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INSTITUTE FOR THE SAFETY OF PARTICIPANTS IN CRIMINAL PROCEEDINGS IN INTERNATIONAL LAW

The article is devoted to the study of the experience of foreign countries in ensuring the safety of participants in criminal proceedings. It is determined that security measures include the following: to ensure the safety of these persons, by decision of the investigator, data on them may not be indicated in the investigative report (search) action carried out with their participation, in this case, the investigator, with the consent of the prosecutor, makes a decision stating the reasons for making such a decision, indicates the pseudonym of the participant in the investigation a (search) action and a sample of its signature, which are used in the protocols of investigative (search) actions with its participation; the order is stored in a sealed envelope, attached to the materials of criminal proceedings; If there is a threat of violence, extortion and other criminal acts against these persons, control and recording of their telephone and other conversations is permissible, either on their written application or, in the absence of such a statement, on the basis of a court decision; To ensure the safety of whoever learns the identification can be conducted in such a way that whoever learns cannot see whoever learns; In order to ensure the safety of these persons, a closed trial, all or part of it, may be conducted on the basis of a court order; In order to ensure the safety of the witness, his relatives and close persons, the court has the right not to disclose the present witness data and to conduct his interrogation in such a way that other participants in the trial cannot see the witness. It has been proved that the effectiveness and special significance of the activities of the bodies providing state protection measures is confirmed by the practice of applying the State program in foreign countries, where due attention is paid to this issue. Based on the experience of foreign countries, it can be argued that such security measures as personal security, protection of housing and property and temporary accommodation in a safe place were mainly applied. It was noted that despite substantial funding for the State witness security programme in neighbouring States and an increase in its use, the level of security of criminal proceedings as well as confidence in law enforcement agencies remained fairly low, which led to the refusal of persons to provide the necessary information.

Keywords: witnesses, victim, security measures, security, criminal proceedings.

The legislation of Ukraine declares recognition, observance and protection of human and citizen rights and freedoms as the duty of the state. The protection of human rights in the criminal process cannot be considered separately from the criminal and criminal procedural policy of the state, which is an integral part of the legal policy of any democratic society.

One of the manifestations of state protection of the constitutional rights to life, liberty and personal integrity is ensuring the safety of citizens in the field of criminal proceedings.

In connection with the fact that the problem of unlawful influence on witnesses, victims, judges, prosecutors, investigators, inquirers, their relatives and close persons has become particularly acute, measures were taken at the legislative level to strengthen the state protection of these persons, which were reflected in the norms of special legal acts. Ensuring the safety of citizens is aimed at protecting such constitutional and inalienable human and citizen rights as the right to life (Article 27 of the Constitution of Ukraine), the right to freedom and personal integrity (Article 29 of the Constitution of Ukraine), the right to property protection (Article 41 of the Constitution of Ukraine), the right to health care (Article 49 of the Constitution of Ukraine), etc.

Provisions on the protection of participants in criminal proceedings are based on Art. 20 of the Criminal Procedure Code of Ukraine, and are also regulated by the Law of Ukraine No. 3926-XII dated 04.02.94 "On ensuring the safety of persons participating in criminal proceedings". The provision on the right to defense provides that in the presence of sufficient data that the victim, witness or other participants in criminal proceedings, as well as their close relatives, relatives or close persons are threatened with murder, use of violence, destruction or damage to their property or other dangerous illegal acts, the court, prosecutor, investigator, inquiry body and inquirer take security measures within their competence with regard to the specified persons.

