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GUARANTEES TO ENSURE THE RIGHTS, FREEDOMS AND INTERESTS OF PARTICIPANTS IN THE CRIMINAL PROCEEDINGS IN THE REPUBLIC OF UZBEKISTAN

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Annotation
This article provides a comparative analysis of the legislation of foreign countries, ensuring the rights and legitimate interests of the victim of criminal attacks.

Keywords: rights of victims, criminal legal protection, victim, crimes, state compensation, rights, freedom, protection, victimology.

Introduction

The protection of the rights and freedoms of citizens is a priority of every democratic State. With the adoption of the Basic Law of our country - the Constitution of the Republic of Uzbekistan - the construction of a humanistic rule of law democratic state is defined as the main goal, as well as, devotion to the ideas of human rights and state sovereignty, democracy and social justice was declared, the supremacy of universally recognized norms of international law was recognized.

As is well known, Uzbekistan is implementing policy measures, the main priorities of which are to ensure the rule of law and the reliable protection of citizens' rights and freedoms, as well as to improve access to justice.

Without the establishment at the national level of an effective mechanism for the promotion and protection of human rights, a just civil society and a democratic State governed by the rule of law cannot be established. The realization of individual human rights and freedoms is a prerequisite for the sustainable and dynamic development of any State.

Presidential Decree of 10 August 2020 on measures to further strengthen guarantees for the protection of the rights and freedoms of the individual in judicial investigation One of the main areas of further improvement of judicial investigation activities is the ensuring of unconditional observance of individual rights and freedoms, Improving the quality of proceedings, reviewing the system of collection, consolidation and evaluation of evidence in criminal proceedings, taking into account the standards of proof widely applied in foreign best practices.

In this regard, the issues of ensuring the rights of participants in criminal proceedings are an important link in the fulfillment of the tasks of criminal proceedings, as well as the subject of research by our scientists.

I would like to draw your attention to some problems in this area. One of them is the need to determine the status of the participants in the process.

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The concepts of "victim," "victim of crime," "victim" and "complainant" should be strictly distinguished. It is no coincidence that the term "victim" is enshrined in the criminal procedure law, and means a specific procedural figure with its criminal procedure rights and obligations explicitly enshrined in the current Code of Criminal Procedure of Uzbekistan. The term "victim of a crime" is broader than "victim" - every "victim" is "victim of a crime," but not every "victim of a crime" is "victim." The terms "complainant" and "victim of crime" overlap only partially and are broader or narrower than each other. On the one hand, far from every "victim of crime" - "applicant." The point is that not all "victims" want or can claim crimes against them. On the other hand, the number of complainants is much wider than the circle of "victims of crimes," since a person who has somehow become aware of the commission of a crime can declare a crime.

The term "victim of a crime" is broadly understood to refer to persons who have been individually or collectively harmed, including bodily or moral injury, emotional suffering, material damage or substantial impairment of their fundamental rights as a result of an act or omission that violates the existing national criminal laws of Member States, including laws prohibiting criminal abuse of power. The term "victim," as appropriate, includes close relatives or dependants of the immediate victim, as well as persons who have suffered harm while attempting to assist victims in distress or to prevent victimization.

The applicant is the person who reported the crime. The term "victim" should not be used for criminal procedure purposes. Reasonably, in the norms of the current Code of Criminal Procedure, he is not found, but everywhere we are talking about the victim. The etymology of the word victim in Russian allows us to refer here a fairly wide range of persons who have neither direct nor indirect relation to the commission of any crime.

For example, under article 54 of the Code of Criminal Procedure, if there is evidence to suggest that a person has suffered moral, physical or property harm as a result of a crime, he or she shall be recognized as the victim, as determined.

In our opinion, such a definition is clearly not enough. As can be seen from the text of the said article, the victim is recognized as such only after the ruling. And it should be made after the initiation of a criminal case and if, as indicated in the article, there is evidence that is also collected after the initiation of the case. The question arises - what is the status of the victim before the initiation of the case. Unfortunately, there is no answer in our legislation to this question. If a criminal case is initiated as soon as possible after a report of a crime is received, this situation does not cause special problems. However, in cases where pre-investigation verification is delayed for a certain period, the issue of ensuring the rights of the victim turns into a serious problem. The applicant does not have the right to testify, to present evidence, to file motions, challenges, to bring complaints and so on.

This problem also exists in some CIS member States; whose Code of Criminal Procedure provides for the institution of initiating criminal proceedings.

