

Koombaev A. A.

**APPLICATION OF SECURITY MEASURES ON THE STAGE OF  
CRIMINAL PROCEEDING INSTITUTION: FOREIGN EXPERIENCE AND  
DEVELOPMENT OF THE KYRGYZ LEGISLATION**

*Koombaev Abdish  
Abazovich,  
c.j.s., Doctoral Student of  
Management control Acad-  
emy of Russian Ministry  
of Internal Affairs, Militia  
Colonel of the Kyrgyz Re-  
public.*

Justifies the necessity of application of the state protection measures on the stage of institution of criminal proceeding with respect to the complainant, witnesses and the victim, the victim of a crime or other persons contributing to the prevention or detection of a crime. In the article attention is drawn to the gaps of criminal procedural legislation in the normative regulation of procedures involving the complainant and the eyewitness. Here are explored options of the application of security measures provided for in criminal legislations of European countries.

**Keywords:** institution of criminal proceeding, witness protection, protection of the applicant who has claimed on a criminal offence, safety in criminal proceedings.

The range of persons involved in criminal proceedings and the amount of subjective rights and obligations, including the right to ensure their safety, in our opinion, depend on several factors: the time period that defines the boundary of this stage of pretrial procedure; the specific tasks inherent directly to the stage of institution of criminal case or conduction the investigation on the case; the ways of solving these tasks. For example, at the stage of institution a criminal case is firstly necessary to correctly determine: whether is an information from the source about the committed or upcoming crime legal ground for instituting criminal proceedings (Article 150 and 156 of the Criminal and Procedural Code of Kyrgyz Republic [2]), is seen or not in the deed the signs of a crime and by what article of the Criminal Code, it may be qualified (Articles 158, 159 of the Criminal and Procedural Code of Kyrgyz Republic), which measures should be taken to enshrine and preserve the traces of a crime. In addition, analysis of the criminal procedure

legislation provisions allows to assert that at the stage of institution of a criminal case implements the process of proof by the production of certain investigative or other procedural actions: view of place of occurrence and appointment of legal expertise (article 165 of the Criminal and Procedural Code of Kyrgyz Republic), directing requirements orders and requests (article 157, parts 3,4 article 91 of the Criminal and Procedural Code of Kyrgyz Republic).

At this stage of institution a criminal case emerges a special complex of relations between bodies of inquest, investigator, prosecutor, complainant, victim, witnesses and other persons contributing to the prevention, solution and investigation of a crime. These relations are realized in the activities of the mentioned subjects of the process, including in addition to acceptance, verification and authorization of incoming applications and information about crimes committed or planned (Article 158 of the Criminal and Procedural Code of Kyrgyz Republic), also activities to ensure the safety of these persons (article 12 of the Criminal and Procedural Code of Kyrgyz Republic, article 2 of the Kyrgyz Republic Law "On Protection the Rights of Witnesses, Victims and other Participants in Criminal Proceedings" [1, 14-29], hereinafter referred to as the KR Law "On protection ...").

Victims of a crime and potential witnesses are at risk of dangerous exposure, not only in the course of investigation, but long before it, since, by influencing to those persons assisting law enforcement agencies, offenders have the opportunity not only to mitigate the punishment, but also to avoid criminal liability [6, 39]]. Therefore, measures of state protection may also be applied to the applicant, witnesses and the victim, victim of a crime or other persons contributing to the prevention or detection of crime before institution of criminal proceedings (part 2 of article 2, article 6 of the Law KR "On protection ..."). However, the legal status of victims of a crime, as well as persons who have information relevant for the investigation of a case, at this stage of the criminal process is not regulated.

The Criminal and Procedural Code of Kyrgyzstan do not explain the meaning of the terms "applicant" and "witness", using them only in exceptional cases, for example, indicating that the application on crime must be signed by the applicant (part 1 article 151), the protocol of an oral statements should contain information about the applicant, his place of residence and work (part 2 article 151), the applicant warned about criminal liability for Knowingly false denunciation what is noticed in the protocol, which is certified by the signature of the applicant (Part 3. 151). Procedural status of an applicant or a victim (in cases where he directly reports to law enforcement agencies about the crime

committed in respect of him) is partially regulated by the CPC or departmental normative acts, which establish that upon receipt of an application or information on a crime directly from the applicant a competent official shall immediately issue a notification card (part 1 article 155 of the Criminal and Procedural Code of Kyrgyz Republic; clause 2.4 Instructions on unified registration of crimes). One of the reasons for the detention of a person suspected of committing a crime is an indication of the witnesses, including the victim, on that this person is a perpetrator of the crime (part 3 article 94 of the Criminal and Procedural Code of Kyrgyz Republic).

