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ENSURING THE SAFETY OF THE VICTIM AND WITNESS IN CRIMINAL PROCEEDINGS (On the example of the Russian Federation)

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Abstract: this article discusses the issues of the procedural status of a witness and victim in criminal proceedings, measures of state protection of their safety throughout the process. Some problems in the protection of the victim and witness during the proceedings are dealt with by the example of the Russian Federation.

Key words: the procedural status of the witness, the victim, the witness, the procedural status of the victim, the procedural protection of the witness and the victim.

ОБЕСПЕЧЕНИЕ БЕЗОПАСНОСТИ ПОТЕРПЕВШЕГО И СВИДЕТЕЛЯ В УГОЛОВНОМ ПРОЦЕССЕ (На примере Российской Федерации)

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Аннотация: в данной статье рассматриваются вопросы процессуального статуса свидетеля и потерпевшего в уголовном процессе, меры государственной защиты их безопасности на протяжении всего процесса. О некоторых проблемах в защите потерпевшего и свидетеля в ходе производства разбирается на примере Российской Федерации.

Ключевые слова: процессуальный статус свидетеля, потерпевшего, свидетеля, процессуальный статус потерпевшего, процессуальная защита свидетеля и потерпевшего.

The problem of creating and implementing security measures for persons involved in legal proceedings has been quite acute in Russia for more than twenty years, i.e. practically since the departure of the Soviet state and its legal system. In the fight against crime, state protection was required not only for witnesses and victims in the investigation of intentional crimes, but also for law enforcement officials themselves and their loved ones, as well as for other authorities in the areas of order management and justice.

However, victims and witnesses in the field of criminal proceedings were particularly poorly protected.

Federal Law No. 119-FZ of 20.08.2004 "On State Protection of victims and witnesses and other participants in criminal proceedings" defined persons subject to state protection and bodies obliged to take organizational measures to implement state protection. A group of bodies that should carry out state protection has been identified. In particular, the role of the bodies taking organizational measures is to consider applications for protection. The law refers to such bodies as judges, heads of inquiry bodies, investigative departments and investigators.

The implementation of protection functions is carried out by the internal affairs bodies of the Russian Federation and the Federal Security Service, the bodies for the control of the turnover of narcotic drugs and psychotropic substances, the customs authorities of the Russian Federation and other state bodies that may be involved in this activity.

The list of security measures that can be applied to persons subject to protection is provided in paragraph 3 of Article 11 of the Code of Criminal Procedure of the Russian Federation. This list is not exhaustive, since the type and nature of the protection measures applied in each particular case should be determined separately and should not be standard. Other security measures are provided, in particular, by such procedural laws as: paragraph 3 of Part 1 of Article 97, paragraph 4 of Part 1 of Article 154, Article 216, Part 1 of Article 217 of the Criminal Procedure Code of the Russian Federation and others.

The main problem of applying security measures to participants in criminal proceedings is not only to determine the correctness of their choice for protection in a specific situation and in relation to specific persons, but often in the insufficient effectiveness of the measures applied. This is noted by more than 30% of the surveyed law enforcement officers organs. We are talking about the insufficient means of protection due to the absence in certain law enforcement units, as the interviewees say, "the forces and means to carry out high-quality protection." The low level of protection, according to practitioners, leads to the fact that many citizens involved in criminal proceedings and in need of state protection simply do not apply for protection to In the official literature, we find data that victims of various crimes do not apply to law enforcement agencies for protection in 60% of cases. the relevant authorities, as they do not count on the effectiveness of protection. A sample survey of victims in criminal cases showed that the reason for not applying for a defense organization is uncertainty in its quality and reliability, or unwillingness to load law enforcement agencies, "which are already overloaded."

