

WITNESSES PROTECTION IN FIGHTING ORGANISED CRIME

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Abstract:

Nowadays, the role of witnesses in the criminal process is becoming crucial. This is an evaluation made both from European and International Institutions. Seeing the increased threatening of civil population from terrorist acts, legal response against these acts should be stronger with strict enforcement measures not only legal but also institutional measurements against terrorist acts¹² and all other illegal acts of organized crime. In democracy the rule of law is in place. At Albanian democracy exists some phenomena that unfortunately are associated with this kind of activity like drugs, children trafficking, weapons and prostitution trafficking, etc. All these criminal acts require collaboration between two or more persons as well as collaboration of foreign persons¹³ when criminal act is performed in a foreign state territory. It is well known that criminality is a complex phenomenon referring dimensional forms of figures and causes that determine the overall nature of criminality.

One of the main concerns for criminal justice system not only in Albania but also at European level is witness protection. For that reason this fact constitutes for us an important issue to be studied. This study intends to address and interpret standards determined by International Institutions and Council of Europe, European Union as well as collaboration between them.

There are some sub issues to be addressed under this study. These issues will target, explain and interpret the process of finding and coordinating the balance between prosecution legal interest and witnesses and victim's interest on fighting effectively serious crime and terrorism.

Keywords: Witnesses, collaborators of justice, organised crime, prosecution, victims

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¹²Balla, R., "Legal response on terrorism phenomena according to Albanian law and International law", Tirana, 2007 pg. 98.

¹³Muçi, Sh., "Criminal Law General Part", Tirana, 2007, pg. 31.

Introduction:

Among encountered and dangerous forms of criminal behaviour in today society is the so called professional and organized¹⁴ crime. Criminal demeanour is diversified as well as society relationships, the goods are violated denied or affected by criminal acts. This kind of criminality is named professional, because it is performed by specialised persons, with long experience in criminal activities. Due to these illegal activities they realise considerable incomes and benefits. During different criminal activities these persons try at all costs to perform their actions, to the most perfected way with the best methods in order to make impossible their tracking, detection and seizing. It is important to mention that they're making impossible the documentation and findings of evidences and trace of criminal offences.

The best professional criminals are included and participate in the activities of organized crime. They contribute with their experience in the performing of activities with special forms of collaboration. In order to achieve their goals, according to objective side of view they act mainly with illegal¹⁵ actions or by using force, threatening, submission and silence. In order to perform a criminal offence they undertake everything by any means to insure administration or to control economic activity of concessions, supervisory of public services, to realize benefits or illegal advantages for themselves or for other persons. In the same time they try to stop and obstruction the exercise of free vote during elections and other similar activities. Fighting the international and professional organized crime is very difficult. In this context the role of witnesses is very important on prosecution of organized crime. Law enforcement agencies should encourage witnesses and collaborators of justice to testify in criminal proceedings and give appropriate evidence in return for protection against intimidation, coercion, corruption or bodily injury.

The role of witnesses:

In this framework there are overriding principal guaranties on fair and impartial trial, parties equality, the right to protection to test the testimony of a witness regulated by article 6 paragraph 3/d of the Human Rights European Convention¹⁶ which provides that: *"Everyone whom is accused for a criminal offence has the right to ask the witness against him and to benefit the witness in his favour in similar conditions with the witness that testify against him"*.

¹⁴ Elezi, I., "Criminal Law Special Part", Tiranë, 2005, pg 345.

¹⁵ Council of Europe declared that :The last decade human trafficking has reached epidemic proportion at appoximately a global annual market of \$42.5 bilion".

¹⁶ Human Rights European Convention.

Meanwhile, the majority of protection proceedings measures, limits in different levels, the fundamental right to investigate evidences and the principle that evidences should be investigated in the court and the trial will be based only on evidences presented and administrated by the court. In this context taking into consideration the rights and principles foreseen under article 6 paragraph 3/d of Human Rights European Convention, The European Court on Human Rights has created during the recent years a reached jurisprudence defining all the limits on the protections right.

International and European Institutions efforts aim to determine common criteria on this field. Their goal is to create some effective legal and institutional measures as well as practice like social assistance programs for certain categories of witnesses. In any case, it is intended to create a common treatment between protection measures for witnesses and human fundamental and freedom rights for all parts that are involved on a specified trial like: witnesses, victims, justice collaborators, the defendant, etc. A special attention in this framework should be addressed to the international mutual cooperation issue between justice authorities, in order to have an effective war against international organized crime.

