



Certain aspects of ensuring the safety of participants in criminal proceedings
(On the example of Belarus Criminal Procedural Law)

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Annotation: this article will analyze the existing problems on security, ensuring the safety of participants in criminal proceedings on the example of the Belarusian Criminal Procedure.

Key words: ensuring the safety of participants in criminal proceedings, criminal proceedings, security, criminal proceedings.

The realities of modern life are such that more and more crimes are committed in conditions of non-obviousness, with careful preparation and subsequent elimination of traces of a wrongful act. Therefore, the testimony of persons who have valuable information about the circumstances of the crime committed are often of key importance in achieving the objectives of criminal proceedings. However, not every citizen is willing to testify. As practice shows, one of the reasons for refusing to cooperate with law enforcement agencies is fear (often quite justified) for one's own life and safety, as well as the life and safety of relatives and friends. The vulnerability of persons capable of promoting justice from unlawful influence actually encourages them to evade their civic duty. In this regard, in the specialized literature, the thesis is increasingly being put forward that the lack of real guarantees for the safety of participants in the criminal process, primarily victims and witnesses, makes their refusal to participate in criminal proceedings quite legitimate.



According to individual researchers, in about 10-20% of cases of investigation and consideration of criminal cases of grave and especially grave crimes, the victims and other participants in the process have an open or hidden unlawful influence⁹.

To prevent and neutralize such situations, the legislation of most modern states provides for procedures for the protection of participants in criminal proceedings.

In the Republic of Belarus, the prototype of the institution in question was first enshrined at the legislative level in 1997, when eleven additional articles were introduced into the Code of Criminal Procedure of 1960, regulating the protection of the victim, witness and other participants in the criminal process (articles 60-2 - 60-12). The institute was further developed and detailed in Chapter 8 “Measures to ensure the safety of participants in criminal proceedings and other persons” of the new Criminal Procedure Code of the Republic of Belarus (hereinafter - CPC) and began to be applied in its current form since 2001.

According to part 1 of Article 65 of the Code of Criminal Procedure, if there is sufficient evidence indicating that there is a real threat of murder, violence, destruction or damage to property, other illegal actions against a participant in a criminal process, members of his family and relatives in connection with participation in a criminal process, the body conducting the criminal procedure is obliged to take measures to ensure the safety of these persons and their property.

In accordance with the above wording, security measures are applied in the presence of sufficient data, which become the basis for the application of such measures. Data sufficiency is an evaluation category, so the conclusion about the existence of grounds for taking security measures is made based on the specific situation in the case. At the same time, we believe it is necessary to avoid a narrow approach to this fundamental issue, which implies the need for some formalized threat to a participant in the process in order to ascertain the existence of these grounds.

The real danger for the protected person may arise much earlier than the moment when an unlawful influence is already being carried out against him. Moreover, public statements about a planned reprisal against a victim, witness or other participant in criminal

⁹ Epikhin, A.Yu. Ensuring the security of the individual in criminal proceedings. - SPb., 2004. - S. 12.



proceedings, in many cases, are significantly inferior to implicit, unspoken threats from representatives of the criminal world in terms of the degree of reality of the threat.

Thus, a threat to a person can be assumed a priori, due to the very specifics of the crime committed (for example, if we are talking about bringing to justice representatives of an organized criminal group who are charged with committing a series of murders). In this regard, the European Court of Human Rights adheres to a clear position, according to which the basis for classifying data on the identity of individual participants in criminal proceedings can be not only the fact of a threat against the protected person, but also the very situation of the commission of the crime, other circumstances established in the criminal case, which directly indicate the need to hide information about him¹⁰.

Part 2 of Article 65 of the Code of Criminal Procedure lists among the reasons for making a decision on the application of security measures:

- a) establishment of circumstances indicating the existence of grounds for taking security measures;
- b) obtaining other information about the circumstances indicating the existence of grounds for taking security measures;
- c) a statement by a participant in the criminal process about the need to take security measures.

In such cases, within a day from the moment the relevant grounds are established, the body conducting the criminal procedure <3> is obliged to make a decision on the application of security measures or on the refusal to apply such measures. A reasoned resolution (determination) is issued on the decision taken. The decision (determination) on the application of security measures is immediately sent for execution to the body of internal affairs or state security at the place of residence, work or study of the protected person. Where necessary, the protected person shall be notified of the decision taken¹¹.

¹⁰ Timoshenko, A.A. The secret of data on the identity of participants in criminal proceedings / A.A. Timoshenko.

¹¹ Based on the provisions of Article 6 of the Code of Criminal Procedure, the bodies conducting the criminal process include the bodies of inquiry, the investigator, the prosecutor and the court.



As for the question of what security measures can be applied to a protected person, the criminal procedure law establishes both procedural and non-procedural measures (the latter are called “other security measures” in the Code of Criminal Procedure).

According to article 66 of the Code of Criminal Procedure, procedural security measures include:

1. non-disclosure of personal information;
2. exemption from appearing in court;
3. closed court session.

