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UNDP-POGAR Regional Workshop on "Witness and Whistleblower Protection"



Handling and Protecting Witnesses and Collaborators of Justice. The European Experience

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Serious crimes to be faced

- Organized Crime
- Terrorism



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Common Features between Terrorism and Organized Crime

- Organization: horizontal and flexible (cells etc.)
- Operations: secret and under-covered
- Tactics: kidnappings, murders, extortions, etc.
- Resources: money laundering
- Availability of arms and explosive: bomb-blasts
- Transnational action: cooperation among criminal groups from various countries



Different Features between Terrorism and Organized Crime

- Terrorist groups are motivated by ideological, political or religious means, whilst criminal organizations act only for getting financial benefits

- Terrorist groups make frequent use of the mass media, criminal organizations do not

- Terrorists are ready to sacrifice their lives for their cause, members of organized crime do not



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Role of supergrasses

- Growing recognition of the rule of supergrasses in criminal proceedings related to organized crime and terrorism

- Supergrasses' statements are often crucial to securing the conviction of offenders, in respect of serious crimes

- In some areas of criminality, such as organized crime and terrorism, there is increasing risk that supergrasses will be subjected to intimidation



Council of Europe's Approach

- Recommendation R(97)13 concerning Intimidation of Witnesses and the Rights of Defence: insufficient

- Multidisciplinary Group on International Action Against Terrorism (GMT): Witness Protection as one of the six priorities on which Council of Europe should work in the fight against terrorism

- Recommendation R(2005)9 on the Protection of Witnesses and Collaborators of Justice: it covers every area in the protection of witnesses and collaborators of justice and can be apply to any type of triable offence, rather than merely terrorist or organized-crime cases



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Main definitions

➢**Witness: any person who possesses information relevant to criminal proceedings about which he/she has given and/or is able to give testimony, who is not included in the definition of "collaborator of justice"**

➢**Collaborator of Justice (supergrass): any person who faces criminal charges, or has been convicted of taking part in a criminal association or other criminal organisation of any kind, or in offences of organised crime, but who agrees to cooperate with criminal justice authorities, particularly by giving testimony about a criminal association or organisation, or about any offence connected with organised crime or other serious crimes**
(in other words: the co-defendant who has decided to co-operate with the justice authorities and who is prepared to give testimony in court against his former associates)



Council of Europe, Committee of Ministers, Recommendation Rec (2005) 9

Additional definitions

- **Intimidation: any direct or indirect threat carried out or likely to be carried out to a witness or collaborator of justice, which may lead to interference with his/her willingness to give testimony free from undue interference, or which is a consequence of his/her testimony**

- **People close to witness and collaborator of justice: the relatives and other persons in a close relationship to the witness and the collaborator of justice**

- **Protection measures: all individual procedural or non-procedural measures aimed at protecting the witness or collaborator of justice from any intimidation and/or any dangerous consequences of the decision itself to cooperate with justice**

- **Protection programme: a standard or tailor-made set of individual protection measures *(e.g., memorandum of understanding)***



Council of Europe, Committee of Ministers, Recommendation Rec (2005) 9

Main European Union Decisions on Witness Protection

- Council Decision (23.11.1995), relating to the protection of witnesses in the context of the fight against international organized crime: the European Union invites all member states to guarantee proper protection for witnesses following a set of guidelines

- Resolution of the Council (20.12.1996), relating to the judicial process in the fight against international organized crime: member states should encourage people to collaborate in the judicial process, in particular those who have participated in associations to commit offences, granting them penal benefits



- Declaration of the Council (25.03.2004), concerning the fight against terrorism : it makes reference to a proposal for the protection of witnesses and collaborators of justice

Present Situation in the European Union

European Commission Working Document COM (2007) 693

Five categories:

- **Countries with legislation and programmes in practice (*Cyprus, Estonia, Italy, Latvia, Poland, Slovakia, United Kingdom)***
- **Countries with complete regulations and witness protection programmes, but lacking regulations on collaborators of justice *(Germany, Czech Republic, Hungary, Lithuania, Portugal, Romania, Slovenia)***
- **Countries with regulations on witness protection, but lacking in either a protection unit or the legal or practical possibility of change of identity *(Belgium, Bulgaria, Malta, Spain, Sweden)***
- **Countries lacking in legislation on witness protection, but possibility of practical programmes of protection *(Austria, Netherlands, Ireland, Denmark, Finland, Luxemburg)***
- **Countries lacking in both regulations and programmes and unit of protection *(France, Greece)***



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Approach of Italy to protecting witnesses and the so-called "*Pentiti*"

