

## Procedural Arrangement for the Provision of Legal Assistance to a Witness by a Lawyer

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**Abstract:** In the article, a lawyer may be invited by a witness to provide him or her with legal assistance not only during interrogation and confrontation, but also during the witness's participation in other investigative actions. Therefore, the powers of a lawyer, which we will consider below, apply not only to his participation in the interrogation, but also to other investigative actions carried out with the witness.

**Keywords:** witness, lawyer, interrogation, legal aid.

The law does not regulate the question of how a witness should obtain information about his or her right to hire a lawyer to provide legal assistance. D.T. According to Arabuli, it assumes the legal literacy and awareness of any person called to testify as a legislator or witness; or the investigator must explain to the witness the right to invite a lawyer when summoning him for questioning; or the investigator must acquaint the witness with his rights before questioning, taking into account his willingness to invite a lawyer, creating the necessary conditions for the exercise of this right [1]. The second is in line with the principle of protection of human and civil rights and freedoms in criminal proceedings, enshrined in the Code. Article 11 of the Code of Criminal Procedure, Part 1 of the Code of Criminal Procedure, obliges the investigator not only to explain to the participants in the proceedings their rights, but also to provide them with the opportunity to exercise them.

It appears that the investigator must explain this right to the witness at the same time as the summoning (on summons or by telephone) or immediately before the commencement of the investigative action [2]. If this is not done, the requirements of the Code of Criminal Procedure of the Russian Federation will be violated and the testimony of a witness obtained in the absence of a lawyer may be recognized as unacceptable evidence.

However, practice shows that the right in question is not always explained to the witness. Thus, the results of a survey conducted among investigators and investigators showed that only 31 percent of them explained to a witness the right to invite a lawyer.

In our view, another question is relevant: if a witness has expressed a desire to invite a lawyer, then who should ensure his or her presence? Currently, criminal procedure law forces a witness to resolve the matter on his or her own.

Given the above principle of protection of the rights and freedoms of the individual and citizen in criminal proceedings, we believe that the obligation of a witness to ensure the participation of a lawyer in the interrogation should not be allowed [3]. To do this, for example, it is recommended to ensure the procedure provided for in the defense of the accused defendant in parts 1 and 2 of the Code. The witness shall be given the right to petition the investigator, the interrogator, to invite a lawyer himself or to ensure the participation of a lawyer.

Nevertheless, we believe that the investigator must verify the identity of the proposed lawyer. Therefore, in our opinion, the lawyer must present his / her reference to provide legal assistance to the witness, as well as the order of the lawyer's information to participate in the criminal case.

An analysis of investigative practice shows that investigators and interrogators often face the problem of inviting a lawyer as a witness, defending the accused and suspect, or representing the victim in a criminal case [4]. Investigators surveyed found that 39 percent of investigators had encountered such a situation. Most often, this occurred when the prosecutor or defense counsel requested that additional witnesses be questioned or that an investigative action be conducted in their presence.

This does not seem to be acceptable, especially in the above situation. A lawyer who provides legal assistance to a witness is another participant in the criminal proceedings, so he or she cannot simultaneously represent the defense or the prosecution in the case. Otherwise, it is more likely to adversely affect the witness.

It is now necessary to proceed directly to the review of the powers of the lawyer providing legal assistance to the witness.

During the interrogation, the lawyer has the following rights:

briefing the witness in the presence of the investigator;

to ask him questions with the permission of the investigator;

to provide written explanations on the accuracy and completeness of the records in the report of this investigative action;

upon the completion of the interrogation, the lawyer shall have the right to make statements that the rights and legitimate interests of the witness have been violated, which the investigator must record in the record.

It appears that all of these powers of attorney should not only be retained, but should also be applied to other investigative actions conducted with the witness.

Let's take a closer look at these powers of attorney.

Short consultation should be recognized as short-term, short-term and short-term counseling. The term "counseling" is synonymous with "counseling."

The lawyer has the right to give a brief advice of the witness "in the presence of the investigator". However, the official conducting the interrogation (infection, on-site examination of the testimony, etc.) in which the witness and the lawyer are present has the right to be present at the location of the lawyer during the consultation [6]. gives brief advice. The law does not stipulate the time limits that must be provided to a lawyer for such consultations, as well as questions about their number during a single investigative action, and the need to record the fact of the consultation in the record of the investigative action. According to a survey of lawyers, witnesses consulted a lawyer during interrogation and confrontation - 47% of cases, presentation for identification - 24% of cases, investigative experiment - 15% of cases, as well as expertise and as at the time of examination - at 14% [7].

At the same time, it should be noted that 12% of the lawyers interviewed asked the investigator (inquirer) to move the investigation to the final stage, indicating that he did not want to set aside time for such advice during the investigation.

At the same time, a lawyer's legal assistance in criminal proceedings is not limited to procedural and time limits, but also provides him with initial legal advice and explanations on legal issues, oral and written appeals to the legislation, applications, complaints and other documents. includes

Exercising the right of a lawyer to ask questions to the interrogated persons is allowed only with the permission of the investigator (inquiry officer). However, the legislature does not require such "permission" to be registered in writing. However, the fact that the lawyer asked the participants of the investigative action and its literal content should be noted in the protocol of the investigative action [8]. Apparently, before the interrogation begins, the lawyer should be warned not to ask "leading" questions, i.e.. containing the required answer.

