

Measures Ensuring Security of Participants of Criminal Proceedings: International Legal Aspect

Oleg A. Zaytsev¹; Aleksandr Yu. Epikhin²; Anna A. Dmitrieva^{3*}; Andrei V. Mishin⁴

¹The Institute of Legislation and Comparative Law under the Government of the Russian Federation, Moscow, Russian Federation.

¹nauka@mael.ru

²Kazan Federal University, Kazan, Russian Federation.

²doc@epihin.ru

^{3*}South Ural State University, Chelyabinsk, Russian Federation.

^{3*}annadm@bk.ru

⁴Kazan Federal University, Kazan, Russian Federation.

⁴av-mishel@mail.ru

Abstract

The article describes international legal positions ensuring the safety of participants in criminal proceedings. The international community has developed documents that provide states with unified and universally accepted legal provisions to regulate the statutory position of a participant in criminal proceedings. The national legislation should be brought in line with the global requirements. Generalizing the existing international legal instruments, the authors identify universal safety measures protecting participants in criminal proceedings. The protection of witnesses and victims is a guarantee of establishing the defendant's guilt. Assistance in criminal proceedings facilitates the effective and timely collection of evidence.

Key-words: International Cooperation, Legal Positions, State Protection, Victim, Witness.

1. Introduction

Legal integration of Russia, Europe and the whole world involves efforts of different States in harmonizing and aligning legal standards and doctrines. It is one of the fundamental factors of the creation of a modern unified legal space. The aim of international regulations is to have a special influence on the perspective standardization of the universal jurisdictions of each State, taking into

account their national realities, without prejudice to others, i.e. on the basis of the legal principle of formal equality (Zorkin, 2017: 503).

Under Article 1, Paragraph 3, of the Criminal Procedure Code of the Russian Federation, universally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of the legislation of the Russian Federation, regulating criminal proceedings.

International cooperation in criminal matters is an effective instrument for optimizing the coordinated activities of national law enforcement and judicial bodies to combat crime on the basis of universally recognized principles and norms of international law.

The problems of applying foreign experience to the legislative and law enforcement process of ensuring the safety of participants in criminal proceedings are in the focus of research of many Russian scholars (Brusnitsin, 1998; Dmitrieva, 2015; Epikhin, 2004; Epikhin et al., 2016; Verin et al., 2016; Zaytsev, 2014; Zaytsev et al., 2017).

Ensuring the safety of participants in criminal proceedings is relevant not only in Russia, but also in other countries. This follows from the published works of such foreign experts as Monica Semrad, Thea Vanags, Navjot Bhullar (Semrad et al., 2014), Rezana Balla (2012), Markus Eikel (2012), Felföldi Enikő (2006), Pamela E. Hart (2009), Sangkul Kim (2016), Risdon N. Slate (1997), Varinder Singh (2016), Gert Vermeulen (2005), Brendan O'Flaherty and Rajiv Sethi (2010).

According to a generally accepted rule, a special role in the field of criminal justice is given to raising standards applicable to the competent state bodies in terms of ensuring security of participants in criminal proceedings. This problem is currently relevant (Makeeva, 2016; Zaytsev, 2017).

2. Methods

The following methods were used in the study: observation, inductive and deductive reasoning, the use of laws of formal logic, comparative analysis, formal legal method.

3. Results

1) Application of international standards and laws of foreign countries in Russian criminal proceedings was determined; 2) a strong tendency in changes in theory, legislation and practice of protecting participants in criminal proceedings from 1991 to 2017 was revealed; 3) main long-term issues to be studied were identified.

4. Discussion

There is by now a significant national experience in implementation of legal mechanisms to ensure the safety of participants in criminal proceedings. Nevertheless, generalization and comparison of existing international and national legal documents in this field testifies to the fact that there are certain differences in them. Many international legal instruments (conventions, declarations, resolutions, etc.) address specific issues of ensuring the safety of victims, witnesses and other participants in criminal proceedings.

The main international legal instrument, which establishes the basis for legal protection and security of a participant in criminal proceedings, is the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the Protocols thereto (Den Berghe, 2010; The European Convention..., 2001). It should be noted that with regard to the criminal process, the provisions of the Convention equally protect both the rights and safety of the person who committed the crime and the person who was the victim of the crime. At the same time, the universal legal norms on protection and security of participants in criminal proceedings, established on the basis of the application of the Convention, can be expanded by the state through legislation and implemented in law enforcement practice.