In the following we will explain and analyse European legal acts which are mostly in the form of recommendation and they do not have enforcement¹⁷ character. Anyway exist some European legal acts that perform enforcement character but they're not regulating only witnesses protection but in the same time they're addressing in general organized crime issues. In an indirect way they affect and constitute a value even for witness protection.

Above all we will take into consideration and analyse the jurisprudence of Human Right European Court in accordance with article 6 paragraph 3/d of Human Rights European Convention which is *de facto* compelling for all member states of the Council of Europe. According to our legislation but especially in accordance with hierarchy of legal acts article 116 of our Constitution¹⁸, all ratified international acts comprise part of our internal legislation. In these conditions even Human Rights European Convention is now part of Albanian internal legislation.

Council of Europe Ministers Committe recently has approved some important recommendation which treat specifically the case of protection and the witness, victim and justice collaborators position, in the criminal process as well as the respective rights of defendant to be protected. Recommendations¹⁹ as legal instruments are not compelling for

¹⁷“Human Rights European Convention and the way to the Strasbour Court”, European Center, Tirana, 2003.

¹⁸Article 116 of the Albanian Constitution.

¹⁹Canaj, E., dhe Bana S., “The European Union Law”, Tirana 2010, Publishing “Arbëria 07”, pg.146.

member states they present a common view of all member states of Council of Europe on concerned legal issues in order to continuously adapt criminal justice systems. So, they have a significant authority and they constitute valid guidelines for legislators and key factors of criminal justice and other criminal experts.

Council of Europe has approved several resolution that are legal instruments on prosecution of offences on fighting organized crime but they're not covering or regulating problems of witnesses and collaborators of justice protection. Recently Europol and its expert's network have developed some principals on witness protection on collaboration of police force European countries. Also, they implemented some common criteria on involving a witness on witness protection programs tending to facilitate police collaboration on prosecution of organized crime offences on Europe.

The International Law on witness protection seems to be graduated higher than the status and protection given by European²⁰ Law. The best reference for witness protection is the Criminal International Tribunal jurisprudence. It is a bracing source on the area of criminal law and criminal proceeding law. According to international law there is no definition on what is a "witness".

However, we can interpret or gain a definition by tractates and other legal acts, as well as by criminal court cases when parties testify they perform it under several regulations and instructions. These parties include in general all that we understand on what is a "witness". Especially, victims that testify on criminal cases and other risked category including children and persons with mental troubles. According to international law there is no definition on protection measures level that a witness has to enjoy on criminal court cases. Measurements for witness protection are foreseen by Rome Statute on International Criminal Court.

Even Republic of Albania has addressed an important attention on witness protection. So it is approved previously the law no. 9205, date 15.03.2004 "On Witness Protection and Collaborators of Justice". This law was abrogated by law no. 10173 date 22.10.2009 which is amended by law no. 10461 date 13.09.2011. Based on these laws the government has approved sub legal acts to ensure the law enforcement by defining legal and institutional mechanisms on witness protection.

²⁰ European Union Standards on Witness Protection and Collaborators of Justice, 2005, G. Vermuelen, Maklu, Anwerp-Apeldoorn, 50-64.

Albanian legislation:

In the Republic of Albania witness protection and collaborators of justice system guarantees their protection according to a scaled manner through proceedings and non proceedings measures. The process is realised by Program on Witness and Collaborators of Justice Protection.

Republic of Albania has signed, ratified, or adhered on different International Convention within United Nations framework, Council of Europe and other international organizations on different field of cooperations, in order to fight organized crime, defend human and fundamental rights and victims against criminal activities. Republic of Albania after signature of Human Rights European Convention became member of Council of Europe and has included on its domestic legislation, recommendations and decisions of Human Rights European Court. In the following we're going to explain legal framework in Albania on Witness Protection.

Albanian Constitution Provisions

According to Albanian Constitution there are sanctioned guaranties on respecting basic principals on human and freedoms rights foreseen on article 25 and the following. It guaranties the fulfilment of legal obligation that a witness has the right to testify before the court in a criminal process without fear or threatening for his life. According to Article 21 of the Constitution it is foreseen that the life of a person is protected by law. Also it determines that the property right is guaranteed based on Article 41.