- Statements of witnesses and collaborators of justice are especially important in the fight against organised crime and terrorism because of the close character of the groups involved, which makes it very difficult to use traditional investigative methods successfully

- Main duty of state authorities is to avoid the endangering of witness/collaborator of justice, setting up appropriate special protection measures

- Special mitigation circumstances applying to co-defendant who effectively co-operate with justice *(that is, reduced sentences, milder prison regime, special protection measures)*



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Type of people that can be protected

- The co-defendant who has decided to co-operate with justice authorities and who is prepared to give testimony in court against his former associates

- Innocent bystanders who happened to be present when something happened that was relevant from a criminal investigative viewpoint (witness/victim)

- Very close relatives to the co-defendant or to the witness/victim



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Admission procedure

- The decision whether or not a person should be admitted to special protection measures is taken by the *"Central Commission for the Development and Implementation of Protection Programmes"* on the basis of a detailed proposal by the competent Chief Prosecutor, stating the nature and extent of criminal investigation, the rule of the person in the criminal activities, actual endangerment for his/her personal safety

- Composition of the Central Commission:
  - President: an under-secretary of the Ministry of Interior
  - Members: two judges, five high-experienced officials

- Separation between the *"Central Protection Service"* and investigative agencies

- The *"Central Protection Service" is* not represented in the decision making body, but gives information on the nature and seriousness of the threat against the applicant (or his/her close relatives)



Criteria for admittance to special protection measures

- The person is involved (usually as a co-defendant) in a case in which persons suspected of serious crime are to be prosecuted
- The person, who is co-defendant, has delivered or has been delivering significant, comprehensive and reliable statements during a criminal proceeding
- The person him or herself and/or his/her close relatives are seriously endangered in relation to this case
- The person voluntary wishes to enter the special protection measures
- The measures taken impose no restriction upon individual freedom beyond those required in the interest of security or in the interest of the trial(s) for which the testimony is needed
- The person, who is co-defendant kept in prison, is isolated from other collaborators of justice to prevent collusion (this is usually done by detention in special prison department)



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Protection measures

➢Upon detailed request of the competent Prosecutor Chief, the Central Commission can take on the following measures:

- Provisional protection programme
- Special protection measures
- Protection programme



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Special protection measures

- Special surveillance carried out by territorial police
- Special surveillance tools (video-surveillance of houses, telephone-alarm..)
- Moving the person (and usually his/her close relatives) to a protected place located in another part of the country
- Transferring the co-defendant, who is prison convict, in a special prison department
- Economic allowance
- Social reinstatement



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Protection programme

- Resettling the person (and usually his/her close relatives) to a secret place located in another part of the country or abroad, if needed
- Special surveillance carried out by units of the Central Protection Service
- Special surveillance tools (video-surveillance of houses, telephone-alarm..)
- Transferring the co-defendant, who is kept in prison, in a special prison department
- Monthly allowance as long as the person is not able to provide a regular income for him-or herself
- Medical and psychological assistance
- Education grant for children



……..to be continued

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Protection programme

- Covered identity cards
- Legal assistance
- Change of identity (new identity papers and documents, new personal history and all necessary documents are produced as well)
- Social reinstatement
- Whenever needed, new job
- Whenever needed, extraordinary economic grant



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Memorandum of understanding

- In a formal sense this is not a contract, but a code of conduct, which primarily describes what the protected person should and what he/she should not do in certain conditions

- The protected person and his/her adult close relatives are obliged to fill in the forms completely and sign them

- For security reasons , protected person do not receive a copy of the memorandum



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Time of special protection measures

- The course of special protection measures is influenced to a large extent by the progress of criminal investigations and court proceedings
- Usually one year's duration, renewable at yearly intervals until the person is no longer endangered
- Regular assessment of the degree of danger by the Central Commission (at least, once one year)
- Withdrawal of special protection measures in case of serious infringement of the subscribed engagements



Protection measures during the trial phase

- The procedural criminal rules state a balance between the rights of the accused to a fair trial and the principle of witness protection
- Anonymous testimony is never allowed
- The defendant (that is, the appointed defence council) is always allowed to the cross examination of collaborator of justice and of victim/witness
- Judges are empowered to order that testimony be given with the use of screens, shields, curtains such that the protected person is only visible to the court
- Judges are empowered to order that evidence be given in a closed court room with only the parties and essential court staff present
- Judges are empowered to order that testimony be given by video/satellite link from a secure location, with a court official being present with the protected person
- Judges are empowered to exclude the defendant from the courtroom and having the testimony of the protected person given in the presence of the judge, the prosecutor and defence counsel



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Thanks for your attention

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