



## Protection of the Rights and Legitimate Interests of the Victim in the Constitution of the Republic of Uzbekistan

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**Abstract:** The article analyzes the social and legal necessity of expressing the rights and interests of the victim in constitutional provisions. It expressed opinions on proposals aimed at improving the mechanism for compensating the harm caused to the victim as a result of the crime, protecting the rights and interests of the victim.

**Key words:** constitution, crime, victim, protection mechanism, law and protection, damage, harm caused by crime.

Large-scale work is being carried out in our country aimed at providing reliable guarantees for the protection of the rights and independence of citizens, primarily from criminal aggression, and a lot of work is being done to prevent the restriction of legitimate interests, humiliation of their dignity and honor. The need for ongoing constitutional reforms is explained by the logic of our main goal of forming a new state and a new society in our country. Constitutional principles, such as the rule of law, equality of citizens before the law, humanism, justice and the presumption of innocence, were the basis of the idea of "New Uzbekistan - a people-loving and humanitarian state".

As the President of the Republic of Uzbekistan Sh.M. Mirziyoyev stated: "New Uzbekistan is a country that is developing on the basis of the principles of friendly cooperation with the world community, strictly following the universally recognized norms and principles of democracy, human rights and independence, and the ultimate goal is a free, well-organized and prosperous life of our people"<sup>1</sup>.

At the center of the reforms - serving the people, pleasing the people, living with their pain, solving their problems has become a priority issue.

In order to further democratize and liberalize the judiciary, increase the efficiency of law enforcement and control bodies, increase public confidence in justice, ensure the rule of law in society and strengthen the rule of law, based on the principle "Action strategy - to a development strategy" for 2022-2026 Adoption of Resolution No. RP -60 "On the Development Strategy of the New Uzbekistan" brought the state policy in this direction to a qualitatively new stage. In order to further democratize and liberalize the judiciary, increase the efficiency of law enforcement and control bodies, increase public confidence in justice, ensure the rule of law in society and strengthen the rule of law, based on the principle "Action strategy - to a development strategy" for 2022-2026 Adoption of Decree No. DP -60 "On the Development Strategy of the New Uzbekistan" brought the state policy in this direction to a qualitatively new stage. In order to successfully implement the issue of combating crime, it must first of all be carried out in accordance with the Constitution and the principles defined in it. Usually, the concept of protection is understood as the direction of law

<sup>1</sup> Mirziyoyev Sh.M. New strategy of Uzbekistan. - T., publishing house "Uzbekistan", 2021, 464 p.

enforcement activity, and it is aimed at establishing the rule of law and its protection, and this activity is focused on ensuring uniform and complete compliance with the requirements of the law in the action of all citizens, organizations and state bodies. The independence of the protective function of the state is expressed by defining its characteristics, and its content is carried out by comparing the protective function<sup>2</sup>. Therefore, in the center of the state's actions for protection and protection, based on the norms of the Constitution, are, first of all, the rights and interests of a person. It should be noted that Article 13 of the Constitution of the Republic of Uzbekistan states that "... a person, his life, freedom, honor, dignity and other inalienable rights are the highest value". However, at the same time, the protective function of the state should be aimed at establishing the order of legality. Therefore, this rule should be defined as follows: "It is desirable that the measure of legal influence on a person is sufficient to achieve the legal goal pursued by the state body and does not cause as much difficulty as possible for interested parties".

This norm is a systemic state of the rule of law and acts as a condition for the protection of human rights and independence.

In the legal literature, the concepts of subjective legal protection and protection of legally protected interests are mutually distinguished. Rights and independence are permanent (of a long-term nature), protected only when they are violated. So, protection is a form of protection, one of its forms.<sup>3</sup>

Regarding the importance of the testimonies of the victims, G.A. Abdumajidov said: "During the preliminary investigation, additional guarantees should be established in order to protect the rights of the victim"<sup>4</sup>.

The Constitution of the Republic of Uzbekistan uses the concept of protection in different senses. In particular, it can be understood as the protection of the state sovereignty of the Republic of Uzbekistan, the protection of democratic rights and independence by the Constitution and laws (Article 13), the legal protection of citizens of Uzbekistan on its territory and beyond (Article 22), the protection of the person himself (Article 26), ensuring the right to self-defense (Article 27), protection of everyone from unemployment (Article 37), the right to legal protection (Article 44), state protection of minors, disabled and lonely elderly (Article 45), the duty to protect the Republic of Uzbekistan (Article 52), protection of property (Article 53), the right to defend the accused (Article 116), protection of law and order, rights and independence of citizens (Article 121).

The inclusion of the norm on the responsibility of state bodies and officials to officials and citizens in the norms of our constitution significantly raises to a new level the responsibility and importance of the state in ensuring the observance and protection of such rights and independence, as well as the fact that citizens have the same rights and freedoms regardless of their personality, gender, race, regardless of nationality, language, religion, social origin, beliefs and social status, they are equal (Article 18), recognition of the inviolability of their rights and independence, which are enshrined in the Constitution and laws, and their protection by the court (Article 19) is confirmed by compliance with international legal standards.

