ppi 201502ZU4645
Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.37 No 65
Julio
Diciembre
2020

Cuestiones Políticas Vol. 37, Nº 65 (julio-diciembre) 2020, 74-81
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

International Standards for the Safety of Persons Assisting in Criminal Justice

DOI: https://doi.org/10.46398/cuestpol.3865.05

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Abstract

The objective of the research was to analyze some international standards for the safety of people who attend criminal justice from different approaches and perspectives of analysis. Based on a meaningful analysis of the provisions of international and regional regulatory legal acts, the document presents approaches to the formation of standards to ensure the safety of persons who contribute to criminal justice. Methodologically, the work applied the provisions of dialectics, general, special and particular scientific methods. In the course of the study, scientific-historical, formal-legal, formal-logical, systemic and comparative methods were also used. It is concluded that the system of security measures for people who cooperate with criminal justice has significant differences in the different national criminal justice systems, which complicates international relations and cooperation in this area and does not allow the international community to advise effectively and comprehensively, while continuously generating challenges and threats.

Keywords: security in criminal proceedings; protection of witnesses and victims; criminal proceedings; International cooperation; comparative law.

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Recibido: 02/03/2020 Aceptado: 05/04/2020.

Normas internacionales para la seguridad de las personas que asisten a la justicia penal

Resumen

El objetivo de la investigación fue analizar algunas normas internacionales para la seguridad de las personas que asisten a la justicia penal desde distintos enfoques y perspectivas de análisis. Basado en un análisis significativo de las disposiciones de los actos jurídicos reglamentarios internacionales y regionales, el documento presenta enfoques para la formación de normas para garantizar la seguridad de las personas que contribuyen a la justicia penal. En lo metodológico el trabajo aplicó las disposiciones de dialéctica, métodos científicos generales, especiales y particulares. En el curso del estudio, también se utilizaron métodos científicos métodos histórico-legales, formales-legales, formales-lógicos, sistémicos y comparativos. Se concluye que el sistema de medidas de seguridad para las personas que cooperan con la justicia penal tiene diferencias significativas en los distintos sistemas nacionales de justicia penal, lo que complica las relaciones y la cooperación internacional en esta área y no permite a la comunidad internacional asesorar de manera efectiva e integral, al tiempo que genera continuamente desafíos y amenazas.

Palabras clave: seguridad en procesos penales; protección de testigos y víctimas; procesos penales; cooperación internacional; derecho comparativo.

Introduction

The problem of international cooperation in the field of criminal justice is very urgent, since transnational organized crime and international terrorism pose a serious threat to both international and national safety of any state. The international community takes concerted measures to coordinate cooperation in the field of crime prevention and detection, which includes, among other things, measures to protect persons assisting in criminal justice. Current international legislation plays the role of integration mechanisms that facilitate the implementation of the most effective methods on protecting participants in criminal production in national legal systems.

The systematization of foreign and domestic experience in studying this issue allows us to make a conclusion that there is no single approach to the definition of the concept of “safety” in the context of the problem under consideration: some authors consider safety as a state of protection

of a person who promotes criminal justice (Kondrat, 2013), others consider it as the existence of an effective system of guarantees for participants in procedural activities (Bakowski, 2013; Zhurkina y Stolboushkin, 2017); and the thirds include in the concept of "safety" the identification of all relevant sources of threats (Fyfe y Sheptycki, 2006 ; Slate, 1997; Van Puyenbroeck y Vermeulen, 2011).

Such variability of modern scientific approaches to the theoretical justification of the concept of "safety of persons assisting criminal justice" and its substantial characteristics hinders the solution of the problem on unification and consolidation of international and national legislation in the field of state protection of participants in criminal proceedings.

1. Methodology

The work applied the provisions of dialectics, general scientific, special and particular scientific methods. In the course of the study, private-scientific methods were also used: historical-legal, formal-legal, formal-logical, systemic, and comparative methods.

2. Discussion and Results

One of the first international acts in the field of ensuring the safety of participants in criminal proceedings is the "Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power", which justifies the need to establish national judicial and administrative mechanisms. They made it possible for victims to be compensated through formal and informal procedures that were operational, fair, affordable and accessible. Victims seeking compensation through such mechanisms are required to be informed of their rights (UN, 1985; paragraph 5).

The Congresses held within the framework of United Nations on the Prevention of Crime and the Treatment of Offenders, and the international acts adopted as a result of them make a significant contribution to the development of a consolidated position of the international community in the field of protection of persons contributing to criminal justice.

