



## **ENSURING SAFETY OF PARTICIPANTS IN CRIMINAL PROCESSES DURING COURT TRIAL**

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<b>Received:</b> November 11 <sup>th</sup> 2023 <b>Accepted:</b> December 10 <sup>th</sup> 2023 <b>Published:</b> January 18 <sup>th</sup> 2024	This scientific article is aimed at explaining the scientific basis of ensuring the safety of the participants in the criminal proceedings during one of the important stages of the process. In this, the problems and achievements of ensuring the security of the participants participating in the trial were highlighted. In revealing the topic, the author's approaches to ensuring the safety of the participants were developed based on the analysis of existing researches, legal bases and practical materials. Also, in the era of today's advanced technologies, the issue of ensuring the safety of the participants of the process is not undermined by the principles of equality.

**Keywords:** court, criminal proceedings, discussion, participants, security, court session, trial

Ensuring the safety of the participants in the criminal proceedings during the trial has its own characteristics. The process of ensuring safe participation in the criminal proceedings is aimed at obtaining the information necessary for the work related to the subject of proof defined in Article 82 of the Criminal Procedural Code by the investigative bodies and the court. This process is of particular importance when considering the cases indicated in the criminal case files.

First of all, they are related to the general conditions of the trial (Chapter 50 of the Criminal Procedure Code) and the difference from the general conditions of the preliminary investigation (Chapter 43 of the Criminal Procedure Code). In addition, if the pre-trial proceedings are characterized by confidentiality, limited use of information collected by the investigator or investigator, one of the general conditions of the court session is the transparency of the substantive consideration of the case (Article 18 of the Criminal Procedure Code).

In this regard, a number of criminal-procedural measures listed in Article 270 of the Criminal Procedural Code cannot be used at court stages, that is, in the conditions of their openness. In this regard, L.V.Brusnitsyn rightly states that "although the investigator is included in the Criminal Procedural Code among subjects with the right to apply security measures, it is clear that the possibility of applying this or that security measure by a particular subject depends on his general authority." <...> "For example, it is clear that the investigator and interrogator do not have the right to make a decision on the use of a security measure such as a closed court hearing." [1; 7-11]

Ensuring the safety of the participants in the criminal proceedings before the court is based on confidentiality and is additionally regulated by the Code of Criminal Procedure, legal norms and other documents, including departmental regulatory legal documents.

Analyzing the features of ensuring security measures during court hearings, we note that Article 270 of the Criminal Procedural Code provides for the provision of security for participants in five criminal-procedural criminal proceedings. The criminal-procedural nature of these measures is related to the fact that they are all regulated by the procedural law (Criminal Procedural Code) and are used by authorized officials in the course of criminal proceedings.

Despite the fact that the opportunities to ensure the protection of the participants in the criminal proceedings have a positive meaning, there are certain problems in its implementation in the law enforcement bodies. For example, the report of the Human Rights Representative of the Oliy Majlis (Ombudsman) indicates that about 60% of victims of crime prefer not to contact law enforcement agencies, because they are not sure that they will not be protected. The effectiveness of criminal-procedural security measures is insufficient.

One of the necessary conditions for the protection of the participants in court proceedings is the basis for the application of state protection measures. Thus, the existence of a threat to their safety due to their participation in the criminal proceedings is the basis for the application of these measures.

The basis for applying security measures is a crime committed by the victim, witness or other participants in the criminal proceedings, as well as their



close relatives, relatives or close persons, or threats of violence, destruction or damage to their property, or other dangerous illegal actions. It is shown that there is sufficient evidence.

Now, if we focus on whether there is enough information about the threat against the participant of the process. The law does not specify the quality and procedural nature of this information, so it may include not only criminal-procedural content, but also other things, for example, rapid search. In addition, such information can be obtained by the judge before the start of the court session, for example, orally (in writing) from the victim or his representative. In such a situation, in our opinion, the judge should refuse to consider this application (appeal) submitted before the start of the court session and consider it in the preparatory part of the court hearing, clarifying the views of the parties.

The content of such sufficiency is the concept of evaluation, which is determined by the judge at the hearing in relation to the specific situation in the criminal case.

Ensuring the safety of participants in the criminal proceedings is considered by the authorized person only when there is sufficient evidence of the existence of the following threats to individuals: if criminals threaten certain participants, then they are already aware of it. In this regard, ensuring the safety of the participants in the criminal process becomes meaningless or ineffective.[2; pp 30-34] Also, A. Yu. Epikhin rightly stated that security is already threatened and not when the participant of the process is illegally influenced, but when such a potential opportunity is objectively should start when available. At the same time, it justifies the mandatory existence of the threat sign as objectivity. [3 pp 60-64]

As for the judicial process, the norms of the Criminal Procedural Code determine the possibility of applying the security of the participants of the following criminal-procedural criminal proceedings:

- 1) closed court session (Article 18 of the Criminal Procedure Code);
- 2) interrogating the witness without disclosing real information about the witness's identity in circumstances that preclude visual observation by other participants in the trial (Article 270 of the Criminal Procedure Code).

The closed court session is aimed at ensuring its information security. The content of such a meeting may include the following prohibitions:

- a) persons interested by the defendant and other outsiders cannot participate in court sessions;

b) audio and video recordings, as well as photography, are prohibited during court proceedings.

