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# THE IMPACT OF PROFESSIONAL AND PSYCHOLOGICAL QUALITIES ON THE PROCEDURE OF CONDUCTING A PHASED TESTIMONY OF CRIMINAL PROCEEDINGS' PARTICIPANTS

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## Abstract

This article discusses procedural and tactical foundations of testimony of participants in criminal trials according to the legislation of the Republic of Uzbekistan. In particular, the article debates on the following issues: the purpose and grounds for attracting an individual to participate in criminal trials; specifics of using techniques during testimony; influence of professional and psychological qualities of a judge in soliciting a testimony; and finally, requirements for processing the results of a testimony.

**Keywords** Criminal proceedings, Code of Criminal Procedure, trial participants, testimony, protocol, defendant, victim, expert, witness, evidence, establishing the truth in a case.

## INTRODUCTION

Further development of Uzbekistan as a democratic state with strong civil society entails a new legal reality with a reformed relationship between an individual citizen and legislature, where the observance of inalienable human rights and freedoms must be guaranteed. Such commitment to ideas of humanism defines an individual as the highest goal of legal development, which was originally laid down in the Constitution of the Republic of Uzbekistan.

In this regard, as stated by the first President of Uzbekistan I. Karimov, one of the most important directions to ensure the rule of law is "deepening judicial reform, democratizing the entire legal system as a third separate and independent branch of the government".[1] Strengthening procedural guarantees for a just criminal trial should be

implemented and become the main objective of the judiciary.

Nowadays judicial practices pay insufficient attention to the rights and legitimate interests of participants, as they are considered to be mere means to obtain facts on criminal case. However, the principle of supremacy of law should be the basis for criminal and legal policy of the state, which will fundamentally contribute to establishment of law and order in the society. At the same time, the improvement of provisions of legislation cannot but improve the existing practices of court administration, as courts will be required to develop the most optimal ways for cooperation with the respective participants, whose testimonies have significant importance leading to a success in solving crimes.

The above-mentioned arguments explain the need

for methodological recommendations for judges in terms of procedural and tactical fundamentals for soliciting a testimony. In the future, the judiciary in Uzbekistan should be reoriented towards more comprehensive and effective protection of the rights and legitimate interests of trial participants, given that they either have valuable information about individuals who commit crimes or what they know can help prevent crimes in the first place.

This article targets the judiciary and reveals key issues pertinent to soliciting testimonies of participants in criminal trials by the current procedural legislation of the Republic of Uzbekistan.

The object of the research is criminal and procedural legislation of the Republic of Uzbekistan regulating the procedure of conducting trials.

The subject of the research is criminal and procedural procedure of testimony in criminal trials.

## **METHODS**

Methods of the research are general scientific, specific, systematic, comparative and legal, content analysis, logical and juridical ways of studying researched phenomena.

The relevance of the research is the solution of the issues of state protection of participants in criminal trials in the Republic of Uzbekistan that have recently arisen. Theoretical comprehension and imperfection of national judicial practice determine studying this topic.

The issues studied in the article were previously devoted to certain issues in criminal procedural legislation of the Republic of Uzbekistan. In particular, the status of a witness in a criminal trial was considered in the dissertation of L. Astanova [2], and the procedural and tactical basis of the work with a witness in the dissertation of T. Mamatkulov [3].

In addition, issues of evidence in criminal trials were reflected in the dissertations of B. Azizkhodjaev [4] and A. Asamutdinov [5].

Thus, comprehensive research of these issues within the framework of one work was not carried

out, the attempted research was carried out firstly based on the legislation of the Republic of Uzbekistan.

Each participant in criminal proceedings has certain rights that facilitate the fulfillment of his/her certain procedural duties. The objective and truthful evidence can be given by an individual if his/her right to testify is respected. Therefore, ensuring the protection and guarantee of compliance with this right of criminal trial participants is the main responsibility of a judge.

In this regard, an important role is assigned to the competence of a judge, priori of the derivative of existing procedurally regulated procedure for soliciting the testimonies of individuals during the trial.

As B. Akramkhodjaev noted correctly when he investigated the legal status of a victim at the stage of the preliminary investigation, the process of conducting procedural or investigative action should be divided into four stages, namely: preparatory, explanatory, law enforcement, and control and certification. He believed that the lack of at least one of them would give rise to infringement of the rights and the legal interests of the victim. [6] It is difficult to disagree with the statement of the scientist, and in our opinion, the above-mentioned algorithm is relevant to the present times. In addition, we believe that it is applicable by analogy, inter alia, to the procedure for soliciting testimonies of all participants in criminal proceedings.

Thus, it follows from the contents of Article 64 of the Code of Criminal Procedure that individuals responsible for proceedings are required to clarify the rights and ensure the possibility of exercising these rights to the suspect, the accused, the defendant, as well as the victim, the civil plaintiff, the civil defendant, and their representatives. At the same time, the responsibilities assigned to participants and the consequences of not fulfilling them should be explained to the respective trial participants.[2]

A word-for-word interpretation of the stated norm from the court could in practice cause non-observance of the rights of a witness. According to

Article 441 of the Code of Criminal Procedure, during the trial, before testimony begins, the witness should swear under oath and be warned of the responsibility for refusing to testify and knowingly giving any false testimonies. [8] From the theoretical point of view, the existence of such a legal precedent gives rise to discrepancies in the norms of the Code of Criminal Procedure.

