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| Research Article

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Specific Aspects of the Concept and Purpose of Preliminary Securing the Testimony of Witnesses and Victims in Criminal Proceedings (Deposit Institute)

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Abstract: In this scientific article, the author states that in the Constitution of the Republic of Uzbekistan, a person, his life, freedom, honor, dignity and other inalienable rights are the highest value. In judicial and investigative activities, respect for and observance of the rights and freedoms of the individual is of great importance.

Keywords: Court-investigation, Depositing, witness, victim, accused, objection.

Thus, the President of our country Sh. Mirziyoyev, in the Decree of the President of the Republic of Uzbekistan dated May 14, 2018 No. PP-3723 "On Measures for the Fundamental Improvement of the System of Criminal and Criminal Procedure Legislation," defined tasks for the introduction of the institution of preliminary securing (depositing) the testimony of witnesses and victims, primarily in cases where, due to objective reasons, it is impossible to interrogate them later.[1] In addition, the Decree "On Measures to Further Strengthen Guarantees of Protection of the Rights and Freedoms of the Individual in Judicial and Investigative Activities" was adopted[2]. This Decree, as one of the main directions for the further improvement of judicial and investigative activities, provides for the introduction of a procedure for preliminary deposition by the court with the participation of the parties at the request of the suspect, accused, victim, witness, prosecutor, or lawyer, if it is impossible to interrogate the witness and victim later at the stage of pre-trial proceedings due to their serious illness or the need for a long-term departure abroad.

Thus, to date, a comprehensive study of the issue of preliminary securing of testimony (deposition) in criminal proceedings and a comprehensive analysis of all elements of the institution of testimony has shown the relevance of this issue.

[1] Ўзбекистон Республикаси Президентининг 2018 йил 14 майдаги ПҚ-3723-сонли “Жиноят ва жиноят-процессуал қонунчилиги тизимини тубдан такомиллаштириш чора-тадбирлари тўғрисида”ги Қарори.
[2] Ўзбекистон Республикаси Президентининг 2020 йил 10 августдаги ПФ-6041-сонли “Суд-тергов фаолиятида шахснинг ҳуқуқ ва эркинликларини ҳимоя қилиш кафолатларини янада кучайтириш чора-тадбирлари тўғрисида”ги ЎзР Президенти Фармони. Қонун ҳужжатлари маълумотлари миллий базаси, 10.08.2020 й., 06/20/6041/1151-сон.

The word deposition (from Lat. dēpōnō pono - "to put," "to store") means the organization of the storage of something[3].

In the explanatory dictionary of S.I. Ozhegov, deponition means transfer for safekeeping.[4] It is in this sense that it is mainly used, but the term under consideration has other definitions, the most common of which are: 1) safe storage of things and documents; 2) the procedure for depositing various international treaties.[5]

Thus, the term "depositing" means giving testimony against someone under oath, giving written testimony, interrogation under oath.

Chapter 12[1] of the Criminal Procedure Code of the Republic of Uzbekistan provides for a new function of the court, namely the preliminary securing of testimony by the investigating judge during pre-trial proceedings in a criminal case.

Preliminary securing of testimony is a new institute of proof in the criminal procedure legislation of the Republic of Uzbekistan, the procedural form of which is similar to the procedure of interrogation. By means of this proof, the "investigative judge"[6] of the Republic of Uzbekistan, as well as its impregnation with the legal systems of foreign countries. Thus, one of the reasons for introducing the institution of preliminary securing of testimony into our national legislation is the creation of a basis for bringing justice into line with international standards and improving the principle of adversarial proceedings in criminal cases.