According to article 35/1 it is foreseen that no one can be forced to make public data relating to his person. On the field of witness and collaborators of justice, provisions on a fair trial are included as general principal as well as with determined actions on criminal process. According to article 42/2 "Everyone has the right of a fair trial and public within a reasonable time from an independent and impartial court determined by law." In the same time according to articles 31, 32, 33 are foreseen the rights of the defendant at the criminal process. Also our Constitution foresees that every international agreement ratified constitutes part of domestic legal system.

Criminal Proceeding Code

The Criminal Proceeding Code is the main and the most important prosecution law in the Republic of Albania. It contains proceeding measures on witness and collaborators of justice protection. There are several measures like personal security measures; general measures; measures on protection of witnesses and collaborators of justice and measures on sensitive witnesses categories.

- Personal Securities Measures are separated on restriction measures and preventive measures. These personal security measures has restrained and prohibitive character on persons to whom exist a reasonable suspicion based on evidence on performing of an offense.

These measures²¹ are taken when exist important reasons that endanger getting the truthfulness of the evidence; when the defendant is runaway or exist the risk of running away or the circumstances of the fact and defendant personality comprise risk that the defendant will perform other serious crime or the same crime for which the defendant is prosecuted.

Restriction Measures²² are: exit ban abroad; obligation to appear at judicial police; detention and obligation to stay in a certain place; financial guaranties; arrest at home; arrest at prison; temporary hospitalization at mental hospital.

Preventive Measures²³ are: suspension of exercising a duty or a public service; temporary detention of exercising professional activities.

- With general measures we understand measures and actions which are refered to other parties that are not foreseen by the Criminal Proceeding Code but they are regulated by other Codes or regulations or guiding. These measures are acceptance and allowing of witness in the court building after securities verification; placing witnesses at separate rooms; detention for using communication device.

According to Criminal Proceeding Code there are other general measures²⁴ relating to criminal process like obligation of judge to maintain silence; to respect dignity and security of present persons in the courtroom; to exclude public and parties from the session, etc.

Proceedings Measures on Witness and Collaborators of Justice Protection

The witness is constrained to be presented to the court and to obey its orders and to answer truthfully on questions. The witness²⁵ can not be forced to testify on facts for which could come e criminal responsibility on him. This is a legal obligation and should be implemented by courts. At Criminal Proceeding Code there are foreseen some exception on this legal obligation. There are excluded²⁶ some persons from this legal obligation who are: relatives or closed affinities of the defendant; spouse; divorced spouse; cohabitating; related person on adoption with the defendant.

In cases when because of the testimony or answer of any questions, or any special question the witness or a related person with him might be threatened for life, health, physical

²¹ Based on article 228/3 of Albanian Criminal Proceeding Code.

²² Based on article 232 of Albanian Criminal Proceeding Code.

²³ Based on article 240 of Albanian Criminal Proceeding Code.

²⁴ Based on articles 103, 104, 279, 339, 340, 341, 344 of Albanian Criminal Proceeding Code.

²⁵ According to article 157 of Albanian Criminal Proceeding Code.

²⁶ According to article 158 of Albanian Criminal Proceeding Code.

integrity or property rights (endangered witness), the witness has the right to refuse to disclose his identity; to refuse to answer to any question; to refuse to testify until he will be guaranteed by protection measures. At Criminal Proceeding Code provisions it is regulated in special manner the witness and collaborators protection through special way of taking in questions which foresee whole or partial anonymity of the witness.

Person under investigation or defendant who is accused for a serious crime performed in collaboration, when this person decide to cooperate with the prosecutor, or the court he must give the whole information with any conditions or reserve on all acts or events and circumstances, that will serve as decisive evidence on detection, investigation, judgement, and prevention of serious crime and remedies on damages caused. Conditions on cooperation will be determined by the protection agreement drafting according to special legal provisions on witness and collaborators of justice protection.

In cases when the cooperation agreement is accomplished during court proceedings, the court decides reduction of sentence or exclusion of sentence according to article 28 of Criminal Code. In cases when the cooperation is accomplished during execution of sentence, collaborator of justice must require from the court that has punished him the change of sentence given to him. The agreement may be revoked when collaborator of justice violates determined conditions, or testifies a false testimony according to article 37/a of Criminal Proceeding Code.

