



THE HISTORY OF CRIMINAL PROCEEDINGS IN UZBEKISTAN

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ABSTRACT

The article covers the development of the institution of the provision of the witness's rights and lawful interests, the usual problems arising under the current legislation. In recent history of Uzbekistan there were several legal monuments which regulating relations in the criminal justice system, they play a special role in the administration of justice in the country. Their historical significance has served to promote public awareness of world-class procedural and legal institutions and the formation of perceptions in the field of justice and criminal practice as well as law enforcement practice.

The existing legal sources in criminal law were the laws prepared and put into practice by the Bolshevik political ideology that came to the cause of the government coup in the Russian Empire in the 17th century. In general, during the Soviet period, criminal procedure codes were received and practiced four times in the area of Uzbekistan. The author reveals the criminal procedure aspects that directly influence the protection of the witness's rights and lawful interests.

KEY WORDS: *history, witness, rights and duties, status, institute, features, practice, national and foreign experience, criminal process, formation, analysis.*

INTRODUCTION

In recent history of Uzbekistan there are several legal monuments which regulating relations in the criminal justice system, they play a special role in the administration of justice in the country. The existing legal sources in criminal law were the laws prepared and put into practice by the Bolshevik political ideology that came to the cause of the government coup in the Russian Empire in the 17th century. In general, during the Soviet period, criminal procedure codes were received and practiced four times in the area of Uzbekistan.

The first of these laws in our country is undoubtedly the CPC of RSFSR adopted in 1922. The reason for this is that after the government coup in the Russian Empire in 1917, there was no legislation in the Soviet Union that could regulate criminal relations. X. N. Bahronov writes that the Soviets first tried to fill this section on the basis of several decrees. However, it was impossible to regulate all the issues that arise, break and end in criminal cases through decrees. For that reason, during the early Soviet period, the Court's statutory

norms of the Russian Empire were used which did not contradict their ideology. A. V. Smirnov writes: The Russian Empire's Court Charter and the CPC codes of the RSFSR are based on a procedural idea in fact the code is a "colorless shadow" of the charter. (Smirnov A. V. 2001) This practice continued until the introduction of the RSFSR CPC in 1922, developed by the Soviets for all regions of the country.

METHODS

The first Soviet CPS was adopted on May 25, 1922. In Russian scientist G. Grigoryev's opinion, the first Soviet CPC in 1922 contained many provisions in the Criminal Code in 1864, as well as the status, rights and obligations of the witness. (Grigoriev F. G. 2008)

According to the conceptual context of this Code, the witness was considered one of the main evidence in criminal proceedings (Clause 62 CPC) (The Code...1922). Like the Court's statute, the RSFSR CPC in 1922 did not in itself formulate norms concerning the understanding of the participants of the criminal procedure, their procedural status, their



rights and obligations. Despite this, some procedural norms in the Code are relevant to the status of the witness. In particular, according to Clause 64 of the CPC, the procedural status of the witness could be based on two aspects. The first is that any person has the necessary information to clarify the circumstances of the criminal case; the second was related to the fact that the person was summoned to formally testify in court or in pretrial detention facilities. Experts could also be summoned for questioning on the conclusions they have made on the basis of their findings (Clause 67 of the CPC). Therefore, refuse to testify on the call of a judge or investigator with knowledge of a criminal case resulted in certain procedural sanctions against the individual (Clause 66 CPC). Based on these rules, an inquiry officer, investigator or judge may have been summoned for disclosure of information related to the case. However, in practice, it was sometimes possible for a person who was informed about the circumstances of the case to appear before the inquiry officer, investigator, prosecutor, or judge and disclose the information he knew.

RESULTS AND DISCUSSIONS

The CPC crime process of the RSFSR in 1922 set the limit for persons who could be present as witness, and the defense of the accused and people with mental or physical disabilities were exempted from such obligation. It is recommended that an expert diagnoses such a physical or mental defect (Clause 65).

As noted above, in the RSFSR CPC in 1922 the rights and obligations of the witness and other participants did not specifically regulate in the proceedings. However, some rights of the witness and responsibilities were reflected in the rules governing the interrogation process. For instance, based on the Clause 167 of the CPC, the witness was obliged not to testify, but to report all information known to the case to the inquiry officer, investigator and the court without distraction.

