



**THE LEGAL SIGNIFICANCE OF THE INSTITUTE OF PRELIMINARY SECURING
OF TESTIMONY IN CRIMINAL PROCEEDINGS**

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Abstract: This article is dedicated to a comprehensive analysis of the procedural and legal significance of the institute of preliminary securing of testimony in criminal justice. The research substantiates that the key objective of this institute is to ensure the reliability, immutability, and admissibility of testimony in conditions where there is a threat of evidence loss (e.g., serious illness of a witness, their prolonged departure, or other objective reasons). The article thoroughly examines the procedural grounds, competent subjects, procedure for preliminary securing of testimony, as well as the legal force of the obtained evidence in subsequent judicial proceedings. The role of this institute in ensuring the principle of adversariality of the parties is separately considered, including guarantees for the participation of the defense and prosecution in the evidence securing procedure. The conclusions present scientific and practical recommendations for further enhancing the significance of this procedural tool for achieving fair justice and establishing the truth.

Keywords: preliminary securing of testimony, criminal process, securing of evidence, procedural significance, reliability, admissibility, adversariality, witness testimony, threat of evidence loss, procedural guarantees.

The primary objective of continuously improving criminal procedure legislation worldwide is to ensure and guarantee the rights of participants in criminal proceedings. It is well known that the United Nations Office on Drugs and Crime (UNODC) develops high-level recommendations aimed at protecting the rights of witnesses and victims. Likewise, reports and studies published by the European Commission, Europol, and Eurojust analyze achievements and shortcomings related to the protection of individual rights and freedoms by courts. According to statistical data published by the Rule of Law Index, indicators for ensuring fair justice and guaranteeing the non-violation of participants' procedural rights were announced for more than 200 countries for the year 2024 within a one-point scale system. Among the states with the highest scores are Australia (0.99), Canada (0.97), Germany (0.99), and Norway (0.98). However, Uzbekistan's indicator (0.16) remains among the lowest tiers. This demonstrates the need to reform the judicial system and to elevate the guarantees of participants' procedural rights to a new level.

The pre-trial consolidation of testimonies refers to the procedural process of recording and formalizing the statements of a witness or victim (civil plaintiff) in such a manner that these statements cannot later be altered or contradicted in court, or in situations where they will be unable to participate in the trial for objective reasons. Particular attention should be paid to the fact that this mechanism is applied by a court when a person has no opportunity to provide testimony later or when it is necessary to ensure the significance and authenticity of such testimony. This institution is used to prevent the loss, distortion, or alteration of evidence.



It should be noted that in the practice of many foreign jurisdictions, this procedural tool is referred to as “preservation of evidence.” However, the Law of the Republic of Uzbekistan “On Amendments and Additions to the Criminal Code and the Criminal Procedure Code of the Republic of Uzbekistan” (No. ORQ-675, dated 18 February 2021) introduced into the Criminal Procedure Code the concept of “preliminary consolidation of testimonies.” In this new institution, the term “testimony” rather than “evidence” was used. In the Uzbek legal lexicon, specific terminology has historically developed to express legal concepts.

In this context, the word “testimony” may denote the presentation or demonstration of evidence, information, or facts. That is, in investigative or judicial proceedings, items or circumstances relevant to the case may be “shown” or “presented.” The concept of “testimony” in criminal procedure law is often used as a generalized term for various forms of evidence (witness statements, expert opinions, material evidence, documents, etc.). Legal terminology is frequently linked to historical development and legal tradition. The use of the term “testimony” in this sense may have been shaped over many years. Additionally, one may argue that it also reflects terminological traditions from other Turkic languages or from the legal system of the former Soviet Union.

The expression “consolidation of testimony” conveys, in a precise and comprehensible legal manner, the need to record testimony in advance to ensure its future use. Other terms might not fully or adequately convey this meaning. Legislative initiators typically select the terminology they deem most appropriate for expressing specific legal concepts, and the choice of “testimony” can be regarded as such a decision.

In criminal proceedings, the consolidation of testimony refers to the process of verifying statements given by a suspect or an accused person and obtaining additional evidence or information to confirm or refute their correctness and authenticity.

English researchers M. Graham and R. Anthony, who scientifically substantiated the connection between testimony and human psychology, expressed the following view: “The testimony of an accused person or a witness does not constitute a single piece of evidence; determining its authenticity requires additional checks, inquiries, expert examinations, or other measures, and investigators cannot know the psychological influences acting upon the individual at the time the testimony is given.” This makes the consolidation of testimony—i.e., increasing its reliability and facilitating its evidentiary value in court—an essential process.