Other security measures include:

1. use of technical means of control;
2. wiretapping of negotiations conducted using technical means of communication and other negotiations;
3. personal protection, protection of housing and property;
4. change of passport data and replacement of documents;
5. prohibition on disclosure of information.

This list is not exhaustive, since, taking into account the nature and degree of danger to life, health, property and other rights of protected persons, other security measures that do not contradict the law can be applied. Thus, on April 13, 2009, the Agreement on the Protection of Participants in Criminal Proceedings, signed during the meeting of the Council of CIS Heads of State in Minsk on November 28, 2006, entered into force for the Republic of Belarus. ensuring the safety of participants in criminal proceedings. In particular, it provides for the possibility of applying, at the request of the requesting party, measures of protection not mentioned in article 66 of the Code of Criminal Procedure.

World experience testifies to the effective application of such security measures as relocation to another place of residence in relation to protected persons; change in appearance; change of place of work or study; temporary placement in a safe place; issuance of weapons to the protected person.

The decision on what security measures will be involved in a particular case is made taking into account the nature and degree of danger of the threat to life, health, or the threat



of destruction or damage to the property of the protected persons and their loved ones. In this case, the simultaneous application of several security measures at once is allowed.

An analysis of the provisions of the criminal procedure law allows us to conclude that these measures are applied in relation to:

- victims;
- witnesses;
- private prosecutors;
- suspects, accused, their defense lawyers;
- legal representatives, representatives of victims, civil plaintiffs, civil defendants and private prosecutors;
- experts, specialists, translators, witnesses;
- civil plaintiffs, civil defendants;
- family members of protected persons, their close relatives and other persons whom they reasonably consider to be close;
- property of protected persons, their close relatives and members of their families or other persons whom they reasonably consider to be close.

The issues of ensuring the safety of employees of preliminary investigation bodies, prosecutors and judges are regulated by a separate regulatory legal act - Law of the Republic of Belarus dated December 13, 1999 N 340-3 “On State Protection of Judges, Officials of Law Enforcement and Controlling Bodies, Employees of a State Security Body” and are subject to separate consideration.

This measure consists in changing the last name, first name, patronymic, other personal data, changing information about the place of residence and work (study) in statements and reports on crimes, materials of inspections, protocols of investigative and judicial actions, as well as other documents of bodies conducting criminal proceedings. , by replacing these data with others (Part 1 of Article 67 of the Code of Criminal Procedure). The original data, the sample signature to be used in the documents of the protected person, and the decision on the application of this security measure shall be immediately sent to the prosecutor supervising the preliminary investigation and kept by him in accordance with the rules of secret proceedings.



In most cases, it is expedient to use non-disclosure of personal information already at the initial stages of the criminal process from the moment the relevant grounds arise.

According to Part 8 of Article 193 of the Code of Criminal Procedure, if it is necessary to ensure the safety of a participant in the process, the investigator, the person conducting the inquiry, has the right not to provide information about his personality in the protocol of the investigative action. In this case, the investigator, the person conducting the inquiry, issues a decision in which he sets out the reasons for the decision to keep the data on the identity of the participant in the investigative action secret, indicates fictitious data on the identity and gives a sample signature that will be used in the protocols of investigative actions with the participation of the protected person. faces.

Such a procedure is connected, first of all, with the fact that while the accused and his defense counsel are not familiar with the materials of the criminal case, it is possible to keep the data of the protected person secret in order to ensure his safety. When the case, after familiarizing the accused and the defense lawyer with it (including the data contained in it about the identity of the participants in the process), came to the court for consideration on the merits, it is already much more difficult to ensure the safety of the participants in criminal proceedings known to all.

At the same time, in practice, even this approach is not always able to ensure the absolute security of protected persons.

According to the requirements of Article 257 of the Code of Criminal Procedure, the investigator is obliged to present to the accused, his legal representative and defense counsel the stitched and numbered materials of the criminal case, with the exception of the decision, which contains data on the identity of the secret person. For familiarization, phonograms are also presented, video recordings, films, slides are shown, if any are attached to the protocols of investigative actions. The accused, his legal representative and defense counsel have the right to refer to any of the volumes of the criminal case an unlimited number of times, write out information from it in any volume, and also, with the permission of the investigator, copy the materials of the criminal case.

Having received the right to get acquainted with all the materials of the criminal case, the accused, studying the testimony of a witness about certain circumstances of the event



under investigation, analyzing the case materials in the aggregate, first of all, by the content of the testimony itself, can guess who testifies against him.

In other words, it is possible to guarantee the actual preservation of personal data in secret only in a situation where a person was, for example, an accidental eyewitness to a particular crime and did not get into visual contact with the accused or was not familiar with him before.

From the above, we can conclude that in Belarus, participants in criminal proceedings are himified in this way, which gives the opportunity to qualitatively, quickly and fully investigate crimes.

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