At the same time, the witness will be able to freely testify his testimony (Clause 168), to testify in his native language and to use the services of an interpreter, and for deaf witnesses to use the assistance of an expert who understands the sign (Clause 170), to familiarize himself (Clause 171), to familiarize himself with the materials of the criminal case concerning the circumstances under which the forensic examiner must give his opinion (Clause 174), to cover the expenses incurred by the inquiry officer, investigator and the court on the summons; the right to demand compensation for work (Clause 69).

Thus, the procedural rules were formed which regulating the witness's presence in the RSFSR CPC in 1922, existed in its territory until the formation of

the Uzbek SSR in 1924. Based on the feedback from this institution, if we clarify the status, rights and responsibilities of the witness, witness is-

- The person who has the information necessary to establish the circumstances of the criminal case;
- The official summons sent by the person conducting the criminal case turns the witness into a criminal proceeding;
- Has certain rights and obligations as a participant of criminal proceedings;
- Limits on the status of the witness.

The peculiarities of the witness doctrine can be seen in the 1926 CPC which is the first historical procedural source in Uzbekistan. "The Criminal Procedure Code of Uzbekistan which adopted in the USSR in 1926 represents an important milestone in the judicial policy pursued by the Soviets in our country. After all, this code is the first written source in the history of our country that has regulated the first national criminal-procedural relationship in the criminal field." (Mukhitdinov F., Islamov B. 2011). The CPC of Uzbekistan in 1926 is not only important as the first historical legal source to regulate criminal justice in the country, but also to a significant contribution to the development of the institution of witness.

For the first time in the CPC of the Uzbek Soviet Socialist Republic in 1926 the concept of the participants of criminal proceedings and the use of positive legal techniques to regulate their rights and obligations in separate norms were used. However, the witness was not recognized as a participant in the criminal proceeding but was seen as a source of evidence. In this section of the CPC "On Evidence" it was noted that the testimony of the witness is the source of evidence (Code of Criminal ... 1927).

The status of the witness is also based on this notion, for this, the person must:

- Availability of relevant information on the circumstances of the criminal case;
- The time and place of arrival of the person conducting the criminal case on the summons;
- To be immune from testifying.

Consequently, the necessary attribute of witness status is that the person has certain information about the circumstances of the criminal case. This information may relate to the crime or the accused and the victim. This information is put in the line of evidence established in the criminal case.

Witness status is the time of condition and characteristics of the person appearing as a criminal entity in the criminal procedure. In criminal proceedings, the witness often enters a procedural relationship based on the summons of the prosecution. It is precisely the information that he or



she possesses is the main objective for the person to acquire witness status.

However, criminal procedure law limits individuals with specific information about the circumstances of the case to be present as witnesses in criminal proceedings. These restrictions apply to the CPC of Uzbekistan in 1926, which relates to:

- Defense of the accused (defendant);
- People with physical or mental disabilities (Article 59 of the CPC).

The fact that the defense is protected from the obligation to be a witness is historic. That is why there is almost no debate about this.

Witness immunity granted to individuals with physical or mental disabilities recognized by the Criminal Procedure Code can also be found in virtually all historical and modern laws. Its main point is that people with a physical disability, such as deaf, blind, visually impaired, old and other persons with physical disabilities, cannot be summoned as witnesses in a criminal case for situations in which certain physical characteristics are required. Individuals with mental disorders may not be able to obtain a witness status because of their legal inability.

The CPC in 1926 did not show in particular the rights and obligations of the participants of the criminal proceedings, as well as the witnesses as previous ones. However, information on the witness's procedural rights and responsibilities can be found in the rules governing the institution. Specifically, Chapter 13 of the CPC under review regulates the rules for questioning witnesses and experts. Its provisions contain some provisions concerning the rights and obligations of the witness. In particular, after the witness receives the summons, he shall appear before the inquiry officer, investigator or court (Clause 123), give true testimony regarding the facts known to him (Clause 163 and 282), refuse to give testimony, and answer questions raised by the parties. (Clause 224)

Moreover, the witness has procedural rights, including the assistance of an interpreter or gossip specialist who knows the language of the criminal case or who is physically defective (deaf and dumb), see the official record of the investigative action, the right to require the appropriate modifications and additions to the testimony contained therein, to make manual statements (Clause 166).