According to M.K. Mukhammadaliev, preliminary securing of testimony is a procedural action carried out by the court before the court stage, the purpose of which is to ensure objectivity in assessing the evidentiary significance of the testimony of the victim, witness, or civil claimant during interrogation in the subsequent resolution of the case during the trial. It is important that the preliminary securing of testimony begins at the initiative of the investigator or prosecutor and is carried out through questioning in the form of a judicial investigation.[7]

We disagree with the aforementioned scholar's opinion. For example, the following can be said about what the scientist expressed in the first part of his thought. In our opinion, the scientist, it seems, did not correctly understand the concept of the institution of preliminary strengthening of testimony, the purpose and necessity of its introduction into legislation. Firstly, the scientist (M.K. Mukhammadaliev) drew these ideas directly from the ideas of S.D. Shestakova and U.E. Imanalieva.[8] Secondly, the victim, the accused, and other persons (civil claimant) are not

[3] The free dicti onary by Farlex. Source. URL: http://legal-dictionary.thefreedictionary.com/ deposition (дата обращения: 01.12.2024).

[4] Ожегов С.И. Словарь русского языка: 70000 слов/ Под ред. Н.Ю. Шведовой. -21-е изд., перераб. и доп. – М.: Рус. Яз., 1989. С. 164.

[5] Темирбекова А.А. Судебное депонирование показаний в современном уголовном процессе // Международный журнал экспериментального образования. – 2019. – № 6. – С. 72-76.

[6] Тергов судяси – (судья-терговчи, тергов магистрати, сўроқ қилаётган судья) бир қатор Европа ва Жанубий Америка давлатларининг ҳуқуқ тизимидаги мансабдор ва процессуал шахс бўлиб, маъмурий ва жиноий ишлар бўйича суд терговини якка тартибда олиб боришга масъул бўлиб, судья ва терговчи функцияларини бирлаштириб, ишни мустақил суд маслаҳатчилари ва ҳимоя томони (адвокат) иштирокисиз ҳуқуқбузарликларни кўриб чиқади. Бошқача қилиб айтганда, тергов судьяси жиноят ишини кўзғатиш тўғрисида, жиноят таркибининг мавжудлиги ёки йўқлиги, шунингдек гумон қилинувчини судловга тегишлилиги ёки тегишлимаслиги тўғрисида қарор қабул қилади. Мамлакатимизда тергов судьяси асосан маъмурий ҳуқуқбузарликларни, эҳтиёт чорасини қўллаш масаласи ва ушбу масала юзасидан назорат қилиш ваколатига эга.

[7] Муҳаммадалиев М.Қ. Кўрсатувларни олдиндан мустаҳкамалаб қўйиш институтининг далилларни баҳолашдаги ўрни. Юридик фанлари доктори дисс. Автореф (PhD). -Т.: Ўзбекистон Республикаси Ички ишлар вазирлиги академияси, 2025. - Б. 26-27.

[8] Шестакова С.Д., Иманалиева У.Э. Депонирование показаний потерпевшего и свидетеля в уголовном процессе Кыргызской Республики. https://cyberleninka.ru/article/n/deponirovanie-pokazaniy-poterpevshego-i-svidetelya-v-ugolovnom-protsesse-kyrgyzskoy-respubliki

considered as impartial participants in the case. Because they will definitely have an interest in the work. For example, the victim (a civil claimant has the same interest) has a desire to punish the accused. The accused, however, has an interest in escaping punishment. Obviously, both participants do not possess the quality of objectivity. Thirdly, in the scientist's opinion, that is, in the expression of his opinion in the sentence, there is uncertainty (the subject presented in his opinion does not give the meaning of the predicate and the whole concept). For example, in the subsequent resolution of the case in court proceedings, it consists in assessing the evidentiary value of the testimony of the victim, witness, or civil claimant during questioning. In our opinion, in Chapter 12^1 of the Criminal Procedure Code of our country, opinions are expressed against the purpose, reason, basis, and necessity of preliminary securing of testimony. Fourthly, based on the essence and content of Article 121^2 of the Criminal Procedure Code of the Republic of Uzbekistan, the purpose of preliminary securing of testimony is to provide for the preliminary securing of the testimony of a witness, victim (accused), and others in cases where there are grounds to believe that their subsequent interrogation during criminal proceedings (their possibility of participation in the case) will be impossible due to certain objective reasons. That is, the legislation provides for the subsequent submission of testimony by a witness, victim (accused), and other persons to the court as evidence. Fifthly, the scientist stated that the purpose of preliminary consolidation of testimony is to assess the significance of evidence. Prosecution authorities and the court have the right to evaluate evidence, but the purpose of preliminary securing of testimony is not to evaluate evidence, but to present (preserve) testimony for the next stage (to the court). Sixthly, although the researcher defended his dissertation in May 2025. For some reason, he forgot that the institution of investigative judge was introduced on January 1, 2025. That is, here it was necessary to keep in mind that the preliminary consolidation of the scientist's testimony was carried out not by the judge, but by the investigating judge. Seventhly, the scientist noted below that he agrees with the views of L.Voskobitova, V.V. Grishchenko, A.S. Gambaryan, A.N. Apkhanov, Ch.D. Kenjayev, A.A. Popov, and I.I. Nikitchenko, but confirms that this action of the scientist contradicts his opinion above.[9]

