

## Witness Protection and collaborators of Justice in Albania

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### Abstract

Recent years as a result of globalization, the free movement of people and the revolution of information technology have increased significantly crime and new forms of crime have appeared, endangering the safety and life of citizens, and consequently the need to enforce stringent legal and institutional measures against terrorism and organized crime.

Therefore, based on witnesses' declaration and justice collaborators who cooperate with juridical authorities it is an invaluable contribution to the war against organized crime and international institutions such as the United Nations, the Council of Europe, the European Union, which have adopted the necessary legislation as well as recommend member states to establish the right legislative framework to enable co-operation with witnesses and to provide their protection.

Thus, based on the decisive role of witnesses and collaborators of justice in achieving successful results in the fight against organized crime and terrorism, I was motivated to undertake this scientific paper focusing precisely on the treatment and analysis of the role of witnesses and justice collaborators in criminal proceedings.

**Keywords:** witness, Protection Program, judicial reform, Albania.

### Introduction

This project aims to address and interpret the standards set by international and European institutions regarding the protection of witnesses and justice collaborators, as well as their reflection on Albanian legislation including new changes to the Criminal Procedure Code expected to enter in Force on August 1, 2017.

The witness protection for the first time appeared in the United States in 1970 as a legally sanctioned procedure to be used in accordance with a witness protection program that provided priceless assistance to the dismantling of criminal mafia organizations.

By then, among the members of the mafia, it was abided the "*Code of Silence*" known as Omerta, a set of unwritten rules, which sanctioned that the members and anyone who denounced the police was threatened with death. Convincing witnesses to cooperate with the police was difficult. In this situation, the United States Department of Justice consolidated its conviction of creating a witness protection program and institutionalizing (Montanino, 1987) it as "*Official secret programs where inclusion in it be subject to strict admission criteria and contain the relocation and alteration of the identity of witnesses whose lives have been threatened by a criminal group due to cooperation with legal authorities.*"

Based on the United Nations Manual on the Protection of Witnesses Involved in Organized Crime, the notion of a witness is defined as a person who possesses important information about a court case and regardless of his legal status (informant, witness, court employee, secret agent, etc.) fulfills the conditions to be included in the

Witness Protection Program.

An essential role in the juridical process for investigating and detecting the perpetrators is done by the Justice Collaborator who has participated in a criminal offense related to a criminal organization and possesses significant knowledge about the organization's structure, the method of action, the activities and links of the criminal group with other local or foreign groups.

### **International Instruments**

The United Nations has endorsed some instruments that emphasize the need to protect witnesses from the injury, intimidation, and the damage they suffer from criminal offenses. These include:

The UN Convention against Organized Crime of 2000 and its three additional Protocols, which provides that States Parties should take appropriate measures to provide effective protection from retaliation or potential threat to witnesses who provide evidence regarding criminal offenses covered by the convention (money laundering, corruption, trafficking of human beings, smuggling of immigrants, etc.) and their relatives and other persons close to them.<sup>1</sup>

The UN Convention against Corruption of 2003. States Parties must take appropriate measures in accordance with their internal legal system and within their possibilities to provide effective protection from retaliation or potential threat to witnesses and experts who provide evidence regarding criminal offenses covered by this Convention (Money laundering, misappropriation or abuse by an official public clerk, abuse of public function, and the appropriation of money for themselves and their relatives)<sup>2</sup> (Articles 32, 37 (4)).

The United Nations Guidelines on Juvenile Justice, who are victims and witnesses of crime, which aim to provide friendly access for children to "indemnification", emphasize that procedures should be easy to use and when this is possible to be treated together with the criminal case. In addition, the guidelines undertake to present the sorts of reparations that a minor should be concerned by focusing on material expenses.

### **European Union**

The European Union has addressed the issue of witness and victim protection mainly through two resolutions. The Council Resolution of 23 November 1995 on the Protection of Witnesses in the War against Organized Crime invites all Member States to ensure the proper protection of witnesses against all forms of direct or indirect threats, pressure or intimidation, also long after the court session. Member States should consider giving evidence in another country where the person is traced, using audiovisual methods.

