bar, as well as citizens"[7]. Based on the content of this norm, it is advisable to determine the procedure for ensuring the safety of participants in criminal proceedings, applying security measures to them, changing and canceling the applied security measures in accordance with the Criminal Procedure Code, which establishes a unified procedure for criminal proceedings. This issue was approved by 90 percent of the respondents who participated in the survey conducted in the research work.

The safety of any person participating in the process of criminal prosecution, of each participant in the process, must be ensured and guaranteed in the manner prescribed by law. In this regard, we propose to introduce into the Criminal Procedure Code of the Republic of Uzbekistan Chapter 321 "Ensuring the Security of Participants in Criminal Proceedings," which includes Articles 270¹-270³, the provisions of the Law of the Republic of Uzbekistan "On the Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings."

Secondly, Although the Law of the Republic of Uzbekistan "On the Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings" clearly defines the range of protected persons, there is no provision on ensuring the safety of the victim's representative, the witness's lawyer, as well as state bodies and officials responsible for the criminal proceedings and their close relatives.

In our opinion, the fact that the safety of this category of participants in the process is not guaranteed by law, does not prevent them from fully exercising their procedural rights and obligations, but can lead to the restriction of their rights, violation of the principles of criminal procedure, such as legality, protection of the rights and freedoms of citizens, and establishing the truth.

thirdly, The Law of the Republic of Uzbekistan "On the Protection of Victims, Witnesses and Other Participants in Criminal Proceedings" provides for the adoption by the bodies of pre-investigation verification, inquiry, preliminary investigation, the prosecutor, the court of a decision (ruling) on the application or refusal to apply security measures to a person.

The Criminal Procedure Code, unlike another body or official, does not contain any provision on the authority of the body conducting the pre-investigation check to make a decision on the application or refusal to apply security measures. The Code only states that the investigator, inquiry officer, prosecutor, and court have the right to issue written instructions to the internal affairs bodies to take the necessary measures to ensure security.

In our opinion, the authority of the body carrying out the pre-investigation check, as the body responsible for conducting the criminal case, to make a decision on the application of security measures or on refusal to apply them, must be included in the other powers of this body in the Criminal Procedure Code.

fourthly, The Law "On the Protection of Victims, Witnesses and Other Participants in Criminal Proceedings" provides for the provision of security measures in relation to protected persons in criminal cases under the jurisdiction of the internal affairs bodies or the State Security Service bodies of the Republic of Uzbekistan by these bodies. However, part two of Article 270 of the Criminal Procedure Code states that the investigator, inquiry officer, prosecutor, and court have the right to give written instructions to the internal affairs bodies

to take all necessary measures to ensure the protection of the life, health, honor, dignity, and property of the persons participating in the case. From this it follows that in the Criminal Procedure Code, which defines the procedure for conducting criminal cases on the territory of the Republic of Uzbekistan, the only body ensuring the safety of participants in the process is the internal affairs bodies.

According to D.M. Mirazov, "assigning the task of ensuring the safety of participants in criminal proceedings solely to the internal affairs bodies does not correspond to their ability to take full security measures"[8]. Other law enforcement agencies must also take measures to ensure the safety of participants in criminal proceedings.

In addition, the law does not provide for the procedure and terms for the protection of a person, residential premises, and other property, the creation within the body carrying out the protection of special departments specializing in performing this function, and providing them with the necessary material and technical means.

Also, norms providing for the procedure, terms for issuing special personal protective equipment and technical means to a protected person, the grounds and procedure for the return of these means, and liability for damage or destruction of means are not specified;

In turn, the procedure for temporary placement in a safe place, relocation to another place of residence, and the duration of these measures are not provided for by law. Also, the law does not provide for specific norms regulating which body organizes special safe places and residences intended for persons subjected to protective measures, the availability of such places in each city and district, and the placement of persons based on the decision (ruling) of the relevant body or official on the application of a security measure.