The legislation of Ukraine provides for security measures to be taken by the court, prosecutor, investigator, inquiry body, investigator within their competence. Safety measures include the following:

- in order to ensure the safety of the specified persons, by the decision of the investigator, data about them may not be indicated in the protocol of the investigative (search) action carried out with their participation, in this case, the investigator, with the consent of the prosecutor, issues a resolution in which he explains the reasons for making such a decision, indicates the pseudonym of the participant of the investigation (search) action and a sample of his signature, which are used in the protocols of investigative (search) actions with his participation; the resolution is kept in a sealed envelope, attached to the materials of criminal proceedings;

- in the presence of a threat of violence, extortion and other criminal actions against the specified persons, monitoring and recording of their telephone and other conversations is permissible - either upon their written statement or, in the absence of such a statement, on the basis of a court decision;

- to ensure the safety of the one who recognizes, the identification can be carried out in such a way that the one who is recognized cannot see the one who is recognizing;

– in order to ensure the safety of the specified persons, on the basis of the court's decision, it is allowed to hold a closed court hearing - all or a corresponding part of it;

– to ensure the safety of the witness, his relatives and loved ones, the court has the right not to disclose the true data about the witness and to conduct his interrogation in such a way that other participants in the trial cannot see this witness.

Unfortunately, our country does not have an effective separate program for the protection of subjects of criminal proceedings, and the law, which is very similar to a similar law in the USA, does not receive sufficient funding to implement its provisions.

The effectiveness and special importance of the activities of the bodies providing state protection measures is confirmed by the practice of applying the State Program in foreign countries, where due attention is paid to this issue. Based on the experience of foreign countries, it can be stated that such security measures as personal protection, protection of housing and property and temporary placement in a safe place were mainly used.

Implementation of the witness protection program in foreign countries is entrusted to ministries and agencies. Studying the budget of the program allows us to conclude that personal protection measures are most often used for those who need protection and providing them with special means of protection and warning about danger.

At the same time, it should be noted that such security measures as change of residence, change of documents, change of appearance, change of place of work and study, although included in the relevant programs, are often not allocated funding due to the high monetary cost of these measures. That is, despite their presence in the law, in practice they are used extremely rarely.

Unfortunately, at present there is no clear mechanism for the implementation of all security measures provided for by law, and the fact that its implementation is entrusted to several ministries and departments calls into question the issue of organization, interaction and compliance with confidentiality requirements by employees of equivalent departments.

In addition, a significant argument of witnesses who refuse to cooperate with law enforcement agencies is the rather high level of corruption of individual employees who, for a certain reward, can reveal information about a person subject to protection.

Gaps in solving the issue of how to replace documents and the subsequent relocation of a person to another place of residence remain a problem, since there is no clear understanding of who should make changes to the relevant documents (passport, identification number, policy, employment book) and how and on the basis of which act. etc. That is, there are currently enough unresolved issues in the field of witness protection program implementation.

L. Brusnitsyn notes that "with the existing wording of the norms of the Criminal Code of Ukraine and the Criminal Code of Ukraine, it is impossible to use security measures in cases where criminals or their entourage use methods of influencing victims and witnesses that are not prohibited by the Criminal Code of Ukraine: silent harassment on the streets, throwing animal corpses into homes and much more. In fairly closed social groups, the goals of influence can be achieved by creating an atmosphere of deliberate exclusion around individuals who promote justice. Post-criminal influence in such forms is not related to illegal actions, but often achieves the goal" [1, p. 48].

The experience of foreign countries in the field of ensuring the safety of witnesses is of interest. Thus, in the USA, since 1971, a special federal witness protection program has been funded by the state. In addition, chapter 224 of the US Code is devoted to the issue of witness protection, this chapter regulates in detail the procedure, grounds and types of security measures.

The program is implemented by the special US Marshals Service, which has its own headquarters, a dozen regional offices and an office in the police department of each city where an inspector for witness protection works. In addition, the FBI has a similar department. According to paragraph 3521 of the Code of Laws of the United States, the question of the need to apply security measures to a witness is decided by the Attorney General, based on the public danger of the crime committed and the potential danger to the witness and his relatives. This paragraph provides for the possibility of applying the following protective measures:

- providing the witness and his relatives with new documents;
- providing the witness with transport to transport the witness' property to the new place of residence;
- provision of housing;
- providing the witness with funds necessary for current expenses;
- assistance in getting a new job;
- provision of other services required at the new place of residence;
- ensuring the concealment of information about witness protection measures, as well as the measure of responsibility for disclosing this information.