Referring to the experience of the CIS countries, we can say that the problem in some of the countries has already been solved. Criminal and Procedural Code of Ukraine and Belarus include protection of an applicant from exposure in connection to the application on crime. Legislators in these countries, stressing special importance of proper protection of the applicant placed the norms directly to the article, which regulates the submission of the application. Thus, in accordance with article 97 (“Obligatoriness of Accepting Applications and Information on Crime and the Procedure for their Consideration”) of the Criminal and Procedural Code of Ukraine, which states that, with appropriate grounds proving a real threat to life and health of the person reporting the crime, should be taken necessary measures to ensure the safety of the applicant as well as his family members and close relatives.

Besides, the Criminal and Procedural Code of Belarus and Ukraine provide for the legal norms regulating the reasons for the taking decision on the application of security measures, the procedure of applying security, responsibility for disclosing information about security measures, and Belarusian law – also establishes responsibility for breach of duty on the application of security measures and other norms regulating the application of security measures.

Without going into more detail in the issues of implementation and ensuring security measures applied to an applicant and provided for by the Criminal and Procedural Code of Belarus and Ukraine, it should be noted that in the CPC of Ukraine, the Russian Federation and Kyrgyzstan there is no concept of “applicant” and its procedural status is not determined.

At the same time, in paragraph 20 article 7 of the Criminal and Procedural Code of Kazakhstan and paragraph 10 article 6 of the Criminal and Procedural Code of Belarus stated that an applicant is any person who has addressed a court or prosecuting agency for the protection in the order of criminal proceedings of his (someone else’s) actual or alleged right.

So, at the stage of institution of criminal proceedings, criminal and procedural relations involve a wide range of persons, which have to be divided into two groups:

1. Persons interested in final resolution of the information about the crime (complainant, victim of a crime, self-reported criminal);
2. Persons involved into the criminal proceedings in connection with the proceedings on the case (witness, expert, witness, interpreter).

It seems that in the CPC of the Kyrgyz Republic, firstly, should be clearly defined procedural status of such participants of process as “applicant”, “witness”, and secondly, should be envisaged the opportunity of applying for them and others, who are involved into criminal procedural legal relations in connection with the proceedings on the case, effective safety measures.

At the considered stage of pretrial proceedings on case in respect of such persons shall be subject to the application, first of all, the measures defined by us as urgent ones: protection of home and property; personal protection; giving of special personal protection equipment; communications and warning of danger; temporary placement in a safe place; confidentiality of information about the protected person.

The use of these security measures in each case is individual. The issue on the possibility (admissibility) of application protective measures within a given stage (stages) must be decided depending on the conformity of the content of this or that security measure to the general conditions of the particular stage. Due to the specifics of protective measures to prevent post crime impact or its immediate restriction, their implementation already at the stage of institution of a criminal case creates the conditions for further participation of the protected person in the investigation and proceedings.

In many cases, for targeted impact on witnesses, victims and other persons assisting in administration of Justice the perpetrators of a crime (the criminals or their accomplices) need to access to certain information, primarily to personal data, information about kinship and other relations, information on the composition of family, place of residence, work or study. The main source of such information is the primary materials and materials of check. It is this factor determines the choice of specific measures of state protection and means of ensuring security at the stage of institution of a criminal case.

Failure to specify in the applications on a crime, in the explanations in the stage of institution of a criminal case, in the records of investigation demographic

data of protected persons [5] is partly provided for in the Criminal and Procedural Code of the Kyrgyz Republic (part 8 article 170) and in the Law of the KR “On Protection of Witnesses, Victims and other Participants of Criminal Proceedings” (article 2 and 6). This measure in the stage of institution of a criminal case is widely used in China, Denmark.

The application of this measure provides for the making by an investigator a decision, in which “are set out the reasons for the taken decision to maintain the confidentiality of the identity of the investigative action participant, indicated an alias and a sample signature, which he will use for the protocols of investigative actions with his participation”. This decision is placed in a sealed envelope, the content of which, in addition to the investigator may be consulted by a supervising prosecutor, and during court proceedings – a judge.