In our opinion, it is necessary to create specialized rehabilitation centers in the regions to ensure the material and social security of a person whose security is ensured, providing him with a temporary or permanent place of residence.

fifthly, part two of Article 5 of this law states that "the decision to ensure protection is made by the bodies conducting the criminal case, carrying out the pre-investigation check, inquiry, preliminary investigation, and the court," and part four states that "safety measures in relation to protected persons in criminal cases under the jurisdiction of the court or the prosecutor's office are ensured by the internal affairs bodies at the location of the protected persons by decision of the court or the prosecutor."

However, part two of Article 270 of the Criminal Procedure Code states that "the investigator, inquiry officer, prosecutor, and court have the right to give written instructions regarding the adoption of necessary measures to ensure the safety of persons participating in the case"[9].

These norms contain provisions that do not correspond to each other and do not correspond to the norms of the Criminal Procedure Code.

Therefore, it is advisable to state in the law that "the decision to ensure protection is made by the body conducting the criminal case, the investigator, the inquiry officer, and the court conducting the pre-investigation check."

It is also proposed to introduce norms that security measures for protected persons in criminal cases under the jurisdiction of the prosecutor's office may be provided not by the decision of the prosecutor, but by the decision of the prosecutor's investigator conducting the preliminary investigation or the prosecutor supervising the preliminary investigation.

Sixthly, it is indicated that, according to the law, family members and close relatives of the participants in the process can also be protected persons, and protective measures can also be applied to the applicant, witness of the crime, or persons assisting in the prevention or detection of the crime before the initiation of the criminal case. Although the content of the law clearly defines the categories of persons whose safety is provided for, this norm excludes the elimination of possible threats to the life, health, property, and other rights of other relatives who are not close relatives of the participants in the criminal proceedings, or persons who are not related at all. If a participant in the proceedings, as a result of fulfilling their legal obligation, has provided information about the existence of a threat to persons who are not close relatives, i.e., distant relatives, acquaintances, and other persons, and has appealed to ensure their safety, it is impossible to apply appropriate security measures to their information and appeal. Because the law provides for the safety of only participants in the process and their close relatives. Such a deficiency in the law directly prevents the participants in the process from fulfilling their obligations in full.

In our opinion, it is advisable to state the second and third parts of Article 4 of the Law "On the Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings" in the following wording.

"Closest relatives of the persons specified in the first part of this article and other persons close to the protected persons may also be protected persons."

Measures of protection may also be applied to the applicant, witness of the crime, or persons assisting in the prevention or detection of the crime before the initiation of a criminal case.

seventhly, The peculiarities of applying the security measures provided for by law to suspects, accused, and defendants are that, since their identity is known to other participants in the process, it does not allow the application of measures such as replacing documents or restricting access to information about the protected person.

At the same time, in cases where two or more persons participate in the case as suspects, accused, and defendants, and at least one of them contributes to the disclosure of the crime, there is a threat of such a threat from other participants in the crime or interested parties, there is no legal norm defining specific measures to prevent or eliminate this threat. Therefore, the disclosure of crimes committed by a group of persons, the establishment of evidence in the case, ensuring the inevitability of liability for guilty persons, in some cases, may create problems for the authorized body or officials in guaranteeing the rights of participants in the crime who have expressed a desire to assist in establishing the truth.

In our view, in order to ensure the safety of participants in criminal proceedings, to apply security measures based on the circumstances of the case, it is first necessary to apply appropriate measures to the person making the threat, depending on who is carrying out the threat. If there are sufficient grounds and information about the suspect, accused, defendant carrying out a threat to the safety of another participant in the crime, the threat may be eliminated by applying a preventive measure in the form of detention to him.

In our opinion, it is advisable to include in the category of grounds for applying the preventive measure of detention provided for in Articles 236 and 242 of the Criminal Procedure Code, the possibility of applying this preventive measure in connection with threats by the suspect, accused, and defendant to the participants in the proceedings.

