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ANALYSIS OF SPECIAL CRIMINOLOGICAL MEASURES FOR THE PREVENTION OF VIOLENT CRIMES, USING THE EXAMPLE OF WITNESS AND VICTIM PROTECTION

Annotation

The presented article is devoted to the analysis of special criminological measures for the prevention of violent crimes, using the example of witness and victim protection. Taking into account that special criminological measures for the prevention of violent crimes are more than extensive, the author decided to analyze these measures through the prism of the problems of witness and victim protection. The author analyzed both doctrinal sources and the norms of the current legislation of the Republic of Kazakhstan, which allowed the author to draw certain conclusions.

Keywords: criminological, special, measures, prevention, violent, crimes, witness, victim.

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АНАЛИЗ СПЕЦИАЛЬНО-КРИМИНОЛОГИЧЕСКИХ МЕР ПРЕДУПРЕЖДЕНИЯ НАСИЛЬСТВЕННЫХ ПРЕСТУПЛЕНИЙ, НА ПРИМЕРЕ ЗАЩИТЫ СВИДЕТЕЛЕЙ И ПОТЕРПЕВШИХ

Аннотация

Представленная статья посвящена анализу специально-криминологических мер предупреждения насильственных преступлений, на примере защиты свидетелей и потерпевших. Принимая во внимание, что специально-криминологические меры предупреждения насильственных преступлений более чем обширны, автор принял решение проанализировать данные меры через призму проблем защиты свидетелей и потерпевших. Автор проанализировал, как доктринальные источники, так и нормы действующего законодательства Республики Казахстан, что позволило прийти к определенным выводам.

Ключевые слова: криминологические, специальные, меры, предупреждение, насильственные, преступления, свидетель, потерпевший.

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КУЭГЕРЛЕР МЕН ЖӘБІРЛЕНУШІЛЕРДІ ҚОРҒАУ МЫСАЛЫНДАҒЫ ЗОРЛЫҚ-ЗОМБЫЛЫҚТЫҢ АЛДЫН АЛУДЫҢ АРНАЙЫ КРИМИНОЛОГИЯЛЫҚ ШАРАЛАРЫНА ТАЛДАУ

Аңдатпа

Ұсынылған мақала куәгерлер мен жәбірленушілерді қорғау мысалында зорлық-зомбылықтың алдын алудың арнайы криминологиялық шараларын талдауға арналған. Зорлық-зомбылық қылмыстарының алдын алудың арнайы криминологиялық шаралары ауқымды емес екенін ескере отырып, автор бұл шараларды куәгерлер мен жәбірленушілерді қорғау проблемаларының объективі арқылы талдауға шешім қабылдады. Автор доктриналық дереккөздерді де, Қазақстан Республикасының қолданыстағы заңнамасының нормаларын да талдады, бұл белгілі бір қорытындыға келуге мүмкіндік берді.

Түйінді сөздер: криминологиялық, арнайы, шаралар, ескерту, зорлық-зомбылық, қылмыс, куә, жәбірленуші.

Special criminological measures for the prevention of violent crimes against witnesses and victims are an essential component of criminological practice aimed at ensuring their protection during criminal proceedings. Such measures are intended to guarantee the safety and legal protection of participants in criminal proceedings whose testimony has significant evidentiary value for solving crimes.

From a legal point of view, the need to implement these measures is conditioned by the purpose of preventing the commission of perjury, ensuring a fair trial and the correct application of the criminal law. In accordance with the provisions of the legislation, the protection of witnesses and victims is assigned to state bodies responsible for ensuring the safety of participants in criminal proceedings, such as national security agencies, internal affairs agencies, the military directorate, the anti-corruption service and the Economic Investigation Service (paragraph 2 of Article 2 of the Law of the Republic of Kazakhstan dated July 5, 2000 No. 72 "On State Security protection of persons involved in criminal proceedings") [1].

However, in practice, the activities of these government agencies often raise doubts about their integrity, which is confirmed, among other things, by judicial precedents. So, in 2005, the court of the Kyzylorda region sentenced two law enforcement officers found guilty of embezzling over 147 thousand tenge from the witness protection fund, which indicates the presence of corruption and insufficient effectiveness of protection measures.

A.N. Ilyashenko notes that police officers often show insufficient initiative in providing real assistance to victims, witnesses and their families, which negatively affects the effectiveness of protection and trust in the law enforcement system. In particular, recent cases show that police officers exerted pressure on a rape victim, creating psychological pressure and trying to persuade her to withdraw her statement, which indicates the

presence of systemic problems in the implementation of protective measures [2, p. 160].

Additionally, there are a number of legislative problems related to the legal regulation of the protection of victims and witnesses. So, the provisions of Articles 26, 65-1 of the Criminal Procedure Code of the Republic of Kazakhstan contain only the procedural rights and obligations of these persons, without providing comprehensive measures for their physical and psychological protection. In contrast, the Law "On State Protection of Persons Involved in Criminal Proceedings" establishes a more detailed list of security measures, including, in particular, personal protection, provision of personal protective equipment, temporary accommodation in safe places, confidentiality of information, relocation, change of documents, as well as a change in appearance — which indicates the need for a more systematic approach to protecting these categories of participants in criminal proceedings. [1].

