

## EUROPEAN STANDARDS OF THE INSTITUTE OF SAFETY OF PARTICIPANTS IN CRIMINAL PROCEEDINGS

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*The article analyzes the European standards of the institute for ensuring the safety of participants in criminal proceedings and compares it with the legislative provisions of this institute in Ukraine. It was established that the legislation of Ukraine declares the recognition, observance and protection of human and citizen rights and freedoms as the duty of the state. The protection of human rights in the criminal process cannot be considered separately from the criminal and criminal procedural policy of the state, which is an integral part of the legal policy of any democratic society. The author emphasizes that one of the manifestations of the state protection of the constitutional rights to life, liberty and personal integrity is ensuring the safety of the citizen in the field of criminal proceedings. In connection with the fact that the problem of unlawful influence on witnesses, victims, judges, prosecutors, investigators, inquirers, their relatives and close persons has become particularly acute, measures were taken at the legislative level to strengthen the state protection of these persons, which were reflected in the norms of special legal acts.*

*On the basis of the conducted research, it was established that the Federal Republic of Germany developed and adopted the Law "On Regulation of Issues of Ensuring the Protection of Witnesses Who Are Threatened with Danger". The law establishes that security measures may be applied to witnesses who give or may give important testimony for the purpose of establishing the truth in particularly serious crimes, as well as to their relatives and loved ones, if their life, health, or well-being are in danger. The mentioned law provides for the implementation of the Witness Protection Program, which establishes the regime of secrecy regarding the personal data of protected persons, as well as the possibility of their relocation to another place of residence. A study of the experience of other foreign countries regarding the standards of this institute was also conducted and the possibilities of their implementation on the territory of our country were determined.*

*It was concluded that despite the significant financial support of the state program for ensuring the safety of witnesses in European countries and a significant array of cases of its application, the level of ensuring the safety of participants in criminal proceedings and the degree of trust in law enforcement agencies remain at a rather low level, which results in the reluctance of sub entities to provide the data necessary for the investigation.*

**Key words:** participants in criminal proceedings, institute of security, European standards.

### **Свінцицький Андрій Вікторович. Європейські стандарти інституту безпеки учасників кримінального провадження**

*У статті проаналізовано європейські стандарти інституту забезпечення безпеки учасників кримінального провадження та порівняно їх із законодавчим закріпленням положень цього інституту в Україні. Констатовано, що законодавство України проголошує визнання, дотримання і захист прав і свобод людини і громадянина обов'язком держави. Захист прав людини в кримінальному процесі неможливо розглядати у відриві від кримінальної та кримінальної процесуальної політики держави, яка є невід'ємною частиною правової політики будь-якого демократичного суспільства. Автор наголошує, що одним із проявів державного захисту конституційних прав на життя, свободу і особисту недоторканість є забезпечення безпеки громадянина у сфері кримінального провадження. З огляду на те, що проблема протиправного впливу на свідків, потерпілих, суддів, прокурорів, слідчих, дізнавачів, їхніх*

родичів і близьких осіб набула особливо гострого характеру, на законодавчому рівні було вжито заходів для посилення державного захисту цих осіб, які знайшли відображення в нормах спеціальних правових актів.

На основі проведеного дослідження встановлено, що у ФРН було розроблено й ухвалено Закон «Про регулювання питань забезпечення захисту свідків, яким загрожує небезпека». Законом установлено, що заходи безпеки можуть бути застосовані до свідків, які дають або можуть надати важливі свідчення з метою встановлення істини по особливо тяжких злочинах, а також до їхніх родичів і близьких, якщо їхньому життю, здоров'ю або благополуччю загрожує небезпека. Зазначений закон забезпечує реалізацію Програми захисту свідків, якою встановлено режим секретності щодо даних про особу захищених осіб, а також можливість їх переселення в інше місце проживання. Також досліджено досвід інших зарубіжних держав щодо стандартів цього інституту і визначено можливості їх реалізації на території нашої держави.