In this regard, state part one of Article 236 of the Criminal Procedure Code in the following wording:

A preventive measure is the prevention of evasion by the accused, defendant from inquiry, preliminary investigation, and court; prevention of further criminal activity by him; prevention of attempts by him to obstruct the establishment of the truth in the case; in order to ensure the safety of the participants in the proceedings and other persons, if there is reasonable information or there is a threat to their safety; in order to ensure the execution of the judgment.

State part two of Article 242 of the Criminal Procedure Code in the following wording:

In exceptional cases, a preventive measure in the form of arrest is applied in cases of intentional crimes punishable by imprisonment for a term not exceeding three years, as well as crimes committed through negligence, for which a punishment in the form of imprisonment for a term not exceeding five years, if one of the following circumstances exists:

when the accused, defendant is hiding from investigation and court;

the identity of the detained suspect has not been established;

violation by the accused, defendant of a previously applied preventive measure;

threat of murder, use of force, destruction of property or damage to property or other unlawful actions of participants in the process to whom security measures have been applied;

the detained suspect or accused, defendant does not have a permanent place of residence in the Republic of Uzbekistan;

may be applied when the crime is committed while serving a sentence in the form of imprisonment.

eighthly, According to Article 18 of the Law "On the Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings," upon receipt of an application (notification) about the threat or threat of committing another unlawful act against a person, the bodies of inquiry, preliminary investigation, the prosecutor, the court carrying out the pre-investigation check are obliged to verify this application (notification) and, within three days, and in urgent cases, immediately, adopt a decision (ruling) on the application or refusal to apply security measures against this person. In Article 20 of the Law, in the event of the elimination of the grounds for the application of security measures specified in Article 16 of this Law, as well as in the event of the impossibility of further application of security measures due to the violation by the protected person of the terms of the agreement concluded by the body providing security measures with the protected person in accordance with part six of Article 18 of this Law, security measures are canceled.

Comparative analysis of the norms of this law shows that there are no provisions regulating the period of validity of security measures and the change of applied measures. According to the content of the law, it is noted that on an application for the application, amendment, or cancellation of security measures, the responsible body may only make a decision on the application or refusal to apply security measures or on the cancellation of the applied security measures. However, the law does not contain a provision that if it is necessary to change a previously applied security measure to another or to cancel some of them if several security measures have been applied to a person, the authorized body may change the security measures to another, cancel some of the previously applied security measures.

Also, in the event of elimination of the grounds specified in Article 16 of the Law , as well as in the event that the subsequent application of security measures is impossible due to the violation by the protected person of the terms of the agreement concluded by the body providing security measures with the protected person. However, the absence in the law of a specific period for the safety measures applied to a person, along with the restriction of the rights and freedoms of the person, leads to the unjustified application of such measures. For example, a security measure was applied to a person for temporary placement in a safe place. Due to the fact that the decision does not specify a specific period, the person is held in another place for months and years. Also, the absence of a specific deadline for applying measures to protect a person's property leads to the inefficient use of the forces and resources of the bodies ensuring security measures.

In our opinion, it is advisable to change, partially cancel the security measures applied to a person, as well as to establish security measures for a certain period, but before the end of the pre-investigation check, preliminary investigation, or before the entry into force of the court's verdict, and, if necessary, to extend these measures for a certain period.

ninthly, According to Article 27 of the Law "On the Protection of Victims, Witnesses and Other Participants in Criminal Proceedings," "persons guilty of violating the legislation on the protection of protected persons shall bear responsibility in the prescribed manner"[10].

Responsibility is established for officials for failure to fulfill or incomplete fulfillment of the task of ensuring the safety of participants in criminal proceedings. However, the law does not specify under which article of the Criminal Code the actions of the guilty person should be evaluated. For example, as a result of the fact that the official authorized to make a decision on ensuring protection did not make a corresponding decision on the appeal of the victim "A," who was involved in the case, requesting to ensure his safety, the victim was deliberately killed by the accused at the stage of the preliminary investigation or trial. Or, due to the negligence of the responsible employee entrusted with the task of ensuring the safety of the participants in the criminal proceedings, inadequate fulfillment of his assigned duties, failure to take all measures to ensure the safety of the victim "A," the victim was premeditatedly killed by the accused at the stage of the preliminary investigation or trial.

