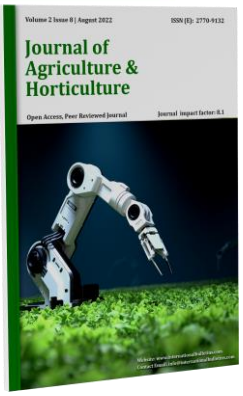

REASONS AND GROUNDS FOR MAINTAINING CONFIDENTIAL INFORMATION ABOUT THE VICTIM AND WITNESS IN CRIMINAL PROCEEDINGS

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Abstract. This article reveals the reasons and grounds for maintaining confidential information about the victim and witness in criminal proceedings in the Republic of Uzbekistan, briefly describes the regulatory legal acts used in the application of state protection measures. The opinions of various authors on the content of the legal doctrine are presented. The Institute for the safety of witnesses and ensuring the confidentiality of personal data of a witness is analyzed.

Key words: criminal proceedings, victim, witness, information, secrecy, confidentiality, security, threat, foreign experience, national legislation.

1. Introduction

The confidentiality of information about the identity of victims and witnesses in foreign countries is regulated by international norms, laws, criminal procedure rules and industry, departmental and interdepartmental rules. At the same time, by decision of the investigator, investigator, prosecutor or court, in some cases, the personal data of the participants in the criminal process are kept secret, and in order to ensure the safety of the participants in the criminal process, the persons participating in the criminal process are assigned a fictitious name (pseudonym, identification number).

Including the Universal Declaration of Human Rights (adopted by the UN General Assembly on December 10, 1948); European Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, signed at Rome on 4 November 1950); Declaration of Basic Laws of the Court for Victims of Crime and Abuse of Power of 29 November 1985; Recommendation No. R (97) 13 of 09.09.1997 of the Committee of Ministers of the Council of Europe “on the issue of intimidation of witnesses and restriction of the rights of defense”; UN General Assembly Resolution 40/34 on the Protection of Human Rights and Victims of Crime and Abuse of Power (adopted May 24, 1990) and the International Convention for the Protection of All Persons from Enforced Disappearance (New York concluded on December 12, 2006) and many other international standards.

Article 270 of the Code of Criminal Procedure of the Republic of Uzbekistan specifies issues related to the basis for the application of security measures [1], which can be considered from several sides. Firstly, from the point of view of the nature of the information that constitutes the basis for making such a procedural decision. Secondly, the content of such information. Article 270 of the Criminal Procedure Code of the Republic of Uzbekistan is limited to providing sufficient information on this issue. This, in turn, was explained by the dangerous position of the victim, witness or other persons involved in the case, but was not determined from a legal point of view.

On this issue, V.A. Azarov said [2] that he considers the available evidence sufficient to ensure the safety of victims and witnesses and serves as the basis for making a procedural decision. In addition, incoming quick information will be displayed as landmark information. Various plans and tactics of actions are determined, but the decision taken cannot lead to a restriction of the rights and freedoms of participants in the criminal process. Other authors also suggest using verified information for quick searches [3].

The Law "On the Protection of Victims, Witnesses and Other Participants in Criminal Proceedings" states that the application of security measures is grounds only if there is information about the presence of a clear threat to the person being protected.

In most cases, the information of the criminal procedure law [4] is obtained from persons participating in the criminal process, that is, from victims, witnesses or suspects, by giving them explanations or interrogation. In operational-search activities, information is obtained in a secret way, that is, secretly, and is of a non-public nature.

II. Analysis of the research results.

The criminal process is a complex systemic legal structure, which consists of many specific elements and its various elements are interconnected. Such relationships are horizontal in nature, and the parties are equal when entering into a relationship.

Keeping confidential information about the identity of the victim and witnesses may affect the rights of the suspect, accused, defendant participating in the criminal case, i.e. affect the administration of justice, lead to biased conclusions as a result of such activities. The question arises whether the applied preventive measure is reasonable and whether it contradicts the legitimate interests of the parties, of course, additional verification of the validity of the measures applied may be required. Such investigations are carried out within the framework of the criminal procedure law, as a general rule, such investigations are conducted publicly and publicly. AGAINST. Shadrin said: "Knowledge of a criminal case is knowledge of criminal procedure that needs to be proven [5].

