



PROCEDURAL STATUS OF A WITNESS AS AN ACTIVE PARTICIPANT IN CRIMINAL PROCEEDINGS

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<https://doi.org/10.5281/zenodo.17111321>

Abstract: This article examines the legal status of witnesses in criminal proceedings. It analyzes the theoretical and practical aspects of the concept of witness, the participation of witnesses in the pre-investigation inquiry process, and the procedure for obtaining explanatory statements. The article emphasizes that due to the insufficient clarity in defining the procedural rights and obligations of witnesses in current legislation, this situation may lead to evidence being deemed inadmissible. Furthermore, it substantiates the need to improve legal mechanisms for determining and protecting witness status based on Presidential decrees.

Keywords: witness, criminal procedure legislation, procedural status, pre-investigation inquiry, explanatory statement, evidence, legal reforms, citizens' rights.

In modern criminal procedure legislation, the issue of the procedural status of a witness is one of the most complex and controversial areas. Although a witness is included by law in the category of other participants in criminal proceedings, there are serious theoretical and practical difficulties in determining their legal status. Like other participants in the process, it has its own concept, enshrined in Article 65 of the Criminal Procedure Code of the Republic of Uzbekistan, as well as its own procedural status.

The definition of the concept of witness and its procedural content is of serious scientific interest in terms of content, since at present a unified approach to this problem has not been developed. This situation is important not only theoretically, but also practically; an incorrect definition of the procedural status of a witness can negatively affect the entire criminal process[1].

It is known that the legal reforms being carried out in our country affect not only the number of institutions of criminal procedure law, but also the qualitative differentiation of individual concepts used in science and legislation. In this regard, the concept of "witness" is of particular interest. It should be noted that the determination of the elements of the content of its procedural and legal status, as well as the resolution of all other issues arising from the participation of the subject of this criminal procedural activity in criminal proceedings, depends on terminology[2].

Law of the Republic of Uzbekistan dated September 6, 2017 No. ZRU-442

Chapter 401 was supplemented as "General Conditions for Pre-trial Proceedings," according to which pre-trial proceedings began from the moment of receipt of applications, reports, and other information about the crime and included pre-investigation verification and investigation of the criminal case[3].

This change also had a significant impact on the witness institution. A pre-investigation check is understood as a special form of pre-trial proceedings aimed at fulfilling the tasks of

combating crime, regulated by the Criminal Procedure Code, consisting of the activities of bodies carrying out pre-investigation checks to prevent or suppress a crime, the collection and storage of evidence, the detention of suspects in the commission of a crime and the search for hiding suspects, the performance of urgent investigative and all other actions to ensure compensation for material damage caused by the crime[4].

According to M.D. Boltaev, one of the scientists who conducted scientific research related to the development of the witness institution, pre-investigation verification is a separate stage of pre-trial proceedings, a system of procedural actions of responsible state bodies and officials who have the appropriate authority, aimed at issuing a lawful and justified decision by collecting, examining, and evaluating evidence on applications, reports, and other information related to a crime[5]. B.N. Rashidov, on the other hand, emphasized that pre-investigation verification is understood as the activity of carrying out urgent actions in order to establish the presence of reasons and grounds for initiating a criminal case after receiving an application or report about a crime, to quickly solve the crime, to prevent the escape, concealment, and destruction of evidence by the person who committed the crime, and to compensate for property damage caused[6].

According to our criminal procedure legislation, during the pre-investigation check, additional documents and explanations may be requested, as well as instructions may be given to detain a person, conduct a personal search and seizure in accordance with part two of Article 162 of the Criminal Procedure Code, inspect the scene of the incident, conduct an examination, appoint an audit, and conduct operational-search measures. Requesting explanations means requesting information from an individual about circumstances known to them and relevant to the case, i.e., obtaining an explanatory note. When receiving an explanatory note, the information reflected in the person's memory is expressed orally, recorded on paper, or presented directly on paper[7].