Another problem of organizing the protection of participants in legal proceedings is that the law does not define criteria for assessing the degree of danger at which protection is required and what should be the level of protection according to its intensity. This is an evaluative concept that should be determined in each specific case, taking into account the nature of the crime and its qualification, the possible relationship between

the perpetrator and the victim, the opinion of the victim himself about the need to protect him and his loved ones, as well as other circumstances of the case. N.E. Shinkeich rightly notes the absence of an indication in the law on the preventive nature of security measures. Today, the application of these measures is possible only if there is a clear threat of harm to a participant in criminal proceedings (victim or witness) in connection with a criminal case, which may be a belated reaction of state bodies to prevent this harm. It is necessary to agree with this opinion for the reason that, as practice shows, in many cases the infliction of physical, property and other harm to victims and witnesses is carried out by guilty persons or their representatives without prior threat. representatives without prior threat.

Article 16 of the Federal Law of 20.08.2004 indicates the existence of a threat of murder, violence, destruction or damage to property as grounds for the application of protection. Further, the law adds: "the threat of another dangerous illegal act". However, in the Criminal Procedure Code, which is a constantly applied law, this content of possible threats does not find an exact repetition. We are talking only about the presence of threats of violence, extortion and other criminal acts. The issue of the rights of the victim in criminal proceedings has been debated in the legal literature for many years. For example, Professor I.E. Zvecharovsky wrote: "The effectiveness of criminal law regulation in general and personal protection in particular, as is well known, largely depends on the state of criminal procedure legislation and its functional consistency with criminal legislation. Without pretending to provide exhaustive coverage of this problem, which was largely actualized with the adoption of the new Code of Criminal Procedure of the Russian Federation, we draw attention, in particular, to the need for a "balance" procedural possibilities and guarantees of the victim of a crime with the person who committed the crime".

In subsequent years, the legal literature repeatedly repeats the reproach to the legislator that both criminal and criminal procedure laws put the victim in an unequal position with other participants in criminal proceedings. The criminal law does not ensure the principle of social justice in relation to the victim, the procedural law regulates mainly the rights and legitimate interests of the suspect, the accused, the defendant and pays little attention to the rights of the victim.

"According to significant procedural positions, the victim is placed in an unequal position with suspects (accused, defendants), which gives reason to talk about the incomplete implementation and insolvency of the principle of equality of the parties in criminal proceedings and the principle of competition," writes E.M. Nikolaev.

Federal Law of 12/28/2013 "On Amendments to certain Legislative acts of the Russian Federation in order to improve the rights of victims in criminal proceedings", which came into force in early 2014, finally drew attention to the victim.

The victim was endowed with rights that are correlated with the rights of the suspect and the accused. Most importantly, along with the expansion of other rights, the possibility of a court is provided apply protective measures against the victim. It would

seem that the legislator himself turned to face the victim. However, two years have passed, and the position of the victim in the practice of criminal proceedings has remained the same, including, as we see, in terms of his protection during the i In reality, only compensation for property damage to the victim is carried out when property is confiscated from the culprit obtained by criminal means. But even this protection of the victim does not always work, since criminals have learned to hide property obtained by criminal means. Part 3 of Article 104 of the Criminal Code of the Russian Federation also helps them in this, where the legislator determined that property transferred by a criminal to another person is subject to confiscation only if "the person who accepted the property knew or should have known that it was obtained as a result of criminal actions. Investigation and trial from criminal encroachments on the part of the guilty person.

Thus, the benefits to the offender to the detriment of the injured person from the committed crime have been re-defined. He may simply not receive his property if someone purchased it from the guilty person, not knowing about its origin or simply.

In conclusion, it should be noted that today there are sufficient legislative grounds for organizing the protection of the victim and witness in criminal proceedings in each criminal case. It is only necessary to ensure a clearer implementation of the relevant law in practice. Law enforcement agencies need to organize protection without waiting for real threats from criminals, especially in cases of serious and especially serious crimes. In addition, this protection should not depend on the victim's statement or a witness with a request for protection, since the latter may not know about the existing law. The bottom line is that in this case, in our opinion, the initiative should come from the state, which has assumed the responsibility to protect citizens from criminal encroachments hiding his awareness of it.

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