Furthermore, any abuse of the legal ignorance of the participants in legal proceedings about their procedural status will in no way ensure a successful consideration of the criminal case in court. The result of such an act will be distorted testimonies of the individuals, which in turn will lead to the loss of a significant part of forensic information about the crime committed and perpetrators. More broadly, this could also increase the number of unsolved crimes.

Looking at the structure of the much-worthy-of-consideration procedural action developed by B. Akramkhodjaev for soliciting testimonies of participants in criminal proceedings, the preparatory stage determines the following steps (also in line with the current Code of Criminal Procedure):

- identifying a place for taking the statement;
- the order of calling for a statement;
- ascertaining the identity of the individual;
- the language used, taking into account general rules in obtaining testimonies of the witness and the victim;
- maintaining respect for the interests of the close relatives of the defendant. [9]

At the same time, in determining the identity of the witness and the victim, a judge must pay attention to the requirements of Article 115 of the Code of Criminal Procedure, defining the circumstances in which it is impossible to interrogate participants in the trial.

The explanatory stage in soliciting testimonies is covered by the requirements of Article 100 of the Code of Criminal Procedure, which states that after determining the identity of the subject, the respective rights and obligations stipulated by this Code must be explained to him/her. [10] An

explanation of these rights and obligations is noted in the minutes of the hearing. [11]

The appointed judge provides explanations of the rights and obligations and designation of its forms. The judge can verbally announce the content of the relevant articles or provide the Articles of the Code of Criminal Procedure to the trial participants so they can familiarize themselves directly with the text. An explanation of the rights and obligations entails several court actions in terms of informing the participants in criminal proceedings, such as spelling out the rights and obligations for participants to understand also the purpose and directions. A guarantee of observing the indicated rights and obligations by the witness and the victim in a court hearing, as they become familiarized with the norms, is the warning of responsibility for violation of the procedural obligations [12] outlined in Articles 230-241 of the Criminal Code of the Republic of Uzbekistan. The explanatory stage also involves informing the witness and the victim that they cannot refuse to testify concerning special circumstances. [13] At the same time, a judge should identify any unlawful actions against the interrogated participant in proceedings that might have been undertaken by the individuals responsible for the criminal proceedings. [14] In addition, if the witness or the victim is a minor, then s/he, including his/her legal representative, adult close relative, teacher, or any other representative, should be warned that the testimony can be taken only with their consent, taking into account the requirements stipulated by Article 121 of the Code of Criminal Procedure.[15]

The legal stage associated with the testimony of a participant in criminal proceedings entails the appointed judge observing the general testimony solicitation rules provided in Articles 96-108 and the procedure defined in Article 442 of the Code of Criminal Procedure. In particular, a testimony of each witness should be taken in the absence of other unquestioned witnesses. At the same time, the questioned witnesses remain in the courtroom and can leave it only with the permission of the judge. It is allowed to interrogate a minor witness at the determination of the judge in the absence of the defendant when it is required to establish the truth in a case. The testimony of the defendant

begins at an invitation by the judge to testify about the circumstances of the case known to him/her. The testimonies of the victims, the witnesses, and any experts begin in the same way. At any given time during the trial, the judge has the right to ask questions from the individual and other participants who have already testified for clarifications and supplementary information.

The control and verification stage of a testimony ends with a compilation of the court session minutes, which the presiding judge and his/her secretary take responsibility for. The minutes of the proceedings are maintained by the rules provided in Articles 90-92, 426 of the Code of Criminal Procedure.

Based on the above, it is clear that the criminal proceedings are not only based on legal norms but also on moral standards. Both determine the nature of the procedural legal relations of trial participants and serve to achieve a successful resolution of tasks of criminal proceedings.

Consistent application of moral principles in criminal proceedings contributes to comprehensive, complete, and objective investigation of the criminal case circumstances. The law thus takes into account the requirements of morality.

To ensure true evidence, it is of utmost importance for a judge to psychologically restructure his/her attitude towards the trial participants. This will help create an environment where courts do not rely on coercive measures for the fulfillment of procedural obligations of trial participants but rather enable the full exercise of their rights and interests by the law.

It is assumed that a trial participant would immediately begin to deny his true testimonies, as s/he feels helpless in the face of a threat to his/her life, his/her family, and/or property. Having not given any incriminating evidence, it is often easier for this individual to simply remain silent about a certain fact s/he may be aware of about the case.

Therefore, in criminal procedure, it is crucial to enable factors that would create conditions for a trial participant to give his/her true testimony. Giving a true testimony is, first of all, every citizen's

moral duty, but this duty will remain a simple declaration if it does not rely on a robust system ensuring the safety of trial participants.

