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THE EXPERIENCE OF FOREIGN COUNTRIES IN THE STATE PROTECTION OF WITNESSES IN CRIMINAL PROCEEDINGS

Abstract: *The scientific article provides a brief analysis on the protection of witnesses in foreign countries for implantation in national legislation. Several aspects were taken into account: the adoption of regulations, the consolidation of security measures, the development of mechanisms and its implementation. In developed countries, witnesses whom the state protection of the criminal investigation needs have used and are using strengthened and developed measures and mechanisms on the issue of witness safety. It is noted that the accumulation of the regulatory framework does not stop there; new mechanisms are developed every day. Studying these points will provide an answer to the question of what we can implant, given the current regulatory framework for the safety of witnesses without a protective witness.*

Key words: *witness, protection, security, mechanism, measures, foreign countries.*

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Introduction

The institution for the protection of witnesses has a special place in criminal proceedings. As we know, the testimony of the witness is one of the most important evidence bases. On this issue, the head of the Witness Protection Department, Oktyabr Urmanbetov, noted in his interview that "... there are many obvious facts when, due to the lack of a guarantee of personal safety from the state, people refuse to testify or change them. In fact, every third or fourth criminal case falls apart for this reason, and the criminals do not receive the punishment they deserve" [1].

On this issue in foreign countries, more attention has been paid and scientifically researched, regulatory frameworks have been adopted, measures for the security of a witness and mechanisms for implementation have been developed.

Witness protection is a set of security measures and a mechanism for protecting witnesses during a criminal investigation, in other cases after a court decision. Ivanov I. S. gives the following definition

"under the protection of witnesses, it is clear to ensure their anonymity, to eliminate public disclosure of the identification data, precisely those witnesses whose health and life are under the threat of obvious encroachments from criminal subjects" [2].

Aspects of ensuring the safety of a witness in the states of the world community, especially those that have already entered the post-industrial period of development, have long and firmly been given increased attention from both representatives of the scientific community and law enforcement officers. This is not surprising, since, as M.P. Fadeeva, "the international practice of combating crime shows that states that have created a legal framework for the protection of persons assisting criminal proceedings from unlawful influence are making the greatest progress in this direction" [3].

Anticipating a review of the normative legal acts of various states on the issues of ensuring the safety of the victim and witness, and in the broadest sense of other participants in the criminal process contributing to justice, it should be noted that legal thought does

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not stand still, and the process of improving this activity is in constant dynamics. This can explain the wide variety of approaches applied to the development of the investigated institution of legal relations.

In this regard, it seems to us that the use of the experience of other states not only helps to solve the problems of today associated with the need to level the factor of unlawful influence on witnesses, but also allows us to determine promising directions for the development and improvement of activities on state protection of participants in criminal proceedings, who, may not be in demand today, but will be relevant in the near future (in relation to Kyrgyzstan, for example, creating conditions for the normal life of the protected person and his family members if long-term security measures are applied). On the whole, in this way, an integrated and multidimensional approach to the problems under study is achieved.

The United States has a law to combat crime, this law was passed in 1968. A feature of this law was the issue of witness protection. This legislation provides a definition for the concept of “reket activity” and one of the types of acts “violence against witnesses”. But unfortunately this law did not define what action or without action we can say “violence”?

VT Tomin wrote in his scientific work that “in various countries, using the example of the United States, a mechanism has been developed and is being implemented to protect witnesses in a criminal trial, as well as its property. In other words, the safety of the witness is elevated to the state program. Foreign experience allows one to come to the idea that “they” have gone far ahead in this area, since this institution is a problem of the state and its citizens. Subsequently, they developed state protection, carefully analyzed and developed a mechanism” [4].

It should be noted that US legislation on the protection of witnesses is extremely mobile, which is largely due to its belonging to the Anglo-Saxon legal system, which is not as rigidly codified as, say, the continental legal system to which most European states belong, including and Kyrgyzstan.

