



Anatoly Stepanovych Demianchuk, Andriy Lyash Guarantee of Safety of Persons Taking Part in Criminal Legal Proceedings in Ukraine

The safety guarantee for the participants of criminal proceedings is realised by the law enforcement bodies of the legal, organizational-technical and other actions. It focuses on the protection of the life, health and property of the persons taken under the state protection, against illegal encroachments. Its main purpose is the creation of necessary conditions for appropriate realisation of justice (Art. 1 of the Law of Ukraine «About Guarantee of Safety of Persons Taking Part in Criminal Legal Proceedings», further - the Law) [1].

According to the Part 2 of the Art. 52¹ of Code of Criminal Procedure of Ukraine (further –CCP), the following persons have the right to have safety guaranteed if there is the corresponding substantiation:

- 1) the person who has informed a law enforcement body about a crime, or in other form took part in revealing, prevention, termination and disclosing of a crime or assisted in it;
- 2) the victim or his representative in criminal case;
- 3) the suspect, the accused, the defenders and their legal representatives;
- 4) the civil claimant, the civil respondent and their representatives in a case about the compensation of the harm done by a crime;
- 5) the witness;
- 6) the expert, and the translator;
- 7) members of families and relatives of the persons listed in parts 1-6 of Art. 52¹ of the CCP if there are threats or other illegal actions concerning them, or the attempts to affect participants of criminal legal proceedings take place [2].

The persons specified in the Part 2 of the Art. 52¹ of the CCP have the right to hand in the statement or the message about the threat of their safety to a legal institution, and the inquiry body, the inspector, the public prosecutor or the court, having received the statement or the message, are obliged to check them and within no more

than three days, and in urgent cases – immediately, to make the decision about the application or the refusal of the application of safety measures.

The basis for the realisation of specific safety measures starts with the Decision of the authorised body (person) who transfers it to the body on which the duty of its realisation lies.

Such Decision is taken in case there exists a real threat to life, health, habitation or property of persons who have the right to the safety guarantee (the Part 1 of the Art. 52¹ of the CCP) [2].

The body entrusted to carry out security measures confirms the list of necessary measures and ways of their realisation if they decide that, under given circumstances, there is the necessity to eliminate the existing threat. They inform in writing the body of inquiry, the inspector, the public prosecutor, the court or the judge who conducts the criminal case, about the accepted measures and their results. Besides, the person taken under the protection is informed about the security measures, the conditions of their realisation and the instructions for the usage of property or the documents which have been issued for the purpose of the safety guarantee (the Part 4 of the Art. 52¹ of the CCP). The rights and duties connected with the realisation of the security measures also are explained to the person.

According to the Part 1 of the Art. 52² of the CCP, the persons taken under the protection have the following *rights*: to submit the petition for the realisation of the security measures or for their cancellation; to know about the application concerning specific security measures; to demand from the body of inquiry, the inspector, the public prosecutor, or the court the realisation of additional security measures or the cancellation of the existing measures; to appeal against illegal decisions or actions of the bodies which provide safety, to the corresponding body of higher level, the public prosecutor or the court. Besides, according to the Part 2 of the Art. 52² of the CCP, they have the following *duties*: to satisfy the conditions for the realisation of the security measures and the legal requirements of the which carry out the security measures; to inform the specified bodies immediately about each case of threat or illegal actions concerning them; to manage the property and the documents with which they have been entrusted and which are used by the body which provides safety, according to the rules established by the legislation [2].

According to the Part 3 of the Art. 3 of the Law, the realisation of the security measures is assigned for jurisdiction to the bodies of security service or internal affairs in the structures where special divisions are created for this purpose. If criminal cases are conducted by the Public Prosecutor's Office or court, security measures are carried out under their decision by bodies of security service, internal affairs or bodies and establishments of punishment performance. Security measures concerning military persons are carried out by commanders of military units (Art. 18 of the Law), as well as by the persons who are in the establishment of the criminal executive system – by the bodies and establishment of the punishment performance (Art. 19 of the Law) [1].