At the same time, in the opinion of A. Yu. Epikhin, it is not enough to apply only the listed measures, and the court, if there are grounds for this, may see (obligatory) to ensure the safety of the participants of other additional criminal proceedings of a closed nature listed below:

- organization of "safe waiting rooms" for victims and witnesses of crimes;
  - equipping the courtroom to "block" victims and witnesses from the defendant and citizens present in the courtroom;
  - before entering the courtroom or the courtroom, document verification and (or) personal search of all persons, including the use of technical means (metal detectors), to check things for the purpose of identifying weapons or other general dangerous items removed from civilian circulation;
  - prohibiting an individual or persons from entering the court building or the court session hall on the grounds of protection of the subjects of the criminal proceedings;
  - questioning individual witnesses, victims and other persons without public participation in an open (public) trial;
  - obtaining from the trial participants and other persons present in the courtroom a signature not to disclose the information known to them in the course of criminal proceedings and that they participated in the trial;
  - immediately expel the witnesses from the closed courtroom after questioning if their further presence is not necessary;
  - interrogation using video equipment when the protected person is outside the courtroom;
  - interrogating the protected persons in the absence of the defendant;
  - limiting the availability of information about the protected person;
  - showing videotaping (announcement) of statements given by persons being protected at the preliminary investigation stage in the courtroom without summoning to the courtroom;
  - interrogating the person being protected by judges without the participation of not only the defendant, but also other participants of the trial;
  - participation of protected persons in court under a pseudonym (on changed biographical data, including the use of a pseudonym in a court decision).[4; p 69]
- L.V. Brusnisinsa completes this list:



- surrounding the entire perimeter of the court building by police officers;

- ensuring the secret exit of witnesses and other persons by transporting them in special transport under conditions that exclude their observation by unauthorized persons;

- installation of coverings on windows where listening, observation or video recording is possible;

- if the criminal case was considered in a closed court session, public announcement of only the introductory and decision parts of the sentence. In this case, the information about the testimony of the victims, witnesses of the prosecution, given in the reasoning part of the sentence, will not be disclosed.[5; pp 48-49]

According to the right opinion of E.G.Benderskaya, "the safety of not only the defendant, but also the victim and witnesses should be ensured during the trial. The court has the right to interrogate the victim or witness without revealing the true identity of the victim, excluding visual observation by other participants in the trial. In such conditions, the defendant's right to participate in the trial is not limited in any way."[6 pp 25-26]

Now, let's focus on some of the problems of using this type of query. For example, the court gives the parties the right to get acquainted with the evidence, the specified information, if they have made a reasonable request to disclose the true information about the person they have given, that is, in essence, they are obliged to disclose information about the protected person.

Such a rule (examination without revealing the facts and excluding the visual observation of the participant of the process) may to some extent limit the right of the defendant and his defense attorney to check the evidence - questioning.

The court will decide the main issue of criminal proceedings - guilt (innocence) and criminal punishment (exoneration) based only on the evidence examined at the court session.

At the same time, strict requirements for this procedure are defined in the criminal procedural legislation. They primarily focus on the mandatory nature of admissible evidence. Evidence deemed inadmissible cannot have legal force and cannot be the basis for a conviction based on Article 88 of the Code of Criminal Procedure. In particular, the evidence that was not examined at the trial cannot be the basis for a guilty verdict.

The issue of the presence or absence of grounds for reading the testimony of the victim or witness at the court session is directly related to the

defendant's right to question the persons who testified against him, it is of actual importance and has been announced in separate international documents.[7]

As a general rule, both the victim and the witness must be present at the hearing and testify under the general condition of immediacy and orality in the criminal case before the court. If they do not appear, the norms of the CPC stipulate that the information can be read out during the preliminary investigation or court hearing. In this case, they can be used both when the parties refer to them in the discussion, and in the subsequent process when the court itself makes a decision in the consultation room.

In the literature, the problems of legal regulation of witness interrogation,[8; pp 133-136] ensuring the safety of him and other persons,[9; p 65] including the victim, have been sufficiently studied.[10]

Note that there are two types of evidence:

1) information during the preliminary investigation and

2) information received at the court session.

At the same time, it can be read by a person who is giving testimony for the first time, which was previously given at the court hearing, was not questioned in the pre-trial investigation during the trial.

In our opinion, it is necessary to read the testimony and then determine the following criteria by which it is possible to recognize their admissibility as evidence in a criminal case:

- failure to ensure security;

- preliminary interrogation in pre-trial proceedings;

- conducting a hearing in the pre-trial proceedings of the case;

- video recording of the interrogation process;

- the possibility of using a video conference;

- confirmation of the read testimony with other evidence in the case, that is, the read testimony is not in the unit of the volume formed by the prosecutor's office.

The new grounds for reading testimony in court are an additional guarantee of the safety of the witness or the victim. If a witness or victim has been unlawfully influenced to prevent him or her from appearing in court to testify, his or her testimony may be read aloud. The absence of obstacles to the reading of testimony by the court is evident even if the victim or witness has died. Consequently, it becomes pointless to physically destroy the protected persons in order to fight against the investigation of the criminal case and its consideration in the court session.

In conclusion, the purpose of ensuring the safety of the participants in the criminal procedure,



including the application of the grounds for the disclosure of the testimony of the participants in the court session, is to increase the effectiveness of the criminal procedure and to strengthen the protection of persons who contribute to criminal justice.

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