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SECURITY MEASURES FOR WITNESSES: CONCEPT, ESSENCE, PROBLEMS, PROSPECTS

Abstract: In this article, measures of state protection are applied to a witness who is at the same time a participant in the criminal process, and is also the subject of an indicator of human rights and freedoms. In the course of criminal proceedings, it was revealed that the institution of state protection was developed to protect witnesses from physical, moral and material damage, often as a result of actions (inaction) accompanied by signs of a crime. Attempts were made to establish that and nstitut witness protection was established to ensure compliance with human rights and freedoms and achieving criminal justice purposes. In the course of the analysis, it was revealed that for the implementation of measures to protect witnesses, the powers of law enforcement agencies are not compared with the goal of protection, nevertheless, it cannot go beyond the main tasks that were defined for them. The witness cannot resolve the issue of financing protection measures, is not included in the direct tasks. Essentially, law enforcement agencies cannot provide social protection measures.

Key words: rights, freedom, person, goal, witness, protection, security, state, international law, measures, damage, threat.

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Introduction

Protection of human rights and freedoms is an important indicator of a democratic society, a prerequisite for the formation and development of the rule of law.

One of the first steps towards the formation of the Kyrgyz state as a democratic and legal state is the Constitution of the Kyrgyz Republic, adopted on June 27, 2010 [1]. This constitution adopts a general concept of human rights, including the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights [2] and the 1966 International Covenant on Civil and Political Rights [3].

In 2010, the Constitution of the Kyrgyz Republic proclaimed Kyrgyzstan a sovereign, democratic, legal, secular, unitary, social state (part 1 of Article 1), in which a person, his rights and freedoms are the highest value, and the protection of rights and

freedoms and a citizen is the duty of the state (Art.2), in which the rights and freedoms of man and citizen directly determine the meaning, content and application of laws, legislative activity. executive power, local self-government and the judiciary (part 1 of Article 16), where the state protection of human and civil rights and freedoms is guaranteed (part 1 of Article 40), where everyone has the right to defense. his rights and freedoms in all ways not prohibited by law (part 2 of article 40), where everyone is guaranteed judicial protection of his rights and freedoms (part 1 of article 40), as well as the right to receive qualified legal assistance (part 3 of article 40), etc.

However, despite the high importance and correctness of the existing legislative provisions, "it is too early to talk about a complete transformation of the rule of law and giving citizens a comprehensive hectares Ranta rights and freedom of the person " [4],

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because "the overall situation with the observance of human rights and freedoms and a citizen in the country as a whole cannot yet be considered satisfactory". This is primarily due to the fact that the human and civil rights and freedoms enshrined in the Constitution are not properly protected by the appropriate protection mechanism at the level of legitimacy.

The creation of the institution of state protection of participants in criminal proceedings began in the middle of the ninety-third year of the last century. Chapter 2 of the Constitution of the Kyrgyz Republic can be viewed as "stimulating the development of laws and the adoption of a large number of new regulations containing general ideas and individual provisions of the Constitution."

Despite the fact that the normative acts were not adopted for a long time, intensive scientific and legislative work was carried out to develop normative provisions for the protection of participants in criminal proceedings. As a result, "On the Internal Affairs Bodies of the Kyrgyz Republic" (January 11, 1994, No. 1360-XII), "On Operational Investigative Activities" (October 16, 1998, No. 131), "On the Rights of Participants in Criminal Proceedings" protection "(August 16, 2006, No. 170). The Criminal Procedure Code of the Kyrgyz Republic (February 2, 2017, No. 20) states that one of the goals of the criminal procedure legislation is to protect a person from restrictions on his rights and freedoms in criminal proceedings.