In the context of the topic of our article, we note that the change of residence is extremely rare, due to both objective and subjective reasons.

In Kazakhstan, other problems have been identified regarding the activities of the witness and victim protection fund, which essentially focuses on financial compensation — an approach that does not always correspond to the goals of comprehensive protection.

In addition, ensuring accountability for violent crimes is a key element of both general and special prevention. An analysis of interviews with those convicted of crimes against the person revealed that almost half of the respondents had a feeling of impunity, which indicates the lack of effectiveness of measures to prevent repeat crimes [3].

The materials of the criminal case submitted to the court include evidence of the contract killing of the Almaty crime boss Ospanov, nicknamed Kuba. It should be noted that the victim was shot

dead on Manas Street in Almaty with an old—style revolver weapon [4]. Establishing the contract nature of the crime was complicated because the perpetrator tried to mislead the investigation out of fear of the customer. This indicates a systemic problem — namely, the persistence of impunity within law enforcement practice.

The experience of the United States shows that witness and victim protection activities are carried out by specialized agencies and involve the creation of structured protection programs. In addition to measures to ensure personal safety, in the United States, attention is paid to psychosocial support for participants in criminal proceedings, including counseling sessions with psychologists and psychoanalysts. Currently, there are more than 2,000 crime victim protection programs in the country, of which 1,422 are supported by the Ministry of Justice. The financing of such programs reaches about \$35 million per year, which makes it possible to ensure their effective operation.

Despite significant funding, the level of integrity of U.S. law enforcement agencies often raises questions, which is typical for Kazakhstan. For example, in 2016, David Mooney's testimony in the extortion case showed that the U.S. Federal Witness Protection Program (WITSEC), promising him housing, new documents, as well as a change in identity and source of income, did not actually provide the promised guarantees after testifying, and Mooney himself lost his source of income and became a victim of new extortion.

For members of the Commonwealth of Independent States, including Kazakhstan, this practice of protecting witnesses and victims is unfamiliar and, in my opinion, unattractive. Organizations established by civil society in the Republic of Kazakhstan to support such individuals do not have sufficient capacity to ensure their personal safety and the effectiveness of the measures taken.

Kazakhstan has established and operates various crisis centers and social assistance organizations aimed at protecting and rehabilitating victims of crimes, including victims of domestic violence. Thus, through the state social order, the ARASHA crisis center was opened. Its activities focus on providing psychological and social support to victims of domestic violence.

Similar institutions operate in Aktobe region, where a crisis center rehabilitates victims of domestic violence, and in Zhambyl region, where a social assistance center for such persons operates. In particular, a psychological support specialist working at the Aktau center with the support

of the United Nations Children's Fund (UNICEF) notes that traumatized children come to the center and participate in training sessions and game-based techniques that promote psychological recovery [5].

It should be emphasized that these crisis centers and social assistance organizations were created solely to provide support to victims, that is, victims of criminal attacks. At the same time, there are no similar institutions in Kazakhstan specifically designed to protect witnesses, which indicates that the institutional framework is insufficient to provide comprehensive protection for participants in criminal proceedings.

In addition to creating protective mechanisms, an important aspect is the fight against established stereotypes and myths about the criminal world and criminals, aimed at debunking their romanticized image. To do this, it is necessary to purposefully inform the population about the real nature of criminals, their base characteristics, cynicism, selfish motives and socio-antisocial attitudes.

As part of the implementation of these measures, the population, in particular certain categories of citizens, should be purposefully informed about the following aspects:

- the essence, purpose and social and state significance of the justice system, including criminal proceedings;
- the role and significance of the testimony of witnesses and victims for the proper and fair resolution of criminal cases;
- about the legal consequences of knowingly false testimony and evasion of giving them;
- existing legal and organizational measures to ensure the safety of witnesses and victims, as well as new legislation in this area;
- criminal and other liability for acts of violence and unlawful acts against these categories of participants in the process;
- on the state of crime related to violent acts against witnesses and victims, and measures taken to prevent and suppress it [6].

Special criminological measures to prevent violent crimes committed against witnesses and victims should include the above-mentioned areas in order to form an understanding of their rights, eliminate fear, and realize their role in strengthening the rule of law and civil society.

However, in practice, victims and witnesses often do not receive the necessary legal, medical, and psychological assistance, which makes it difficult for them to participate in criminal proceed-

ings. As a result, these individuals are reluctant to report crimes and actively participate in investigative actions and court proceedings. In some cases, this leads to evasion of giving evidence, especially in cases of violent crimes, crimes related to organized crime and corruption, as well as to the rejection of previously given testimony in accordance with the procedure established by law [7, p.67-79].

In connection with the above, it seems necessary to emphasize that the most important component of the system of special measures for the prevention of crime is the implementation of targeted work with the public, as well as with law enforcement agencies. Within the framework of this activity, various preventive measures can be carried out, including seminars, training sessions, meetings with psychoanalysts, as well as meetings with the heads of funds protecting victims who are aware of the importance of ensuring the safety of these subjects. It is obvious that the work of law enforcement agencies is characterized by complexity, and over time their expressions of compassion and humanity often fade into the background; however, it is necessary to take into account the crisis situations in which witnesses and victims find themselves and take appropriate measures to protect them.