By the Decision of the European Court of Human Rights acknowledged that “the use of information provided by anonymous witnesses as evidences during the stage of institution of a criminal pre-trial proceedings on a case, is in keeping with the provisions of the European Convention” [3, 57], whose influence on the legislative and law-enforcement activity of European countries in the field of criminal proceedings grows more and more [4, 9]. Returning to the security measure set out in paragraph 3 article 6 of the KR Law “On protection...”, it should be noted that the current Criminal and Procedural Law of the KR (article 170) allows to restrict with the indication in the record of the investigation action of the participant’s surname, name and patronymic, and the address is indicated only when necessary. According to the requirements of article 9 of this law, by a decision of the body conducting the security measures may be imposed a ban on the giving of information about the protected person from the state and other information and reference data-bases, and also may be changed the phone numbers and vehicle registration marks of his vehicles.

Application of the specified security measure in respect of witnesses, victims and persons assisting in the administration of justice, in our opinion, is possible at the stage of institution of a criminal pre-trial proceeding on a criminal case. At the same time should be taken into account the provisions of one of the last acts of the Council of Europe – Recommendations No. 9 (2005) “On the Protection of Witnesses and Persons Cooperating with Justice” based on the precedents of the European Court of Human Rights. In paragraphs 19, 20 of the Appendix to this Recommendation is formulated the conditions of participation of citizens in proceedings under the pseudonyms: such participation shall be the exclusive measure of security and applied in the event of a serious threat to life or freedom of a credible person

having significant probative information. Also, the verdict should not be based solely or largely on the testimony of anonymous witnesses (paragraph 21 annex to the Recommendation). As for the recommendation of establishing for the parties the opportunity to contest the legality of the application of this security measure, this is provided both in the Criminal and Procedural Code of the KR (articles 125, 131), and in the KR Law “On Protection of Witnesses, Victims and other Participants of Criminal Proceedings” (article 19).

#### References:

1. The law of the Kyrgyz Republic “On protection of witnesses, victims and other participants in criminal proceedings” [Zakon Kyrgyzskoj Respubliki «O zawite prav svidetelej, poterpevshih i inyh uchastnikov ugolovnogo sudoproizvodstva»] *Informatsionnyj byulleten’ – Information Bulletin*, Bishkek: 2009, No. 16.

2. *The Criminal and Procedural Code of the Kyrgyz Republic from June 30, 1999* [Ugolovno-protsessual’nyj kodeks Kyrgyzskoj Respubliki ot 30 ijunja 1999 goda]. Available at: [http://base.spininform.ru/show\\_doc.fwx?rgn=395](http://base.spininform.ru/show_doc.fwx?rgn=395) (accessed 05 May 2012).

3. Brusnitsyn L. V. *Ensuring the Safety of Persons Cooperating with Criminal Justice: International Experience and the Development of Russian Legislation (procedural study)* [Obespechenie bezopasnosti lits, sodejstvuyushhikh ugolovnomu pravosudiyu: mirovoj opyt i razvitie rossijskogo zakonodatel’sтва (protsessual’noe issledovanie)]. Moscow: 2010.

4. Ignatova I. V. *The Mechanism for Implementing International Standards of Human Rights under the European Convention “On protection of human rights and fundamental freedoms”* [Mekhanizm realizatsii mezhdu-narodnykh standartov v oblasti prav cheloveka v ramkakh Evropejskoj konventsii “O zashhite prav cheloveka i osnovnykh svobod”]. author’s abstract of thesis... candidate of juridical sciences. Moscow: 1994.

5. *National legislation and its compliance with the requirements of combating against different forms of organized transnational criminality* [Nacional’noe zakonodatel’stvo i ego sootvetstvie trebovanijam bor’by s razlichnymi formami organizovannoj transnacional’noj prestupnosti]. reference document. doc. E/conf. 88/3 of August 25, 1994.

6. Novikova M. V. *Institute of Security in Criminal Proceedings and Ways of its Improving* [Institut bezopasnosti v ugolovnom sudoproizvodstve i puti ego sovershenstvovaniya]. *Rossijskij sud’ya – Russian Judge*, 2007, No. 7.