Historically, on the European continent, it was the Italian Republic that was the first of the states to experience the effect of the factor of unlawful influence on the participants in criminal proceedings and was forced to become a European pioneer in the application of the institution of state protection. An interesting feature of modern Italian legislation is the fact that over the past decade it has been in the phase of a transit transition from the continental to the Anglo-Saxon system of law, which, of course, was reflected in the acts of Italian legislation, including on the issues under consideration.

For example, in 1984 Italy adopted its Special Witness Protection Program [5], which is administered by the Department of Public Security of the Ministry of the Interior through a special central protection service and through the Office of the State

Prosecutor for Mafia Cases. This program is used in cases where the measures taken in accordance with the current Italian legislation are not effective enough.

For example, a number of security measures that can be applied during the interrogation of persons collaborating with justice are defined by the new [6] CCP of the Italian Republic. The Code, approved by Decree No. 271 of July 28, 1989 and in effect since October 24, 1989, in a special article No. 147Yz provided the opportunity to conduct remote interrogation during the trial of a person who, in accordance with the law, is subject to the protection program, using technical means enabling audiovisual contact. The condition of such interrogation in order to ensure the equality of the parties is the mandatory presence of a court officer at the location of the protected person.

French criminal law provides for an exemption from criminal liability if a member of a criminal group informs or declares his activities before the initiation of a criminal case or facilitates the prosecution and arrest of organized criminals. According to Art. 62-1 of the French Code of Criminal Procedure, if there is a petition, the witness has the right to testify without information about his place of residence. In addition, during the interrogation of a witness, personal data is established, but does not indicate in the protocol, that is, it is not indicated for public documents. Such information will be entered into a special database that contains personal data about anonymous witnesses. There are similar security measures at the trial stage. At the beginning of the interrogation of the witness, the place of residence is not disclosed.

As noted in the foreign legal literature, “some crimes, in connection with the exposure of which the used witness protection is also modified from country to country. For example, in Italy and Belgium, measures of security are applied in the case of ordinary crimes (cases include drugs action Mafia or deliberate killings or other crimes punishable by taking away liberty from 5 to 20 years)” [7].

In court proceedings, videoconferencing is used to guarantee the safety of the witness (for example, in the Russian Federation). AP Ryzhakov its scientific and practical commentary to the **Federal Law of 20 March 2011 n 39-FZ indicates that at the level of legislation adopted and a mechanism for the protection of witnesses, namely,** “when the inevitability of ensuring the protection of the witness, his close family circle, relatives and associates, the court makes the mentioned in Part 5 of Art. 278 Code of Criminal Procedure definition and without disclosure of authentic information about the identity of the witness spends his interrogation by the use of video conferencing system so that interrogates saw all members of the court, and not all of the parties the court process. Hear the same information a witness in this second case, you should have the admissibility of all nahodschiysya in the courtroom. At the same time

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questioning the witness in order to guarantee its safety under conditions precluding the visual observation of the witness by other participants in the proceedings, it is recommended to make so that in the place where the witness, were defendants' lawyers" [8].

Some countries (eg Austria) do not have such security measures. They believe that the use of videoconferencing to obtain testimony violates the rights of the defendant, namely the presence of the witness at the hearing. But in such cases, for the authorities that are responsible for the safety of the object, that is, the witness (property and close relatives), it becomes more difficult to fulfill their functional duties. They will have to apply security measures from the personal information of the witness to its location, that is, the relocation of the witness abroad must be ensured.

On the issue of including a witness in the protection program, different countries have different procedures. For example, in Northern Ireland, Great Britain, Austria and Latvia, even knowledgeable persons have the right to benefit from protective immunities. In Italy, Germany, Slovakia, an informed person should be given the status of "witness", only then they include them in the witness protection program.

It is obvious that the content and focus of such Programs in each state is different, since the goals and objectives solved by these programs differ. In addition, they all have one thing in common - none of them is limited to the protection of only the persons involved in the criminal case. In some cases, protection is provided for a fairly long time, and in exceptional situations - for life.

