



# **“ISSUES OF REDUCING THE PARTICIPATION OF WITNESSES BY THE WIDE INTRODUCTION OF DIGITAL TECHNOLOGIES IN CRIMINAL PROCEEDINGS”**

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<b>Received:</b> February 1 <sup>st</sup> 2023 <b>Accepted:</b> March 1 <sup>st</sup> 2023 <b>Published:</b> April 6 <sup>th</sup> 2023	The purpose of the study is to improve the system of electronic proceedings by introducing new norms into the criminal procedure legislation. At the same time, this study promotes the idea of reducing the participation of witnesses in the criminal process due to the widespread introduction of digitalization capabilities. Its scientific novelty lies in the fact that today every person in society is in the process of reforming digital technologies in one sector. The introduction of such innovations in the criminal process will not only facilitate the work of the competent authorities, but also protect the rights and interests of citizens, and contribute to protection. Therefore, this topic, analyzed based on scientific approaches, analysis of legislation and the experience of some foreign countries, is aimed at improving certain norms in criminal proceedings

**Keywords:** institution of witnesses, procedural actions, admissibility of evidence, alternative order, video recording, digitalization.

According to part 2 of Article 121 of the Constitution of the Republic of Uzbekistan, public organizations and citizens can provide assistance to law enforcement agencies in protecting legality and legal order, rights and freedoms of citizens[1].

On the basis of this constitutional rule, the activities of the participants in the criminal process such as witnesses, impartial, public prosecutors and defenders were established in the practice of law enforcement.

Of course, a legal norm has a changeable nature, which happens not only as a result of new political and legal worldviews, but also through the emergence of opportunities to use convenient and more effective methods of its implementation.

Articles 22, 25, 37 and 39 of the Code of Criminal Procedure of the Republic of Uzbekistan, which regulate the principles of determining the truth, the principles of dispute in court proceedings, the powers of certain officials participating in the investigation, set a number of rules for impartial conduct of proceedings [2, 6. 12-14, 20-21, 23-24].

On this basis, Article 73 of Chapter 6 (other persons participating in criminal proceedings) of this Code envisages the institution of impartiality, which is aimed at involving impartial persons mentioned in this Code in the cases to confirm that an investigation or other actions, its process as well as the results, have been conducted by an investigator, interrogator, prosecutor.

It is perceived from the content of the article that impartial persons are involved to confirm that the investigation or other actions, its process and results, have successfully been carried out. The participation of impartial persons in the objective implementation of most investigative and procedural actions aimed at determining the truth is defined in the legislation.

In accordance with Article 352, Part 3, it was established that impartial persons can be involved to confirm that a citizen refuses to fulfill the legal demands and proposals of the investigator, or resists the investigator, or commits other illegal actions that do not correspond to the procedure of the preliminary investigation. (the list of investigative and procedural actions that involve the participation of impartial persons is shown in the table attached to this paper).

The institution of impartiality can also be found in related fields of law. For example, Article 282, Part 3, Clause 3 of the Code of Administrative Responsibility specifies that a report drawn up with the participation of two impartial parties in the case of evasion of an examination to determine the state of intoxication under the influence of alcohol, narcotic substances, or a special form of intoxication, is indicated as a document to be attached to the report on administrative offenses.

However, in Chapter XXII of this Code, which is called "Persons participating in administrative offense proceedings", there are no specific norms about the institution of impartiality[3].



The same can be seen in the Customs Code (Articles 195,196), Tax Code( Articles 114, 145, 148, 153), Civil Procedural Code (54-модда) [4, 5, 6].

According to part 2 of Article 73 of the Criminal Procedure Code, at least two adult citizens, who are not interested in the outcome of the case, must be invited to participate in the investigation. Before starting the investigative action, the interrogator, investigator or prosecutor explains to the parties their rights and obligations.

In the Article 349 of this Code, impartial persons are defined as public representatives, and the activity of the participant in this procedure is important in criminal proceedings. Because his non-participation in investigation and other procedural actions, where his participation is necessary, will have certain consequences.