Зроблено висновок: попри значну фінансову підтримку державної програми, забезпечення безпеки свідків у європейських державах і значний масив випадків її застосування, рівень забезпечення безпеки учасників кримінального провадження, як і ступінь довіри до правоохоронних органів, залишаються на досить низькому рівні, що має наслідком небажання суб'єктів надавати потрібні для розслідування дані.

**Ключові слова:** учасники кримінального провадження, інститут забезпечення безпеки, європейські стандарти.

The legislation of Ukraine declares recognition, observance and protection of human and citizen rights and freedoms as the duty of the state. The protection of human rights in the criminal process cannot be considered separately from the criminal and criminal procedural policy of the state, which is an integral part of the legal policy of any democratic society.

One of the manifestations of state protection of the constitutional rights to life, liberty and personal integrity is ensuring the safety of citizens in the field of criminal proceedings.

In connection with the fact that the problem of unlawful influence on witnesses, victims, judges, prosecutors, investigators, inquirers, their relatives and close persons has become particularly acute, measures were taken at the legislative level to strengthen the state protection of these persons, which were reflected in the norms of special legal acts. Ensuring the safety of citizens is aimed at protecting such constitutional and inalienable human and citizen rights as the right to life (Article 27 of the Constitution of Ukraine), the right to freedom and personal integrity (Article 29 of the Constitution of Ukraine), the right to property protection (Article 41 of the Constitution of Ukraine), the right to health care (Article 49 of the Constitution of Ukraine), etc.

Provisions on the protection of participants in criminal proceedings are based on Art. 20 of the Criminal Procedure Code of Ukraine, and are also regulated by the Law

of Ukraine No. 3926-XII dated 04.02.94 "On ensuring the safety of persons participating in criminal proceedings". The provision on the right to defense provides that in the presence of sufficient data that the victim, witness or other participants in criminal proceedings, as well as their close relatives, relatives or close persons are threatened with murder, use of violence, destruction or damage to their property or other dangerous illegal acts, the court, prosecutor, investigator, inquiry body and inquirer take security measures within their competence with regard to the specified persons.

The legislation of Ukraine provides for security measures to be taken by the court, prosecutor, investigator, inquiry body, investigator within their competence. Safety measures include the following:

- in order to ensure the safety of the specified persons, by the decision of the investigator, data about them may not be indicated in the protocol of the investigative (search) action carried out with their participation, in this case, the investigator, with the consent of the prosecutor, issues a resolution in which he explains the reasons for making such a decision, indicates the pseudonym of the participant of the investigation (search) action and a sample of his signature, which are used in the protocols of investigative (search) actions with his participation; the resolution is kept in a sealed envelope, attached to the materials of criminal proceedings;

- in the presence of a threat of violence, extortion and other criminal actions against the specified persons, monitoring and recording of their telephone and other conversations is permissible - either upon their written statement or, in the absence of such a statement, on the basis of a court decision;

- to ensure the safety of the one who recognizes, the identification can be carried out in such a way that the one who is recognized cannot see the one who is recognizing;

- in order to ensure the safety of the specified persons, on the basis of the court's decision, it is allowed to hold a closed court hearing - all or a corresponding part of it;

- to ensure the safety of the witness, his relatives and loved ones, the court has the right not to disclose the true data about the witness and to conduct his interrogation in such a way that other participants in the trial cannot see this witness.

Unfortunately, our country does not have an effective separate program for the protection of subjects of criminal proceedings, and the law, which is very similar to a similar law in the USA, does not receive sufficient funding to implement its provisions.

The effectiveness and special importance of the activities of the bodies providing state protection measures is confirmed by the practice of applying the State Program in foreign countries, where due attention is paid to this issue. Based on the experience of foreign countries, it can be stated that such security measures as personal protection, protection of housing and property and temporary placement in a safe place were mainly used.

Implementation of the witness protection program in foreign countries is entrusted to ministries and agencies. Studying the budget of the program allows us to conclude that personal protection measures are most often used for those who need protection and providing them with special means of protection and warning about danger.