According to part 3 of this paragraph, responsibility for disclosing this information involves a fine of 5,000 dollars or imprisonment for 5 years, or both types of punishment at the same time [2, p. 199].

When deciding on the application of security measures, the following circumstances are taken into account: information about the witness's previous convictions, psychological assessment of the witness, as well as the significance of witness data for the investigation of a criminal case and the possibility of receiving this information from other sources. In cases where protection measures are applied to a minor, a psychological examination is conducted, which determines the potential impact of this program on the relationship between the child and the parents.

Before the application of protective measures, an agreement is concluded between the witness and the Ministry of Justice in which the following is defined:

1. The person agrees to provide information in a criminal case and to act as a witness in court.
2. A person gives an undertaking that he will not commit a crime.
3. The person undertakes not to disclose information about the protection granted to him.
4. The person undertakes to cooperate with officials.
5. Protective measures applied to this witness are determined.

Section 3523 of the United States Code establishes the only possibility when disclosure of information about a person participating in the witness protection program is allowed. In the

case of consideration of a civil lawsuit against this person, if the defendant did not take measures to resolve the issue of consideration of this civil case in his absence.

In addition to the Code of Laws of the United States, the procedure for applying security measures is regulated by the Law on the Protection of Victims and Witnesses of Crime, as well as the Law on Strengthening the Security of Witnesses.

It should be noted that, in contrast to Ukrainian legislation, the US legislation in the field of ensuring the safety of participants in criminal proceedings contains clear instructions in which cases the witness protection program can be implemented, namely in cases of organized criminal groups, crimes related to drug trafficking, or other serious federal crimes referred to by the provisions of Chapter 18 of the US Code.

In addition, this program can be used in administrative and civil proceedings in the event that the testimony of a witness may cause the use of violence against him.

US legislation regulates the specifics of inclusion in the witness protection program of informants and witnesses of prisoners. It is understood that the security of the informant is ensured by the forces of the investigative body that uses him. However, if necessary, he can be included in the Witness Protection Program on general terms, subject to meeting the necessary criteria.

The law stipulates the need for mandatory psychological testing of the witness and his family members as a condition for inclusion in the program, and it is also a mandatory condition that a study on the "Polygraph" machine is conducted for witnesses who are serving time in prison, with in order to reveal the truth of his testimony and his subsequent intentions and actions. If, during the investigation, it is established that a person poses a danger to the environment or gives false testimony, or does not disclose complete information, he may be refused inclusion in the Witness Protection Program [3].

After a person is included in the Witness Protection Program, information about him and his relatives is confidential, all documents are submitted in a sealed form with a secret mark, including documents on guardianship, employment, place of residence, etc. and public officials are criminally responsible for disclosure given information.

It can be noted that in the USA the issue of ensuring the safety of witnesses has received a wider development and the main means of protection is the transfer of a person to a safe place. However, among scientists and practitioners in the United States itself, it is possible to note critical points of view regarding the operation of this program. Yes, Slate. Risdon focuses on its shortcomings. He notes that since its inception, about 7,000 Witnesses and 16,000 family members have been enrolled in the program. The estimated cost of security for one witness and family is approximately \$150,000. At the same time, he notes that a large part of the witnesses have a rich criminal past and they possess valuable information for the investigation because they occupied not the last place in the hierarchy of an organized criminal group and committed crimes together with other members of it. Also, the minus of the program is the fact that with the help of obtaining new documents and moving, the witnesses hid from debts, guardianship authorities and social services. In addition, a person who moves within the limits of the program loses the constitutional right to freedom of movement and privacy, because he is obliged to transfer information about this to the Federal

Marshals Service. However, at the same time, none of the third parties is immune from possible illegal actions on the part of the protected person, taking into account his criminal past and within the scope of the program there have been cases when protected persons committed crimes [4].

Therefore, it should be noted that the implementation of the program to ensure the safety of witnesses and other participants in criminal proceedings in the USA has a significant number of debatable issues, despite its long period of operation and time-proven effectiveness.

