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THE ROLE OF PARTICIPANTS IN THE PROCESS IN THE PRELIMINARY RECORDING OF TESTIMONY

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ABSTRACT

This article highlights the essence of the institution of preliminary securing of impressions and analyzes the circle of participants in the process of securing impressions. Also, having studied foreign experience, conclusions, proposals and recommendations were made for the preliminary confirmation of the testimony of both an expert and a specialist.

KEYWORDS

Testimony, reinforcement, witness, victim, civil plaintiff, expert, expert, law, freedom, participants in the process.

INTRODUCTION

Preliminary recording of evidence is one of the procedural actions that must be performed by the court on the basis of procedures related to the judicial investigation, and is a special type of interrogation. Before a scientific analysis of the forensic investigative action associated with interrogation, it is worth clarifying precisely the concept of the investigative action.

In the legislation of most foreign countries, the institution of preliminary securing of testimony is reflected in the sense that testimony is subject to judicial bail. In this way, the testimony of witnesses and victims is preserved and corroborated in advance. The

National Encyclopedia of Uzbekistan gives a broader description of the word “deposit” (Latin depositum - contribution, deposit) - “deposits in a bank, securities (shares and bonds) transferred for storage to credit institutions, as well as funds.[1]”

In the explanatory legal dictionary of the English language, the concept of “bail” is interpreted as the interrogation of a witness or parties before the start of trial in criminal and civil courts. Deposit indicators are performed orally, and at this time questions are asked to the depositor (interrogated).[2] Also in the legal sphere of foreign countries - giving testimony,

expressing the meaning of giving testimony under oath[3].

According to the national Criminal Procedure Law, it is established that only the testimony of the witness, victim and civil plaintiff is corroborated in advance. For this reason, it is important for us that we study individuals individually, whose assessments are reinforced in advance.

Among the persons whose testimony is recorded in advance, one of the main ones is the witness, and in the legislation the witness is classified as another person participating in the criminal process. Any person who may know the circumstances to be established in a criminal case may be summoned to testify as a witness (Article 66 of the Code of Criminal Procedure).

The explanatory dictionary defines the concept of a witness as “a person who saw with his own eyes the events that occurred or was specially called to the place where the event occurred in order to confirm that they really occurred.” On the other hand, the concept of “evidence” is interpreted as “evidence of what someone saw or knew; to be a witness[4].”

Witness testimony plays a key role in most criminal cases. Therefore, the process of evidence in a criminal case is unthinkable without the testimony of witnesses.

The second person whose testimony is recorded in advance is the victim, and the victim is considered one of the persons representing his interests in criminal proceedings.

A victim is an individual or legal entity who has suffered moral, physical, or material damage as a result of the commission of a crime, as well as as a result of a socially dangerous act or an act that entailed a real risk of

causing such harm, if there is evidence confirming the commission of a crime[5].

Scientist-lawyer T.N. Tillaev believes that the victim is the subject of the criminal process and only after the inquirer, investigator or prosecutor makes a decision or decree recognizing him as a victim, he becomes a victim[6].

In accordance with our criminal procedural legislation, the testimony of a civil plaintiff can also be recorded in advance (Article 1212 of the Code of Criminal Procedure). They are involved as civil plaintiffs if there is evidence that a crime or the act of an insane person who poses a public danger caused harm to an individual, enterprise, institution or organization (Article 56 of the Code of Criminal Procedure).

Relations related to a civil claim in a criminal proceeding arise in accordance with Article 276 of the Code of Criminal Procedure from the moment a person who has suffered property damage as a result of a crime or a socially dangerous act committed by an insane person files a claim orally or in writing. If the inquiry officer or investigator who received this statement of claim really believes that this person has suffered property damage, he issues a decision recognizing the person as a civil plaintiff in accordance with Article 277 of the Code of Criminal Procedure. A civil action may be filed with a criminal complaint during the time between the initiation of the criminal case and the commencement of the trial. The difference from the victim is that not only individuals, but also legal entities can be involved as civil plaintiffs[7].

According to our current criminal procedural legislation, the circle of persons whose testimony is subject to preliminary corroboration includes only the witness, the victim and the civil plaintiff, of whom there

is no mention of preliminary corroboration of the testimony of other participants in the process.

Accordingly, expanding the circle of persons whose testimony is recorded in advance not only ensures the completeness of the process of proof in the case, but also serves to ensure the rights and freedoms of the individual, as well as the effective implementation of the tasks of criminal procedural law.

As you know, the issue of ensuring a full and fair consideration of the case by preliminary securing the testimony of the witness and the victim is of particular relevance. A.S. Gambaryan and A.S. Simonyan believes that it becomes very important for both the witness and the victim to corroborate the testimony of an expert or specialist in advance. Because only an expert who has given the exact same opinion will be fully informed and will be able to give accurate evidence to give more clarity to the expert's conclusion during the trial[8]. Therefore, we must consider the possibility of including an expert and specialist in the circle of participants in the process, whose testimony will be recorded in advance.