The witnesses and collaborators of justice under protection measures during interrogation

The process is developed on special measures in order to protect the witnesses, these special measures are determined by the court itself or on parties' request. In cases when the court has the technical tools at its availability it can decide to question the witnesses on distance on a video conference line according to article 361 of Criminal Proceeding Code. In cases when it is decided to change the identity of the witness, the court order to take appropriate measures to modify the face and voice of the witness to not identify the witness by parties, according to 361/a of Criminal Proceeding Code.

Under the main principles, every witness is legally obligated to give data relating to his identity in the beginning of the process before interrogating him. But, there is an exception to this principle which is partial anonymity or identity protected. In these cases, the witness will be interrogating by using pseudonym. The accurate data are known only by the court. The whole anonymity is performed by concealment and total masking of the appearance of the witness and it includes identity protection.

Also interrogation in these cases is performed by using technical tools which modify the voice and the face of the witness. Meantime, the defendant in a related process, or when he is serving sentences abroad country, for another criminal offence and is refused to be extradited he may be interrogating in distance by video conference and audiovisual link according to international agreements based on condition that the foreign country should guarantee participation of the defender of the accused at the interrogating place²⁷.

Interrogating minors witness and disable persons

It should be a particular care on interrogating minor witness in order to prevent harmful effects of the process on their mental health. Interrogation of minor witness should be done by the judge and parties may deposit their requirements and objections to the judge. The judge might be assisted by a familiar of the minor or by an expert on education field. In case when it is evaluated that it will not be damaged his psychological state, the judge decides to continue the interrogation by the prosecutor or by the defendant or legal representative that have asked questions. This order can be revoked according to article 361/5 of Criminal Proceeding Code.

In case of absolute inability of witnesses to be presented in the court based on parties requirement the court may decide that the interrogation should be at the place where witnesses are. But the court should notify the parties on this decision letting them know of the time and place of interrogation. Interrogation should be done in the way foreseen by the law without the presence of public. The defendant and parties will be represented by the defence attorney. The court may permit interference by the defendant on interrogation process according to article 364 of Criminal Proceeding Code.

Criminal Code

In the field of protection of witnesses and collaborators of justice there are some special provisions foreseen by Criminal Code. Witnesses and collaborators of justice might benefit reduction or conviction exemption according to these provisions. According to article 28/7 of Criminal Code there are some special forms of collaboration foreseen by Criminal Code; conviction exemption article 245/2; aid in the detection of crime 284/b; murder in specific circumstances article 79/ç; threat to not report the crime article 311; threat for false statement, expertise or translation article 312/a; prohibition of the provision and publication of data in violation of law, of confidential data that risks the life, physical integrity or freedom of protected persons based on Law no 9205 date 15.03.2004 “On protection of

²⁷ This procedure is foreseen under article 167/a of Albanian Criminal Proceeding Code.

witnesses and collaborators of justice” constitute criminal offense and will be punished by fines or imprisonment.

When this offense is committed by the person who is responsible to maintain the confidentiality of the information he will be punished by fines or imprisonment in case of causing death according to article 313/b of Criminal Code; article 84 of Criminal Code intimidation; threat due to duty article 238 of Criminal Code; trading in state secrets from the responsible person article 294 of Criminal Code; trading in state secrets article 295; actions that impede the discovery of truth article 301 of Criminal Code; support of the perpetrator article 302 of Criminal Code; concealment or destruction of the body article 303 of Criminal Code; false testimony article 306; refusal to testify article 307; active corruption of an expert, witness or interpreter article 312 of Criminal Code.

International Standards:

Jurisprudence of Human Rights European Court

The court has confirmed on several decisions its position that the guaranty foreseen by article 6 paragraph 3/d of Human Rights European Convention is not absolute. The court has carved some exemption from the general rule “...all evidences should be administer at court in the presence of the accused, in respect of the argument having opposed...”

These exemptions can be classified in four different categories:

The missing witnesses

According to the court jurisprudence on cases *Unterpentinge*, *Windich*, *Delta*, *Saidi*, *Rachdad*, witness statements whom has issued a preliminary declaration before police authorities, or prosecutors, at investigation phase, but after that can not be determined his location, has died, or can not be presented at court for legal motives, can be used as evidence only when the protection of the defendant has had the opportunity to ask the witness in an earlier stage and authorities can not be blame for the missing witness.