Of course, in the theory of law there are concepts of protection, protection and protection of rights related to human rights, and in general - countering illegal actions aimed at restricting the rights and independence and interests of a person, as well as eliminating such violations and restrictions, or in case of ineffectiveness of preventive measures, it will be aimed at compensating for the damage caused to them<sup>5</sup>.

At the same time, it should be noted that special norms and laws aimed at protecting the rights and interests of victims of a crime are not enough, only some articles of the Code of Criminal Procedure are given in general terms.

<sup>2</sup>Meshkova O.E. *The role of state functions in the formation of subject and functional criteria for the allocation of industries in the system of law // Bulletin of the Omsk University. - 2021. - Issue 5. - p. 82–85.*

<sup>3</sup>Matuzov N.I. *Legal system and personality. - Saratov, 2017. - P. 131.*

<sup>4</sup>Abdumajidov G.A. *Investigation and trial of criminal cases: problems and solutions // New codes of the Republic of Uzbekistan: theory and practice: Proceedings of the scientific and practical conference. -T., - p.35.*

<sup>5</sup>Lukasheva E.A. *General theory of human rights. - M., 2016. - p. 169.*

The criminal process does not provide for a special rule establishing separate liability for the use of mental or physical violence against the victim for reporting a crime to the relevant authorities. However, it cannot be said that the rights and interests of victims in Uzbekistan are not protected by law, since the rights and interests of victims are protected by law in a number of articles of the Criminal Code. In particular, Article 97 of the Criminal Code, part two, point "d" provides for liability for the murder of a person or his close relatives in connection with the performance of his official or civic duty. Since it is the civil duty of the victim to report a crime, if the crime committed is serious or extremely serious, it is the duty of the person to report it.

According to legal scholars of our country B.E. Zokirov and T.R. Saitbaev, "the majority of victims, fearing physical revenge, destruction of their property or causing damage to it, do not report crimes, and witnesses renounce their initial testimony."<sup>6</sup> In such cases, articles protecting the legitimate rights and interests of the victim or ensuring their safety are not provided. Due to the fact that the current Criminal Code does not provide for a special article or norm on the protection of the life, health, honor, dignity and property of the victim, according to the information given to the victims in connection with the initiation of a criminal case, the guilty are the general responsibility for the committed criminal act. If they are threatened with murder or other violence, they can only be prosecuted under article 112 of the Criminal Code.

As you know, in addition to the minimum requirements for justice, a document providing for the need to provide assistance to victims of crime in accordance with international standards, the resolution of the UN General Assembly of November 29, 1985 at the VII Congress "On the fight against crime and the treatment of offenders", "Persons who have become Victims of Crime and Abuse of Power", "Declaration on Basic Principles of Justice"<sup>7</sup> (Milan, Italy). In accordance with this Declaration, victims must be treated with compassion and respect for their dignity. They have the right to apply directly to the justice system and, in accordance with national law, they are entitled to seek immediate compensation for the harm they have suffered. According to the declaration, restitution (lat. *restitutio* - restoration) - requires the restoration of violated rights, the return of property or compensation for damage caused.

Given these circumstances, our current Constitution states: "The rights of victims of crime and abuse of power shall be protected by law. It would be expedient if the state could take advantage of justice for the victims, compensation for the damage caused, and that each person be compensated by the state for damage caused by illegal actions or inaction of state bodies or their officials".

At the same time, there are opinions that "the main reason for the lack of legal protection for victims is that the majority, investigators, prosecutors and judges consider the victim as a temporary means of solving a crime". This idea is firmly rooted in the public consciousness, and it is clear that the legislator often proceeds from this point of view. In particular, if the victim does not appear before the investigating authorities or the court without valid reasons, it is legal to bring him to trial, and there is no alternative for disobeying the testimony, only criminal liability.

An important step in ensuring their practical effectiveness will be the development of a practical mechanism that includes a set of measures that guarantee the protection of the life, health and dignity of victims. Although the issue of legal protection of participants in the criminal process, especially victims and other persons involved in the crime to one degree or another, was one of the most urgent problems before, it remains one of the problems that need to be addressed without delay in the current conditions.

In order to ensure stability in society, the legislation on the committed crime should fulfill two tasks: firstly, the ratio of the legally protected interest that will be violated when a coercive measure is applied, that is, responsibility for the crime committed;

<sup>6</sup> Zokirov B., Saitbaev T. Legal and organizational problems of the protection of victims and witnesses.// Law. 2000. No. 2.-51 p.

<sup>7</sup> Adopted at the ninety-sixth plenary session of the UN General Assembly on November 29, 1985. See: Zaitsev O.A. State protection of participants in criminal proceedings. – M., 2020. – P.338–343.

secondly, the issue of compensation for harm caused by the crime must be applied taking into account the degree of harm caused to the dignity of that person.

Currently, the issue of responsibility for the crime committed is being resolved, but we see that measures to eliminate the harm caused as a result of the crime are not being fully implemented.