In conducting scientific studies on this issue, a number of scientists from the CIS countries, including Uzbek ones, conclude that it is necessary to give the applicant a procedural status during the pre-investigation period and endow him with appropriate rights. In this regard, scientists of the Academy

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of the Ministry of Internal Affairs have prepared draft amendments to the Code of Criminal Procedure and it is thought that it will be taken into account when developing a new Code of Criminal Procedure of Uzbekistan.

There are problems with recognition as an injured legal person and, accordingly, ensuring his rights. National legislation does not recognize a legal person as a victim. It is a civil plaintiff under the CPC. As you know, a civil plaintiff can be recognized as a natural or legal person who has suffered a crime of property damage. And if the crime is not completed and there is no material damage, then the recognition of a legal person by a civil plaintiff loses its logical meaning.

Therefore, in preparing the above draft, following the example of the Code of Criminal Procedure of the Russian Federation (art. 42), Kazakhstan (art. 71), Azerbaijan (art. 87), Armenia (art. 59) and Tajikistan (art. 42), it is stipulated that a legal person who has suffered from a crime must also be recognized as a victim and have the relevant rights.

In the criminal procedure legislation of the States of the post-Soviet space, including Uzbekistan, the institution of private and private-public prosecution is expanding and improving. Without going into the details of this institution, I would like to draw attention to the appearance in the criminal trial of a new person - a private prosecutor, who is not in our code. It seems that his rights should be much broader than that of an ordinary victim, since he essentially supports the prosecution in court and, to some extent, should have the authority of a public prosecutor. In this regard, it is necessary to include in our Code the institution of a private prosecutor, as an independent participant in criminal proceedings, with greater empowerment.

Almost all procedural codes of the countries of the post-Soviet space have rules providing for the procedural status of a private prosecutor, which will allow us not to invent a new bicycle.

Compensation for material damage resulting from the crime is one of the criteria for assessing the work of the investigating authorities. Indeed, if the damage is not compensated or the stolen property is not found, then it is not entirely correct to talk about the disclosure of the crime. Unfortunately, this issue has not always been resolved positively and in some cases the damage remains unresolved. In such cases, the dissatisfaction of the victims is obvious.

Therefore, based on the experience of European and a number of Asian States, the USA, as well as Russia, Kazakhstan and Azerbaijan, a proposal has been developed and scientifically substantiated to improve the mechanism for protecting the rights and interests of the victim, in connection with which a draft Law "On Compensation for Harm Caused by Crime" has been prepared. The draft also provides for the creation of a special fund to compensate victims for moral, physical and material damage caused by the crime. If the State was responsible for preventing crimes, compensation seemed logical.

When considering ensuring the rights of participants in criminal proceedings, the figure of the suspect requires a special approach. Article 47 of the Code of Criminal Procedure defines the very concept of a suspect. This is a person for whom there is evidence in the case that he has committed a crime, but not enough to bring him to participate in the case as an accused. The person is recognized as a suspect by the investigator, investigator or prosecutor.

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In our opinion, this definition is also incomplete, since, unlike the Code of Criminal Procedure of the CIS countries, before the initiation of a criminal case, the status of a person - a suspect, remains unclear. Even in cases initiated, where a person is referred to in a statement or report of a crime as the person who committed the crime, or there is evidence against him, he remains a witness until a decision is made to recognize him as a suspect.

The witness, according to the Code of Criminal Procedure, is a person who is obliged to truthfully report everything known to him in the case and answer the questions posed. For refusing to testify and for giving knowingly false testimony, he is warned of criminal liability.

The law provides that a witness has the right not to testify against himself, to have a lawyer. However, the mere fact of warning him of criminal responsibility, while he was entitled to silence, appeared to be psychological pressure, which was an element of torture. Moreover, he is not protected by the rights of the suspect, through which he could build his line of defense.

A different situation with persons detained and taken to a law enforcement agency. The Act allows a person to be detained pending the initiation of criminal proceedings (Code of Criminal Procedure, art. 224), that is, until the person is officially recognized as a suspect. At the same time, the competent person who made the detention is obliged to inform him of the reasons for the detention, explain the procedural rights to a telephone call or message to a lawyer, refuse to testify, notify him that the testimony given by him can be used against him, as well as bring the detained person to the law enforcement agency and draw up relevant protocols.

A different situation with persons detained and taken to a law enforcement agency. However, the lack of a clear procedural mechanism for the detention process and the ambiguity of the procedural status of the suspect before the initiation of the case lead to different interpretations of the rules of procedural law. An analysis of law enforcement practice shows that violations of the law committed by law enforcement officials in most cases occur precisely at the initial stage of bringing a suspect to the appropriate authority and checking his involvement in the crime. Unfortunately, it is during this period of time that we are faced not only with the infringement of the rights of the delivered person, but also with the use of illegal methods of introducing investigations, including torture.