Regarding the second part of the scholar's opinion, the following can be said. According to the scientist, it is important that the preliminary securing of testimony begins at the initiative of the investigator or prosecutor and is carried out through questioning in the form of a judicial investigation. However, according to Article 121^1 of the Criminal Procedure Code, preliminary securing of testimony is carried out at the request of witnesses, victims, and others. Thus, it is evident that the scholar expressed his opinion on reinforcing the testimony without deep analysis. Ninthly, the researcher notes that the national encyclopedia defines the institution of deposit. However, the national encyclopedia (witnesses, etc.) is not intended for preliminary consolidation of testimony. The encyclopedia only defines terms. That is, an encyclopedia provides general information about a particular word. The reference to deposition from the encyclopedia is, firstly, not a legal encyclopedia, and secondly, the year of its publication remains unknown. In short, it became clear that the scientist's opinion on the preliminary consolidation of the testimony contained a lot of confusion, a lack of systematization, logic, and did not express his own opinion.

According to A.A. Popov, preliminary securing of testimony in criminal proceedings is carried out if there are grounds to believe that the possibility of further interrogation (appearance) of a

[9] Муҳаммадалиев М.Қ. Кўрсатувларни олдиндан мустаҳкамалаб қўйиш институтининг далилларни баҳолашдаги ўрни. Юридик фанлари доктори дисс. Автореф (PhD). -Т.: Ўзбекистон Республикаси Ички ишлар вазирлиги академияси, 2025. - Б. 26-28.

participant in criminal proceedings during the trial will be lost, and also provides for the preservation of these testimony for the purpose of their publication during the subsequent trial.[10]

According to Professor L.A. Voskobitova, depositing is one of the methods of giving legal force to facts obtained by the court (submitted by the bodies prosecuting the crime). Depositing is especially important when it can unlawfully influence or cause serious harm to the persons involved in the criminal case, or for objective reasons (for example, illness, the possibility of traveling abroad).[11]

T.V. Khmelnitskaya, in criminal procedure legislation, the institution of deposit is an integral part of the procedure for the formation of evidentiary material with the assistance of the investigating judge.[12] A similar opinion was expressed by V.V. Grishchenko and L. Voskobitova.[13]

I.I. Nikitchenko emphasizes that preliminary securing of testimony consists in obtaining testimony at the pre-trial stage for the purpose of conducting written testimony in court in the future during the trial.[14]

Depositing testimony in criminal proceedings is the interrogation of a victim or witness by an investigative judge if there are sufficient grounds to believe that further questioning in court may be impossible or difficult due to objective reasons.[15]

According to some scholars, preliminary securing of testimony increases the reliability and acceptability of testimony, and also serves as a guarantee of an impartial assessment by the court in future proceedings without its participation.[16] Some argue that they prioritize the institution of deposit over the interests of justice.[17]

Above, we cited the opinions of several scholars regarding the deposition of broadcasts. In it, some scholars expressed various unique, unrepeatable opinions on one issue. That is, each scientist tried to solve the same problem in different ways. This is considered a unique style. Thus, the deposition of testimony is related to the presentation or storage of testimony of evidentiary significance at the next stage. It shows that the purpose of such an unusual action is connected with objective reasons. We will certainly try to explain the objective reasons below. Admittedly, there are disagreements among scholars regarding the deposition of programs.