In particular, According to the subparagraph 9 "b" of the decision No. 24 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated 24.08.2018, "On some issues of the application of the norms of the criminal procedural law on the admissibility of evidence", if the law enforcement officers or other persons assisting them on a public basis are involved in the investigation, evidence collected in this process is considered inadmissible.

In accordance with paragraph 2 of this decision, it is established that the evidence is considered admissible only when it is obtained in compliance with the rules and procedures related to the conduct of the procedural action related to obtaining it, it is not possible to use the evidence obtained without legal grounds for proof and to put them as the basis of the accusation [9].

In this regard, it is possible to cite some examples used in court practice.

Defendant M.Kh. illegally planted and nurtured a bush of "cannabis" plant, which is considered a prohibited plant containing narcotic drugs, in the yard of the residential house where he lives, and sold 1.7 grams of narcotic drug to several people for money at different times.

During the initial investigation carried out on this criminal case, the residence and auxiliary farm buildings of A.R, one of the defendants who bought drugs, were investigated. During the search, in the room of Z.R., crushed plant remains and seeds put into 1 matchbox were found, and a report was made on that.

However, the results of the search of the residential house and the auxiliary farm buildings of Z.R were found by the criminal court to be inadmissible.

The court reached this decision according to the followings: in the course of the search and investigation process, the rights and obligations of impartial stipulated in Article 74 of the Code of Criminal Procedure of the Republic of Uzbekistan were not explained. Also, before the search is carried out in accordance with Articles 160 and 161 of this Code, the rights of those who are being searched, impartial, to be present during all the actions of the inquirer or investigator and to make a complaint about these actions have not been explained. Before starting the investigation, the decision on this, and then the report on the search was not introduced to Z.R, unsigned receipt was not received. After the search and investigative action under Article 92 of the Criminal Code, the participants were not allowed to get acquainted with the report of the investigative action. [10].

As for the participation of impartial persons in the criminal process, in the process of improving the criminal procedural legislation, a number of reforms were implemented to further reform this institution, more precisely, to strengthen impartiality with additional means.

In particular, it was set by part 4 of Article 91 of the CPC that, on most serious crimes, the inspection of the scene of an incident, search, examination of evidence, investigative experiment, arrest of a person, waiver of defense counsel, personal search and seizure during the process of arresting a person must be recorded in a video.

However, it should be noted that the use of such tools does not exclude the participation of impartial parties in the implementation of procedural actions.

If we focus on the legal system of foreign countries, there are different approaches to ensure impartiality in the process of conducting investigations and procedural actions in criminal proceedings

For example, in Russia, the institution of impartial was introduced in 1864 with the adoption of the "Charter of Conducting Criminal Justice", and nowadays impartial are involved only during the implementation of investigative actions of search, personal search, examination of electronic devices and identification [11].

In contrast to Russia, in the United States of America, the institution of impartiality has not been introduced, and documents and opinions expressed by investigative bodies during investigation and procedural actions are recognized as reliable. If false information or forgery is detected, heavy penalties will be applied to the officials. Similar rules exist in France,



Great Britain, Canada, China, Latvia, Japan and Kyrgyzstan [19].

The Federal Republic of Germany relies on a different approach to ensure impartiality in certain criminal proceedings. In this case, the procedural legislation does not provide for the institution of impartiality, and two local deputies are involved in the search and investigation. [12].

According to the law of the Republic of South Korea, if the investigative actions are recorded by video recording, the presence of neutrals is not required. Most of the investigative processes are electronic, and almost all of them are recorded through video recordings [20].

It should be noted that there are different views among researchers regarding the need for the institution of impartiality in criminal proceedings. Some of them emphasize that the existence of impartiality is important in ensuring the protection of the rights and interests of citizens, and some of them emphasize that it is not necessary.