The state has individual norms that apply to every citizen, and assistance is provided to citizens whose rights have been violated. In these norms, compensation payments are paid to a person who has suffered from a crime<sup>8</sup>.

Since the state is authorized to use the opportunities for the timely and full compensation of the rights of citizens, the state has taken upon itself the implementation of these actions. The above cases apply not only in case of non-compliance with the requirements of criminal procedure rules, but also in case of violation of rules relating to other areas, and the procedure for dealing with this refers to the Code of Criminal Procedure.

From the foregoing, we can conclude from what L.V. Boytsov said that a comprehensive substantive study of the illegal and unreasonable application of criminal prosecution against citizens in the field of a rehabilitation institution provides legal protection for citizens in the interests of society and the state. B. T. Bezlepkin noted that “relationships related to compensation for material and moral damage have not appeared today as an institution”<sup>9</sup>. In his works, the following concepts were shown that confirm these opinions: regulated relations are related to each other and are directly related to the suspicion or accusation of a citizen in committing a crime. The subject of these relations is, on the one hand, the state, that is, law enforcement agencies acting on its behalf using the powers granted to them, and on the other hand, a citizen, that is, a person who has suffered wrongfully and illegally. When analyzing the institution of protecting the rights and interests of the victim, it is more important to apply it in practice from the point of view of protecting the legally protected rights of each citizen, and not from the point of view of the legal responsibility of the courts and investigating authorities. Because from the point of view of social and legal protection, a citizen is considered as a layer that is more in need of protection from the state than its bodies. For this reason, modern legislation is based primarily on human rights, and only then on the rights of society and the state.

Article 2 of the Constitution of the Republic of Uzbekistan states that “The state expresses the will of the people and serves their interests. State bodies and officials are responsible to society and citizens”. This responsibility is also manifested in the restoration of rights violated as a result of a socially dangerous act of a criminal and insane person. One of the main goals of conducting criminal proceedings, which is a type of state activity, is the restoration of rights violated in connection with a crime or a socially dangerous act of an insane person. One of the most difficult obstacles faced by state bodies and officials involved in criminal proceedings in achieving this goal is the enforcement of court decisions. Because the very adoption of a decision on the dispute is not considered an achievement of protecting the rights and interests of the victim.

However, in the theory of law, "ensuring social justice" is important in protecting the rights and independence of citizens. In practice, Article 26 of the Constitution states that “every person accused of a crime cannot be considered guilty until the case of the person accused of a crime has been heard in a public court and his guilt has been established. It was noted that the accused in court will be provided with all conditions for self-defense. However, we see a one-sided approach”. In the legislation, cases are considered on the basis of the principle of "equality of arms". The Constitution of the Republic of Uzbekistan must reflect guarantees for the restoration of the violated rights of victims of crimes, on the one hand, and on the other, the accused. Only then the Court, as a symbol of justice, will decide cases impartially and fairly. The activity of the court is independent and relies only on such principles as the subordination of the Constitution of the Republic of Uzbekistan and the laws adopted on its basis, openness, disputability and equality of the parties, the presumption of

<sup>8</sup> Boytsov L.V. Criminal justice: citizen, state. Tver, 2018. p.16.

<sup>9</sup> Bezlepkin B.T. Compensation for damage caused to a citizen by illegal actions of bodies of inquiry, preliminary investigation, prosecutor's office and court. M., p. 354 (electronic resource. Access time 2022 May 28)<http://lawlibrary.ru/article1015679.html>.

innocence and other democratic foundations of criminal justice.

Only under such conditions, the judiciary can manifest itself as a fair, humane, truly independent power, ensuring the legality and inviolability of the rights, interests and independence of the individual.

Based on the requirements of the articles of the Constitution of the Republic of Uzbekistan, it is necessary to make the protection of the interests of the victim and compensation for harm caused as a result of a crime one of the basic principles of justice.

We can also observe that this provision is provided in the constitutions of some foreign countries. For example: according to the constitutions of Japan, Turkey, Thailand, compensation is paid to the victim or his family by the state as restitution from a special fund under the Ministry of Justice.

According to Article 52 of the Constitution of the Russian Federation, "The rights of victims of crimes and abuses of power are protected by law".

The state guarantees victims access to justice and compensation for damages. The right to private property is enshrined in the constitutions of countries such as Japan, the Russian Federation, Kazakhstan, Kyrgyzstan, Greece, Italy, Mexico, Romania, and Thailand.

Whereas the UN Declaration of November 29, 1985 on Basic Principles of Justice for Victims of Crime and Abuse of Power (Milan, Italy) and the implementation of its provisions in our national legislation to protect the rights and interests of victims and the UN Declaration of July 24, 2002 It is recommended to ratify resolution 2002/12 (Ottawa, Canada) on the basic principles for the application of the restitution program (lat. restitutio - restoration) in criminal cases.

Taking into account the above factors, the legislation of the Republic of Uzbekistan, along with the improvement of the legal mechanism that ensures the protection of the rights and interests of victims, strengthens guarantees for the protection of constitutional rights and independence of citizens.