

PROTECTION OF WITNESSES IN EUROPEAN JUDICIAL PRACTICE

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Abstract: *Witnesses are vulnerable subjects with a crucial role in criminal law.*

Witness protection programs are important institutions, in which countries can decide for themselves the way they want to handle it. In the European Union, the inspiration was the United States model, and more countries try to establish a common practice for the member states.

A common practice is more efficient and encourages cooperation between nations in the fight against crime.

Keywords: *Witness, vulnerability, co-operation, organized crime, protection, relocation.*

Introduction

A witness¹ is the person who, through his statements, provides information and data of a decisive nature in finding the truth about serious crimes, or which contributes to preventing the occurrence or recovery of special damages that could be caused by committing such crimes.

1 Legea nr 682/ 2002 privind protecția martorilor, Republicată în temeiul art. 107 alin. (3) din Legea nr. 255/2013 pentru punerea în aplicare a Legii nr. 135/2010 privind Codul de procedură penală și pentru modificarea și completarea unor acte normative care cuprind dispoziții procesual penale, publicată în Monitorul Oficial al României, Partea I, nr. 515 din 14 august 2013, cu modificările ulterioare, dându-se textelor o nouă numerotare. Legea nr. 682/2002 a fost publicată în Monitorul Oficial al României, Partea I, nr. 964 din 28 decembrie 2002 și a mai fost modificată prin: Ordonanța de urgență a Guvernului nr. 157/2005 pentru modificarea alin. (3) al art. 3 din Legea nr. 682/2002 privind protecția martorilor, publicată în Monitorul Oficial al României, Partea I, nr. 1.045 din 24 noiembrie 2005, aprobată prin Legea nr. 79/2006, publicată în Monitorul Oficial al României, Partea I, nr. 293 din 31 martie 2006; Legea nr. 187/2012 pentru punerea în aplicare a Legii nr. 286/2009 privind Codul penal, publicată în Monitorul Oficial al României, Partea I, nr. 757 din 12 noiembrie 2012, rectificată în Monitorul Oficial al României, Partea I, nr. 117 din 1 martie 2013, cu modificările ulterioare.

When discussing witnesses, we must consider their quality, their degree of involvement, their physical and mental state, and last but not least their credibility.

Under Romanian law², the competent judicial body gives him the witness status if there is reasonable suspicion that the life, integrity, freedom, property or professional activity of the witness or a member of his family could be endangered by the data it provides to the judicial authorities or its declarations.

The prosecutor³ shall, on his own initiative or at the request of the witness, apply the protection measures, by reasoned ordinance, which shall be preserved in confidentiality.

- supervising and guarding the witness's dwelling or providing temporary housing⁴;
- accompanying and ensuring the protection of the witness or his / her family members while traveling⁵;
- protection of identity data by giving a nickname with which the witness will sign his / her statement⁶;
- hearing the witness without being present, audiovisual means of transmission, with distorted voice and image when the other measures are not sufficient⁷.

The prosecutor verifies⁸, at reasonable intervals, whether the conditions which have led to the taking of the protection measures are maintained, otherwise, he discontinues them.

The protection measures⁹ shall be communicated to the designated authority with the enforcement of the measure.

2 NCPP, Titlul IV, Probele, mijloacele de probă și procedeele probatorii, Capitolul II, Audierea persoanelor, Secțiunea a 5-a Protecția martorilor, Subsecțiunea 1, Protecția martorilor amenințați, art 125.

3 Idem art 126 alin (4)

4 Idem art 126, alin (1), lit a)

5 Idem lit b

6 Ibidem lit c

7 Ibidem lit d

8 NCPP, Titlul IV, Probele, mijloacele de probă și procedeele probatorii, Capitolul II, Audierea persoanelor, Secțiunea a 5-a Protecția martorilor, Subsecțiunea 1, Protecția martorilor amenințați, art 126, alin. (5)

9 NCPP, Titlul IV, Probele, mijloacele de probă și procedeele probatorii, Capitolul II, Audierea persoanelor, Secțiunea a 5-a Protecția martorilor, Subsecțiunea 1, Protecția martorilor amenințați, art 126, alin. (8)

Witnesses in Organized Crime

In the fight against organized crime, undercover agents are of particular importance. These are crucial in the destruction of criminal groups.