The Council Resolution of 20 December 1996 on Individuals Co-operating with the

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<sup>1</sup> The United Nation Convention against Organized Crime of 2000 and its three additional Protocols Article 24.

<sup>2</sup> The United Nation Convention against Corruption 2003, articles 32, 37, point 4.

Judicial Process in the War against Organized Crime provides that Member States adopt appropriate measures to encourage individuals who participate or have participated in a criminal association or in any kind of organized crime offenses, to cooperate with the judicial process. In terms of witness protection, it calls upon member states to provide appropriate measures, taking into consideration the Council Resolution of 23 November 1995.

### **Predictions in Albanian Legislation**

The Republic of Albania being a member of international organizations has ratified the United Nations Convention and has included in its legislation recommendations of Council of Europe to combat organized crime and to protect fundamental human rights.

### **Constitution of the Republic of Albania**

The Constitution of the Republic of Albania provides the fundamental principles of the state as well as the basic freedoms of the individual, where apart from the ordering of fundamental rights and freedoms, the Constitution has created some guarantees for their implementation and respect.

In the area of Witnesses and Justice Collaborators, the provisions for a fair trial are included as general principles, as well as actions defined in the criminal process. According to Article 21 of the Constitution “the life of a person is protected by law”, which means the right to live is the fundamental human right, the enjoyment of which constitutes the condition for the enjoyment of all other rights and the state has the obligation to take all necessary measures to supervise and control the respect for life.

### **The Criminal Procedure Code**

The Criminal Procedure Code is the most important criminal law and encompasses the entirety of the norms governing the activity of the subjects of criminal proceedings. Testimony is important evidence that is encountered in almost all criminal proceedings and serves to establish the circumstances of the commission of the offense, to discover its motive and to prove the guilty of the defendant (Islam & Hoxha & Panda, 2010, 208).

In the alterations that the New Criminal Procedure Code has undergone, which will enter into force on 1 August 2017 it is envisaged that the justice collaborator is questioned as a witness, and the statements of the collaborator of justice are evaluated in unity with other evidence confirming their truthfulness.

Also, in the alterations of Article 37/a, it is specified <sup>3</sup> that the defendant who is charged with a crime punishable in maximum of not less than seven years imprisonment, committed in collaboration or for one of the offenses provided from letter a), paragraph 1, of Article 75/a, may acquire the status of a justice collaborator by signing a cooperation agreement with the prosecutor. The agreement that contains the terms of cooperation may be related to any state and stage of proceedings, even

<sup>3</sup> Article 37 / a Code of Criminal Procedure.

after the criminal decision has become final and enforced.

In order for the defendant to be considered a collaborator of justice it is essential that his testimony be a decisive test of guilt, in terms of proof of the facts and of their authorship. Also, the defendant in his testimony must identify all assets of criminal origin in his possession and associates.

Depending on the contribution provided by the collaborator of justice about the facts and circumstances related to the offenses and their authorship, it is also appreciated the reduction of the punishment measure or the full exemption from the punishment. One of the most important elements of witness co-operation with judicial authorities is the signing of the agreement <sup>4</sup> which contains the identity and generality of the justice collaborator and the prosecutor as well as the obligation of the collaborator to provide the information in full and without any reservations.

The agreement that contains the terms of cooperation may be related to any state and stage of proceedings, even after the criminal decision has become final and enforced. The Criminal College of the High Court in its decision <sup>5</sup> in interpreting the abovementioned provision of co-operation with justice precludes the “*drafting of the protection agreement*”, it is fairly considered that the disregard of this procedure in the concrete case has rendered its enforcement not applicable by the respective courts.

Thus, in its unifying decision, the Supreme Court, not drafting the agreement as a procedural action considers its consequences not applicable.

Article 316/a of the Code of Criminal Procedure provides the question of collaborators of justice and protected witnesses under special protection measures. In addition to being able to interrogate at a distance of their own through the audiovisual connection, the court, when it has been decided to change the identity, commands the taking of appropriate measures to ensure that the face and voice are not distinct.