The implementation of conventional provisions at the national level is controlled by the action of the European Court of Human Rights. In its law enforcement practice, a special place is occupied by the development of fundamental international principles and norms for the application of national measures of the protection for participants in criminal proceedings. The problems of national legal regulation of the execution of the European's Court judgments have a negative impact on the effectiveness of security guarantees and safety of participants in criminal proceedings. In this regard, retrial and review of cases by national courts could serve as an effective measure to address the consequences of violations of the Convention's norms caused by an unfair domestic procedure.

The judgments of the European Court as an element of the mechanism of criminal procedure regulation have a preventive effect on the national legal system. The legal positions of the European Court, included in the final judgments of the Court, can serve as the basis for the decisions rendered by the courts of the Russian Federation (Article 413, Paragraph 4(2), of the Criminal Procedure Code of the Russian Federation).

The authors of the present article believe that the practice of Russian citizens filing complaints to the European Court should be normatively incorporated in a supplementary article in the Criminal Procedure Code of the Russian Federation, which would commit the court, the prosecutor, the

investigator and the interrogator to compare the law applied in the specific case to the norms of ratified international legislation in order to avoid any possible violation of human rights and freedoms.

The authors believe that the case law on direct application of the judgments of the European Court in the Russian legal system requires further improvement. It will be necessary in this regard to consolidate the status of the legal positions of the European Court and the mechanism of working with them in domestic criminal proceedings by a special legislative act. This will improve the legal regulation of the protection and ensuring the security of the person involved in the field of criminal proceedings.

It seems reasonable to establish a position of an international expert in courts in order to study, summarize and analyze the practice of the European Court, obtain a better and more comprehensive understanding of generally accepted principles and norms of international law, and explain them to the parties and the court. Such a position in the courts of general jurisdiction can contribute to the development of modern legal thinking of judges necessary for the timely protection of citizens' rights. In this regard, it seems reasonable to supplement Article 58 "Expert of the Criminal Procedure Code of the Russian Federation," with Part five, which reads as follows: "an international expert is a person having a particular form of professional education and expertise in international relations and international law, enlisted to provide further explanations to Parties and the court for the issues on application of generally accepted principles and norms of international law, as well as international agreements of the Russian Federation in judicial decisions".

Common European positions on ensuring the security of participants in criminal proceedings are reflected in many international documents. Thus, the Code of Conduct for Law Enforcement Officials (1979) (The Code of Conduct..., 1990: 319-325) requires the police and other law enforcement officers to respect human dignity and human rights in the performance of their duties. It requires them to keep personal information confidential, which may relate to individual privacy or be detrimental to the interests of such persons and their reputation.

The positive practice of legal regulation of measures to ensure the safety of participants in criminal proceedings are: the Convention "Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (1984) (Resolution 39/46..., 1995); Guidelines on Crime Prevention and Criminal Proceedings (1992); the Council of Europe Committee of Ministers Recommendation No. R(85)11 CoE-CM "On the Standing of Victims in Criminal Proceedings" (1985) ("GARANT" database); Recommendations for implementing the Declaration of Basic Principles of Justice for

Victims of Crime and Abuse of Power (adopted by UN Economic and Social Council Resolution 1989/57 of 24 May 1989).

International legal norms and principles regarding the application of security measures in relation to victims and witnesses are also covered by the Rome Statute of the International Criminal Court, adopted in Rome on 17 July 1998 (signed in Rome on 13 September 2000, but not ratified by the Russian Federation) (“TEKHEXPERT” database); Recommendations No. R(2003) 12 CoE-CM “On Dissemination of Information Regarding Criminal Processes through the Mass Media” of 10 July 2003; Recommendations 9(2005) of the Committee of Ministers of the Council of Europe “On the Protection of Witnesses and Collaborators of Justice” of 20 April 2005 (“Lawmix” Legal portal); Council of Europe Recommendation No. R(2006)8 CoE-CM “On Assistance to Victims of Crime” of 14 June 2006 (Portal for extrajudicial procedures...); etc.

The generalization and analysis of the current international legislation relating to criminal proceedings showed that the generally accepted criminal procedural and other security measures (in this case, other security measures are defined differently: non-procedural, extra-procedural, organizational, and special) for protected persons are the following:

- Provision of weapons, means of individual protection and alarm system;
- Temporary relocation to the places that ensure safety (foreign countries included);
- Change of work, service or study place;
- Personal protection, protection of residence;
- Substitution of driver documentation and vehicle number plates;
- Change of data in the person’s file and biographical information, including the data on family members;
- Change of appearance and plastic surgery;
- Presentation of testimony using audio files, video recordings or telecommunications (including teleconference with distorted voice) and other alternative methods for giving testimony;
- Use of videoconferencing in the court proceedings;
- Providing the opportunity to give testimony in a separate room;
- Restriction of access to information about witnesses and victims;
- Use of evidence obtained during the preliminary investigation without summoning the witness to protect them from undesirable disclosure of information in court;
- Prohibition of presence or limited presence of media representatives and/or the public throughout the trial process or its part;

- Use of special means preventing identification of witnesses or collaborators in criminal proceedings (e.g. screens or curtains hiding protected persons or distorting their voice).

