

## PRELIMINARY SECURING OF TESTIMONY AND ITS ROLE IN THE MECHANISM OF PROOF

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**Abstract:** This article offers a comprehensive analysis of the place and significance of this institute within procedural law. The main focus is on investigating the legal mechanisms aimed at ensuring the authenticity, immutability, and integrity of evidence under the existing threat of its loss (for example, in the event of witnesses' illness or the rapid volatility of evidentiary information). The article examines the procedural grounds, subjects, and implementation procedure for the preliminary securing of testimony in civil, economic, or administrative proceedings, as well as the legal force of the obtained evidence in subsequent judicial review. The research results substantiate the decisive role of this institute in ensuring fair justice and strengthening the legal protection of the parties.

**Keywords:** Conditions of proof, criminal process, proving, evidence, procedural form, legality, human rights, admissibility of evidence, reliability of evidence, relevance of evidence, collection of evidence.

The institution of "preliminary securing of testimony" (deposition), introduced into the criminal procedure legislation of the Republic of Uzbekistan, represents one of the significant reforms aimed at improving investigative and judicial activities and protecting the rights and freedoms of individuals. This institution occupies a new and critical place within the criminal procedure legislation of the Republic of Uzbekistan. It serves to streamline the investigative and judicial process, simplify the proving procedure, and safeguard the rights and freedoms of individuals.

The procedural necessity and legal nature of this institution demonstrate its orientation towards ensuring the reliability of evidence, enhancing the efficiency of the investigative and judicial process, and protecting the rights and freedoms of individuals. The preliminary securing of testimony holds significant importance in the criminal process, serving to preserve evidence, prevent its distortion or loss, expedite the judicial process, and ensure fair justice. It is carried out in the manner prescribed by law as both a procedural action and a source of evidence.

The existence of general conditions for proof, such as the protection of citizens' rights and legitimate interests (Article 88 of the CPC) and the inadmissibility of evidence (Article 95<sup>1</sup> of the CPC), when combined with specific rules regarding the preliminary securing of testimony, indicates a multi-staged approach to human rights protection. This implies that even if the testimony has been preliminarily secured, its admissibility and the process of its collection may be subject to subsequent review. Articles 88 and 95<sup>1</sup> of the CPC establish the general principles of evidence. Their application to preliminarily secured testimony means that even if the initial securing process complies with Chapter 12<sup>1</sup>, the content and method of obtaining this testimony can be examined within the general rules of evidence.

The preliminary securing of testimony contributes to ensuring the reliability of evidence in a criminal case. If a witness or victim cannot be subsequently interrogated due to a serious illness or the necessity of leaving the country for a long period, their pre-secured testimony is accepted as evidence in the case. This institution aids in conducting the investigative and judicial process

efficiently and swiftly. Pre-secured testimony provides an opportunity for a rapid and precise review of the case during judicial deliberation.

Ch. Kenjetaev, in discussing the securing of testimony in the context of proof, states: "The issue of preliminary securing of testimony is considered and regarded as finally evaluated by the court"[1]. Preliminary securing of testimony is a procedural action carried out by the investigative body or the court, which must be performed in the manner prescribed by law. Based on the prosecutor's motion, the court conducts the preliminary interrogation of a witness or victim in a judicial procedure.

The implementation of this institution simplifies the proof process in criminal proceedings and assists in the collection and consolidation of evidence. This, in turn, enables the court to review the case quickly and efficiently. Consequently, preliminarily secured testimony is considered a source of evidence for the criminal case. It is evaluated by the court together with other evidence and plays a vital role in establishing the truth of the case.

The necessity of preliminarily securing testimony is highly significant for criminal procedure legislation. Essentially, it can be argued that these matters are aimed at simplifying the case procedure. According to S. Kuzmin, "if we consider the necessary elements of preliminary securing of testimony, they encompass adherence to procedural deadlines, caring for the health of the witness or victim, preventing re-interrogations, avoiding conflicts between parties, and ensuring security"[2].