The precious witnesses

This category includes infiltrated, undercover agents and informants to which exists a public interest to reveal their identity, because this may compromise their further commitment. The court has acknowledged this concern to some extent. The court has allowed the various protective measures that will prevent full disclosure of the identity of the agent at the defendant and public if the accused recognize the agent under his false identity and has met him (case *Ludi*) and rejected complete anonymity of a secret agent at an hidden secret observations sector which the accused has never met (case *Van Mechelen*). Consequently, based on actual court jurisprudence, infiltrated agents, informants and other persons that implement special investigation measures can not enjoy complete anonymity, based on public

interest to not reveal their identity for operational purposes; complete anonymity can be recognized only when the witness is included at intimidating witness category.

The sensitive witnesses

The court has recognized and legitimated protected measures²⁸ on cases such as victims of domestic violence; victims of crime of sexual nature; or children whose confrontation with the accused or testimony on a public trial would seriously undermine them psychologically.

The Court jurisprudence also shows how despite the protective measures protection rights of the defendant can be guaranteed such as: recording with the recording apparatus, taking the first examination and giving to the defense the video, allowing the defense to submit written questions to the witness, continuing with the examination, etc.

There are too many risks for a fair and honest trial, for abuse and failure of justice on case of anonymity witness. To allow the witness to give the testimony anonymously always carries a risk, based on the fact that the defense could not prove the openness, the accuracy and truthfulness of these statements.

Risks often encountered are:

Anonymous witness may be considered unreliable because of subjective reasons related with his or her personal history for example, due to mental disorders in the past, or simply episodes attest to the habit of lying, circumstances that will not be disclosed because the defense is not aware on witness identity and can not verify his history.

Anonymous witness may have had in the past an unknown report or a form of contact or communication with the defendant which should be known and taken into account, to verify if this is the source of prejudice against the defendant, anonymous witness might be spinning conspiracy against the defendant.

Except as stated above, it is important to treat with care, not only procedure of granting anonymity but even question of anonymous witness.

In conclusion, examination of anonymous witness, during trial creates numerous opportunities for violation of Article 6, because the Court is in the mean time responsible to not allow defense question that will disclose witness identity.

It is more important to emphasize the principle that “the right to a fair administration of justice is so important that it can not be easily sacrificed²⁹”. For example the court ruled that a non direct confrontation, in which the defense may question the prosecutors and polices, that has question the anonymous witness not sufficiently guarantee the rights of defense, thus

²⁸ Based on cases *Baegen, P.S, N., Finkensiër, S..Hols, M.K.*

²⁹ Underlined by Court at case *Kotovski.*

violating Article 6 of the Convention. In another case, the court ruled that to the defense had not given sufficient opportunities to question anonymous witness, when from 14 written questions that the defense has submitted to the witness, only for two has responded and the remainder was rejected based on the fear of disclosing the witness identity.

The last condition has been confirmed repeatedly by the Court (even though it is never explained in detail) is that punishment should not be based only or to a decisive degree at evidences presented by anonymous witnesses.

International Criminal Tribunal³⁰ for the Former Yugoslavia³¹

According to the statute of the Court, implementing the procedural provisions³² regarding the protection and aid to witness, performed by a specialized unit within the Secretariat, Unit of Victims and Witness³³, whose program is to ensure that witnesses may testify freely and safely.

More specifically, this unit has the following duties: - to recommend protective measures for victims and witnesses; - to provide counselling and support for them especially on case of rape and sexual assault. The unit believes that the act of giving testimony by victims and witnesses is important not only to ensure that the justice³⁴ is functioning at former Yugoslavia, but also as a way to help them in the long process of overcoming major traumatic events in their lives.

Serious Crime Court in Albania:

According to the law “For the organization and functioning of the Serious Crime Court”, on 2003, there are established the First Instance Serious Crime Court and the Appeal Serious Crime Court in Albania.