Article 88 of the Criminal Procedure Code of the Republic of Uzbekistan confirms that if evidence is presented in the process of proof that does not meet the requirements of proof, such evidence will not be taken into account [6]. We do not completely deny that the information obtained as a result of search activities is obtained. That is, one of the requirements of the Criminal Procedure Code of the Republic of Uzbekistan is the mandatory participation in the criminal process of the relevant subjects, that is, the participation of state bodies and officials carrying out criminal proceedings, is indicated in Chapter 3 of the Criminal Procedure Code of the Republic of Uzbekistan [7]. When conducting studies of various information, it was noted that this evidence, if used to make decisions, is carried out only with the participants in this criminal process.

Thus, if information is obtained as a result of investigative activities and this information is attached to the criminal case as evidence, the person making the procedural decision, that is, the person conducting the criminal case, is obliged to verify the evidence on the basis of criminal procedure rules. and its reliability. Only then will this information have probative force.

Unfortunately, at present, in many cases, confidential witnesses are subjected to serious pressure. One of the main reasons for this is that the perpetrator threatens witnesses with intimidation, violence, force, destruction of property, or other illegal acts. The specific goals and methods of such an action may be different, but its main goal is the same, which, in turn,

consists in the refusal of the witness to cooperate with law enforcement agencies. In other words, the witness is left alone with his own security concerns. Often he experiences a huge psychological shock. Because in the current developed period, society and the legislature have not developed an effective mechanism for combating crime.

In recent years, the skill and transparency of criminals require a new and high-quality approach to ensuring personal security, legitimate interests and rights of a person in the conduct of criminal cases.

Thus, the basis for taking security measures and making appropriate procedural decisions is that the operational officer has sufficient and reliable sources of information. This source of information is not specified in specific laws, so the process can be obtained from the participant himself, that is, from the affected person, or from other persons. This information must be true, true and not false. Therefore, this information must be verified by criminal procedure norms and other means and methods.

In addition to evidence obtained as a result of operational-search activities, the need to maintain confidentiality can confirm the identity of the victim and witness. At the same time, the information received should be based on procedural decisions. This or that procedural decision should be based on information, which is understood as the consistency of all available information and evidence when drawing conclusions.

In the legislation, the application of such security measures in relation to the victim and witnesses is considered as the need to protect operational-search activities.

According to the law on search and rescue operations, information about the tactics of organizing and conducting search and rescue operations is a state secret, and information about persons providing assistance is also classified. Prosecutors ensure the confidentiality of information in the documents and materials submitted to them, supervise the implementation of laws by the bodies engaged in investigative activities. It can be disclosed only in cases and in the manner prescribed by law, only on the basis of a decision of the head of the body carrying out operational-search activities [8].

Disclosure of this type of information, that is, state secrets or official secrets, can not only harm a person, but also affect a citizen, the state and the constitutional system. Also, the established principle of justice may affect the rights and freedoms of man and citizen, including life and health.

Therefore, participation in a criminal case as a secret witness is allowed if information about them is known to the bodies of the criminal process, and is allowed only if the information provided by them is verified in the manner prescribed by the Criminal Procedure Law. Procedural Code of the Republic of Uzbekistan.

Thus, it can be said that the security measures provided for in Article 270 of the Criminal Procedure Code of the Republic of Uzbekistan are imperative. Other grounds are dispositive and are applied at the discretion of the investigator, inquirer and prosecutor. So, in our understanding, in order to participate as a secret witness in a criminal case, information about the threat must be known to the body conducting the criminal case, and this information must be verified in accordance with the Code of Criminal Procedure of the Russian Federation. The Republic of Uzbekistan. If, in fact, a participant in the criminal process is threatened by a criminal, such action or inaction should be recognized as a crime in the form of bribery, intimidation, death threats, causing harm to property or health, according to the Criminal Code of the Russian Federation.

Also, in article 270 of the Criminal Procedure Code of the Republic of Uzbekistan, the victim, witness or other persons participating in the case, as well as members of their families or close relatives, are punished with murder, use of force, destruction or damage to their property or other unlawful behavior. If there is sufficient information about that they are threatened with actions, the investigator, investigator, prosecutor, 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 [9].