According to statistics, during the 12 months of 2023, a total of 1,690,800 applications, reports, and information about offenses, crimes, and incidents were received by the territorial subdivisions of the Ministry of Internal Affairs of the Republic of Uzbekistan, registered in the "E-material" system, and pre-investigation checks were carried out on these cases[8]. These figures clearly demonstrate the practical significance of the institution of pre-investigation verification.

During all pre-investigation checks, witnesses actively participate, and explanatory letters are taken from witnesses and attached to the case file. Based on the testimony of witnesses, the final decision is made by the authorized person performing the pre-investigation verification actions. However, although procedural actions related to witnesses are carried out during pre-investigation checks, the procedural order for obtaining explanatory letters is not defined in our legislation. Also, in practice, in the process of obtaining an explanatory note, the procedural rights and obligations of the witness are not explained, and this, in turn, leads to ignorance of the witness's rights or violation of their rights during the pre-investigation check. The evidence obtained as a result may be recognized as inadmissible.

Important provisions for solving this problem are defined in the Decree of the President of the Republic of Uzbekistan dated November 30, 2017 No. UP-5268 "On Additional Measures to Strengthen Guarantees of the Rights and Freedoms of Citizens in Judicial and Investigative Activities." In particular, it was stated that "evidence obtained as a result of

failing to explain the rights and obligations of a person participating in criminal proceedings cannot be used as evidence"[9]. In addition, in the Decree of the President of the Republic of Uzbekistan dated February 28, 2023 No. UP-27 "On the State Program for the Implementation of the New Development Strategy of Uzbekistan for 2022-2026 in the "Year of Caring for People and Quality Education," the task was set to "develop regulatory documents to clarify the procedural status of persons involved in the pre-investigation verification process, to determine the exercise by these persons of the rights and obligations of the suspect, victim, and witness, and to authorize certain investigative actions at the pre-investigation verification stage"[10].

Based on the results of the above-mentioned scientific analysis, in our opinion, the implementation of the institution of pre-investigation verification as a result of amendments made to the legislation of the Republic of Uzbekistan in 2017 led to a new definition of the legal status of the witness institution, and currently, the procedural rights and obligations of witnesses in the process of pre-investigation verification are not fully defined. For this reason, the tasks defined by Presidential decrees indicate the need to improve the procedural status of witnesses, to clearly define their rights and obligations. To solve these problems, it is advisable to develop a separate regulatory framework regulating the procedural status of witnesses at the pre-investigation stage.

At this point, a legitimate question arises: when does a person's legal status arise? According to legal theory, the legal status of a person is the state that reflects the real state of a person in relations with society, the state, and others. It is a set of rights, freedoms, and obligations of a person, legally enshrined and determining their place in society[11].

The legal status of a person is enshrined in the Constitution and other legislative acts issued in accordance with it. There are several types of legal status, of which the general legal status of a person is the legal status of a person as a citizen of a certain state and a member of society. The general legal status is determined by the Constitution and is considered the same and uniform for all, and it operates in a relatively stable and general form. The essence of the general legal status of the individual is based on the rights and obligations granted and guaranteed by the Constitution to everyone and every person. The general legal status of an individual serves as the basis and foundation for other types of legal status[12]. Based on constitutional principles, it would not be an exaggeration to say that if a person's rights and freedoms belong to them from birth, then the procedural status, rights and obligations of a witness begin with their involvement in pre-investigation verification actions.

Decree ~~~ of the General Prosecutor's Office, the State Security Service, the Ministry of Internal Affairs, the Ministry of Emergency Situations, the Ministry of Defense, the State Customs Committee, and the National Guard of the Republic of Uzbekistan dated

Resolution No. 62, 30, 78, 27-q/q, 40, 01-02/22-56, 46 of November 2, "On Approving the Regulation on the Procedure for Receiving, Registering, and Considering Applications, Messages, and Other Information on Crimes and Events," stipulates that during the pre-investigation check, within the framework of certain investigative actions, other persons - witnesses - who may be aware of any circumstances to be clarified in the case, have the rights of a witness; during the pre-investigation check, when obtaining explanations from individuals and representatives of legal entities, it is necessary to comply with the general rules of interrogation established in Chapter 10 of the Criminal Procedure Code; the person giving the explanation exercises the rights of a witness established by criminal procedure

legislation; after establishing the identity of the person giving the explanation, their procedural rights and obligations are explained to them, and this is recorded in the explanatory note. This resolution stipulates that during the pre-investigation check, when obtaining explanations from individuals and representatives of legal entities, the general rules of interrogation established in Chapter 10 of the Criminal Procedure Code must be observed, the person giving the explanation must exercise the rights of witnesses established by criminal procedure legislation, and after establishing the identity of the person giving the explanation, their procedural rights and obligations must be explained to them, which is recorded in the explanatory note.