As foreign experience shows, for the purpose of protection, such security measures can be applied as, for example: failure to indicate in statements about a crime, in explanations received at the stage of initiating a criminal case, personal data of protected persons, as well as non-disclosure without consent of information about them throughout investigation (used in China, Denmark, Lithuania) [9]; interrogation not of the witness himself, but of a police officer or investigator, who learned the circumstances of the crime from witnesses (including police agents) in the course of their official activities (used in the USA and

Germany); keeping secret the location of the witness by controlling the receipt and sending of letters and other correspondence by police officers, as well as his negotiations with relatives and employees of various institutions (used in Germany);

detention of persons carrying out post-criminal influence during the performance of investigative actions (for example, by threats to their participants) until the end of the investigative action (used in the GDR) or removal of these persons from the place of investigation; verification of documents and searches of persons admitted to the courtroom, as well as the prohibition of entry into the courtroom by individuals, by a court decision (used in Germany) [10]; separate detention of suspects, accused (and convicts - while in custody), whose life and health are in danger from other suspects and accused); mandatory informing of the protected participants in the process about the transfer of the convict to another penitentiary institution, about his early release, about escaping from the place of serving the sentence, about being sent to work outside it (used in the USA); wiretapping of negotiations without the sanction of the prosecutor with the obligatory implementation of sound recording and attachment of the phonogram to the case (used in Latvia); video recording of testimony and its reproduction in court (since 1992 it has been legislatively enshrined and applied in Great Britain) [11]; video broadcasting of interrogations of persons outside the courtroom, the use of protective screens limiting the announcement of the witness's identification data, as well as closed court sessions in the absence of the public in the courtroom, removal of the defendants from the courtroom during the interrogation of victims and witnesses, other participants in the process (used in Italy, The Netherlands, Belgium, Great Britain, France, Russia, etc.) [12], etc.

Despite the fact that many of these protection measures, widely used in other states, go beyond the framework of criminal procedural relations, they seem to be quite effective, and therefore can be recommended for use in Kyrgyzstan, especially since the generally recognized principles and norms of international law and international contracts are part of national legislation.

References:

1. (n.d.). Retrieved from https://www.vb.kg/doc/288914_v_mv_d_kyrgyz_stana_obrazovano_upravlennie_po_zashite_svide_tey.html
2. Ivanov, I.S. (2013). Relocation of the protected person to another permanent place of residence in domestic and foreign law. *Russian investigator*, No. 6, p.43.

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3. Fadeeva, M.P. (2006). *Theory and practice of state protection of persons assisting in criminal proceedings*. Diss. ... Cand. jurid. sciences. (p.61). Moscow.
4. Tomin, V.T. (1991). *Sharp corners of criminal proceedings*. (p.6). Moscow.
5. (1993). Italian legislation in the fight against organized crime. *Legality*, No. 11, pp.34-38.
6. Della Marra, T. (1994). Criminal process in Italy: Reform and counter-reform. *State and law*, No. 1, pp.124-131.
7. (n.d.). *The new Italian Criminal Procedure Code has replaced the old one, which has been in force for 60 years, known as Rocco*.
8. Bakowski, P. (2013). *Witness protection programs: EU experience in the international context [Electronic resource]*. Retrieved from <http://www.europarl.europa.eu/RegData/bibliot>
9. (n.d.). Retrieved from <https://justicemaker.ru/view-article.php?id=22&art=2047>
10. Kvashis, V.E., & Vavilova, L.V. (1996). *Foreign legislation and practice for the protection of victims of crime*. (p.68). Moscow.
11. Schroeder, F. (1990). *Glasnost in West German Criminal Proceedings*. Materials of the IV Soviet-West German Symposium on Criminology, Criminal Law and Procedure. (p.70). Kiev.
12. Aparova, T.V. (1996). *UK Courts and Litigation*. (p.36). Moscow.
13. (2003). Sukharev Who Benefited from the New Criminal Procedure Code. *Russian Federation Today*, No. 18, pp.25-27.