The preliminary consolidation of testimony consists of questioning a witness or victim (civil plaintiff) at the pre-trial stage, upon the prosecutor’s request, in accordance with judicial procedures established in the Criminal Procedure Code. The consolidated testimony is subsequently evaluated by the court as evidence.

If objective reasons exist to assume that it will not be possible to question a witness or victim (civil plaintiff) later during the pre-trial or trial stages—such as their departure from the Republic of Uzbekistan or the presence of a severe and chronic illness preventing their participation in proceedings—their testimony may be consolidated in advance. This means that if future questioning may become impossible, their statements must be clarified and formally recorded beforehand so they may be accepted as reliable evidence during the pre-trial or trial stages. This ensures that the rights of the suspect or accused are not violated and that the criminal case is examined comprehensively and fairly.

However, legislation currently provides a narrow set of objective grounds, which limits practical applicability. These grounds include only departure from Uzbekistan and the existence of a severe and chronic illness preventing participation in proceedings.



In our view, beyond these grounds, the scope should be expanded to include circumstances such as mobilization for military service or involvement in armed conflict, natural disasters or emergencies, health-related limitations (e.g., elderly persons, persons with disabilities), terminal illnesses with a risk of imminent death, and in cybercrime cases, the risk of the disappearance of digital traces.

When consolidation of testimony is necessary, the inquiry officer or investigator issues a resolution initiating a motion for such consolidation and submits it, along with necessary materials, to the prosecutor.

A noteworthy aspect is that consolidation may be applied only with the prosecutor's consent. However, the criteria determining the grounds on which the prosecutor grants or refuses consent are not clearly defined. There is no provision specifying the procedure for appealing the prosecutor's refusal, the timeframe for such appeal, or the specific factual grounds for refusal. Likewise, the mechanism for notifying the applicant of the prosecutor's decision is not regulated by explicit legal norms.

Copies of the criminal case materials confirming the necessity of pre-trial consolidation are attached to the motion submitted to the court.

The following documents should be considered appropriate to include as confirmation of the necessity of consolidation:

1. Documents related to health conditions, including:
 - medical conclusions (issued by a physician or hospital),
 - certificates regarding mental illness,
 - epicrisis or records indicating continuous treatment requirements, etc.
2. Documents confirming departure abroad, including:
 - passport stamps for entry/exit,
 - information on temporary residence abroad,
 - embassy or consulate records,
 - employment contracts (if working abroad),
 - airline or train tickets, etc.
3. Documents confirming involvement in military service or armed operations, including:
 - certificates issued by military units,
 - service travel orders (military assignment orders),
 - official state deployment documents, etc.
4. Medical documents indicating risk of imminent death, including:
 - case histories and medical records,
 - medical certificates,
 - clinical statements on the patient's current condition,
 - substantiated medical diagnoses and prognoses indicating likelihood of death, etc.

Copies of criminal case materials include the resolution initiating criminal proceedings, interrogation records of witnesses, victims, or civil plaintiffs prepared by the investigator or inquiry officer, applications submitted by individuals requesting consolidation of their testimony, confrontation records, and similar documents.



REFERENCES:

1. <https://ourworldindata.org/grapher/rule-of-law-index?time=latest&country=COG~BHR~UZB>
2. Forensic Psychology: Crime, Justice, Law, Interventions Graham M. Davies, Anthony R. Beech 466 pages, Paperback, April 23, 2022 by BPS Blackwell ISBN10: 1119991951 <http://goodreads.com/book/show/15027490-forensic-psychology>
3. Suyunova D. J., Koniushenko Y. Y., Nguindip N. C. Una comprensión comparada de la formación de responsabilidad penal por delitos contra las mujeres en uzbekistán y camerún //Ius Humani. Revista de Derecho. – 2021. – Т. 10. – №. 2. – С. 129-148.
4. Ражабов Б. Х. Некоторые мысли и замечания по совершенствованию уголовного и уголовно-процессуального законодательства //Современные проблемы развития уголовно-процессуального права. – 2022. – Т. 1. – №. 1. – С. 132-140.
5. Суюнова, Д. (2020). Особенности института предварительного судебного слушания по уголовным делам. Обзор законодательства Узбекистана, (4), 60-61.
6. Suyunova D. Preparation of the Case for Trial //Central Asian Journal of Social Sciences and History. – 2023. – Т. 4. – №. 6. – С. 182-188.
7. Охлопкова Анна Семеновна ИНСТИТУТ ПРЕДВАРИТЕЛЬНОГО СЛУШАНИЯ В УГОЛОВНОМ СУДОПРОИЗВОДСТВЕ // Право и государство: теория и практика. 2023. №11 (227). URL: <https://cyberleninka.ru/article/n/institut-predvaritelnogo-slushaniya-v-ugolovnom-sudoproizvodstve> (дата обращения: 10.12.2025).