In most cases, when considering a criminal case during the trial, the expert and specialists who gave an opinion on the criminal case are called in, and their conclusions are clarified through questioning. The reason for the petition of the defense attorney or one of the parties to the case may also be petitions for the emergence of additional questions about the need to clarify the expert's conclusion.

Experts and specialists may be summoned to trial in the following cases:

- the emergence of additional new questions regarding the pre-trial conduct of the case or its conclusion made at the trial stage;

- in order to clarify the conclusion made during pre-trial proceedings in the case or at the trial stage;

- if any misunderstandings arise regarding the given conclusion and the need to substantiate them;

- if the court deems it necessary to check the conclusion of the expert who gave the conclusion, through additional questioning, whether it is written correctly;

- if the expert's conclusion is not clear enough and there is no need to conduct an additional check to fill the deficiencies;

- when it becomes necessary to clarify the methods used by the expert.

The expert's testimony is accepted for the purpose of clarifying and explaining his conclusion. An expert can be questioned only on the basis of the conclusion he has made and the expert examinations he has personally conducted. It is prohibited to interrogate an expert until he gives an opinion[9].

It is worth noting that in some cases the expert who gave the opinion of the trial or the expert who gave evidence cannot be provided. This is due to the fact that he may have gone on a long business trip or, due to a serious deterioration in health, gone abroad, leaving his career as an expert. And the above problems can be solved by first confirming the testimony of an expert.

When pre-fixing testimony, the intended goal is not achieved by calling an expert different from the expert who gave an opinion on the case. The reason is that no one other than an expert who has done exactly the same research on each given conclusion will have sufficient information, and it would be logically incorrect to question it. In addition, since each expert's

research methods are different, another expert cannot explain how the study conducted the methods. Therefore, during the preliminary investigation, it will be necessary to interrogate exactly the expert who gave the opinion and confirm his testimony in advance.

When studying the norms of criminal procedural legislation of foreign qualifications governing this procedural rule, one can observe:

1) Article 26 of Chapter 198-201 of the Code of Criminal Procedure of the Kyrgyz Republic specifies the institution of preliminary corroboration of testimony, which establishes that only the testimony of the victim and witness can be corroborated[10];

2) Article 217 of the Code of Criminal Procedure of Kazakhstan also establishes that preliminary recording of testimony is only possible for the victim and witness[11];

3) Article 225 of the Code of Criminal Procedure of Ukraine establishes that, unlike the legislation of other states, in addition to the victim and witness, the testimony of a captured serviceman, taken in accordance with the decision of an authorized person, can also be supported in advance[12];

4) Article 109 of the Code of Criminal Procedure of the Republic of Moldova establishes that only the testimony of a witness is subject to preliminary confirmation[13];

5) Article 691 of the Code of Criminal Procedure of the Republic of Estonia establishes that, as in the legislation of the Republic of Moldova, only the testimony of a witness must be recorded in advance[14];

6) Article 173 of the Code of Criminal Procedure of the Republic of Lithuania also states that, as in the

legislation of most countries, the testimony of the victim and witness can be recorded in advance[15].

According to the above, the legislation of almost all states provides for the possibility of pre-recording the testimony of a witness, while in some states, namely the Kyrgyz Republic, the Republic of Kazakhstan, the Ukrainian Republic and the Lithuanian Republic, in addition to the testimony of a witness, the testimony of the victim can also be pre-recorded. However, only the Code of Criminal Procedure of Ukraine states that, in addition to the victim and the witness, it is possible to corroborate in advance the testimony of a captured serviceman, in accordance with the decision of an authorized person. In addition, we see that the legislation of all the foreign countries analyzed does not reflect the preliminary confirmation of the testimony of an expert or specialist.

When discussing the participants in the process, whose testimony will be recorded in advance, we consider it advisable to expand the circle of these persons, including in it, in addition to the witness and the victim, an expert and specialist. We believe that in this way we achieve an increase in the efficiency of the institution of preliminary confirmation of testimony and thus ensure greater completeness of the work.

Also in the questionnaire, conducted to study the opinion of the inquirer, investigator and judges, the question is asked: "which participants in the process would be advisable to include in the circle of persons to whom testimony will be assigned in advance? the fact that 80% of respondents answered that "the expert and specialist must be included in the circle of persons whose testimony will be recorded in advance" also indicates the relevance of this problem in forensic investigative practice today.

In addition, during our study of sentences in criminal cases available in the Angren City Court dated June 11, 2022, it was found that when required to interrogate several experts and specialists during the judicial investigation, they, for various reasons, traveled outside of Uzbekistan or for health reasons do not have the opportunity to interrogate them[16].

Based on the above considerations, it is necessary to amend Article 1211 of the Code of Criminal Procedure and state them in the following wording:

“Preliminary confirmation of evidence consists of interrogating a witness, victim (civil plaintiff), expert and specialist at the request of the prosecutor at the stage of pre-trial proceedings in the case, which is carried out by the court according to the rules of trial provided for by this Code.”