In Romania, the main institution dealing with the fight against organized crime is DIICOT. Thus, agents can come from within the structure or become infiltrated agents. Often, witnesses from inside provide data about the group in return for certain advantages in their own condemnation. This is particularly the case with the destruction of drug trafficking groups.

As regards this information exchange practice, when it comes to political people and ideologies, some controversy arises. Many witnesses have been forced or even tortured to testify, which has led to certain political scandals. In particular oppressive regimes use this method to annihilate opponents. Romania had during the communist period prisons of ideological re-education¹⁰ and the extermination of the political elite¹¹.

For this reason, a personal opinion is that the exchange of information should be done with caution, and at some point it is preferable to apply other methods of extracting information, in order not to get the methods to be disputed as abusive.

The witness protection program is the specific activities of the National Office for Witness Protection¹².

The protected witness¹³ is audited without being physically present at the place where the judiciary is located by means of audio / video.

The protected witness statement¹⁴ is recorded, and is fully written. During the criminal prosecution, the declaration shall be signed by the criminal prosecution body or, as the case may be, by the judge of rights and freedoms and by the prosecutor who was present at the hearing of the witness and filed with the case file.

10 Suceava, Pitești, Gherla, Târgu Ocna, Târgșor, Brașov, Ocnele Mari, Peninsula prisons.

11 Sighet, Râmnicu Sărat, Galați, Aiud, Craiova, Brașov, Oradea, Pitești.

12 Law no. 682/2002 regarding witnesses protection

13 NCPP, Titlul IV, Probele, mijloacele de probă și procedeele probatorii, Capitolul II, Audierea persoanelor, Secțiunea a 5-a Protecția martorilor, Subsecțiunea 1, Protecția martorilor amenințați, art 129, alin. (1)

14 idem alin (5), (6), (7).

During the trial, the witness's statement is signed by the president of the panel.

The support on which the witness's statement was originally recorded, will be sealed with the seal of the prosecutor's office or of the court before which the statement was made, and shall be kept confidential. The status of vulnerable witness¹⁵ is granted by the court or by the prosecutor.

It is considered vulnerable

- the witness who has suffered a trauma as a result of the offense or as a result of the subsequent behavior of the suspect or defendant;
- the underage witness.

The hearing of the underage witness

The hearing of the underage witness¹⁶, aged up to 14 years takes place in the presence of one of the parents, the guardian or the person or the representative of the institution to whom the minor is entrusted to be raised and educated.

The psychologist may, with the consent of the criminal prosecution body, ask questions to the witness and, at the end of the hearing, take note of the report or, as the case may be, of the witnesses's written statements and make written comments on what has been observed.

The tactics of listening to underaged witnesses will be determined by their level of development, perceptiveness and understanding of the facts and events they have witnessed. Thus, at the age of 7 to 10, children undergo intensive psychological development, a sharp increase in perceptual and knowledge potential. It is preferable to hear them in school or other places well known to the witness. The free flow of facts is most appropriate for the minor witness, and the questions phase will only be passed if necessary.

Though witnesses under 14 years are not responsible for a false testimony, it must be discouraged.

In many cases, minor witnesses, and especially those under the age of 10, tend to falsify information, being influenced by relatives and other interested persons. More difficult are the hearings of minors under the age of 14. It is a period that is characterized by a less stable behavior, irritable,

15 NCPP, Titlul IV, Probele, mijloacele de probă și procedeele probatorii, Capitolul II, Audierea persoanelor, Secțiunea a 5-a Protecția martorilor, Subsecțiunea 1, Protecția martorilor amenințați, art 130, alin. (1), lit a, b.