However, since such a procedure is not officially established in our procedural legislation, in practice, these procedures are not used in the process of pre-investigation checks. Based on the foregoing, it is necessary to establish in our procedural legislation the procedure for explaining the rights and obligations of a witness during a pre-investigation check and reflecting this in the documents drawn up.

In addition, this article defines in the summons who the person was summoned to, at what address and to whom, on what day and at what time he must appear, as well as the consequences of failure to appear without a valid reason, the receipt of the summons upon presentation, and to whom the summons may be handed over.

However, our criminal procedure legislation does not define the procedure for summoning participants, in particular, a witness, during pre-investigation checks. For this reason, in practice, a number of difficulties arise in summoning participants during pre-investigation checks. In practice, these actions are carried out in the process of pre-investigation checks in the same manner as in the period of inquiry and preliminary investigation after the initiation of a criminal case.

This situation contradicts the principle of legality and reduces the legal protection of witnesses. Therefore, it is necessary to clearly introduce into our criminal procedure legislation the procedure for summoning witnesses or other participants in pre-investigation checks.

Based on the foregoing, we propose the following new scientifically and theoretically revised concept of a witness: a witness is a sane person who has witnessed or heard the events that took place and was summoned to the pre-investigation check, inquiry, investigation and court proceedings to confirm their fact, and is obliged to give fair testimony on the circumstances, but at the same time has the opportunity to protect his rights and use procedural guarantees.

The relevance of this definition lies in the fact that it takes into account not only the obligations, but also the rights of the witness and corresponds to the principles of the modern rule of law.

The legislation allows any person, regardless of age, gender, and citizenship, to participate as a witness in criminal cases and may be interrogated, except for certain persons with immunity. Naturally, preschool children who have not yet been able to correctly perceive the phenomena of objective reality and testify about them should not be interrogated as witnesses. In such cases, it is recommended to interrogate the parents as witnesses regarding the circumstances and information known to the child. Moreover, a person suffering from a severe form of mental illness that interferes with the correct perception of facts cannot be interrogated as a witness. At the same time, the law should not contain mandatory

prohibitions on questioning as witnesses persons of a certain age or suffering from certain mental disorders.

Absolute exclusion of the above-mentioned persons from the list of witnesses contradicts the interests of establishing the truth in a criminal case. Because, according to paragraph 5 of Article 173 of the Criminal Procedure Code of the Republic of Uzbekistan, it is possible to determine whether a person can correctly perceive the circumstances of the surrounding reality by appointing an expert examination, and accordingly, the reliability of his testimony can only be assessed by examining the internal consistency of his testimony and its compliance with other evidence collected in the case by questioning this person.

From a scientific point of view, the presence of any physical or mental defect that makes it difficult for a person to correctly perceive the facts of objective reality does not at all mean that during interrogation the person cannot provide the necessary information to clarify the circumstances that should have occurred. The testimony of such a person, proven in a criminal case, especially in certain cases, can have decisive significance in the essence of the criminal case.

Based on the above analysis, the issue of the procedural status of a witness is of serious importance not only theoretically, but also practically. The current legislation does not fully define the status of a witness, and this leads to many problems in practice. Also, in the new institution of pre-investigation verification, the status of a witness has acquired a new meaning, but this legal change is not sufficiently reflected in the legislation.

Another aspect of the issue is the need to define the rights and obligations of the witness. In this case, it is necessary to protect not only the interests of the state, but also the personal rights of the witness. It is necessary to apply an individual approach to the issue of testimony and consider each case separately. Strict pre-determined restrictions can contradict the principle of justice.

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