## Penal Code

Concerning the issue of witness and justice collaborators in Article 28 it is envisaged that they may benefit from a reduction in punishment or exemption from punishment in case of cooperation with judicial authorities<sup>6</sup>. *A member of a criminal organization, a terrorist organization, an armed gang or a structured criminal group benefits from the exemption from punishment or reduction of it, if it provides assistance, can be decisively judged for the recognition of their activity, other associates, directly or not owned assets, as well as for investigative activities conducted against criminal organizations, terrorist organizations, armed gangs and structured criminal groups.*

These particular forms of co-operation have a significant social risk and are very difficult to be investigated and be brought to justice, and therefore the witness and the justice collaborator play a very important role in dismantling these criminal groups. Article 284/b of the Criminal Code provides that for persons arrested or convicted for one of the offenses related to narcotics, weapons, clandestine, prostitution or criminal offenses committed by criminal organizations *and cooperating to find out the persons of*

<sup>4</sup> Added to Article 37 / b of the Code of Criminal Procedure.

<sup>5</sup> Decision of the Criminal College of the Supreme Court No. 246, dated 03.10.2012.

<sup>6</sup> Criminal Code article 28 point 7.

*such criminal offenses, benefit a reduction in punishment and, in exceptional cases, exemption from punishment.*

In addition to the provisions provided by the Criminal Procedure Code regarding witness protection, the law *"On witness protection and justice collaborators"* represents an important act. This law specifies in detail the special measures, the manner and procedures for the protection of witnesses and collaborators of justice, as well as the organization, functioning, competencies and relations between the bodies charged with the proposal, evaluation, approval and implementation of special measures of protection as an important tool in the war against organized crime.

Provisions of this law are applicable in the framework of criminal proceedings for intentional crimes for which the law provides for a minimum sentence of imprisonment of not less than four years. The risk of these crimes and their perpetrators should be such as to justify the performance of the necessary expenses for the protection of one or more persons.

The law defines the Responsible Bodies for the Protection of Witnesses and Justice Collaborators, which are: The Commission for Evaluating the Program of Witness Protection and Justice Collaborators, which is the body responsible for assessing and approving the directorate's proposals for admissions to protection programs and the Directorate for the Protection of Witnesses and Collaborators of Justice, which is the body responsible for the preparation, prosecution and implementation of the protection program.

In order for a witness to be admitted in the Protection Program, he must fulfill these conditions by cooperating freely with the prosecution and the court and, through his or her complete statements or testimony, done unconditionally, provide based data, constituting crucial evidence for the detection, investigation and trial of the crimes and their perpetrators;

Also, to be involved in the protection program, it is necessary for the witness or lawyer to be in danger for his life and with his / her free will accepts to enter the program, also undergoing the coping with emotional and psychological pressure which may cause inclusion in the Program of Protection.

Protection measures that can be taken toward witnesses and justice collaborators depending on the risk and the specificity of each case are: identity change; change of residence; giving false documents; temporary protection of identity, data and documents; giving evidence with another identity and administering special means for deforming his or her voice and other forms determined by law, in accordance with Article 361/a of the Code of Criminal Procedure.

In special and urgent cases, the directorate, upon the request of the prosecutor proceeding, decides on the immediate implementation of the temporary protection measures. To this purpose, the directorate and the protected person sign a temporary protection agreement. The head of the Special Prosecution Director <sup>7</sup> must submit a proposal for accepting the person in the protection program within 30 days from the date of commencement of the implementation of the temporary measures.

Temporary protection measures shall be established in accordance with the state of danger in such forms as to guarantee, provisionally and in advance, the necessary level

<sup>7</sup> Amended with Law No.32 / 2017.

of protection. Before the adoption of the Protection Program, the Directorate prepares the program implementation agreement, discusses conditions with witnesses and other protected persons.