The First Instance of Serious Crime Court has paid great importance to the parties in the process, prosecutor, lawyer, defendant, as well as treatment of witnesses, by respecting ethical and procedural elements³⁵, thus ensuring them equality before the law, correct behavior and special treatment in appropriate cases. For lawyers, prosecutors and witnesses special facilities were created where is enabled attitude and preparation for the process. The

³⁰Bassiouni, M. C., “Former Yugoslavia: Investigating Violations of International Humanitarian Law and Establishing an International Tribunal” Security Dialogue, 25/4 (1994), 409-23.

³¹ The Tribunal was established by resolution 827 of Security Council in May 1993, as a consequence of serious violations of international humanitarian law, undertaken at the territory of former Yugoslavia.

³²Aldrich, G. H., “Jurisdiction of the International Criminal Tribunal for the Former Yugoslavia”, American Journal of International Law, 90 (1996), 64-88.

³³Ackerman, J. E., and O’Sullivan E., “Practice and Procedure of the International Criminal Tribunal for the Former Yugoslavia” Nederland: Kluwer Law International, 2000).

³⁴Akhavan, P., “Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal”, Human Rights Quarterly, 20/4 (1998), 737-816.

³⁵Annual reports of Serious Crime Court in Albania 2006, 2007, 2008, etc.

First Instance Serious Crime Court in the manner of its operation has been sensitive enough to respect the parameters of a fair criminal justice process, especially equality of parties in the process and guaranteeing the right of defense in the spirit of Article 6 of the Human Rights European Convention, Article 31 of the Constitution, article 6 and 48-57 of Criminal Proceeding Code by establishing a standart already.

Important criminal judicial processes and its nature require as main component, an effective defense on defendant interest rights. Relationships with the State Police are correct, but in some cases are not executed the orders of the Court to notify the defendant or escort of witnesses. There is a lack of readiness by some police departments to fulfill the orders of the Court. Compound by impossibility of the execution of notification from the judicial police of the Prosecution of Serious Crime Court, they perform a serious problem for the Serious Crime Court. The activity of Special Department of Witness Protection and Collaborators of Justice is quite impressive and effective. The Court evaluates the willingness of these employees and correctness of their directors on exercising their duties.

So, training of judicial officers relating on issues of their role on exercising thier duty is conducted, as well as supporting public access, treatment of parties and witnesses. For the year 2006 are ended some of the most complex issues, that refers to the occurrence of serious criminal, and are widely applied particular procedural instruments as control permission on interception, collaborators of justice, witness protection measures, etc. Preliminarily is necessary continuance of legal reform at material and procedural criminal law.

The judges at Serious Crime Court are appointed by presidential decree no. 3993 date 29.10.2003 “For determining of territorial jurisdiction of the court and total number of judges at first instance Serious Crime Court and Appeal Serious Crime Court”. Actually it is working for recording audio/video of court sessions and integration with management cases system. There are special facilities for prosecutors, lawyers, witnesses and public, special treatment for the witnesses and the parties in the process.

The Court was not able to assess the threat of witnesses, referred to Serious Crime Court decision³⁶, that is appealed and the decision has become final on 20.03.2007. Although the victim damaged has managed to change her testimony, against defendants who has been its tutors. In this case the Court should have terminated the court session and ask the prosecutor to verify if there was a threat to the victim.

³⁶Decision no. 16 date 20.03.2007 of Serious Crime Court.

It must have been a threat until it proves that defendants didn't do anything and change the charge against the defendants calling them innocent, the victim was scared and refuses to testify. The same error is done even by Serious Crime Court of Appeal upholding the decision of First Instance Court. The state should provide assistance to enable witnesses to fair punishment of the perpetrators. So, in this case it is clear and present obstacles to the administration of justice. The court should take into account the practice that is consolidated in this field by the European Court of Human Rights. The ECHR has established a number of exceptions to the general rule that: "... all evidences should be administer in the court, in the presence of the accused, in respect of the argument having opposed" which I have presented in this study.

The Serious Crime Court has good relationship with the media in Albania. At this stage, we are of the opinion that appropriate amendments at criminal legislation, about following processes at Serious Crime Court, should be done. So, it is important to improve the accuracy of the cases when the public should be excluded according to obligations foreseen by article 8 of the law "For the organization and functioning of the Serious Crime Court", allowing media filming and recording at the court room, in order to precede the application of special procedural provisions, in a way that not infringe upon the effectiveness of trial and to prevent leakage of information which should not be given to the public.

