

Means of Providing Security of the Persons Who Perform a Special Task to Expose Organized Criminal Groups

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Abstract

The article establishes the connection of the general rules for applying security measures of these persons with the general principles of criminal proceedings, including in comparison with the experience of ensuring security in other countries. It is determined that the general rules apply both to persons performing a special task and to other persons (victim, suspect, defense lawyer, civil plaintiff and other persons) who require security measures in connection with their participation in criminal proceedings. It is concluded that it is advisable to introduce positive international experience in Ukraine.

Keywords: Witness Protection, Criminal Proceedings, Law Enforcement Agencies, Legislation, Court.

Introduction

The United Nations Convention against Transnational Organized Crime (2000) was adopted by Resolution 55/25 of the United Nations General Assembly (United Nations). Article 24 of this document proclaims the protection of witnesses. Article 26 of this document provides for measures to encourage individuals who participate in or participated in organised criminal groups to provide information, including actual, specific assistance to law enforcement agencies to deprive organised criminal groups of their proceeds of crime. In general, the United Nations Convention against Transnational Organised Crime (2000) is aimed at creating the legal conditions necessary for coordination and cooperation between Ukraine and UN member states in the fight against and prevention of transnational organised crime.

An effective method of combating organised crime in Ukraine is to conduct a secret investigative (search) action stipulated in Article 272 of the

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Criminal Procedural Code of Ukraine (2012) "performing a special task to uncover the criminal activities of an organised group or criminal organisation". Article 3 of the Constitution of Ukraine (1996) states that "a person, his life and health, honor and dignity, inviolability and security are recognised in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and areas of the state's activities. The establishment and enforcement of human rights and freedoms is the main responsibility of the state. This rule also applies to a person who performs a special task, as one of the participants in criminal proceedings. Despite the fact that the norms of the Constitution of Ukraine (1996) are norms of direct action, it is of great importance to create an effective and efficient mechanism for guaranteeing and protecting proclaimed human rights.

In Ukraine, the issue of ensuring the safety of individuals is regulated by the provisions of Law of Ukraine No. 3782-XII "On ensuring security of the persons who participate in criminal legal proceedings" (1993). In the United States of America (USA), the issues of ensuring the safety of participants in criminal proceedings are regulated by An Act No. 97-291 "To provide additional protections and assistance to victims and witnesses in Federal cases" (1982), and the set of security measures itself was called The "Witness Security Program" (2021). If necessary, the housing and property of protected persons are equipped with fire and security alarm systems at the expense of the local budget; their apartment phone numbers and state license plates of their vehicles are changed. This measure of ensuring the safety of persons is used most often and is quite simple, although at the same time it has certain disadvantages.

Measures Aimed at Reducing the Recognition of a Witness Whose Life and Health Are at Risk

Now in Ukraine, in the process of ensuring the safety of participants in criminal proceedings, there is a main problem – the lack of personnel support for special forces, which are assigned this function, and the lack of a single body that would have its main task to ensure the safety of persons taken under protection (until November 7, 2015, it was a special unit of the judicial police of the Ministry of internal affairs of Ukraine – "Gryphon"). Regarding the existence in Ukraine of a new law enforcement agency of the judicial protection service, which has been operating for 2 years, according to the decision of the High Council of Justice No. 1051/0/15-19 "On approval of the Regulations on the Judicial Protection Service" (2019) and is a state body that, through its divisions, maintains public order in court; prevents manifestations of contempt of court and stops such manifestations; protects the premises and other property of courts; provides state protection of

judges, guarantees the safety of participants in the trial only in the premises of the court (Law of Ukraine No. 1402-VIII..., 2016). Over the 2 years of its existence, more than 500 bodies and institutions of judicial power have already passed under the protection of the service, and court guards have ensured the personal safety of 20 judges who were threatened. But there are no indicators for ensuring the safety of participants in the trial.