In particular, V.V. Yarovenko, Doctor of Legal Sciences of the Vladivostok State University of Economics and Service, in his scientific paper entitled "Participation of impartial parties in investigative actions as a guarantee of the reliability of the preliminary investigation" emphasized the positive aspects of the participation of impartial parties, and the official report on the results of preliminary investigative actions in the evaluation of evidence during the trial, and he also stated that the reliability of the documents, the fact that they do not include false records or information can be determined only by questioning the persons who participated in the investigative actions impartially in court, and this reflects their role and importance as a participant in the criminal proceedings.

According to this scientific paper, in accordance with Article 170 of the Criminal Procedure Code of the Russian Federation, the participation of impartial persons in investigation and procedural actions can be compensated by using technical means of determining the results of procedural actions, that is, the operation of this institution has an alternative nature [13].

N.N. Fomkin, a lecturer at the Department of Criminal Procedure, Justice and Prosecutor's Control of the Moscow State University named after N.P. Ogareva, also wrote his "Institute of Impartials in the Russian Criminal Procedure: Abolition or Retention?" In his scientific article, he states that the existence of an impartial institution is important in ensuring the protection of individual rights, and that there is a high probability of evidence falsification in the process of

full introduction of technical means that can be used instead. [14].

M.S.Nejkasha, P.A.Lupinskaya, G.B.Mirzoev, I.L.Petrukhin also conducted scientific research in the content similar to the above-mentioned ideas. [15].

In the scientific paper entitled "Impartiality in Criminal Court Proceedings" co-authored by R.M. Shevtsov and A.V. Maksimenko, Candidates of Legal Sciences of the Belgrade Law Institute of the Ministry of Internal Affairs of the Russian Federation, comparing the existing legal mechanisms in Germany, France, Japan and the United States of America, they stated that the existence of the impartial institution confirms the fact that the state recognizes that it cannot provide impartiality and transparency in the field of law enforcement, and proposed to exclude the impartial institution from the legislation, fully introducing the procedure for the use of technical means. [11].

D.S. Kiselyov, sergeant of the prosecutor-investigative faculty of the Russian Military University, in his scientific article entitled "Participation of impartial persons in the implementation of investigative actions in the conduct of criminal court proceedings", confirms that the actions taken by recording investigative actions through video recording devices were carried out based on the law, and for this, he states that the institution of impartiality is not necessary. Also, in his opinion, there may be various objections to this proposal, in particular, that the possibility of commenting on the report, which will be drawn up as a result of investigative actions, will be limited. However, in practice, such objections are unlikely to be made, as the impartialists lack relevant knowledge. [16].

M.E. Muminov, S.S. Oripov, A.O. Trushin, D.V. Dolzhnikov, T.F. Skogoreva, E.J. Chkhvimiani, in their research, have proposed the complete or partial abolition of the institution of impartiality by using technical devices. [17].

S.S. Oripov stated that since the responsibility of the maintenance of the participation of impartial persons in the investigation and procedural actions is on the shoulder of inquiry and preliminary investigation bodies, in practice, in most cases, impartial persons are selected from among the persons assisting the law enforcement agencies, and this fact is showing that this institution has just an official character in the criminal proceedings [18].

In our opinion, the insufficient impact of legal regulation in the existing norms, which provide for the participation of impartial parties, creates the following number of problems in practice.



**First**, there are some difficulties in the search and selection of impartial. This is in addition to the fact that it takes a certain amount of time, as well as the difficulty of providing impartiality at night, in remote and difficult-to-reach places (for example, conducting investigations and other procedural actions in remote and difficult-to-reach areas in the criminal procedural legislation of Russia, Belarus, Tajikistan, Turkmenistan, as well as in cases where there is danger to the life and health of a person, it is established that neutrals should not be involved), it is also manifested in the fact that the responsibility for refusing to be neutral is not defined in the legislation.