16 NCPP, Titlul IV, Probele, mijloacele de proba si procedeele probatorii, Capitolul II Audierea persoanelor, Secțiunea a 4-a Audierea martorilor, art 124 Cazurile speciale de audiere a martorilor, alin(1)

predisposed to fantasy, and exaggerated perceived facts. Also false statements or aggressive behavior are included.

That is why the criminal investigating body conducting the hearing must be very patient and calm, so that the hearing should take place in a serious and encouraging manner in order to get the most accurate information.

For people between the ages of 14 and 16, similar tactical measures are applied to the one for listening to mature witnesses.

When we talk about the victim - witness, we need to keep in mind that it requires increased care and a query technique that makes him speak with confidence about the events that he has gone through. There is a risk that the victim may refuse to cooperate if he / she feels in any way attacked or defenseless. It is crucial to remember that fear often intervenes.

As Benjamin Mendelsohn says, vulnerability is the degree of predisposition of the person to become a victim, and this is conditioned by a multitude of factors such as age, gender, bioconstitution, socio-cultural background, IQ, psycho-behavioral characteristics.

Here are some categories¹⁷ of victims depending on:

- the criminal category, from which results the victim;
- the degree of involvement and responsibility in committing the offense;
- the degree of participation and involvement in the commission of criminal offenses;
- by psychological, biological and social factors.

The immediate result is the trauma. It appears from the threat of the victim's mental or physical integrity.

Most EU Member States¹⁸ have legislation in the field of witness protection, with the difference that in some countries it is largely responsible for police missions, while others play an essential role in ministries and the judiciary; some have a national witness protection program, and others have a few regional or local programs.

At EU level, there is a coordinated liaison network of EUROPOL, which brings together, on a voluntary basis, heads of specialist witness

17 Victomologie și psihologia victimei, note de curs, Lect Univ Bulat Irina, Chisinau 2013. pag 20

18 Documentul de lucru al Comisiei privind fezabilitatea legislației UE în domeniul protecției martorilor și colaboratorilor justiției, Bruxelles, 13.11.2017 COM(2007) 693 final. Pag 4

protection units. Network meetings serve as a platform for exchanging information, developing tools and defining guidelines.

The European Union also cooperates with international institutions through bilateral agreements.

However, we are particularly struggling because of electronic databases that become vulnerable to hackers. In the UK, Lydia Lauro¹⁹, the girlfriend of a convicted murderer, is getting a job in the Hammersmith Police. Breaks the database of the protection program to find the identity of the witnesses in her life partners trial. The life of witnesses protected at least for a period will be changed. Many are not allowed to return to their professions if they require registration in a particular database, such as lawyers or accountants.

Conclusions

The Commission, in its working document on the feasibility of EU legislation on the protection of witnesses and judicial staff, highlights a number of gaps due to:

- the multiplicity of measures taken by international bodies on matters relating to the protection of witnesses²⁰;
- different degrees of implementation of the instruments in the field, the majority non-binding;
- the need for better coordination between the competent authorities of the Member States and the EU bodies in the process of drafting policies and programs on witnesses, including the absence of agreement on common best practices to ensure effective protection;
- Difficulties in cross-border operational cooperation and the need to improve the use of existing networks;
- the lack of an overview of what has been done today due to a lack of data and analysis, generally because of the confidential nature of the information.

There are also difficulties as a result of:

- Differences between state criminal laws;
- Lack of legislative instruments and / or administrative structures and witness protection programs in some countries.

19 www.theguardian.com

20 UE, Europol, Consiliul Europe, TPII/CPI, G-8

According to the Commission Working Document on the feasibility of EU legislation on the protection of witnesses and judicial staff,²¹ we will see that a number of countries do not have witness protection legislation, but most of them have witness protection units, except France, Greece, Luxembourg, Malta and Spain, and special laws on law enforcement officers only exist in 6 countries.

All these differences make it difficult to harmonize legislation, and uneven legislation can be poorly demonstrated in cross-border cooperation.

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21 Austria, Danemarca, Finlanda, Franța, Grecia, Irlanda, Luxemburg, Olanda, Norvegia, Spania.

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