Achieving the goals of criminal proceedings involves the creation of conditions for a full, comprehensive and objective consideration of all aspects of the case. The impact on the participants in criminal proceedings threatens the administration of justice. The duty of the state is to ensure the safety of persons participating in criminal proceedings, according to which it, in the full sense of the word, acts as a guarantor of justice. Therefore, in order to solve the problems of criminal proceedings, it is very important to properly protect its participants from any unlawful influence on them. Grounded in art. According to Article 40 of the Constitution of the Kyrgyz Republic, which guarantees the protection of human and civil rights and freedoms, the Kyrgyz Republic undertakes to "fulfill in good faith its civic obligations and protect all subjects of criminal proceedings." However, if the state fails to fulfill its obligations to protect this category of persons, their refusal to participate in the investigation and subsequent criminal proceedings in court is not subject to moral condemnation or punishment.

Particular attention should be paid to some provisions of the Criminal Procedure Code of the Kyrgyz Republic, which clearly demonstrate a systematic approach to the formation of security measures for participants in criminal proceedings. For the first time, the Criminal Procedure Code of the Kyrgyz Republic has developed special security

measures for individual participants in the criminal process, which are used in pre-trial and judicial proceedings. According to paragraph 5 of Article 13 of the Criminal Procedure Code of the Kyrgyz Republic, the circle of persons in need of protection (protection) of human and civil rights and freedoms in criminal proceedings has significantly expanded. The legislative body has extended the application of criminal procedural security measures to all participants in the criminal process, including the accused and his close relatives, including: close relatives, i.e. spouse, parents, children, foster parents, foster children, brothers and sisters, grandparents, grandchildren (paragraph 2 of Article 5 of the Criminal Procedure Code of the Kyrgyz Republic).

Part 3 of Article 13 of the Criminal Procedure Code of the Kyrgyz Republic prescribes the use of five procedural security measures, depending on the nature of the participants in the criminal process. In this case, the only condition for their use is to ensure the safety of the data of the litigants. There are no other criteria for applying procedural security measures. Thus, the law gives authorized persons, including judges, prosecutors, investigators, investigative bodies and investigators, the right to make their own decisions on the advisability of using the institution of state protection of vulnerable participants in criminal proceedings or, conversely, excessive decisions depending on the current situation and , as well as assessment and analysis of information about potential threats to protected persons.

Some proceduralists consider "detention" under Articles 98-99 of the Criminal Procedure Code of the Kyrgyz Republic as a security measure [5].

With the adoption of the Law "On the Protection of the Rights of Participants in Criminal Proceedings" in August 2006, the main institutional norms were established to regulate the appropriate types of behavior of subjects of state protection, participants in criminal proceedings. This law establishes a system of state protection measures, including security measures and measures of social support for persons assisting in criminal proceedings, as well as the grounds and procedure for their application. According to the law, must defend: the victim, witnesses and other participants in the criminal process.

The same law defines the principles for the implementation of state protection: legality, respect for human and civil rights and freedoms, mutual responsibility of state protection bodies and protected persons (part 1 of article 4).

The principle of legality is a general legal principle that implies strict observance of the Constitution and laws of the Kyrgyz Republic by all state authorities, local self-government bodies, officials and citizens. In Art. 5 of the Law on State Protection of the Rights of Witnesses and Victims is based on the [Constitution of the Kyrgyz Republic](#) and consists of the Law "On Protection of the Rights of

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Participants in Criminal Proceedings”, the Criminal [Code of the Kyrgyz Republic](#), the Criminal Procedure [Code of the Kyrgyz Republic](#), the Criminal Executive [Code of the Kyrgyz Republic](#), other laws, and other regulatory legal acts of the Kyrgyz Republic, as well as international treaties and agreements that have entered into force in the manner prescribed by law, to which the Kyrgyz Republic is a party .

The principle of respect for human and civil rights and freedoms complies with the norms of international law and the legislation of the Kyrgyz Republic that regulate these rights and freedoms. An example of compliance with this principle is the provision of the Criminal Procedure Code of the Kyrgyz Republic on the inadmissibility of the use of violence, intimidation and other unlawful measures during investigative actions, as well as threats to human life, and the health of those involved. (part 4 of article 1 58).

Also, the Criminal Procedure Code of the Kyrgyz Republic provides for the possibility of hearing a case in a closed court (part 2 of article 2 8 1). If it is necessary to ensure the safety of the victim, witness or other participants in the process, as well as members of their families, close relatives, relatives and close persons, the criminal case can be considered behind closed doors.