Employees of authorised operational units are responsible for ensuring the confidentiality of information about procedural cooperation in the framework of operational search support for criminal proceedings. According to the decision of the High Council of Justice No. 1051/0/15-19 "On approval of the Regulations on the Judicial Protection Service" (2019), its functions do not include the protection of state secrets while ensuring the safety of participants in legal proceedings. Therefore, in this case, the issue of ensuring security for persons performing a special task remains open. In the United States, every federal district has an office of the United States Marshal, which is part of the Department of justice system. These agencies collectively create the federal "judicial police" and the bailiff service. The main function of U.S. Marshals and employees of their departments (U.S. Marshals) is to execute orders, commands, and regulations issued by the federal court to which they are assigned, and to ensure the enforcement of court decisions that have entered into force. Within the framework of cases of federal jurisdiction, US marshals conduct arrests, searches and seizures on warrants issued by the court; ensure the protection of judges, participants in the process, detention, transportation of arrested and accused persons for placement in correctional institutions; implement a programme to protect witnesses in cases related to organised crime. The U.S. Marshals Service manages all U.S. Marshals, who in turn report to the U.S. attorney general through the U.S. Department of justice (similar to the Prosecutor general's office).

An Act No. 91-452 "Relating to the control of organised crime in the United States" (1970) gives the Secretary of justice and the Attorney General of the United States the right to allocate funds to ensure the protection of witnesses who are in danger. The Witness Security Program (2021) provides for the protection of witnesses from physical danger by moving them to a new, confidential place of residence, along with changing their name and other personal data. But according to this law, protection was provided only to witnesses in cases related to organised crime. In the United States, a witness whose life and health are at risk may be placed in a specially equipped room prior to the start of the trial, including for the duration of its conduct, and they may be provided with code names for the duration of the investigation. Witnesses in particularly serious

criminal cases, after testifying in court, receive documents for a new name, they are assigned new numbers in the social security system, they are reimbursed for the cost of moving to a new place of residence, they are helped to find a job, a new biography is developed for them, etc. (Karnaukh, 2021).

A possible addition is the approval of such measures as psychological rehabilitation and support; compensation to a person (at the expense of the state or the convicted person) for personal protection and property protection. The latter measure is similar to the sheriff's protection provided in the United States. Not every person in the United States can be included in the witness protection programme, so for their own safety, such witnesses pay for personal protection. Given the freer nature of arms trafficking and the presence of a large number of citizens, such a treaty is convenient for the United States. If necessary, with the permission of the prosecutor, identity documents, other documents of the person to be protected may be replaced, and his appearance may be changed. Complete or partial replacement of a person's documents is carried out together with the adoption of other measures: changes in their appearance, personal protection, relocation of the person to another place of residence, transfer to another job or to another educational institution. During the pre-trial investigation, questions constantly arise related to the application of this measure, since Ukraine has not yet developed regulations that would provide for the issuance of documents to a person, provided that this measure is applied to ensure their security (Lapkin et al., 2019).

In many cases, the replacement of the main documents of a person (birth certificate, passport, military ID card for those liable for military service, taxpayer identification code) causes a number of problems in legal relations, the solution of which requires the replacement of other documents: marriage (or divorce) certificate, birth certificate of a child (or children), vehicle driver's license, education certificate, employment record, death certificate of relatives or friends, etc. The replacement of documents of a person who is being taken under protection necessarily entails adverse consequences and restrictions on the rights of his relatives and other persons, in particular at the place of work, permanent residence, stay, etc., which also requires a decision within the powers of investigative bodies and bodies that implement measures to ensure the safety of the person. In many countries of the world, almost half of the adult population is contained in a particular catalog. Human rights organisations call this trend a real and immediate threat to privacy. The US National Security Agency has been collecting such photos for many years. Government agencies in Ukraine are very interested in facial recognition technologies for security and law enforcement reasons.