Upon completion of the investigation, the lawyer has the right to make a statement that the rights and legitimate interests of the witness have been violated. The Code of Criminal Procedure does not specify in what form such statements should be made - orally or in writing, but Part 5 of the Code does. The protocol is a basic and important tool for determining the course and outcome of the investigative action, which should include all the statements of the parties involved, including the lawyer [9]. However, the lawyer shall not only apply to the investigator (interrogator) with a statement of violation of the rights and legitimate interests of the witness, but also provide written explanations on the accuracy and completeness of the entries in this record.

If the attorney has prepared a written document, it is part of the interrogation protocol and the protocol itself indicates the existence of such a document. If the statement is given orally, the full (if possible, literal) text of the questionnaire must be included in the interrogation report [10]. In the opinion of the investigator (inquirer), even in the absence of a violation, a report may be drawn up and recorded by the investigator.

Thus, a selective analysis of the transcripts of the investigative actions in which the witness and the attorney participated showed that in 81% of cases, the attorney's testimony was verbally stated and recorded in the transcripts; In 13% of cases, the lawyer personally wrote a statement of violation of the witness's rights in the protocol of the investigative action, and in 6% of cases, the lawyer filed a written statement attached to the statement of interrogation of the witness.

Often, the lawyer's statement was related to the fact that the information provided by the witness in the transcript of the interrogation was incorrectly reflected (92%), as well as to the fact that the suspect was illegally interrogated as a witness. they point out. crime (6%) and the need to apply security measures to the witness and his close relatives (2%).

Based on the modern concept of criminal procedural offenses, violation of the rights of a witness is understood not only as an illegal, guilty, socially harmful behavior of the investigator (interrogator, etc.), but also any other (except the interrogated). person) a participant in an investigative action.

Not only the personal rights of the witness (honor and dignity, the inviolability of the person, his safety, etc.) but also his other rights, such as the right to file a lawsuit, may be violated. inaction) and (or) decision investigator (inquirer) and others.

The rights of a witness in the performance of this or that investigative act may be violated by a person who is not present at it, temporarily or permanently present at the time of its conduct. Thus, for example, an operative who enters an investigator's room during an interrogation may threaten the person being interrogated and leave without waiting for the interrogation to end [11]. The lawyer may also make a statement about the violation of these procedures.

A survey of 64 attorneys found that 36 of them (56%) participated in witness-based investigations. At the same time, 37 percent of them indicated that the entries in the protocols of the investigative actions were incorrect; 19% - on illegal pressure on a witness; 17% - on violations related to untimely provision of services of interpreters, psychologists, teachers and other specialists; 10% - on illegal interrogation as a witness of a person actually suspected of committing a crime; 7% - on the need to apply security measures to the witness or his relatives; 3% - on violation of the interrogation period [12]. At the same time, 7% of respondents explained that they did not identify any violations of witness rights during the investigation.

1. A lawyer who provides legal assistance to a witness is a person who has the status of a lawyer in the manner prescribed by law and has been invited by a witness to provide him with qualified legal assistance in connection with his participation in criminal proceedings.
2. A lawyer may be invited by the witness himself or by other persons on his behalf or with his consent. At the request of a witness, the presence of a lawyer shall be provided by the inquiry officer, investigator or court.
3. If the lawyer fails to appear within 5 days from the date of summons, the witness or other persons on his behalf, as well as the investigator, inquiry officer or the court, shall have the right to attend the hearing at the request of the witness. invite another attorney.
4. The participation of a lawyer in a criminal case shall be permitted upon presentation of a certificate and an order.
5. If the lawyer participates in the proceedings on the criminal case, which contains information constituting a state secret, and does not have the right to use the information, he shall sign a non-disclosure agreement. condition
6. From the moment a lawyer is admitted to participate in a criminal case:
  - 1) to participate in the interrogation of a witness, as well as in other investigative actions with the participation of a witness;
  - 2) brief advice to the witness;
  - 3) ask questions to him with the permission of the investigator, the court;
  - 4) get acquainted with the protocol of the investigative action in which he participated, give written comments on the accuracy and completeness of the entries in the protocol of the investigative action;
  - 5) to submit an oral and written statement on the violation of the rights and legitimate interests of the witness. Oral statements should be included in the protocol of the investigative action, written statements should be attached to the protocol;
  - 6) registration of written applications, complaints, petitions and other legal documents on behalf of the witness;
  - 7) submit an application on his / her own behalf to apply security measures to the witness;
  - 8) appeal against actions (inaction) and decisions of the inquiry officer, investigator, prosecutor, court and participate in their consideration in court;
  - 9) provide other legal assistance to the witness not prohibited by this Code.
7. A lawyer shall not have the following rights:

- 1) waiver of the obligation to provide legal assistance to the witness, unless otherwise provided by this Code;
- 2) simultaneously participate in the defense or prosecution in the same criminal case;
- 3) Asking "leading" questions during the investigative action, ie. containing the required response;
- 4) Disclose the information of the preliminary investigation known to the witness in connection with the provision of legal assistance, if he was notified in advance in the manner prescribed by this article. Article 161 of this Code. A lawyer shall be liable in accordance with the Code for the disclosure of preliminary investigation information.
8. A lawyer may not be questioned as a witness in the circumstances known to him in connection with the provision of legal assistance to a witness. "

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