In addition to the norms of the Code of Criminal Procedure, the Law of the Republic of Uzbekistan “On the Protection of the Victim, Witnesses and Other Participants in the Criminal Process” also states that the safety of persons participating in the criminal process and the confidentiality of information about them must be kept secret. According to this law, information about the existence of a clear threat of murder, the use of violence against him, the destruction of his property or damage to his property in order to apply security measures after receiving a statement (notice) about the existence of a threat to commit another illegal act in order to apply security measures or in relation to him Confirmed that it will be the basis [11].

Analyzing the above, at first glance it seems that the impact on the victim and witnesses is carried out only by the threat of committing a crime against such persons. However, the concept of "illegal", "extra-legal" does not include the concept of "crime", but also the threat of committing an administrative offense against a person. The difference lies in the fact that in the Criminal Code one can distinguish between the threat of committing a socially dangerous act, that is, dangerous threats that can be caused to a person and his interests as a result of dangerous actions or actions.

In our opinion, it is also necessary to determine the state body that determines whether there is a real threat to the protected person. It would also be appropriate for a government agency for the government to guard or decide to identify such information. The real threat should be posed not only by the protected person, but also by the person making the decision to take security measures.

Of course, this is subjective and depends on how the investigator assesses the current situation or the situation in the criminal case.

IS. According to Ivanov, he mentions that "the methodology for determining the real threat is not designed to come to a consensus [11]." There are also no rules in the JPK law and regulations that define a real threat. In most cases, subjective circumstances affect, that is, the investigator in charge of criminal cases makes an assessment based on the criminogenic situation, determines whether there is a real threat or not.

In the criminal procedural legislation, “an attack on a protected person with the threat of death, the use of force, the destruction or destruction of property” is used when establishing the presence of a threat to protected objects. The Criminal Procedure Code of the Republic of Uzbekistan states that security measures are applied “only if there is a danger of committing a dangerous act.”

Legal scholars L.V. Brusnitsyn said that in Council of Europe Recommendation No. R (97) 13 “On intimidation and protection of witnesses” of 1997, “intimidation” means the existence of a clear fact of the existence of a criminal organization that directly or indirectly and potentially influences witnesses through threats and revenge. used as an example [12].

In itself, the threat in the legal literature means “there must be an external intention or purpose to kill the victim, witness, or destroy their property, or harm them, and it must always be aimed at intimidating persons and must be presented in any form understandable to this person. ".

Representatives of criminal law science describe the concept of threat as a form of criminal acts with the following features: a way of expression, time of commission and reality [13]. Thus, the threat must be external and known to the victim. Reality refers to how the threat is perceived by the victim in the first place [14].

The reason for the danger for the addressee of the threat is that the threat can cause fear and psychological distress, which can lead to the victim or witness refusing to testify or to knowingly giving false evidence. A threat can be expressed verbally or as a result of an action.

The problem of identifying "imaginary" threats may arise when determining the basis for ensuring the confidentiality of information about the identity of victims and witnesses. They can be expressed "quietly" behind the person or always next to him. In fact, such expressions are not prohibited by law.

L.V. According to Brusnitsyn, he recommends the adoption of foreign security measures for the criminal process. That is, the accused or defendant says that it is necessary to warn the victim or witness by giving an order to refrain from illegal influence or to stay close to him [15]. We believe that such exposure reduces the likelihood of an attack on the victim or bystander.

In connection with the above, L.V. Brusnitsyn's point of view deserves special attention. In his opinion, he notes that the investigator (victim, witness) should be given the opportunity to keep personal information confidential and prevent unlawful interference when there is a possibility of unlawful influence. He also stressed that the involvement of the accused or his entourage in organized criminal activity is the basis for the application of security measures [16]. Indeed, today the risk of unlawful influence on the victim and witness by an organized criminal group is increasing.

In addition, according to foreign literature, in order to influence witnesses and fight against justice (accused, defendants), special lawyers are hired, such lawyers are hired to monitor the testimony of witnesses in court [17].

The possibility of violating the rights and legitimate interests of witnesses and victims can be confirmed by the facts of the impact of criminal proceedings on other participants. This can be done before or after the initiation of a criminal case.

Thus, the facts indicating the possibility of unlawful influence on the victim and the witness include:

1) involvement of the person held criminally liable in organized crime;

2) detection of dangerous things that such persons (accused, defendant) may have, that is, detection of means of effective influence on the victim and witness (firearms, explosive devices, etc.);

3) if it is established that the victims and witnesses were under the influence of such persons in previous cases (persons previously prosecuted) [18].