So, in 1990, in Havana, at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, "Measures to Combat International Terrorism" (http://docs.cntd.ru/document/901809394), and "Guidelines for the Prevention and Combating of Organized Crime" were developed and adopted (Docs cntd, 2020: 45). The documents emphasize that the

international community needs to achieve full general agreement on the measures necessary to prevent the harmful effects of acts of terrorist violence and to combat them. The tasks are also set to ensure the uniformity of laws and practice of states regarding criminal jurisdiction, the effectiveness of the implementation of international extradition treaties, mutual assistance in criminal matters, as well as the cooperation of states in implementing measures to protect judges and criminal justice workers, victims of terrorist acts, as well as victims and witnesses.

In order to ensure greater efficiency, consistency and fairness of national criminal justice systems, the "Guidelines" offer the development and widespread use of procedures for protecting witnesses from violence and intimidation; the procedures include ensuring the protection of a witness' human person from the accused and his/her lawyer, the provision of protected housing and personal protection, and also relocation and financial assistance (Docs cntd, 2020, paragraph 11).

The legal justification for the possibility of using the testimony of anonymous witnesses in criminal evidence was enshrined in the provisions of the Rome Statute of the International Criminal Court (Docs cntd, 2020). It provides "a procedure for the submission of evidence by electronic or other special means, as well as the possibility of non-disclosure of information about the identity of the witness or members of his/her family, if such disclosure could entail a serious threat to their safety" (Council of Europe, 2006).

Separately, the UN Convention against Transnational Organized Crime (UN, 2020; paragraph 3), should be noted. It significantly expands the possibilities of international cooperation on the protection of victims and witnesses for crimes covered by the Conventions, and, in addition to relocation, provides non-disclosure of information about protected persons and the use of communications to testify (UN, 2020; paragraph 2 of article 24), also the possibility of states-participants to conclude agreements or arrangements with other states regarding the relocation of these persons (UN, 2020; paragraph 3 of article 24).

Despite the generalized nature of the Convention against Transnational Organized Crime, an analysis of the provisions of Article 24 (Witness protection), Article 25 (Assistance to victims and their protection), as well as the content of Article 26 and 27 (Measures aimed at expanding cooperation with law enforcement agencies and Cooperation between law enforcement agencies) allows us to conclude that an effective fight against transnational crime is possible only within the framework of cooperation between the activities of law enforcement, judicial and other bodies of various states, which in turn requires either the conclusion of a large number of bilateral agreements (which may be the cause of legal conflicts), or the unification of national laws, including also criminal justice safety standards for persons

assisting in criminal proceedings.

The development of new information technologies and their widespread use, including in the implementation of witness and victims protection programs, has found its legislative consolidation in the provisions of the Doha Declaration which recommends that in order to effectively combat corruption and terrorism by national criminal justice systems, to legislatively secure the possibility of using not only traditional, but also new information and communication technologies when developing protection programs for witnesses and victims (UN. 2019).

The main European standards in the field of ensuring the safety of persons in criminal proceedings are contained in the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in Recommendation No. R (85) 11 made by the Committee of Ministers of the European Council "On the situation of a victim within the frameworks of criminal law and process, Recommendation No. R (2005) 9 issued by the Committee of Ministers of the European Council "On the Protection of Witnesses and Persons Cooperating with Justice" (European Court of Human Rights, 2020).

In the EU countries, the activities of the national law enforcement agencies of the EU Member States are coordinated by Europol which makes practical recommendations for ensuring the safety of persons cooperating with criminal justice.

However, the current European witness protection program is not universal, as the national criminal procedure and specialized regulations in this area are not unified. For example, the grounds for applying safety measures are different: in some countries (Italy, Belgium), the program is valid only for certain types of serious crimes, and it does not apply for other criminal cases.

The EU does not have a unified approach to the system of safety measures. For example, in Austria it is not allowed to use information technology to testify protected persons in court, since this violates the defendant's right to defence, which directly contradicts the provisions of international declarations and resolutions of the UN Congress on the prevention of crime and the treatment of offenders, which "recommend that states widely use information technology in order to protect the life and health of participants in criminal proceedings" (Fijnaut, 2000).

There is no single body on the territory of the entire European Union that implements safety measures: in Austria and the UK, the police deal with these issues, in the Netherlands it is the prosecution authorities, and in Italy the ministry of justice. European legislation in the field of ensuring the safety of persons assisting criminal justice on the issues of jurisdiction of solving this issue is not unified: in some states, decisions are made by the

court, in others - by the prosecutor's office or specially created commissions.