5. Summary

- A. The authors believe that such state institutions as constitutional courts shall actively participate in the implementation of supranational standards for the protection and ensuring the safety of participants in criminal proceedings. In most states, Constitutional Court proceedings as the administration of criminal proceedings are considered as a guarantee for the observance of the rights and safety of participants in criminal proceedings. Through the application of the norms of international law by Constitutional Courts, the protection and security of the participants are now becoming more justified, since the purpose of the application of international law in specific cases is, on the one hand, the identification of the deep content of national legal norms, and on the other, the abolition of deficient laws and the support of the rule of law (Oganesyanyan, 2017).
- B. The Constitutional Court of the Russian Federation does a lot for the unity of legislative and judicial practices to protect the rights and ensure the safety of participants in criminal proceedings. The legal positions of the Constitutional Court of the Russian Federation in criminal proceedings are of legal procedural importance. Its recognition of the law that was applied by the court in the criminal case but was inconsistent with the Constitution provides grounds for reopening criminal proceedings in the light of new circumstances (Article 413, Paragraph 4(1) of the CPC) or a legal basis for the review of criminal cases in court.
- C. In many countries, the Commissioner for Human Rights (Ombudsman) plays an important constructive role in protecting the rights and ensuring the safety of participants in criminal proceedings.
- D. The analysis of the activities of the Commissioner for Human Rights in the Russian Federation shows that appeals by citizens are often related to the issues of pre-trial and trial proceedings on criminal matters, including the protection and ensuring of security of participants in criminal proceedings. The authors of the present article believe it is reasonable to establish in the Russian Federation an institution for specialized Ombudsmen for criminal matters and to consolidate their legal status in the Criminal Procedural Code of the Russian Federation as a participant in criminal proceedings. This will create a procedural competence ensuring that the Commissioner can get him(her)self familiar with the criminal

case and apply to the courts of the supervisory authority (see also: Mishin, 2010; Muratova, 2006; Olenev, 2005).

- E. Currently, the position of a specialized Commissioner for the Rights of Victims of Crime exists in some foreign countries. Thus, in the United States, the activities of such an Ombudsman are regulated by 28 of the Code of Federal Regulations, para. 45.10. In Poland, the protection of the interests of victims of crimes within the framework of general competence is ensured by the Commissioner for Civil Rights and the Children's Rights Commissioner (Artemov et al., 2017: 151, 165).
- F. It should be noted that the international legislator does not regulate issues directly related to the legal mechanism for ensuring the safety of participants in criminal proceedings and leaves the decision to be made within the national legislation of a State.
- G. Recently, when evaluating the opportunity of the law of the European Council on the safety of witnesses and victims of crimes, the European Commission proposed to postpone the relevant legislative initiatives for a certain period, reserving the right to monitor the situation on this issue. In this regard, the proposals of scholars and law-appliers of different countries on the creation of the International Convention on the Safety of Participants in Criminal Proceedings are especially relevant.

6. Conclusions

Thus, the general legal positions of the international community towards the formation of universal norms for ensuring the security of the participants in criminal proceedings should be used both in Russian legislation and in law enforcement practice.

In regulations of the institution for ensuring the safety of the participants in domestic criminal proceedings, the legislator is currently making consistent efforts to further improve the safety of participants in criminal proceedings. As a novelty of the legislation on state protection of participants in the criminal proceedings, the following laws should be noted:

Federal Act of 07.02.2017 No. 7-FZ “On introducing modifications to the Federal Act “ the State Protection of Judges and Law-Enforcement and Inspection Officials” and Federal Act “On State Protection for Victims, Witnesses and Other Parties to Criminal Proceedings”; Federal Act of 28.03.2017 No.46-FZ “On the Reforms of the Codes of Criminal Procedure of the Russian Federation”, Federal Act of 28.03.2017 No.50-FZ “On the Reforms of the Codes of Criminal Procedure of the Russian Federation to Improve the Conditions for Implementing the Programme for

the State Protection”; Federal Act of 17.04.2017 No. 73-FZ “On the Reforms of the Codes of Criminal Procedure of the Russian Federation”.

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