According to V.V. Kalnitsky, the deposition of testimony, unlike traditional interrogation, does not correspond to the principle of adversarial proceedings, i.e., the defense is deprived of the opportunity to question the prosecution in order to clarify the situation. In addition, it will not be

10 Попов А.А. Проблемы регламентации досудебного депонирования показаний в уголовном процессе (компаративистский подход). *https://cyberleninka.ru/article/n/problemy-reglamentatsii-dosudebnogo-deponirovaniya-pokazaniy-v-ugolovnom-protsesse-komparativistskiy-podhod*

11 Воскобитова Л. В. Состязательность: две концепции участия адвоката в доказывании // Уголовное судопроизводство. – 2012. – № 2. – С. 22–25.

12 Хмельницкая Т. Ф. К вопросу о формировании личных доказательств в ходе досудебного производства по уголовному делу // Юридическая наука и практика: Вестник Нижегородской академии МВД России. – 2014. – № 1 (25). – С. 239–244.

13 *Гамбарян А.С., Симонян С.А.* Судебное депонирование показаний в современном уголовном процессе: монография – Москва: 2016. – С. 3.

14 *Никитченко И.И.* Депонирование личных доказательств в ходе досудебного производства по уголовным делам // Вестник Калининградского филиала Санкт-Петербургского университета МВД России. 2014. № 1 (35). С. 120-124.

15 Грищенко В.В. О необходимости введения процедуры депонирования показаний в Российском уголовном процессе. Российское правоведение: трибуна молодого ученого. Сборник статей. *Выпуск 20.* Издательский Дом Томского государственного университета. 2020. – С. 204-205.

16 Ахпанов А.Н. Депонирование показаний потерпевшего и свидетеля в уголовном процессе Республики Казахстан // Вестник Омского университета. Серия «Право». 2015. № 4 (45). С. 173–179.

17 Кенжетаев Ч.Д. Особенности депонирования показаний в уголовном процессе Республики Казахстан // Уголовное право и уголовный процесс. 2016. № 2 (43). С. 43–46.

possible to check for a newly discovered case.[18] Thus, the deposition of testimony strengthens the monopoly on obtaining evidence and creates inequality between the parties (victim, accused).

Ch.D. Kenjetayev also expressed his opinion on this matter. According to him, the issue of depositing pre-trial testimony may lead to negative consequences in the future. That is, in the event of a serious contradiction between the witness, victim, and accused (in their testimony), it is impossible to clarify the deponent's testimony, thereby increasing the possibility of the accused escaping criminal prosecution.[19] With this, the scholar explains that the institution of deposit (witness) protects the interests of the victim, placing its own interests above the interests of justice.

V.V. Kalnitskiy, continuing his opinion on this matter, notes that to ensure fairness, the deposition of witness testimony should be conducted openly between the accused, their defense counsel, the prosecutor, and the investigating judge during the preliminary consolidation of testimony. Only then will their equality be ensured and will lead to the reliability of testimonies obtained under the conditions of adversarial proceedings and the strengthening of guarantees for decisions made.[20]

According to A.S. Aleksandrov, adversarial proceedings lead to the administration of justice. If we are content with the evidence presented by only one party, it can lead to the accumulation of unreliable, unacceptable evidence.[21]

The Convention on the Protection of Human Rights and Fundamental Freedoms stipulates that every person participating in a criminal case as an accused (defendant) has the right to ask questions to a witness or victim (who testified against him).[22] According to the content of the Convention, the defendant has the right to defense against prosecution. Based on the foregoing, the deposition of programs has its positive and negative aspects.

Consequently, the deposition of testimony plays an important role in the further storage or submission of evidence in the case to the court. Moreover, the deposition of testimony does not correspond to the principle of adversarial nature (which deprives the parties of the opportunity to file a counterclaim or subsequently verify it), and indeed, real facts are formed as a result of the adversarial nature of the parties. However, for objective reasons, such as the grave illness of a witness, a victim, and other similar reasons, the deposition of testimony can be explained by the fact that it has its own positive aspects.

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