A. Y. Epikhin says that he also suggests that the importance of protected person data should be taken into account [19]. In fact, the Code of Criminal Procedure of the Republic of Uzbekistan does not specify the rules governing the use of pseudonymous testimony and information available to witnesses.

These cases may be subject to other forms of accounting, which may be in the form of statements or statements of claim, as well as by reflecting the relevant facts in the protocols of investigative and other procedural actions [20].

M. P. Fadeev notes that when giving pseudonyms to witnesses in criminal cases, the following rules must be taken into account.

First, the witness must refrain from using a name similar to his real name. He must not be allowed to be identified by the name given to the witness by the accused [21].

Secondly, it is advisable that the name and title given to the secret witness belong to the opposite sex [22].

It is best to use Russian or English (middle core) if the relevant procedural documents are drawn up. In this case, not only personal information is kept secret, but also the gender of the protected person [23].

For example, the indictment may use the following characterization: “witness A testified that he saw the person who was abandoned” or “according to the testimony of the victim B, he recognized the accused.”

In addition, providing the witness with an alias can also provide security. For example, witness number "1" and others.

In order to ensure their rights, it is advisable to stipulate that information about a secret witness can be opened in a separate sealed and numbered envelope, and when this envelope is opened, only a certain narrow circle of authorized persons can open it. Epikhin and L.V. Brusnitsyn put forward this idea [24].

If a confidential witness cooperates with the investigating authorities on a confidential basis, information about him cannot be disclosed as a general rule. About this I.A. Antonov and other scholars argue that if a witness cooperates with government agencies on a confidential basis, this information reveals a state secret. Information about them can be disclosed only with the consent of witnesses and in cases provided for by law [25].

In conclusion, we can say that it is advisable to apply security measures only if there is a real threat to the protected person and reasonable information, as well as if there is reliable information about the presence of a threat.

The application of these security measures should be carried out only by an authorized person and on the basis of the consent of the head of the investigative body (head of the investigative body), and in exceptional cases it is necessary to make a decision by an independently authorized person without the consent of the management. Also, the application of these measures should not be for the purpose of collecting evidence in a criminal case, but it is advisable to use them from the point of view of the safety of persons participating in criminal proceedings.

III. Conclusion

Also, taking into account the above, we propose to make the following changes to the criminal procedural legislation:

1. Security measures (participation under a pseudonym) should be applied not only to the victim and witnesses, but also to the investigator, investigator, prosecutor, judge;

2. When grave and especially grave crimes are committed, the investigator, investigator, prosecutor or judge must warn the accused or defendant, victim or witness about refraining from taking measures to influence the accused;

3. It is necessary to provide an opportunity for the investigator, investigator, prosecutor and judge (victim, witness) to maintain the confidentiality of personal data, prevent unlawful interference and prevent unlawful influence in the initial part of the criminal case;
4. If in previous crimes the accused or defendant committed illegal actions against the victim, witness and other participants in the criminal process, this may be the basis for applying security measures to the victim, witness and other participants in the criminal process;
5. In certain serious and especially serious criminal cases (terrorism, subversive activities, encroachment on the constitutional order of the Republic of Uzbekistan), it is advisable to apply security measures to the victim, witness and other participants in the criminal process, even if there is no obvious threat;
6. First of all, to determine the facts, risks and factors that create opportunities to influence the participants in the criminal process;
7. Article 270 of the Criminal Procedure Code of the Russian Federation compelling the victim, witness or other persons participating in the case, an interested person to refuse to testify or to give knowingly false evidence;
8. Application of security measures, such as recording (on video or audiotape) telephone conversations and other actions of protected persons, and consider the results as a separate reason and basis.
In this sense, the procedural basis for the application of security measures can be considered as part of the information, and not the protocol of the interrogation.