It should be noted that although the articles 74 and 271 of the Civil Code stipulate the application of measures of responsibility for the violation of procedural obligations, this responsibility is not related to the evasion of the duties of impartial parties [2, 6. 52, 209-210].

Secondly, since impartial persons are not selected from among persons with legal knowledge, they will not be aware of the content of the ongoing investigation and procedural actions, as well as the reasons for their participation.

Thirdly, the formation of the practice of selecting impartial persons from among the persons who provide close support to the inquiry and investigation bodies has a negative impact on the objectivity, which is the main content of their participation. In this process, the officials responsible for conducting the investigation have opportunities to falsify or distort evidence. Also, the fact that the number of times it is possible to participate as an impartial person is not specified in the law, encourages such "opportunities".

If we pay attention to the legislation, in articles 76 and 78 of the Code of Criminal Procedure, it is possible to observe cases that hinder the participation of an impartial person in the criminal process.

In particular, if an impartial person participates in this case as a victim, civil plaintiff, civil defendant, expert, expert, translator, witness, defense attorney, suspect, accused, legal representative of the defendant, or as a representative of the victim, civil plaintiff, civil defendant, or has previously participated ; if he is a relative of an official responsible for conducting this case or of the other persons mentioned above; if there are other circumstances that raise doubts about his impartiality and impartiality, and if he is subordinate to any of the persons participating in the case in terms of service or in any other way, he has no right to participate in the criminal proceedings.

In particular, the workers of internal affairs body, State Security Service of the Republic of Uzbekistan, the National Guard, the State Security Service of the President of the Republic of Uzbekistan, the prosecutor's office, justice or court employees cannot participate in the case as an impartial [2, 6. 53, 55].

Fourthly, some persons who took part in the inquiry and preliminary investigation activities as impartial, are withdrawing from their initial testimony in court. Although, according to the procedural law, it is established that the court will make a decision based on the evidence presented in the court proceedings, this is only of a formal nature, and the change of testimony of the impartial does not mean in all cases that the investigation and procedural action were conducted illegally.

The analysis of the mentioned problems requires the establishment of effective legal norms for their elimination.

In recent years, a number of reforms have been carried out in our country in the area of judicial law, especially in improving criminal procedural legislation.

In this regard, important norms are also defined in the "Concept of Improving the Criminal and Criminal Procedural Legislation of the Republic of Uzbekistan" approved by the decision of the President of the Republic of Uzbekistan dated 14.05.2018 No. PQ-3723.

In particular, according to the Concept, ensuring the transparency and openness of judicial and investigative activities, **strengthening the institution of public participation** in the conduct of criminal cases are defined as the expected results of the implementation of the concept of improving the criminal and criminal procedural legislation of the Republic of Uzbekistan. [8].

In addition, in the paragraph 47 of the State Program on Implementation in the "Year of Development of Science, Enlightenment and Digital Economy", "Strategy of actions on five priority areas of development of the Republic of Uzbekistan in 2017-2021", approved by approved by President of the Republic of Uzbekistan, PD-59-53 dated 02.03.2020, further improvement of the impartial institute based on advanced foreign experience and by means of video recording of investigative actions was mentioned [7].

If, according to the above-mentioned constitutional norms and criminal-procedural legislation, we see the impartial as a public representative, we can see that the Concept and other legal documents adopted in recent years envisage further strengthening of the activity of this institution.



However, we believe that it is appropriate to introduce **alternative, truly impartial and effective** methods of involving impartial persons in criminal proceedings by introducing the following norms.

In our opinion, since the implementation of procedural actions is related to the human factor, confirmation of its impartiality should be carried out without human intervention. Of course, the use of technology is of great importance.

It should be noted that although part 4 of Article 91 of the Criminal Procedural Code stipulates the requirement to record a number of procedural actions through video recording, the procedure for obtaining video recording and the rules to be followed in this process are not provided for in the legislation.

As long as it is envisaged to determine the alternative of impartial participation by using digitization opportunities in the implementation of investigative actions, it is necessary to introduce the following requirements in order to ensure the protection of the rights and interests of the individual.