Implementation of the principle of mutual responsibility of bodies providing state protection and protected persons implies a set of bilateral rights and obligations of bodies and protected persons to each other and responsibility for their non-observance. Such rights and obligations are determined by Articles 24 and 25, with the possibility of conclusion of the contract (Part 1 of Article 21) and the exercise of rights and obligations under this agreement, as well as in cases stipulated by the SFA howling 5 of the Law on the Protection of the subjects participants.

The basis for the development of this principle was the recommendations to the governments of states on the status of a victim in the framework of criminal law and criminal procedure, proposed for the revision of national legislation and practice:

- informing the victim about the possibility of obtaining assistance, practical and legal assistance, compensation from offenders and the state, as well as about the results of the police investigation;

- release the offender from criminal liability only after resolving the issue of compensation for the victim;

- informing the victim by the court of the date and place of the consideration of the case, the possibility of obtaining compensation and compensation in the course of criminal proceedings, legal assistance and ways of finding out the results of its consideration. Job;

- increase the level of protection against disclosure of any facts that unreasonably affect the confidentiality of the victim or may damage his

reputation (closed court hearings, non-disclosure of personal data, etc.);

- Ensuring effective protection of the victim and his / her family members from intimidation and possible retaliation by the offender (especially in the framework of organized crime).

The principle of departmental, judicial and prosecutorial supervision over state protection is a requirement for strict observance of the requirements of the Criminal Procedure Code of the Kyrgyz Republic and the Law on the Protection of the Rights of Participants in Criminal Proceedings.

Control is one of the functions of any government agency. Departmental control is control over the legality of state protection, that is, control exercised by the forces and means of specific structural units of specific agencies exercising state protection, as well as control of higher authorities by lower authorities.

Departmental control is carried out in accordance with laws and other normative legal acts that regulate the activities of bodies providing state protection .

The prosecutor's office supervises the activities of bodies that have taken measures of state protection. The Prosecutor's Office of the Kyrgyz Republic is the only body on behalf of the Kyrgyz Republic that monitors compliance with the Constitution of the Kyrgyz Republic and the implementation of laws in force in the territory of the Kyrgyz Republic. The powers of the prosecutor's office to supervise the implementation of state protection are regulated by the Law of the Kyrgyz Republic "On the prosecutor's office of the Kyrgyz Republic" dated August 24, 2020 No. 143.

When implementing state protection, open and covert methods can be used. Sound working methods are not secret, but open. Using confidential (confidential, invisible) methods of work to ensure the safety of protected persons, protecting the confidentiality of information about protected persons, measures taken to protect criminals in order to prevent unlawful actions and creating an "information vacuum" against protected persons.

Covert methods of state protection are mainly used to identify criminals so that law enforcement agencies can detain them when they commit criminal acts. The use of explicit (explicit) and covert (confidential) actions must be carried out in accordance with the legislation of the Kyrgyz Republic.

The rights of the protected person are not limited when applying security measures. It is about respecting the housing, labor, pension and other rights of protected persons. So, in accordance with parts 2-3 of Article 10 of the Law on the Protection of the Rights of Participants in Criminal Proceedings, when the protected person moves to another permanent place of residence, he is provided with housing at the

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expense of the state budget, reimbursement of the costs of moving, material assistance, a guarantee of employment and assistance in choosing a job (position) or place of study, similar to the previous job. The rights of the protected person are also protected when moving to another temporary place of residence, changing the place of study, changing appearance or documents. However, no significant improvement in the housing and other rights of protected persons is allowed.

For example, the laws of the Federal Republic of Germany stipulate that the material condition of a witness should not be "higher" than at the time of the beginning of the defense: this "excludes the possibility of obtaining testimony in connection with benefits, benefits, etc." [6].

