

The Issue of Protecting Personal and Family Privacy In Criminal Proceedings

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Annotatsiya: This article analyzes the specifics of protecting personal and family secrets in criminal proceedings. The legal basis for protecting the rights related to family, personal and state secrets was also analyzed during the preliminary investigation. The most important thing is the issue of the category of state, family, and personal secrets. This article analyzes national and foreign legislation as well as the opinions of scientists.

Kalit soʻzlar: personal, family, state secret, constitution, crime, criminal process, documents, category, immunity, foreign experience, law, secrecy, disclosure.

The legal basis for the protection and protection of state or personal and family secrets is the Constitution of the Republic of Uzbekistan. Thus, in Article 31 of the Constitution of the Republic of Uzbekistan, every person has the right to the inviolability of his private life, personal and family secrets, the protection of his honor and dignity. Everyone shall have the right to keep their correspondence, telephone conversations, postal, electronic and other communications confidential. Restriction of this right is allowed only in accordance with the law and on the basis of a court decision. It is enshrined that everyone has the right to the protection of his/her personal data, as well as the right to demand the correction of inaccurate information, the destruction of information about him/her that has been illegally collected or has no legal basis.¹

In addition, according to Article 33 of the Constitution of the Republic of Uzbekistan, restrictions on the right to seek, receive, and disseminate information are permitted only in accordance with the law and only to the extent necessary to protect the constitutional order, public health, social morals, the rights and freedoms of others, ensure public safety and public order, as well as to prevent the disclosure of state secrets or other secrets protected by law.²

Also, Article 18 of the Criminal Procedure Code of the Republic of Uzbekistan states that the secrecy of private life of citizens, the inviolability of their dwellings, mutual correspondence, telegraphic communications and telephone conversations is protected by law. Criminal cases are considered openly in all courts, except for cases that contradict the interests of the protection of state secrets, as well as cases of sexual crimes. At the same time, Article 89 of this Law contains norms related to the protection of state secrets. According to it, it is noted that the search, seizure and other actions related to documents or items that are state secrets can only be carried out on the basis of a decision of the investigator or investigator, sanctioned by the prosecutor, or by a court ruling. Thus, in the Criminal Procedure Code of the Republic of Uzbekistan, the legislator obliges the investigator, the investigator to take measures to ensure the circumstances related to a person's personal life, family and state secrets. Of course, if we draw a conclusion from the above, it indicates the importance of protecting a person's private life, family and state secrets in the state.

¹ Ўзбекистон Республикаси Конституцияси. – Т.: Ўзбекистон, 2023.

² Ўзбекистон Республикаси Конституцияси. – Т.: Ўзбекистон, 2023.

Therefore, in this article, we will thoroughly examine issues related to a person's personal life, family and state secrets.

The legislator did not provide a list of issues related to personal, family, and state secrets. In our opinion, this category of secrets includes: relationships between individuals, physical defects, adoption, illness, telephone correspondence, voting in elections, information about work, service, family circumstances, etc.

Yu.E. Sisoyev emphasizes that the subject of personal secrets can be information.

- about facts in a person's biography;
- about the state of health;
- about social status, property status;
- about the activity and the actions taken; about views, assessments, beliefs;
- about relationships with relatives and others;
- personal non-property and property relations between spouses, etc.³

According to E.R. Aberkhaev, the right to personal inviolability includes the right to self-determination, the confidentiality of private life, the inviolability of correspondence, freedom of opinion, freedom of conscience, freedom of religion, freedom of speech, the right to choose the language of communication, the right to inviolability.⁴

As can be seen from the presented viewpoints, there is no common understanding of the concept and types of secrets, just as there is no single definition of private life, family, and state secrets. The studied perspectives show that this group of secrets is the most extensive, encompassing and revealing many aspects not only of people's interactions but also their views, passions, inner world, beliefs, and more. Unfortunately, criminal procedural legislation lacks definitions for personal and family secrets, which sometimes makes it difficult to classify certain categories of information and adequately protect such information through criminal proceedings. Paragraph 9 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated February 21, 2020, No. 04 "On Ensuring the Transparency of Judicial Proceedings and the Right to Access Information on Court Activities," states that if a civil case or a case arising from administrative legal relations contains information related to state secrets or other secrets protected by law, or if the law mandates the consideration of a civil case in a closed court session, the court shall hear the civil case in a closed session. At the request of a participant in the proceedings, the court may consider a civil case or a case arising from administrative legal relations in a closed session to ensure the privacy of personal life or the confidentiality of legally protected information. Furthermore, paragraphs 11-12 of this resolution state that to maintain state secrets and other secrets protected by law, the case may be heard in a closed court session in accordance with the Law of the Republic of Uzbekistan "On the Protection of State Secrets" and other legislative acts if the case contains information related to state secrets or other secrets protected by law. To maintain trade secrets, a case may be considered in a closed court session, provided that the person possessing such information and filing the relevant request has taken measures to protect the trade secret in accordance with Article 10 of the Law of the Republic of Uzbekistan "On Trade Secrets." Paragraph 19 of this Resolution addresses other secrets protected by law (for example, the secrecy of adoption) (Article 153 of the Family Code of the Republic of Uzbekistan)