At the same time, it should be noted that such security measures as change of residence, change of documents, change of appearance, change of place of work and study, although included in the relevant programs, are often not allocated funding due to the high monetary cost of these measures. That is, despite their presence in the law, in practice they are used extremely rarely.

Unfortunately, at present there is no clear mechanism for the implementation of all security measures provided for by law, and the fact that its implementation is entrusted to several ministries and departments calls into question the issue of organization, interaction and compliance with confidentiality requirements by employees of equivalent departments.

In addition, a significant argument of witnesses who refuse to cooperate with law enforcement agencies is the rather high level of corruption of individual employees who, for a certain reward, can reveal information about a person subject to protection.

Gaps in solving the issue of how to replace documents and the subsequent relocation of a person to another place of residence remain a problem, since there is no clear understanding of who should make changes to the relevant documents (passport, identification number, policy, employment book) and how and on the basis of which act. etc. That is, there are currently enough unresolved issues in the field of witness protection program implementation.

L. Brusnitsyn notes that "with the existing wording of the norms of the Criminal Code of Ukraine and the Criminal Code of Ukraine, it is impossible to use security measures in cases where criminals or their entourage use methods of influencing victims and witnesses that are not prohibited by the Criminal Code of Ukraine: silent harassment on the streets, throwing animal corpses into homes and much more. In fairly closed social groups, the goals of influence can be achieved by creating an atmosphere of deliberate exclusion around individuals who promote justice. Post-criminal influence in such forms is not related to illegal actions, but often achieves the goal" [1, p. 48].

The experience of foreign countries in the field of ensuring the safety of witnesses is of interest. Thus, in the USA, since 1971, a special federal witness protection program has been funded by the state. In addition, chapter 224 of the US Code is devoted to the issue of witness protection, this chapter regulates in detail the procedure, grounds and types of security measures.

The program is implemented by the special US Marshals Service, which has its own headquarters, a dozen regional offices and

an office in the police department of each city where an inspector for witness protection works. In addition, the FBI has a similar department. According to paragraph 3521 of the Code of Laws of the United States, the question of the need to apply security measures to a witness is decided by the Attorney General, based on the public danger of the crime committed and the potential danger to the witness and his relatives. This paragraph provides for the possibility of applying the following protective measures:

- providing the witness and his relatives with new documents;
- providing the witness with transport to transport the witness' property to the new place of residence;
- provision of housing;
- providing the witness with funds necessary for current expenses;
- assistance in getting a new job;
- provision of other services required at the new place of residence;
- ensuring the concealment of information about witness protection measures, as well as the measure of responsibility for disclosing this information.

According to part 3 of this paragraph, responsibility for disclosing this information involves a fine of 5,000 dollars or imprisonment for 5 years, or both types of punishment at the same time [2, p. 199].

When deciding on the application of security measures, the following circumstances are taken into account: information about the witness's previous convictions, psychological assessment of the witness, as well as the significance of witness data for the investigation of a criminal case and the possibility of receiving this information from other sources. In cases where protection measures are applied to a minor, a psychological examination is conducted, which determines the potential impact of this program on the relationship between the child and the parents.

Before the application of protective measures, an agreement is concluded between the witness and the Ministry of Justice in which the following is defined:

1. The person agrees to provide information in a criminal case and to act as a witness in court.
2. A person gives an undertaking that he will not commit a crime.

3. The person undertakes not to disclose information about the protection granted to him.

4. The person undertakes to cooperate with officials.

5. Protective measures applied to this witness are determined.

Section 3523 of the United States Code establishes the only possibility when disclosure of information about a person participating in the witness protection program is allowed. In the case of consideration of a civil lawsuit against this person, if the defendant did not take measures to resolve the issue of consideration of this civil case in his absence.

In addition to the Code of Laws of the United States, the procedure for applying security measures is regulated by the Law on the Protection of Victims and Witnesses of Crime, as well as the Law on Strengthening the Security of Witnesses.

It should be noted that, in contrast to Ukrainian legislation, the US legislation in the field of ensuring the safety of participants in criminal proceedings contains clear instructions in which cases the witness protection program can be implemented, namely in cases of organized criminal groups, crimes related to drug trafficking, or other serious federal crimes referred to by the provisions of Chapter 18 of the US Code.