At the same time, several other motives could trigger a false testimony, including the following:

- perceived sense of friendship;
- personal interest of the participant in a trial (e.g. greed, envy, jealousy, etc.);
- family or other familiar relationship status vis-à-vis the case subject;
- desire to avoid the trouble of testimony;
- fear of inadvertently revealing one's adverse actions;
- mutual responsibility;
- fear of retribution by the trial participant or his/her relatives/acquaintances;
- incitement.

It seems that the psychological specifics of soliciting testimonies of various participants in criminal procedure consist of several additional, sequential, and interconnected court actions. These actions are aimed at protecting a bona fide participant of a trial from unlawful exposure to potential individuals invested in the case, who could try to prevent the participant from giving any testimony (or make him/her provide a false testimony) through threats to the participant's safety, including possibly to members of his/her family. There is also a potential effect of the authorized individuals involved in the investigation, who might have an adverse procedural activity with the intention of retrieving a true testimony.

Given the above-mentioned professional context, a judge needs to develop certain specific psychological qualities for nurturing the following traits: abilities, including the ability to pinpoint the relevant information from trial participants about the circumstances of a case. This in turn requires developing skills of thorough attention to detail, deep observation, insight, inquisitiveness, perseverance, and consistency in achieving the goal, as well as the ability to quickly establish psychological contact with the participants, e.g. by



showing interest in protecting their rights and by exhibiting clarity, flexibility, mirroring the participants, showing empathy and self-criticism.

Another important condition for success in working with any trial participant is the judge's ability to get an accurate psychological assessment of the individual's relation to the rest of the trial participants and of the impression the case's factual data is making on the individual when presented.

In this regard, it is possible to distinguish the following three main stages of testimony development of the legal proceedings' participants.

At the initial stage, a trial participant observes and perceives the event and the facts, the human behavior, etc., which preceded the moment when (i) the criminal act was committed, (ii) observes and perceives the event triggering the crime, or (iii) perceives the results of the committed crime. This participant could have been an eyewitness of either all of these events or some of them. It is important to keep in mind, that the interrogated individual might have observed and perceived the matters of interest to the court, the objects related to the crime scene, as well as the overall situation and conditions under which the criminal act was committed. Some participants pay attention to the facts themselves, while others, to the significance of these facts. When some could be interested in description, others might be more into explaining what they perceived and observed. The value and volume of information perceived by a trial participant depends on his/her observation and the type of perception s/he has of real facts: objective or subjective.

At the stage of preserving the information, a trial participant remembers the events s/he perceives – the facts. The criminal act memories of the trial participant cause deep and strong feelings that can be associated with fear, anger, or other emotions that have negative effects. The emotional state of an individual who remembers the event can also have a positive effect, depending on the perception s/he has of the criminal act. It should be noted that the longer the time passes after the criminal offense, the less information stays in the memory of the individual, unless s/he has written it down, e.g. in a

diary, notebook, etc.

When conveying the information out of memory, a trial participant is in direct contact with a judge and his/her psychological state makes him/her recall the events and facts related to the alleged crime, possibly the identity of the accused or the victim, etc. The less time passes since the crime, the more useful it is for a judge, given that the trial participant then can recall much more useful information than in the case of the investigation starting after a considerably longer gap.

In this regard, here are some procedural and psychological basic principles for soliciting testimonies of participants in legal proceedings:

- 1) Strict compliance with the requirements of criminal procedural rules governing the testimony procedure;
- 2) Gathering preliminary information by the judge about the psychological qualities of the trial participant with support from an expert - psychologist to ensure an effective testimony;
- 3) Collecting preliminary procedural and operational information by the judge about the case, including among others, an analysis of the background information on the criminal case;
- 4) Planning for a testimony, including possible questions for clarification, taking into account the psychological portrait of the trial participant, and ensuring the necessary conditions for a successful testimony (considering a possible conflict and measures to overcome it using tactical and psychological techniques and evidence available on the case);
- 5) Effective use of methods of psychological connection (empathy, mirroring) to enable a positive engagement of the trial participant in line with observing four phases of the procedural action;
- 6) Verification of the trial participant's testimony by comparing the conveyed information with the available evidence of the case based on the specifics of this particular stage of the trial;
- 7) Competent and careful use of psychological techniques by the judge for soliciting a testimony of the trial participant.

It should be noted that it is at the trial stage when any shortcomings and errors are revealed from the inquiry and the preliminary investigation stages. At the same time, as can be seen from several illegal sentences and unfounded judgments in the judicial practice, errors do happen at the actual trial stage too. For that reason, the criminal process includes institutions for appealing, cassation, supervision, and reopening of cases due to newly discovered evidence/circumstances.

In this regard, the subpoenaed individual's role is to contribute to establishing an objective truth by providing his/her truthful testimony. This exact action serves as a guarantee to ensure his/her rights and legitimate interests are respected. As for a trial participant with a negative procedural activity, the result of his/her actions may be perjury or refusal to testify.

At the same time, judicial practice indicates that forcing a self-incriminating testimony and/or imposing on relatives an obligation to testify significantly infringes the participant's interests and leads to grave consequences, inter alia negatively affecting the trial's objectives.

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