3 Сулова С.И. Тайна в праве России: цивилистический аспект: автореф. дис. канд. юрид. наук / С.И. Сулова. - Иркутск, 2003. 1-4 25 с.

4 Аберхаев Э.Р. Право не свидетельствовать как институт неприкосновенности частной жизни / Э.Р. Аберхаев// Информационное право. - 2006. - № 3. - с. 29

Unfortunately, there is no definition of personal and family secrets in criminal procedural legislation, which sometimes makes it difficult to classify certain categories of information, as well as adequately protect such information through criminal proceedings.

Paragraph 9 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated February 21, 2020, No. 04 "On Ensuring the Openness of Judicial Discussion and the Right to Receive Information on the Activities of Courts," states that if a civil case, as well as a case arising from administrative law relations, contains information related to state secrets and other secrets protected by law, or if the law provides for the mandatory consideration of a civil case in a closed court session, the court considers a civil case in a closed court session. At the request of the participant in the process, the court has the right to consider a civil case, as well as a case arising from administrative legal relations, in a closed court session in order to ensure the inviolability of private life or confidentiality of legally protected information.

Also, in paragraphs 11-12 of this resolution, in order to maintain state secrets and other secrets protected by law, the discussion of the case in a closed court session is allowed, in accordance with the Law of the Republic of Uzbekistan "On the Protection of State Secrets" and other legislative acts, if the case contains information related to state secrets and other secrets protected by law.

In order to maintain commercial secrecy, the case may be considered in a closed court session, provided that the person who possessed such information and filed the relevant request took measures to protect commercial secrecy in accordance with Article 10 of the Law of the Republic of Uzbekistan "On Commercial Secrets."

Paragraph 19 of this Resolution, concerning other secrets protected by law (for example, the secret of adoption) (Article 153 of the Family Code of the Republic of Uzbekistan).⁵

The presence of information related to the private lives of individuals participating in a case may serve as grounds for the court to decide on considering the case in a closed court session. When making a decision to conduct a court hearing in a closed manner to ensure a person's right to personal inviolability, courts must take into account the nature and content of information about a person's private life, as well as the potential consequences of disclosing such information.

It should be noted that personal and family secrets are closely interconnected, and their protection is also ensured by constitutional and other legislative acts. This type of confidentiality is related to safeguarding the constitutional and other rights, freedoms, and interests of the individual. Therefore, their definition is crucial for the criminal process as an activity aimed at applying partial procedural coercive measures, including coercion related to violations of constitutional rights and personal freedoms (particularly, searching residential premises, inspecting crime scenes, and conducting other investigative actions).

Consequently, it is not permissible to disclose information about the private life of participants in criminal proceedings without their consent.

We support the opinion of A.A. Fatyanov, who argues that the right of the person conducting the preliminary investigation or the prosecutor to publicly disclose information at their disposal cannot be absolute, as the case may contain information constituting personal and family secrets of an individual. During the preliminary investigation, its disclosure cannot be accepted, even if it was carried out in the interests of the case.⁶

⁵ Ўзбекистон Республикаси Олий суди Пленумининг 2020 йил 21 февралдаги 04-сон “Суд муҳокамаси ошқоралигини ва судлар фаолиятига доир ахборот олиш ҳуқуқини таъминлаш тўғрисида” қарори.

⁶ Фатъянов А.А. Правовое обеспечение безопасности информации в Российской Федерации: учеб. пособие / А.А. Фатъянов. - М.: Юрист. - с. 32.

As can be seen, it is currently necessary to develop and improve the criminal procedural mechanism for protecting a person's private life, personal and family secrets.

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