**First**, the video recording should cover the process from the beginning to the end of the investigation and procedural actions in a way that does not allow interruptions.

**Second**, the video recording should reflect that all rights and obligations of the participants have been explained to them before the investigation and procedural actions begin.

**Thirdly**, it is required that the images of the persons participating in the investigation and procedural actions are fully reflected in the video recording.

It is appropriate to ensure the participation of impartial persons in the implementation of procedural actions only in the event that it is not possible to use the technological means (*for example, the technological means become faulty, their power runs out, etc.*).

In addition, in procedural actions that may harm the protection of a person's constitutional rights and interests (*showing for recognition; testimony related to undressing a person, as well as identifying scratches, bruises, blisters on his body; exhumation of the corpse; inspection and seizure of postal and telegraphic dispatches; search of residences; taking of property*), we believe that, to implement new norms on ensuring the participation of impartial people, it is necessary to involve deputies, who are representatives of the people, and not any person as an impartial person in the implementation, regardless of the use of technological tools.

As long as deputies work to protect the interests of their elected citizens, their control of the local Council over the observance of guarantees related to the protection of the constitutional rights of a person in criminal proceedings is of great importance in ensuring the performance of one of the tasks assigned to them.

The participation of deputies in the above-mentioned procedural actions is also important in ensuring citizens' residence and correspondence, personal privacy and presumption of innocence (Articles 25, 26 and 27 of the Constitution).

**Based on the above-mentioned scientific views, opinions and considerations, as well as existing problems in practice, the following suggestions are made:**

- 1) Editing Article 73 of the Criminal Procedure Code of the Republic of Uzbekistan like the following version::

#### **"Article 73. Impartials**

Impartials are summoned by the interrogator, investigator, prosecutor to confirm the conduct of investigation or other actions, the process and results of its conduct in the cases provided for in this Code.

At least two citizens who are not interested in the outcome of the case must be summoned to participate in the investigation. In the cases stipulated by this Code, deputies may be involved as impartial.

The followings cannot be impartials:

- 1) minors;
- 2) other participants in the criminal proceedings and their relatives;
- 3) law enforcement officers;
- 4) persons who do not know the language of the investigation;
- 5) Persons who participated as impartial in the investigations on this case before, with the exception of cases where it is necessary to carry out investigative actions in sequence, as well as when deputies are involved as impartial in the implementation of procedural actions.

Before starting the investigative action, the investigator, investigator or prosecutor shall explain to the parties their rights and obligations."

- 2) Supplementing the Criminal Procedure Code of the Republic of Uzbekistan with the following **Article 73**<sup>1</sup>:



**"Article 73<sup>1</sup>. Participation of impartial  
in the implementation of procedural actions**

The participation of neutrals in the following procedural actions is mandatory, except for the cases provided for in the fourth part of this article.:

- 1) showing for recognition;
- 2) testimony related to undressing a person, as well as identifying scratches, bruises, blisters on his body;
- 3) exhumation of the corpse;
- 4) inspection and seizure of postal and telegraphic dispatches;
- 5) search of residences;
- 6) taking of property.

Deputies operating in the relevant area will be involved as neutrals in the implementation of these investigative actions.

In all other cases, confirmation of the conduct of investigation or other actions, the process and results of it is ensured by recording them in a video recording, without the participation of impartial parties, except for the cases of involving impartial parties based on the request of the participants of the criminal proceedings or the initiative of the interrogator, investigator, prosecutor or the court.

Due to the lack of appropriate means of communication, in hard-to-reach places where it is not possible to involve impartial people, as well as investigative actions that may endanger people's lives and health, the investigations are carried out without the participation of impartial people. In such cases, these investigative actions are recorded in a video recording, and the reasons for this are indicated in the report."