One of the cases envisaged by the CPC of Uzbekistan in 1926 was the strict limits of the testimony, which established that the accuracy of the testimony and the accuracy of the witness information was determined. According to Article 164 of the CPC, the witness could be interrogated only in the circumstances surrounding the criminal case and in the disclosure of the identity of the accused.

Thus, the first criminal procedure of Uzbekistan in 1926 during the Soviet period did not substantially alter the issues related to the procedural status of the witness. The procedural rules, in fact, the institution of testimony were virtually indistinguishable from the principles of the Judicial Charter of the Russian Empire of 1864 relating to this matter and the regulation of the Court. The main difference was due to the ideological approach to criminal-procedural relations. In particular, the Soviets considered the religious doctrine to be outdated and therefore narrowed the rules to restrict the testimony of witnesses based on their religious, national, or service affiliation.

These issues were clarified in the 1929 CPC's second written source, which regulates criminal-procedural relations in Uzbekistan. In general, researchers had a negative attitude towards the CPC of Uzbekistan in 1929, which they believe was based on the reduction of criminal procedural guarantees. For example, G. A. Abdumazhidov suggested this kind of idea. He wrote that the CPC in 1926 of the Uzbek SSR had some significant theoretical shortcomings, but instead of reducing them, the CPC in 1929 substantially increased (Abdumazhidov F.A. 1974)

However, there are points that do not agree with such an idea. Including H. N. Bakhronov noted that while the CPC in 1929 did not solve all the issues arising from the legal regulation of procedural relations, but it should say that it improved certain procedural rules and regulations in 1926 and regulated some of the structural elements in a more logical manner (Bakhronov H. N. 2007).

On the basis of these scientific considerations, if we analyze the rules governing the witness's proceedings in the CPC in 1929, this CPC has also taken the lead in the evidence system, so the procedural status of the witness remains at the object of evidence. Article 22 of the CPC provides the notion of evidence, according to which individual or cumulative factual information confirming or denying the facts of a crime is evidence. Accordingly, the testimony of the witness, among other evidence, constitutes an important source of evidence. The status of the witness was also linked to the notion of the status of the person who had the information confirming or denying the facts of the criminal case.

That is why this CPC stipulates that the witness may be interrogated only on the facts known to him and on the identity of the perpetrator (Clause 26). Interrogation was mainly carried out at the crime scene, and sometimes witnesses could be summoned to testify to the inquiry officer, investigator or court (Clause 23 of the CPC).

At the same time, the CPC in 1929 established a strict range of people who could not be present as



witnesses in the criminal case. Article 24 of the Penal Code includes such individuals - people with physical or mental disabilities, children under ten years of age. However, the involvement of children under the age of ten as witnesses is permitted only when necessary. Although the procedural law does not disclose the content of "necessary circumstances", individuals of this age could be questioned, mainly because they were witnesses of the crime and could not otherwise prove the facts of the crime (Clause 24, Part 2).

An essential aspect of this historical source regarding the questioning of the witness was that it set out the rules enforcing the principle of controversy during the trial. According to Article 116 of the CPC, witnesses could initially be questioned by the party that invited them.

Thus, the Criminal Procedure Code in 1929, which exists in the history of Uzbekistan's judicial practice, attempted to link the nature of the procedural task (that is, an important source of evidence) to witnesses in criminal proceedings. Undoubtedly, when the present Code was in effect the "queen" of proof was officially recognized by the defendant as his "confession" (Vishinsky A.Ya. 1950). Therefore, the witness was often viewed as a regular evidence in the criminal case, rather than as a participant in the proceeding with specific information about the crime. The Code specifies neither the rights nor obligations of the witness.

An important law in the history of criminal justice in our country is the Criminal Procedure Code of the Uzbek SSR, adopted in 1959.

According to I.L.Petrukhin's opinion exactly this code is.... (Petrukhin I.L)

H.N. Bahronov also wrote that "the new and post-Soviet CPJ legislation adopted in 1959 differs from previous laws by establishing prosecutorial oversight of criminal-procedural relations and only the judicial review and resolution of criminal cases." (Bakhronov H. N. 2007)

At the same time, the analyzed procedural law, in contrast to its previous ones, could be seen as attempting to construct the procedural relationships regulated by certain principles. One of them is the Article 14 of the CPC, which states that "the court, prosecutor, investigator and inquiry officer shall take all measures prescribed by law for comprehensive, complete and impartial investigation of a criminal case, both in respect of the accused and his acquittal, it must also determine the aggravating and mitigating circumstance" (Criminal Procedure ... (1978).