In 1998, the Federal Republic of Germany developed and adopted the Law "On Regulation of Protection of Witnesses at Risk". The law specifies that security measures may be applied to witnesses who give or may give important testimony for the purpose of solving particularly dangerous crimes, as well as to their relatives and loved ones, if their life, health, or well-being are in danger. In accordance with this law, the Witness Protection Program is being implemented, which provides for the regime of secrecy regarding the identity of protected persons, as well as the possibility of their transfer to a new place of residence.

A similar program financed from the state budget exists in Austria. The most common method of protection, as in the USA and Germany, is the transfer of the witness to a safe area, while after the transfer the witness is provided with financial support for several months, designed to ensure the witness's usual standard of living, until he adapts to the new environment and is able to earn for life [5, p. 251–252].

It should be noted that despite the significant financing of the state program for ensuring the safety of witnesses in neighboring states and the increase in the number of cases of its application, the level of ensuring the safety of participants in criminal proceedings, as well as trust in law enforcement agencies, remain at a rather low level, which entails the refusal of individuals to provide the necessary information. At the same time, it is quite problematic to bring to criminal responsibility for giving false testimony or for refusing to testify, because in practice a person does not talk about refusing to testify, but explains that he "does not have the necessary information", "did not know", "did not hear", "did not see", "does not remember or remembers vaguely". Undoubtedly, these circumstances have a negative impact on the quality of the investigation of criminal proceedings.

The foregoing allows us to draw a conclusion about the need for further improvement of criminal and criminal procedural legislation in the field of ensuring the safety of participants in criminal proceedings.

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А. В. Свінцицький. Порівняльний аналіз законодавства зарубіжних країн щодо інституту безпеки учасників кримінального провадження

Стаття присвячена дослідженню досвіду зарубіжних країн у питанні забезпечення безпеки учасників кримінального провадження. Визначено, що до заходів безпеки належать такі: для забезпечення безпеки зазначених осіб за рішенням слідчого дані про них можуть не вказуватися у протоколі слідчої (розшукової) дії, проведеної за їх участю, в цьому випадку слідчий за згодою прокурора вносить постанову, в якій викладає причини прийняття такого рішення, вказує псевдонім учасника слідчої (розшукової) дії та зразок його підпису, які використовуються у протоколах слідчих (розшукових) дій за його участю; постанова зберігається в опечатаному конверті, долучається до матеріалів кримінального провадження; за наявності загрози насильства, вимагання та інших злочинних дій щодо зазначених осіб допустимі контроль і запис їх телефонних та інших переговорів – або за їх письмовою заявою, або за відсутності такої заяви, на підставі судового рішення; для забезпечення безпеки того, хто впізнає, упізнання може бути проведено так, щоб той, кого впізнають, не міг бачити того, хто впізнає; для забезпечення безпеки зазначених осіб на підставі постанови суду допускається проведення закритого судового розгляду – всього або відповідної його частини; для забезпечення безпеки свідка, його родичів і близьких осіб суд має право не оголошувати справжніх даних про свідка і провести його допит так, щоб інші учасники судового розгляду не могли бачити цього свідка. Доведено, що ефективність і особлива значимість діяльності органів, що забезпечують заходи державного захисту, підтверджена практикою застосування Державної програми у

зарубіжних країнах, де цьому питанню приділяється належна увага. На основі досвіду зарубіжних країн можна стверджувати, що переважно застосовувалися такі заходи безпеки, як особиста охорона, охорона житла та майна і тимчасове поміщення у безпечному місці. Зазначено, що, незважаючи на суттєве фінансування державної програми забезпечення безпеки свідків у державах-сусідах і збільшення випадків її застосування, рівень забезпечення безпеки учасників кримінального провадження, як і довіра до органів правопорядку, залишаються на досить низькому рівні, що зумовлює відмову осіб надавати необхідну інформацію.

Ключові слова: свідки, потерпілий, заходи безпеки, охорона, кримінальне провадження.

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