*Before the agreement is signed, the justice collaborator is obliged to inform the directorate in detail about the types and extent of the assets owned by him. If any of the assets owned by the justice collaborator is a product of criminal offenses, proceeds or benefits from the proceeds of the criminal offense, or the assets with which the products are mixed, then the person should declare this fact.*

While the witness protection law and subsidiary acts undoubtedly represent a significant step forward, much remains to be done to ensure the safety of other witnesses and to increase the credibility of witness testimonies in Albania. The special measures provided for in the law on witness protection have a pricy cost and the scope of the law is limited.

A particular problem for many witnesses and not discussed above in this analysis is the difficulty to secure transportation and the costs associated with travel to the court. An obvious way to improve this situation would be to cover travel expenses for witnesses who come to testify. This would also be an effective way to influence the readiness of witnesses to appear in court.

At present, this is provided only for witnesses in civil proceedings, where the party seeking to hear a witness is obliged to pay the witnesses' expenses. While in criminal cases, at best, the police bring the witnesses to the court.

In the framework of the adoption of the legal package prepared in the framework of judicial reform such as: Constitutional amendments, Law "On the Organization and Functioning of Institutions for Law against Corruption and Organized Crime", Law "On the Organization and Functioning of Institutions against Corruption and Organized Crime", the new amendments to the Criminal Procedure Code (CPC) led to the need for some additions and amendments <sup>8</sup>to Law no. 10173, dated 22.10.2009 "On the Protection of Witnesses and Justice Collaborators", as amended, because the current law does not correspond to the dynamics of the changes that have been made to the legislation as a result of changes made in the framework of judicial reform in the Republic of Albania.

Given the fact that the provisions of this law are applicable in the context of criminal proceedings for intentional crimes, which means criminal offenses with high social risk, the implementation of this law and in the cases of investigation and prosecution of criminal offenses which are in the competence of structures such as the Special Prosecution, the amendment of the legal provision is more than indispensable. For this reason, the Draft law determines the role of the Special Prosecutor's Directors.

The draft law reflects the constitutional changes adopted by the Assembly by changing bodies proposed by members to the Commission for Evaluating the Program of Witness Protection and Justice Collaborators. It will be the High Judicial Council which will propose a judge to serve as deputy chairman and the High Prosecutor's Office which will propose a prosecutor to serve as a member of the commission.

The right to proposing, reviewing and decision-making in the Commission for

<sup>8</sup> Law no. 10173, dated 22.10.2009 "On the Protection of Witnesses and Justice Collaborators" as amended.

Evaluating the Program of Witness Protection and Justice Collaborators to include in the protection program one or more persons, with the establishment and functioning of the Special Prosecution, the law recognizes apart from the General Prosecutor even the directors of the Special Prosecution. Also, the draft law provides that in special and urgent cases, the directorate, upon the request of the prosecutor proceeding, decides on the immediate implementation of the temporary protection measures. Likewise, the draft law stipulates that in the cases of reaching the agreement with the justice collaborator as well as in the cases of the completion of the protection program should be informed the Director of the Special Prosecutor.

### **Conclusions and Recommendations**

Witness Protection Programs are considered an effective means of providing security to witnesses threatened by co-operation with the judiciary. Over the years, witness protection programs have developed sophisticated practices and effective protection measures that allow change in the identity of threatened witnesses and their relocation to a safe place.

The success of these operations has had a positive impact on securing crucial evidence and witness testimonies are considered a key element against organized crime. Taking in consideration that testimonies given by witnesses are vital to the effective investigation of crime and the construction of a lawsuit against the accused, facilitating co-operation between states is a key objective for all criminal justice systems.

Based on the practice of various legal systems, witnesses tend to be afraid to testify, where, in addition to the witness protection program provided for in the law on witness protection and justice collaborators, other measures should be taken to make possible their secure participation by creating a co-operation and coordination between different states to realize effective protection programs.

There is also a need to institutionalize a program that will have knowledge and specialized expertise, Protection Officers, psycho-social field experts, doctors, witness property managers, services and other resources to manage all the elements needed to displace witnesses and their family.

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