As part of the general preventive direction, V.D. Malkova emphasizes that in the context of further democratization of society, the role of public organizations, labor collectives and citizens in strengthening the rule of law, protecting individual rights and educating the population in a spirit of respect for the law is increasing [8, p. 131].

Nevertheless, the effectiveness of general social methods of crime prevention continues to arouse debate: K.I. Jayanbayev noted that in modern conditions, countering crime through public measures has become impossible, meaningless or ineffective. There is an opinion among some criminologists that due to negative socio-economic processes that complicate the development of society and raise the standard of living of the general population, the level of public crime prevention has significantly decreased [9, p. 100].

Law enforcement agencies can analyze criminal actors in order to determine individual preventive measures, such as:

- identification of persons whose behavior indicates a possible propensity to commit crimes, for example, the presence of aggressive manifes-

tations, hatred, and attacks on victims and witnesses;

- study of the sources of negative impact on these individuals in order to identify those who are in danger;

- carrying out personality correction measures to change antisocial behavior to law-abiding;

- predicting the behavior of individuals in order to assess the potential threat to witnesses and victims;

- preventive registration of persons released on parole if there is a risk of a threat to their lives, health or safety of family members of victims and witnesses; for this, it is necessary to create a unified database and record the relevant fact in it;

- development and implementation of individual preventive measures, including their improvement;

- direct preventive effect at the place of residence or activity of persons who pose a threat;

- control over the behavior and lifestyle of registered persons;

- systematic verification of the effectiveness of implemented preventive measures.

At the stage of the pre-trial investigation, it is necessary to implement a set of measures aimed at ensuring the safety of witnesses and victims. In particular, it is necessary to exclude the possibility of free access to information about them by unauthorized persons, as well as to take the following actions:

If necessary, the investigator has the right to send official inquiries to the information and reference funds with the requirement to ensure the confidentiality of information about the identity of the accused, witnesses and victims. In such requests, it is necessary to clearly indicate which specific information should be seized, where it is stored, and whom to inform in case of written or oral requests from legal entities and individuals regarding addresses, phone numbers, and other data related to protected persons [10, p.33].

When receiving requests for information from other government agencies or management, it is necessary to minimize the disclosure of information about witnesses and victims and transfer them only to personally authorized persons.

A clear procedure should be established according to which all information about the progress of the investigation is transmitted exclusively to the investigator or the head of the investigative task force directly conducting the proceedings.

Communication with representatives of the media on investigation issues is allowed only by

authorized persons and within strictly limited limits in order to minimize the risk of information leakage.

It is necessary to plan and implement measures in advance to prevent uncoordinated actions by officials involved in criminal proceedings, which may lead to the disclosure of information concerning witnesses and victims [11, p. 73].

In cases of crimes that infringe on the life, health or other rights of witnesses and victims, illegal actions aimed at obstructing justice are often used. These include threats, intimidation, physical violence, and even murder — all of which are used to coerce testimony or silence. Such actions create an atmosphere of fear that hinders the normal functioning of the judicial system. As a result, witnesses and victims, fearing for their safety, may refuse to participate in court proceedings or give false evidence, which leads to a violation of the principles of justice and the imposition of unlawful decisions.

Thus, witnesses and victims occupy a key position in the criminal justice system. Their involvement as sources of evidence or victims significantly affects the effectiveness of investigations and judicial proceedings; their lack of cooperation significantly complicates the process of establishing the truth and passing a fair sentence. These individuals provide important information that is the basis for identifying the perpetrator, establishing his guilt and ensuring a lawful judicial decision.

As part of the system of preventive measures, measures aimed at the social rehabilitation of victims are also significant, including the creation of specialized funds to provide psychological, social and legal support at both the regional and national levels; the introduction of permanent legal clinics at higher educational institutions of a

legal profile to provide free legal assistance and counseling to victims and witnesses on the use of legal and organizational measures to ensure their safety; as well as the establishment of specialized "helplines" and other means of operational interaction.

Crimes that infringe on witnesses and victims cause long-term harm not only to individuals, but also to public interests, including the maintenance of law and order and justice in society. Their prevention requires an integrated approach combining both legal and psychological measures. Effective protection requires the development of a multifaceted system in which law enforcement officers are highly qualified in security matters. Improving technology and legislation will help reduce threats and create conditions that ensure the safety of participants in the criminal process.

The training of law enforcement officers should be integrative, combining legal and psychological training, which allows them to adequately assess situations, effectively communicate and ensure the safety of witnesses and victims. The implementation of comprehensive training programs will increase the effectiveness of investigative activities and strengthen citizens' trust in the justice system, demonstrating that their safety is guaranteed.

The most important aspect of the prevention of violent crimes against witnesses and victims is the active participation of society in shaping an environment where law and order and security are perceived as the norm. The involvement of public organizations and civil initiatives in threat prevention processes can become a powerful tool for reducing violence and strengthening the rule of law.

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