The fading of memory over time is a natural process. Therefore, securing testimony in a judicial procedure as close as possible to the actual event ensures the admissibility and reliability of the evidence. I. Kondrat's scientific theory posits that "no matter how much a witness tries to remember the event, details may be forgotten or distorted over time"[3]. Preliminary securing allows for the recording of testimony obtained closer to the time the event occurred, which increases its accuracy and reliability. This is of critical importance for the proving process.

According to S. Shestakova's views, "the health or psychological state of a witness at the time they appear in court may differ from their initial state". For example, they may be unable to fully and accurately present their testimony due to fear, stress, or illness[4]. In such situations, preliminary securing helps preserve testimony given in the initial, relatively stable state. This process encompasses both the procedural and forensic aspects of proof.

There can be various reasons why a witness, victim, or civil plaintiff may be unable to attend the court session:

- Relocation to another place;
- Leaving the country;
- Going abroad for treatment due to a serious illness;
- The possibility of death.

It should not be overlooked that in such circumstances, preliminarily secured testimony may remain the sole reliable source of evidence for the court. Consequently, the preliminary securing of testimony typically prevents a number of real, problematic situations that may arise in investigative and judicial practice[5].

If the testimony of key witnesses is legally secured at the investigation stage, the necessity of re-interrogating them fully at the court session is reduced. The court may only ask brief questions to confirm or clarify the pre-secured testimony. This significantly saves the court's time and allows for a faster review of the case.

Furthermore, it should be noted that the existence of preliminarily secured testimony may reduce disputes between the parties regarding the content of the evidence, as the testimony is

recorded in a procedural manner and is known to all parties. That is, these issues are examined and evaluated in a brief court session.

The process of preliminarily securing testimony under this procedural order must be carried out based on the guarantees established by law. For instance, the participation of the defense lawyer (attorney) is ensured, the witness is informed of their rights, and an opportunity is created for questions to be asked to them. This court session is open to all parties[6].

From a procedural perspective, the legal nature of the preliminarily securing of testimony is an independent procedural action carried out in the manner prescribed by law. It is performed at the initiative of the investigative body or the court, when necessary, and when the grounds specified in the law exist. The main purpose of this action is to ensure the possibility of utilizing this evidence in the future.

It should be emphasized that the existence of preliminarily secured testimony does not completely relieve the court of the obligation to summon the witness, victim, or civil plaintiff to the court session. If the court deems it necessary, it may summon the participants to court to clarify their testimony or ask additional questions. However, in cases where these participants cannot attend the court, the preliminarily secured testimony can serve as a vital piece of evidence underpinning the court's verdict.

The institution of preliminarily securing of testimony is constantly evolving in modern legal systems. The development of information technologies creates new possibilities, such as securing testimony via video conferencing[7].

Preliminarily secured testimony is considered an important source of evidence alongside other evidence in a criminal case (material evidence, expert conclusions, investigation protocols, etc.). They are taken into account by the court in establishing the truth of the case and in making a decision regarding guilt or innocence. For example, preliminarily secured testimony can be compared with other evidence in the case to confirm or refute their veracity. Another example: if the witness's pre-secured testimony aligns with material evidence, this increases the reliability of the evidence. Conversely, non-alignment necessitates conducting additional checks.

The court bases its decision on its internal conviction. Testimony that has been legally secured beforehand and deemed reliable plays an important role in shaping the court's internal conviction. Ensuring that all parties are familiar with the essential evidence in the case during the preliminarily securing of testimony, and guaranteeing a court session with their participation, is one of the crucial conditions for fair justice.

The process of preliminarily securing of testimony can be carried out in the manner prescribed by law, with the participation of all interested parties (accused, defense lawyer, representative of the victim). This ensures their rights and serves the objective recording of evidence, thereby contributing to the fairness of the proving process.

Preliminarily securing of testimony is an increasingly studied research topic by scholars in advanced foreign countries. The rise in the number of cybercrimes in the virtual environment and their tendency to disappear from the virtual world after a certain period is becoming widespread. In the context of increasing cybercrimes and digital traces, the preliminarily securing of testimony plays a vital role not only in preserving the statements of traditional witnesses but also in timely recording testimony related to digital evidence and ensuring its legality.

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