There are cases where the competent person who detained and brought the suspect to the law enforcement agency may ignore the need to conduct procedural procedures with his participation (meaning compliance with the Miranda rules) or, worse, the preparation of a detention report. Work with it is carried out as if not officially, without registration and the preparation of relevant documents. As a rule, in such cases, all procedures involving the suspect provided for by the CPC are carried out after checking his involvement in the crime and transferring the materials to the investigative body. This situation clearly contributes to the violation of the rule of law.

In order to avoid such violations, the process of apprehending and delivering a person suspected of committing a crime must be streamlined. It seems necessary to:

Firstly, based on foreign experience, revise the definition itself - the suspect. In our view, the suspect should be a person:

– against whom criminal proceedings have been instituted;

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– or detained on suspicion of having committed a crime;
– To whom a preventive measure has been applied before being brought in as an accused;
– in respect of a person who has been ordered to declare him a suspect;
– as well as, summoned or brought before a law enforcement agency in connection with the suspicion of committing a crime.

Thus, a person suspected of committing a crime must acquire the relevant rights, regardless of the initiation of criminal proceedings and the issuance of an order recognizing him as such

Secondly, to distinguish between the institutions of capturing and delivering a person suspected of committing a crime from procedural detention. In the current Code of Criminal Procedure, the term "detention" provides for both the seizure of a person and his delivery to a law enforcement agency and procedural detention. Agree that each of these phrases is a different concept with different legal consequences. On this basis, each action must be strictly procedural. The law should clearly state:
– Actions of the employee carrying out the seizure and delivery of the person to the law enforcement agency;
– Procedure for ensuring its procedural rights;
– which documents should be drawn up;
– What period of stay of the person delivered to the law enforcement agency;
– What decision is taken following the results of the investigation of his involvement in the crime or after the expiration of the delivery period.

In this regard, it seems necessary to establish the following procedure in national legislation:

When a person suspected of committing a crime is captured, his rights must be explained to him and, at his request, the issue of inviting a lawyer should be decided at the place of capture. These actions should be reflected in the protocol, drawn up immediately after the person is brought before a law enforcement agency;

After the arrest and delivery of the suspect to the law enforcement agency, within three hours, and not 24, as indicated in the current Code of Criminal Procedure, all procedural procedures must be carried out, his involvement in the crime was checked and the issue of his procedural detention was resolved;

Within 12 hours of the capture of the person suspected of committing the crime, a criminal case must be opened.

If at least one of these actions is not performed, the detained person must be released.

Thirdly, the procedure for applying the preventive measure of detention by the courts is subject to review. The current Code of Criminal Procedure (art. 243) provides that the request of the investigator for the application of a preventive measure is sent to the court with the necessary materials, in particular copies of the decisions on the initiation of criminal proceedings, on the involvement of a suspect, accused, protocol of detention, documents containing information about the identity, a lawyer's warrant or a protocol on the refusal of a lawyer, etc. I cannot understand how it is possible with the above documents to resolve the issue of detention of a person or apply another type of preventive measure

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Therefore, in our opinion, when choosing a preventive measure, the courts should first of all study the full criminal case and verify the validity of the detention, as well as assess the evidence, in terms of their admissibility and only after that, consider the need to choose a preventive measure. If the detention is unreasonable, the courts must decide to reject the application.

Thus, in the criminal process, a valid mechanism of a system of checks and balances will be created, obliging each employee to comply with the requirements of the Code of Criminal Procedure, otherwise there can be no question of solving the crime.

It seems that it is not particularly difficult to develop this procedure, since in almost all the CPC of the CIS member States these issues are resolved to one degree or another and we can only take advantage of this experience.

Law enforcement officials will rather accept these proposals bayonets. Indeed, it will be much more difficult to solve crimes by fulfilling these requirements. But agree, we should strive to work on the principle of "not on behalf of evidence, but from evidence to suspect." Only in this case, our law enforcement and law will meet world standards.

References

1) Decree of the President of the Republic of Uzbekistan "On measures to further strengthen guarantees for the protection of individual rights and freedoms in judicial investigative activities in Tashkent, August 10, 2020, No. UP-6041// https://lex.uz/docs/4939467.
2) Kvashis V.E. Fundamentals of victimology. Challenges in protecting the rights of victims of crime. – M, 1999. – 280 pages.