In addition, this program can be used in administrative and civil proceedings in the event that the testimony of a witness may cause the use of violence against him.

US legislation regulates the specifics of inclusion in the witness protection program of informants and witnesses of prisoners. It is understood that the security of the informant is ensured by the forces of the investigative body that uses him. However, if necessary, he can be included in the Witness Protection Program on general terms, subject to meeting the necessary criteria.

The law stipulates the need for mandatory psychological testing of the witness and his family members as a condition for inclusion in the program, and it is also a mandatory condition that a study on the "Polygraph" machine is conducted for witnesses who are serving time in prison, with in order to reveal the truth of his testimony and his subsequent intentions and actions. If, during the

investigation, it is established that a person poses a danger to the environment or gives false testimony, or does not disclose complete information, he may be refused inclusion in the Witness Protection Program [3].

After a person is included in the Witness Protection Program, information about him and his relatives is confidential, all documents are submitted in a sealed form with a secret mark, including documents on guardianship, employment, place of residence, etc. and public officials are criminally responsible for disclosure given information.

It can be noted that in the USA the issue of ensuring the safety of witnesses has received a wider development and the main means of protection is the transfer of a person to a safe place. However, among scientists and practitioners in the United States itself, it is possible to note critical points of view regarding the operation of this program. Yes, Slate. RisdonN focuses on its shortcomings. He notes that since its inception, about 7,000 Witnesses and 16,000 family members have been enrolled in the program. The estimated cost of security for one witness and family is approximately \$150,000. At the same time, he notes that a large part of the witnesses have a rich criminal past and they possess valuable information for the investigation because they occupied not the last place in the hierarchy of an organized criminal group and committed crimes together with other members of it. Also, the minus of the program is the fact that with the help of obtaining new documents and moving, the witnesses hid from debts, guardianship authorities and social services. In addition, a person who moves within the limits of the program loses the constitutional right to freedom of movement and privacy, because he is obliged to transfer information about this to the Federal Marshals Service. However, at the same time, none of the third parties is immune from possible illegal actions on the part of the protected person, taking into account his criminal past and within the scope of the program there have been cases when protected persons committed crimes [4].

Therefore, it should be noted that the implementation of the program to ensure the safety of witnesses and other participants in criminal proceedings in the USA has a sig-

nificant number of debatable issues, despite its long period of operation and time-proven effectiveness.

In 1998, the Federal Republic of Germany developed and adopted the Law "On Regulation of Protection of Witnesses at Risk". The law specifies that security measures may be applied to witnesses who give or may give important testimony for the purpose of solving particularly dangerous crimes, as well as to their relatives and loved ones, if their life, health, or well-being are in danger. In accordance with this law, the Witness Protection Program is being implemented, which provides for the regime of secrecy regarding the identity of protected persons, as well as the possibility of their transfer to a new place of residence.

A similar program financed from the state budget exists in Austria. The most common method of protection, as in the USA and Germany, is the transfer of the witness to a safe area, while after the transfer the witness is provided with financial support for several months, designed to ensure the witness's usual standard of living, until he adapts to the new environment and is able to earn for life [5, p. 251–252].

It should be noted that despite the significant financing of the state program for ensuring the safety of witnesses in neighboring states and the increase in the number of cases of its application, the level of ensuring the safety of participants in criminal proceedings, as well as trust in law enforcement agencies, remain at a rather low level, which entails the refusal of individuals to provide the necessary information. At the same time, it is quite problematic to bring to criminal responsibility for giving false testimony or for refusing to testify, because in practice a person does not talk about refusing to testify, but explains that he "does not have the necessary information", "did not know", "did not heard", "did not see", "does not remember or remembers vaguely". Undoubtedly, these circumstances have a negative impact on the quality of the investigation of criminal proceedings.

The foregoing allows us to draw a conclusion about the need for further improvement of criminal and criminal procedural legislation in the field of ensuring the safety of participants in criminal proceedings.

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