**3) Editing part 4 of the Article 91 of  
Criminal Procedural Code** in the following manner:

**"Article 91. Supplementary means in  
recording evidences. Annexes to the report**

The following procedural actions must be recorded by video recording:

- 1) **showing for recognition;**
- 2) examination of evidence at the scene of the incident;
- 3) **examination;**
- 4) **exhumation of the corpse;**
- 5) investigative experiment;
- 6) search;
- 7) catching of the person;
- 8) personal search and seizure conducted during the arrest of a person;
- 9) **inspection and seizure of postal and telegraphic dispatches**
- 10) **taking samples for expert research;**

11) **acceptance of submitted materials  
and documents,**

- 12) refusing the defender;
- 13) **taking of the property".**

- 4) To fill the second part of Article 271** of the Criminal Procedure Code of the Republic of Uzbekistan with the following **seventh paragraph** and consider the **seventh paragraph** as the **eighth paragraph**:

**"Article 271. Liability for violation of  
procedural obligations**

impartial - for not being present at the summons of the interrogator, investigator, prosecutor, for refusing to participate in the conduct of the investigation, as well as for refusing to confirm the conduct of the investigation, the process and results of the investigation by signing the report of the investigation."

- 5) Supplementing the Code of Administrative Responsibility of the Republic of Uzbekistan with the following article 197<sup>1</sup> and considering articles 197<sup>1</sup>-197<sup>6</sup> as articles 197<sup>2</sup>-197<sup>7</sup>**

**"Article 197<sup>1</sup>. Failure to fulfill  
procedural obligations during criminal  
proceedings**

During criminal proceedings, non-fulfillment of the obligations provided for in the second part of Article 271 of the Criminal Procedure Code by the person entrusted with it, with the exception of cases of harming other social relations protected by the Criminal Code -

causes a fine to be imposed on citizens from one to ten times the amount of the base calculation, and on officials from ten to fifteen times".

In conclusion, it can be said that as a result of the implementation of the proposed mechanisms, effective protection of the rights and interests of the individual will be ensured, as well as prevention of various cases of abuse by the officials responsible for the conduct of criminal court proceedings, convenience and "**procedural economy**" will be achieved in the activities of these officials.

At the same time, the gaps in the law are filled by determining the measures of responsibility established in the criminal procedure, but whose practical expression has not been reflected in the legislation to date.



list

**Procedural actions that require the participation of impartial parties during the initial investigation and judicial investigation (including, interrogation)**

**LIST**

No	The name of procedural actions	During then initial investigation (including interrogation)	exceptions	During the judicial investigation	exceptions
1.	Questioning	-	-	-	-
2.	Pre-amplification of shows	-	-	-	-
3.	Confrontation	-	-	-	-
4.	Showing for identification	available	available	-	Available in the showing for identification
5.	Checking the details at the scene of a crime	available	available	-	-
6.	Examination	available	available	-	-
7.	Testimony	-	<b>Available</b> when testimony related to undressing a person, as well as identifying scratches, bruises, blisters on the body	-	<b>Available</b> when testimony related to undressing a person, as well as identifying scratches, bruises, blisters on the body
8.	Exhumation of the corpse	available	available	-	-
9.	Conducting experiment	available	available	-	-
10.	Taking	available	available	available	available
11.	Search	available	available	available	available
12.	Inspection and seizure of postal and telegraphic dispatches	available	available	-	-
13.	Listening to conversations conducted by telephone and other telecommunication devices, receiving information transmitted through them	-	-	-	-



14.	Appointment of expertise	-	-	-	-
15.	Taking samples for expert research	available	available	available	available
16.	Appointment of inspection	-	-	-	-
17.	Acceptance of submitted materials and documents	-	-	-	-
18.	Detention	available	available	available	available
19.	Preventive measures	-	-	-	-
20.	The suspension of an application of a passport	-	-	-	-
21.	Dismissal from work	-	-	-	-
22.	Forced Bringing	-	-	-	-
23.	Placing a person in a medical institution	-	-	-	-
24.	Taking of the property	available	available	available	available

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