For the first time in the procedural and legal sphere of Uzbekistan specific aspects of the procedural status of the witness were laid on the basis of the same procedure. Articles 53-55 of the CPC in 1959 were devoted to the establishment of the institution of witness. Specifically, part 53 of Article

53 clarifies the notion of a witness, which states that a witness is "any person who is aware of any facts of a criminal case or of the personal characteristics of the accused."

This kind of person to have witness status in criminal proceedings, he had to be summoned by the inquiry officer, investigator, procurator or the court to testify.

In this CPC the issue of witness rights was left open and its obligations were emphasized. According to Article 54 of the CPC, the witness is "obliged to give testimony about the facts that are known to him in the case and facts that characterize the accused." Therefore, it is an important social duty to provide testimony by a person with specific knowledge of the case, and also to present only the facts of crime in their testimony. Therefore, the witness was not obliged to give up his duty and to give false testimony. These obligations were subject to the threat of liability provided by Articles 161 and 162 of the Criminal Code (1982).

The witness was also obliged to appear at the designated time by the call of the investigator. Article 134 of the CPC specifies the procedure for forcing a witness to appear without summons. According to this, a police officer forcing a witness to evade his arrest was ordered by police to order him

Following people were free from obligations above:

- Individuals who are unable to properly recall the facts and events that are relevant to the criminal case due to their physical or mental illness and are unable to give correct testimonies;

- Defense of the accused - on the circumstances of the case learned in connection with his defense.

Unlike previous criminal and procedural laws, the CPC in 1929 of Uzbekistan has narrowed the scope of witness immunity. The close relatives of the accused (the suspect, the defendant), the clergy and the judges (in relation to the secret of the consultation) were not infected by the witness's immunity.

Some new rules could also be seen in the witness interrogation procedure. According to Article 135 of the CPC, the witness could verbalize all the facts known to him, and then, if necessary, the investigator could ask him questions.

All testimony provided by the witness during the interrogation had to be recorded verbatim, whenever possible. Sometimes, at the request of the witness, he could write down his own testimony. The investigator could familiarize himself with the witness's own testimony, ask questions, and the answers could be written by the witness. The protocol was signed by witnesses, investigators and people



present during the interrogation (Clause 136 of the Criminal Code).

The Code also specifies the rules for interrogating juvenile witnesses, and the teacher, at the discretion of the investigator, may participate in the interrogation of witnesses between the ages of 14 and 16. In minor cases, close relatives of the minor witness could also be summoned during the interrogation. Persons participating in the interrogation of a minor witness had the right to ask questions, with the permission of the investigator (Clause 137 of the CPC).

The rules of questioning witnesses during the trial were of a particular nature. The witness was required to speak freely in court, and the trial participants were asked to clarify questions, and if the witness was summoned at the request of one of the participants, that person would first question the witness (Clause 263 of the CPC).

At the same time, if the witness's testimony relates to information that is difficult to remember, the criminal procedure law permits the use of paperwork (Clause 264 of the CPC), if there is a conflict between the testimony of the witness and the testimony in the preliminary investigation, and the witness has the opportunity to appear. In the event of his failure to appear in court, his testimony was read out (Clause 266 of the Criminal Code). At this stage the criminal procedure of the witness was coming to an end. Because the criminal procedure legislation of the Soviet period restricts the participation of witnesses at other stages of legal proceedings, the fate of the case was decided only in the light of the collected evidence and the written testimony of the witness.

CONCLUSION

Thus, a recent study of the characteristics of the institution of witnesses in criminal proceedings gives us the following conclusions:

- Witness - a person with specific knowledge of criminal cases;
- The witness may be involved in the criminal case on the basis of summon or inquiry of the inquiry officer, investigator or the court;
- The witness's testimony issued by the prosecution is an important object of evidence;
- The testimony of the witness demonstrates his / her ability to understand subjectively the circumstances surrounding the criminal case;
- However, the witness is recognized as an important participant in every criminal case;
- The testimony of the witness is therefore evaluated by the court that decides the case;
- There are two important identities of the witness, one of which is his or her identity and the other is information he / she has on the case;

- Therefore, one of these cases may be the basis for establishing a witness to a criminal trial.

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