Conclusion:

Based on implementation of the Law on Witness Protection and Collaborators of Justice in Albania, by Serious Crime Court and evaluation of cases when witnesses are included in the protection program we have prepared some recommendations on how the law should be improved.

According to Recommendation Rec. (97) 13 of Council of Europe (September 10th) which refers on witness intimidation and the defence right, although it is a recommendation and it is not binding, we suggest that the law should be improved by other definitions defining terms "intimidation" and "anonymity".

In order to accomplish its competencies the Directory of Witness Protection and Collaborators of Justice needs the support of other public administration institutions. We suggest developing an article on making this support and collaboration of public administration institutions an obligation on them. In the same time, it should be determined by law that these institutions must keep secret all informacions given to them. Confidentiality must be an legal obligation on them. Determination by law of the institutions obligation to

perform duties required by the Directory, as in the case of creating a false identity, will exempt them, from the criminal responsibility, based on article 21 of the Criminal Code.

Our recommendations on improving the law are larger, but due to restricted number of pages on this publishing, we have limited our suggestions only on improving the law in order to approximate it with the Internacional and European Standarts.

But, regardless of how it was mentioned above, taking into consideration the fact of the short time of activity and problems with number of employees at Serious Crime Court, we are of the opinion that in the field of witness protection must be more to reach European and International Standarts. So, the Court should create conditions for hiding witness identity. Currently, threatened witnesses are presented in the same court room³⁷ with the defendant. Actually, there are not technical conditions to enable hiding of vulnerable and intimidating witness indentity. Even to such crime as trafficking in human being where the injured victim is the witness, the victim is presented in the same court room with the tutor, causing them further trauma.

Surely that should be more done by the Directory as well as by the prosecutors on witness protection field. Actually, our country is facing the awesome crime of domestic violence and its victims that are sensitive witnesses as women and children are never included in the witness protection program. Or cases of human trafficking, that actually are performing the biggest number of cases at Serious Crime Court the victims or witness of this kind of crime are never included in the witness protection program. In this context, police and prosecutors must cooperate to identify and assess threat and intimidation, to this category of witness, to ensure to them the necessary protection.

Witness Protection in Albania remains weak with the result that victims of trafficking are reluctant to report their traffickers to the police³⁸.

References:

Ackerman, J. E., and O’Sullivan E., “Practice and Procedure of the International Criminal Tribunal for the Former Ygoslavia” Nederland: Kluwer Law International, 2000).

Akhavan, P., “Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal”, Human Rights Quarterly, 20/4 (1998)

Annual reports of Serious Crime Court in Albania 2006, 2007, 2008, etc.

³⁷This conclusion is based on several decisions performed by the Serious Crime Court at both levels First Intance and Appeal Court.

³⁸Albania 2008 Progress Report of European Commision.

Aldrich, G. H., “Jurisdiction of the International Criminal Tribunal for the Former Yugoslavia”, *American Journal of International Law*, 90 (1996).

Albania 2008 Progress Report of European Commission.

Albanian Criminal Proceeding Code.

Albanian Criminal Code.

Albanian Constitution.

Balla, R., “Legal response on terrorism phenomena according to Albanian law and International law”, Tirana, 2007.

Bassiouni, M. C., “Former Yugoslavia: Investigating Violations of International Humanitarian Law and Establishing an International Tribunal” *Security Dialogue*, 25/4 (1994).

Canaj, E., dhe Bana S., “The European Union Law”, Tiranë 2010, Publisher “Arbëria 07”.

Decision no. 16 date 20.03.2007 of Serious Crime Court.

European Union Standards on Witness Protection and Collaborators of Justice, 2005, G. Vermuelen, Maklu, Anwerp-Apeldoorn.

Elezi, I., “Criminal Law Special Part”, Tiranë, 2005.

European Human Rights Court cases *Baegen*, *P.S*, *N.*, *Finkensiër*, *S.*, *Hols*, *M.K*, case *Kotovski*, *Unterpentinge*, *Windich*, *Delta*, *Saidi*, *Rachdad*, etc.

Human Rights European Convention.

“Human Rights European Convention and the way to the Strasbourg Court”, European Center, Tirana, 2003.

Muçi, Sh., “Criminal Law General Part”, Tirana, 2007.

Resolution 827 of Security Council in May 1993.

Recommendation Rec. (97) 13 of Council of Europe (September 10th).