References:

1.Ўзбекистон Республикаси Жиноят-процессуал кодекси. – Т.: Ўзбекистон, 2018. 270-модда.
2.Азаров В. А. Уголовно-процессуальные н оперативно-розыскные средства достижения цели раскрытия преступлений. С. 47; Зажицкий В. Трудности предоставления прокурору и органам расследования результатов оперативно-розыскной деятельности//Российская юстиция. 2000. Ш 1. С. 37.
3.Поляков М.П. О защите обвиняемого и защите ≪от обвиняемого≫. С. 98; Комиссаров В.И., Лакаева О.А.
4.Указ. соч. С. 55; Брусницын Л.В. Обеспечение безопасности лиц, содействующих... С. 284.
5.“Жабрланувчиларни, гувоҳларни ва жиноят процессининг бошқа иштирокчиларини ҳимоя қилиш тўғрисида”ги Ўзбекистон Республикаси Қонуни. Қонун ҳужжатлари маълумотлари миллий базаси, 15.01.2019 й., 03/19/515/2472-сон.
6.Шадрин В.С. Обеспечение прав личности... С. 85.
7.Ўзбекистон Республикаси Жиноят-процессуал кодекси. – Т.: Ўзбекистон, 2018. 88-модда.
8.Ўзбекистон Республикаси Жиноят-процессуал кодекси. – Т.: Ўзбекистон, 2018. 3-боб.
9.“Тезкор-қидирув фаолияти тўғрисида”ги ЎзР Қонуни. Ўзбекистон Республикаси қонун ҳужжатлари тўплами, 2012 й., 52-сон, 585-модда.
10.Ўзбекистон Республикаси Жиноят-процессуал кодекси. – Т.: Ўзбекистон, 2018. 270-модда.

11.“Жабрланувчиларни, гувоҳларни ва жиноят процессининг бошқа иштирокчиларини ҳимоя қилиш тўғрисида”ги ЎзР Қонуни. Қонун ҳужжатлари маълумотлари миллий базаси, 15.01.2019 й., 03/19/515/2472-сон.
12.Иванов И.С. Административно-правовое обеспечение безопасности участников уголовного судопроизводства в России // Административное право и процесс. 2011. № 11. С. 38-42.
13.Брусницын Л.В. Обеспечение безопасности участников уголовного процесса: анализ УПК Белоруссии, России и Украины // Российская юстиция. 2010. № 11. С. 30-34.
14.Лукьянова И.В. Угроза как преступление: социальная обусловленность криминализации и проблемы ответственности. - Калуга: Изд-во АКФ ≪Политоп≫, 2004. С. 61
15.Щерба С. П., Зайцев О.А., Сарсенбаев Т.Е. Охрана прав беспомощных потерпевших по уголовным делам. Пособие / Под ред. заслуженного деятеля науки РФ, докт. юрид. наук, проф. Щербы СП.. - М., 2001.С. 144.
16.Брусинцын Л. Правоофаничения для обвиняемых и осужденных - меры безопасности для жертв и свидетелей // Российская юстиция. 2002. № 5. С. 48.
17.Брусницьш Л.В. Комментарий законодательства законодательства... С. 32.
18.Finn P, Murhy Healey K. Preventing gang-and drug-Related witness intimidation. Washington: National Institnte of Justice, 1996. P. 7.
19.Брусницын Л. В. Обеспечение безопасности лиц, содействующих уголовному правосудию... С. 3.
20.Епихин А.Ю. К вопросу о безопасности защищаемых лиц в уголовном процессе // Российский следователь. 2002. № 2. С. 14.
21.Небезосновательно Б.Т, Безлепкин считает, что ходатайство может быть заявлено в ходе допроса свидетеля или потерпевшего (Безлепкин Б.Т. Справочник адвоката по уголовному процессу. - М., 2004. С. 35).
22.Фадеева М.П. Теория и практика государственной защиты лиц, содействующих уголовному судопроизводству: Дис. … канд. юрид. наук. М., 2006. С. 100.
23.Брусницин Л. В. Допрос под псевдонимом // Законность. 2003. № 1. С. 24.
24.Қаранг.: Фадеева М.П. Указ. соч. С. 101.
25.Епихин А.Ю. Правовое регулирование мер безопасности участников процесса // Законность. 2003. № 5. С. 46. Брусницин Л. В. Допрос под псевдонимом // Законность. 2003. №1. С. 24.
26.Антонов И.А., Гурбанов А.Г., Шахматов А.В. Правовые основы обеспечения безопасности лиц, оказывающих содействие органам, осуществляющим раскрытие и расследование преступлений // Российский следователь. 2008. № 17. С. 14-17;.