According to the Art. 7 of the Law, *the measures for safety guarantee*, are as follows:

- a) bodyguarding, habitation and property protection;
- b) delivery of special means for individual defence and the notification about the

- danger;
- c) use of technical means of control and listening in of telephone and other conversations, visual control;
- d) change of documents and the appearance;
- e) change of place of work or study;
- f) resettlement in another residences;
- g) location in preschool educational establishments or establishments of the social protection of population;
- h) guarantee of the personal data confidentiality;
- i) the closed proceeding and other security measures taking into account the character and the degree of danger to life, health, habitation and property of the persons taken under protection [1].

In the case of information about the crime in the statement (message) of the threat of safety to the person specified in the Part 2 of the Art. 52¹ of the CCP, the inquiry body, the inspector, the public prosecutor - in the order provided by the Articles 94, 98 and 99 of the CCP - make the decision about the commencement of prosecution or the refusal of the commencement of prosecution in criminal case, or about the transfer of the statement (message) according to appurtenance. In such cases the court (judge) informs the public prosecutor who carries the necessary verification and makes the corresponding remedial decision. The message about the accepted decision is given immediately to the applicant.

According to the Part 1 of the Art. 52² of the CCP, the persons taken under the protection, have the following *rights*: 1) to submit the petition for the realisation of security measures or for their cancellation; 2) to know about the application concerning specific security measures; 3) to demand from the body of inquiry, the inspector, the public prosecutor, or the court the application of additional security measures or cancellation of the security measures already applied; 4) to appeal against the illegal decisions or actions of the bodies which provide safety, to the body of a higher level, the public prosecutor or court. Besides, in accordance with the Part 2 of the Art. 52² of the CCP, the persons taken under protection have the following *duties*: 1) to discharge the terms of the realisation of the security measures and the legal requirements of the bodies which carry out security measures; 2) to inform the specified bodies immediately about each case of threat or illegal actions concerning them; 3) to manage property and documents with which they have been entrusted temporarily by the body which provides safety, according to the rules established by the legislation [2].

According to some authors, the activity of the inspector concerning the safety guarantee for the persons who take part in criminal legal proceedings should include the system of such remedial actions:

- 1) an explanation to the participants of the proceedings the right for the safety guarantee for them personally and for the members of their families and relatives;
- 2) checking the substantiation of the necessity of safety guarantee for the persons taking part in criminal legal proceedings;
- 3) decision-making about the safety guarantee and the choice of the specific measures or the refusal of the safety guarantee;
- 4) criminal case excitation on a new crime (a premeditated murder, deliberate causing of physical injuries of different severity level, property destruction, inter-

ference to the appearance of the participants of the proceedings, their compulsion to refuse giving evidence or threat to sweep for the evidence given earlier, etc.) which has been committed concerning the person taken under protection, members of his family, his relatives or their property. It must be done within the office-work running the case of the person taken under protection;

- 5) the realisation of the additional measures directed on the safety maintenance of the persons who take part in criminal legal proceedings (the prevention of the criminal liability according to the Art. 381 of Criminal Code of Ukraine (further - CC) [3] for disclosure of the data about the security measures, a subscription capture about nondisclosure of data of a pre-trial investigation, the maintenance of the preservation of the data about the security measures and the persons taken under protection as an item of information with the limited access, etc.);
- 6) the organisation of the interaction of the inspector with the bodies carrying out the security measures;
- 7) the organisation and carrying out of remedial actions taking into account the decision concerning the safety maintenance (including presentations of the person for the identification out of vision of the person who is identified);
- 8) decision-making on the cancellation of the security measures [4, with. 30].

In accordance with the Part 2 of the Art. 52³ of the CCP, the data about the security measures and the persons taken under protection is the information with *limited* access. The rules provided by the Part 2 of the Art.48, by the Articles 217-219 and 255 of the CCP do not extend to the documents which contain such information. [2].

It is necessary to take into consideration the fact that, according to Articles 380, 381 of the CCP, the criminal liability is provided for non-use of the security measures concerning the persons taken under protection, and for the disclosure of the data about the security measures concerning the persons taken under protection. [3]

The security measures can be cancelled if such action is justified, in the order defined by the Article 52⁴ of the CCP, by the motivated decision or the decision in writing issued within a day that refers to the person who was under protection. This decision can be appealed against at the public prosecutor's office, in the local court, or in a legal investigation place, in the order defined by the Article 52⁵ of the CCP.

Literature

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