It is necessary to amend part one of Article 1212 of the Code of Criminal Procedure and state them in the following wording:

In cases where there is reason to believe that the interrogation of a witness, victim (civil plaintiff), expert and specialist for objective reasons (travel outside the Republic of Uzbekistan, the presence of a serious and long-term illness that precludes participation in criminal proceedings) will become impossible for pre-trial proceedings or subsequent trial, their testimony may be pre-recorded.

It is also necessary to amend part one of Article 1214 of the Code of Criminal Procedure and state them in the following wording:

Preliminary recording of the testimony of a witness, victim (civil plaintiff), expert and specialist is carried out in accordance with Article 442 of this Code in a court hearing with the participation of the inquirer, investigator, prosecutor, suspect, accused, his defense

attorney and, if necessary, other participants in the process in compliance with the order interrogation in court.

The implementation of the above proposals, along with a full and objective consideration of criminal cases in practice, contributes to the adoption of a fair decision.

REFERENCES

1. Ўзбекистон миллий энциклопедияси. Т. – Б.201. // <http://n.ziyouz.com>
2. The free dictionary by Farlex Source. URL: <http://legal-dictionary.thefreedictionary.com/deposition> (Электрон манбага мурожаат этилган вақт: 22.02.2023).
3. Мюллер В.К. Англо-русский словарь: 55 000 слов. СПб: Издательский дом «Литера», 2008. 656 с.
4. Ўзбек тилининг изоҳли луғати / А.Мадвалиев таҳрири остида. 5 жилдли. Ж.1. – Тошкент: “Ўзбекистон миллий энциклопедияси” Давлат илмий нашриёти, 2006. – Б. 514-515.
5. Тураева Д.Р. Жиноят процессида жабранувчининг ҳуқуқ ва манфаатларини муҳофаза қилиш механизмини такомиллаштириш: Юрид. фан. номзод.(PhD) дисс. – Тошкент: ИИВ Академияси 2020. – Б. 43.
6. Тиллаев Т.Н. Жиноят процессида фуқаровий даъво: Юрид. фан. номз. ... дис. – Тошкент: ИИВ Академияси, 2010. – Б. 94.
7. Мавлонов Т.А. Жиноят натижасида етказилган мулкый зиённи қоплашни такомиллаштириш: Юрид. фан. номзод.(PhD) дисс. – Тошкент: ИИВ Академияси 2023. – Б. 92.
8. Гамбарян А.С., Симонян С.А. Судебное депонирование показаний в современном

- уголовном процессе: монография – Москва: 2016. – С. 94, 95.
9. Ўзбекистон Республикасининг Жиноят-процессуал кодекси // <https://lex.uz/acts/111460> Ўзбекистон Республикаси Қонун ҳужжатлари маълумотлари миллий базаси. (05.07.2023 йилгача бўлган ҳолати)
10. Уголовно-процессуальный кодекс Кыргызской Республики от 2 февраля 2017 года (с изменениями и дополнениями по состоянию на 22.07.2021 г.). [Электронный ресурс]. Режим доступа: https://online.zakon.kz/Document/?doc_id=36313326&pos=5;88#pos=5;88 (Бесплатная онлайн-база данных) / (Электрон манбага мурожаат этилган вақт: 12.07.2023).
11. Уголовно-процессуальный кодекс Республики Казахстан от 4 июля 2014 года (с изменениями и дополнениями по состоянию на 01.07.2023 г.). [Электронный ресурс]. Режим доступа: https://online.zakon.kz/Document/?doc_id=31575852 (Бесплатная онлайн-база данных) / (Электрон манбага мурожаат этилган вақт: 12.07.2023).
12. Уголовный процессуальный кодекс Украины от 13 апреля 2012 года (с изменениями и дополнениями по состоянию на 21.03.2023 г.). [Электронный ресурс]. Режим доступа: https://continent-online.com/Document/?doc_id=31197178 / (Бесплатная онлайн-база данных) (Электрон манбага мурожаат этилган вақт: 12.07.2023).
13. Уголовно-процессуальный кодекс Республики Молдова от 14 марта 2003 года (По состоянию на 31.07.2023) [Электронный ресурс]. Режим доступа: <http://base.spininform.ru> (База данных законодательства стран СНГ) / (Электрон манбага мурожаат этилган вақт: 12.07.2023).
14. Уголовно-процессуальный кодекс Эстонии от 08 марта 2014 года [Электронный ресурс]. Режим доступа: <https://www.wipo.int/wipolex/ru/legislation/details/1291> (Бесплатная онлайн-база данных) / (Электрон манбага мурожаат этилган вақт: 12.07.2023).
15. Уголовный процессуальный кодекс Литовской Республики от 23 декабря 2010 года [Электронный ресурс]. Режим доступа: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.163482/asr> (Бесплатная онлайн-база данных) / (Электрон манбага мурожаат этилган вақт: 12.09.2023).
16. Интернет тармоғида эълон қилинган суд қарорлари <https://public.sud.uz/report/CRIMINAL> (электрон манбага мурожаат қилинган сана: 09.09.2023)