The circle of subjects for which safety measures are applied is also not unified: in some countries it includes only direct participants in criminal proceedings who personally testify (Germany, Italy), while others include confidants (Austria, Latvia, and The Netherlands).

The lack of a unified approach to regulating the institution of state protection in European countries makes it difficult for them to cooperate in the fight against crime and reduces the effectiveness of implementing programs to protect witnesses and victims.

Conclusions

A study of international law and the experience of European states' cooperation in the field of state protection of participants in criminal proceedings allow us to conclude that it is necessary to develop and adopt international standards to ensure the safety of persons who promote criminal justice and unify national laws in accordance with the developed international standards.

Given the specific nature of crimes of a transnational nature, the participation of witnesses and victims may be required in several trials, each of which will be regulated by its own national legislation, and which in turn may lead to a violation of the safety guarantees of persons contributing to criminal justice due to differences in national standards.

In our opinion, the unification of standards for ensuring the safety of witnesses and victims at the international and national levels will be facilitated by the development of a universal model containing the following elements: definition of the concept of "safety of persons assisting criminal justice; unified safety system; safety principles; grounds and conditions for the application of safety measures; selection criteria and training of employees of bodies implementing safety measures; the circle of persons with respect to whom safety measures may be applied; rights and obligations of bodies implementing safety measures; rights and obligations of protected persons.

We believe that in order to eliminate existing legal conflicts and increase the effectiveness of combating transnational organized crime and international terrorism, it is necessary to develop new approaches to the regulation of minimum guarantees and procedures in the field of ensuring the safety of persons promoting criminal justice and international cooperation in this field.

Bibliographic References

BAKOWSKI, Pietr. 2013. "Witness protection programmes: EU experiences in the international context" In: Library of the European Parliament: Briefing. Vol. 28, No. 01, pp. 255-289.

COUNCIL OF EUROPE. 2006. "Protecting witnesses of serious crime; training manual for law enforcement and judiciary" In: Strasbourg: Council of Europe Publishing. Strasbourg, France.

FIJNAUT, Cyrille. 2000. "Transnational Crime and the Role of the United Nations in Its Containment through International Cooperation: A Challenge for the 21st Century" In: European Journal of Crime, Criminal Law & Criminal Justice. Vol. 8, No. 2, pp. 119-127.

FYFE, Nicholas; SHEPTYCKI, James. 2006. International trends in the facilitation of witness co-operation in organized crime cases. European journal of criminology (London)

GENERAL ASSEMBLY OF UNITED NATIONS. 1992. Organized Crime Prevention and Combat. Available online. In: http://docs.cntd.ru/document/901809392. Date of consultation: 10/01/2020. (In Russian).

EUROPEAN COURT OF HUMAN RIGHTS. 2020. Protection of Human Rights and Fundamental Freedoms. Available online. In: http://www.echr.coe.int/Documents/convention_ENg.pdf. Date of consultation: 10/01/2020.

UNITED NATIONS. 2020. Transnational Organized Crime. Available online. In: https://www.un.org/ru/documents/decl_conv/conventions/orgcrime.shtml. Date of consultation: 10/01/2020.

UNITED NATIONS. 2019. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Available online. In: https://www.un.org/ru/documents/decl_conv/declarations/power.shtml. Date of consultation: 10/01/2020.

UNITED NATIONS. 1985. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, paragraph 5 of the Declaration. Available online. In: https://www.unodc.org/documents/justice-and-prison-reform/R_ebook.pdf. Date of consultation: 10/01/2020.

KONDRAT, Vladimir Aleksandrovich. 2013. "Safety of participants in criminal proceedings: the concept and some foreign experience" In: Legal science: history and modernity. No. 9. (in Russian).

SLATE, Risdon N. 1997. "The federal Witness Protection Program: its evolution and continuing growing pains" In: Criminal Justice Ethics. Vol. 16, No. 2, pp. 20-34.

VAN PUYENBROECK, Laurens; VERMEULEN, Gert. 2011. "Towards minimum procedural guarantees for the defence in criminal proceedings in the EU" In: International and Comparative Law Quarterly. Vol. 60, No. 4, pp. 1017-1038.

ZHURKINA, Olga V; STOLBOUSHKIN, Andrey V. 2017. "Witness protection Programs in the legislation of foreign countries: comparative legal analysis" In: Questions of Russian and international law. Vol. 7, No. 10. (in Russian).

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DEL ZULIA

CUESTIONES POLÍTICAS

Vol.37 Nº65

Esta revista fue editada en formato digital y publicada en julio de 2020, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

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