According to Ya.F. Kuleshnyk, V.V. Senyk, O.V. Sorokach (2019), city councils of regional centers plan to install cameras on all bridges and tunnels to recognise those who use them. In the European Union (EU), such technologies must comply with the Directive of the European Parliament and of the Council no. 95/46/EC “on the protection of individuals with regard to the processing of personal data and on the free movement of such data” (1995) and Regulation 2016/679 of the European Parliament and of the Council “on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)” (2016). Automatic verification performed based on facial recognition is very questionable from the standpoint of preserving a person's right to privacy. In some countries, it is currently prohibited, while in others (in particular, Britain) it is allowed under certain conditions – for example, a person has the right to appeal the results of such a check if they believe that an error has occurred. Therefore, changing the appearance of a person performing a special task is extremely important. Changing the appearance of a person can be carried out in two ways: medical, that is, by performing appropriate plastic surgery, and forensic – by temporary disguise due to makeup, hair coloring, the use of wigs, glasses, etc. Forensic changes in a person's appearance are used in cases where there is a threat to identify them based on their appearance during procedural actions and consideration of the case in court. To solve all the problems that arise during the application of the above-mentioned protection measures, it would be advisable to make changes to the legislation regarding the issuance of documents, including medical intervention. The list of these documents and the procedure for issuing them should be regulated in a single programme, which, unfortunately, is still absent in Ukraine.

Conditions Under Which a Witness Whose Life and Health are in Danger is Relocated to Another Place of Residence

If a person needs to leave their place of work or study to eliminate the threat, they are helped (at their request or with their consent) to get a new place of work or study. The time of forced absenteeism of a person is included in his work experience, and he is paid compensation for the corresponding period. If the salary of a person at the new place of work is lower than at the previous one, they are paid the difference in salary, in accordance with the current legislation and the procedure established by the Cabinet of Ministers of Ukraine. Relocation of a person to another place of residence, provision of living space, material assistance and employment is regulated by the resolution of the Cabinet of Ministers of

Ukraine No. 457 “On the procedure for resolving issues of resettlement, housing, material assistance and employment of persons taken under state protection” (1995). For the convenience and frequency of use of this measure, it is necessary to make some changes to the Housing Code of Ukraine, which should specify the grounds, conditions, financing and procedure for applying the relocation of persons who are taken under protection. In addition, a separate section is suggested in the budget legislation, which should indicate which body finances and controls public funds to ensure the safety of a person performing a special task, and the corresponding budget for each body that carries out security-related activities (Vapniarchuk et al., 2021).

According to the legislation of Federal Law No. 526 of the Republic of Austria, the security measures include moving the witness to a safe territory, moving to another place of residence (another city, or even another state); creating a new "history" of the person's life (legends), processing new documents; personal protection; changing the person's documents; establishing a link between new documents and existing databases; tracking mail and electronic messages based on passwords and logins provided by the client; social adaptation at a new place of residence; psychological assistance to the victim (witness), etc. In the United States, if there is a need to relocate a witness, he is asked to name several places in the United States where he would like to live. Some people talk about the desire to visit Hawaii, "lower their bones" on the beaches of Florida or California, someone has always dreamed of living in Nevada or Atlantic City. These are the places that, if named by the witness, would never be chosen for relocation according to the programme, since he could voice his wishes earlier in conversations with friends. Such places do not meet the conditions of disappearing. First, the programme participant and his family are transported to a safe place, which is chosen by the marshals themselves.

Then the witness and his relatives receive an identity card with new names and surnames, including the necessary funds for the period of time while they get used to the new conditions. The state undertakes to provide housing, health insurance and employment for the witness, and the Marshals Service provides round-the-clock protection to programme participants during the trial. In addition, its employees ensure that local law enforcement and judicial authorities perform their duties in relation to witnesses who are being protected. After the witness enters the programme, first of all, the marshals immediately take him and all his relatives out of their previous place of residence, and none of them will return there again. In the first stage, the witness lives in a safe place, which is temporary. These can be hotel rooms. And only then he is moved to the so-called "new life". Despite the "creation" of a new identity, the law enforcement agencies