The means of protecting human rights and freedoms in criminal proceedings include not only explaining the rights to interested parties, but also the application of security measures, as well as warnings about possible negative consequences associated with the exercise of certain rights. The Criminal Procedure Code of the Kyrgyz Republic provides a wide range of rights to participants in criminal proceedings. However, in order to use them freely, the participants in the process must, firstly, be aware of the rights, duties and responsibilities provided for by the law, and secondly, be able to effectively protect their rights. This provision informs the participants in criminal proceedings about their rights and obligations, whether they understand the meaning and content of these rights and obligations, and also provides an opportunity to exercise these rights. Rights and obligations are clarified at each stage, since the legal status of a participant in criminal proceedings may change [7]. A protocol is drawn up on the explanation of rights and obligations, in which a note is made that the rights provided for by law have been explained to the suspect, the accused and the witness. Clarification of rights and obligations should be made immediately after the recognition of a person as a participant in the process (Articles 41, 50, 54, 58, 59, 60, 61, 99, 161, 162, 170, 202, etc. of the Criminal Procedure Code of the Kyrgyz Republic).

When implementing the principle of criminal justice under consideration, special attention should be paid to the use of procedural means aimed at ensuring the implementation of the so-called immunity of witnesses in a number of articles of the Criminal Procedure Code [8]. According to paragraph 38 of Article 5 of the Criminal Procedure Code of the Kyrgyz Republic, the right of every person not to incriminate himself and his close relatives, i.e. "No one is obliged to testify against himself, his wife and close relatives, the scope of which is determined by law." (part 5 of article 26 of the Constitution of the Kyrgyz Republic).

The implementation of the provisions of Article 4 of the Law on the Protection of the Rights of

Participants in Criminal Proceedings is to strictly observe the law in the activities of specific departments and officials of those bodies that are responsible for state protection. The published ideas on the principles of mutual responsibility of bodies providing state protection and protected persons, the rule of law and respect for human and civil rights and freedoms, unfortunately, are declarative in nature, which requires a detailed mechanism for the implementation of these principles [9]. In particular, it is necessary to make appropriate changes to the housing, pension, labor and other laws.

Thus, the analysis of the articles of the CPC KR, the PEC of KR and the Law On Protection of the rights of participants in criminal proceedings for the protection of participants in criminal proceedings shows that the CD has a specific legal framework of state institute of protection of participants in criminal proceedings.

Thus, the analysis of the articles of the Penal Code of the Kyrgyz Republic, the Criminal Procedure Code of the Kyrgyz Republic and the Law of the Kyrgyz Republic on the protection of the rights of participants in criminal proceedings regarding the protection of participants in criminal proceedings has a certain legal basis for the institution of state protection of participants in criminal proceedings.

Summarizing the material presented in the paragraph, we can draw the following conclusions:

1. The institution of state protection of participants in criminal proceedings is a set of legal norms that determine the grounds, conditions, procedure, objects of application of measures of state protection, as well as the types of these measures, procedural principles, goals of achieving and solving criminal procedural problems that ensure the protection of citizens' rights ... The Public Defense Institute is responsible for clarifying procedural rights, filing petitions, and so on. Along with the elements, it is part of the mechanism for ensuring the rights of participants in criminal proceedings [10]. The legal basis of the institution of state protection in the Kyrgyz Republic is the provisions of international normative acts, laws, as well as by-laws. Legal sources do not include regulation of important aspects of state protection of participants in criminal proceedings: - ensuring the immunity of witnesses; - retain the right to housing, pensions and employment when applying specific protective measures.

2. Protection of participants in criminal proceedings is a special area of law enforcement.

The Kyrgyz Republic has established institutional legal norms regulating the appropriate types of behavior of law enforcement agencies and protected persons.

The problematic issues include:

- the uncertainty of the material and social means necessary to effectively ensure security measures;

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- compliance with regulatory requirements for the protection of persons involved in criminal proceedings, is difficult due to the lack of a common concept of security of protected persons.

Problematic issues include:

- uncertainty of material and social resources necessary for effective security measures;

- Due to the lack of a unified concept of ensuring the security of protected persons, it is difficult to implement the regulatory requirements for the protection of persons involved in criminal proceedings.

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