In such cases, the law does not specify exactly under which article of the Criminal Code the guilty persons will be held accountable, and the current criminal legislation does not contain such a norm.

Summarizing the above, the following points can be put forward:

The procedural basis for ensuring security is the provisions of criminal procedure legislation regulating the state of security of security objects in the sphere of criminal procedure. Among such rules, the central place is occupied by the rules on the application of safety measures;

The existence of security measures provided for by criminal procedure legislation and the direct application of these measures, which are elements of legal protection, should be considered as one of the main methods of ensuring security in the sphere of criminal procedure.

Security measures in criminal proceedings are specific methods provided for by criminal procedure legislation, implemented by authorized state bodies and officials, aimed at protecting and preserving security objects in the sphere of criminal procedure from various threats.

For the application of security measures and state protection, factual and legal grounds are necessary.

The factual basis for applying procedural security measures is information that may have a dangerous impact on the objects of security of criminal proceedings by criminal or other illegal actions that may be committed in the future.

The legal basis for the application of security measures and state protection is the adoption by an authorized official of a procedural decision, expressed in writing, on the application of security measures or the implementation of state protection.

The grounds for applying security measures must be oral and written statements, documents of the criminal case containing information about the dangerous impact on the objects of criminal procedural security of criminal or illegal actions that may be committed in the future.

If there are reasons and grounds for applying security measures, authorized state bodies and officials are obliged to make a decision on their application.

We believe that persons who have not taken measures to make decisions on the application of security measures, who have not duly fulfilled their duties to apply security measures, or who are guilty of disclosing information about these measures and about protected persons, should be held accountable, and we propose to supplement the Criminal Code with the following norms:

Supplement Article 239 with the following second part:

"Disclosure by an official of the bodies that make a decision on ensuring protection, ensuring security measures, social protection measures, of information about security and social protection measures and about protected persons - is punishable by a fine of up to one hundred times the basic calculated value or correctional labor for up to three years or restriction of liberty from one year to three years or imprisonment for up to three years."

Article 240¹. Threat to the safety of participants in criminal proceedings.

"Threatening murder, the use of force, destruction of property or damage to property or other unlawful actions, committed during a pre-investigation check, inquiry, preliminary investigation or in court, in respect of which there are sufficient grounds to fear their commission against participants in the process or other persons related to the conduct of criminal proceedings, if such actions were committed after the application of administrative penalties, is punishable by a fine of up to fifty times the basic calculated value or correctional labor for up to three years or restriction of liberty from one year to three years or imprisonment for up to three years."

Supplement the Code of Administrative Offenses with the following new article:

Article 1821. Threat to the safety of participants in criminal proceedings.

"Threatening murder, the use of force, destruction of property or damage to property or other unlawful actions against participants in the process or other persons connected with the conduct of criminal proceedings during a pre-investigation check, inquiry, preliminary investigation or in court - entails the imposition of a fine of up to twenty basic calculated values."

tenthly, in order to ensure the safety of the victim, witness, and other persons assisting in criminal proceedings, measures are envisaged to ensure the confidentiality of information about the protected person, protect the person, housing, and other property, provide the protected person with special personal protective equipment and technical

means, temporarily place in a safe place, relocate to another place of residence, change the place of work (service) or study, exchange documents, restrict access to information about the protected person, and apply additional security measures to the protected person held in custody or places of detention.

In addition to these security measures, it is possible to change the preventive measure applied to the accused, the defendant, to a more severe preventive measure, that is, to detention, or to apply detention. Because such a measure is the most effective way to eliminate the threat to the safety of the participant in the process, which has been or may be committed by the suspect, accused, or defendant.

In this regard, it is advisable to supplement the first part of Article 6 of the Law of the Republic of Uzbekistan "On the Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings" with clause 71: "application of a preventive measure of detention in relation to the accused, defendant

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