that carry out the concealment of a witness still have all the data about his crimes, if any. The service of judicial marshals, under various fictitious pretexts, informs law enforcement agencies at the place of new residence of the witness about his criminal past. As long as the witness may be in danger, marshals provide him and his family with round-the-clock protection. The purpose of the witness protection programme is to protect the witness so that he can testify in court against members of organised groups, gangs or terrorist organisations. Sometimes a witness with his family has to change dozens of places of residence before a court hearing previous to giving evidence. A witness is sometimes brought to court by helicopter, mail truck, or fisherman's boat (Witness Security Program, 2021).

Recommendation Rec (2005) 9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice (2005) states that "any decision to grant a witness anonymous status in criminal proceedings should be made in accordance with the norms of domestic law and European human rights law." O.O. Podobnyi's reasoning is correct in this regard (2015): "the duty to implement these measures within the framework of operational search support for criminal proceedings is assigned to employees of authorised operational units." The adoption of these security measures under the legal procedure provided for secret investigative (search) actions will allow, in the conditions of recording actual data on illegal actions of criminals directed against participants in criminal proceedings, court employees, law enforcement agencies or their family members, to immediately introduce them into criminal proceedings as evidence of relevant criminal activity (Criminal Procedural Code..., 2012). Moreover, the outlined security measures implemented under the legal procedure of secret investigative (search) actions should counteract the illegal collection of information and be applied in conjunction with measures to ensure the confidentiality of personal information.

In Part 2 of Article 16 Law of Ukraine No. 3782-XII "On ensuring security of the persons who participate in criminal legal proceedings"(1993), it is established that "in the case and in accordance with the procedure provided for by the Criminal Procedural Code of Ukraine, to ensure the security of a participant in criminal proceedings, the court may decide to conduct an interrogation of a participant in criminal proceedings using a video conference (broadcast from another room), including in a way that enables identifying the person giving evidence". The Criminal Procedural Code of Ukraine (2012) provides for the possibility of conducting interrogations and identification via a video conference at the legislative level for the first time. Conducting some investigative (search) actions during a pre-trial investigation via videoconference, carried out by

broadcasting from another room, is a fairly progressive way to collect and verify evidence, since this method allows using technologies and technical means and by ensuring proper image quality and information security mode to quickly solve the tasks of criminal proceedings without violating the legal rights and interests of participants in the process. According to paragraph 54 of the Criminal Code of the Federal Republic Germany (1998), officials of the Office for the protection of the Constitution or the police, being state employees of special services, may give evidence of circumstances, information about which constitutes an official secret, only with the permission of a higher authority (with the exception of information on agent work). Such permission gives the employee the right to give evidence on his own behalf based on testimony received from an agent worker, without disclosing information about him. In addition, in the Federal Republic of Germany, it is also practiced to interrogate the secret agent (informant) himself.

Conclusions

The results of the above suggest that there is a link between the general rules for taking measures to ensure the safety of persons performing a special task and the general principles of criminal proceedings, including in comparison with the experience of ensuring the security of other countries. The general rules apply both to persons performing a special task and to other persons, in particular victims, suspects, defense lawyer, civil plaintiff, civil defendant, representative of a legal entity and other persons in need of security measures in connection with their participation in criminal proceedings. The use of positive international experience shows that the application of security measures can encourage a person to perform a special task, which will make it effective in detecting and preventing organised crime in general. Disclosure of information about the cooperation of a person performing a special task with law enforcement agencies to solve a serious or particularly serious crime may endanger the life and health of both the confidant and his relatives. That is why, of course, information about procedural cooperation should be kept secret. In Ukraine, there is an urgent need to create a special unit, the main task of which should be to ensure the safety of participants in criminal proceedings, and the number of employees of this unit should be greater than the number of persons in need of protection. It is advisable to design modern rooms for providing anonymous testimony, supplied with special equipment, a screen with image hiding and changing the voice of witnesses who are under protection.

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