

The Topic of the Issue: WITNESS PROTECTION

A United States Prosecutor's Perspective

Myths and Truths about Witness Protection in Serbia

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A witness protection program can serve as one of the most formidable tools in the "fight" against organized crime, war crimes and other serious crimes. Unfortunately, the concept of witness protection is often misunderstood not only by the public, but also by many in the criminal justice system.

Since 2002, the Serbian criminal justice system has received a "baptism by fire" in the application of the new witness collaborator and witness protection concept. In the post-Djindic organized crime crackdown (operation "Saber") and the subsequent establishment of the specialized departments for the organized crime and war crimes, witness protection became a necessary and, at times, an indispensable part of these crucial cases.

The United States, through its Department of Justice Resident Legal Advisor program, has worked closely with Serbia's criminal justice system in its fight against organized crime, war crimes and corruption. The establishment of a strong rule of law is the foundation of any democratic country. Ultimately, economic growth and prosperity will depend on a fair and just criminal justice system.



Protection of witnesses and victims is a vital tool and integral ingredient to successfully establish rule of law and to combat domestic and transnational crimes. Successful protection of witnesses will not only enhance witness cooperation, but also facilitate the need to obtain difficult witness testimony.

Although as previously noted, Serbia has basic legislation authorizing the protection of witnesses, it is essential to institutionalize the protection of witnesses through enactment of a new comprehensive legislation. This new law will re-affirm Serbia's commitment to prosecute organized crime, war crimes, corruption and other serious crimes. In the meantime, let us separate the myths from the truths in witness protection.

MYTH 1: PROVIDING WITNESS PROTECTION TO CRIMINALS IS NOT GOOD PUBLIC POLICY

At first blush, it may seem a backwards concept to provide a protection "benefit" to witness collaborators and those who themselves were involved in crimes. Witness collaborators who receive protection are most often criminals who represent, in many ways, the underbelly of the society. They are neither good citizens nor welcome neighbors. Nonetheless, such witnesses are the people who possess the best insights and evidence that can dismantle a criminal organization. Therefore, these witnesses are the most likely to be killed if they testify against their fellow criminals. The hard truth is that when you "prosecute the devil, you often have to go to hell to find witnesses". Priests, doctors, teachers and average citizens seldom can testify about the inner workings of a criminal organization.

Of course, despite the use of such people, the information obtained from them must still be corroborated. In the witness protection assessment process, the judge should consider many factors. These include a person's criminal record, alternatives to protection, the possibility of securing the testimony from other sources and the relative importance of a person's testimony in the case. Furthermore, there must be safeguards to ensure that the witness testifies truthfully. In Serbia the law permits the prosecutor to petition the court to revoke the witness collaborator status if one does not testify truthfully and fully. Although the ability to revoke status ensures the witnesses' truthful compliance, the law in Serbia is literally "all or nothing" and permits only full immunity from criminal prosecution to the witness collaborator and does not allow any form of plea bargaining (a lesser penalty).

Allowing for plea bargaining in certain circumstances and permitting a lower sentence instead of full immunity would contribute to greater public acceptance of the witness collaborator concept.

Interestingly, protecting the witness collaborator was not widely accepted initially in the U.S. However, using the U.S. as an example demonstrates how much the benefits outweigh this initial reluctance. In the United States, the Witness Security Program was authorized by the Organized Crime Control Act of 1970 and later amended by Comprehensive Crime Control Act of 1984. Since the program began in 1971, the United States Marshal Service, which administrates the program has protected, relocated and provided new identities to over 7700 witnesses and 9800 of their family members. In the U.S., like in Serbia, both the public and criminal justice officials had misgivings about providing life-long protection to criminals.

However, the successful operation of the U.S. program is widely recognized as providing a unique and valuable tool in the battle against major criminal conspirators and organized crime. Significantly, since the program's inception, it has obtained an overall conviction rate of 89% as a result of protected witnesses' testimony. Also, an interesting benefit, that was not initially contemplated, was the low rate of recidivism of the protected witness collaborators. A recidivism study found that less than 17 percent of protected witnesses with criminal histories are arrested and charged with crimes after joining the program.

In sum, providing protection to such witnesses is good public policy, if policy makers and legislators are serious about combating crime. Of course, witness protection must be properly regulated by law and those involved must be adequately trained. In most cases there is simply no better way to penetrate the upper levels of criminal organizations without providing protection to witness collaborators.

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MYTH 2: WITNESSES CANNOT BE SUCCESSFULLY PROTECTED INSIDE SERBIA

There is no doubt that providing witness protection in Serbia and in similarly sized countries may present different issues than in the U.S. In the U.S., the U.S. Marshal's service has relied upon relocation and establishment of a new identity as a principal mechanism for witness protection. In a country the size of the U.S., relocation to a different community is obviously more readily available than elsewhere in the world.

Nonetheless, assuming that a witness cannot be protected in Serbia due to its size is a false presumption. The members of the Serbian witness protection unit have already successfully provided physical protection to many high-profile witnesses. Although physical protection is a costly option, it has proved to be possible in Serbia under certain conditions.

Furthermore, relocation of witnesses in Serbia may be a valid option under certain circumstances. Similarly sized countries in Europe have successfully relocated witnesses within their own borders. Often it depends on a number of factors and circumstances. For instance, a properly evaluated threat assessment may determine that a witness can in fact be relocated in Serbia, especially if identity change is an option. Also, it is often the case that the witness may not desire to leave his/her country. Moreover, although protection should be granted for life, if necessary, it is often the case that the threat diminishes over time. In those circumstances, the witness may only need to be removed from Serbia for a short period of time and returned once the threat is diminished.

In sum, protection and even relocation in Serbia is an option that should be considered and professionally evaluated.

MYTH 3: WITNESS PROTECTION IS TOO COSTLY

One of the most common criticisms of the witness program is that the costs of providing protection are

exorbitant. From a public policy level a society must ask itself some hard questions. First, one must consider the cost of not providing such services. How much would it cost the society if it chooses not to utilize significant tools such as witness protection to combat crime? How much will society lose in economic revenue and investment if rule of law is not present? Does a society have an obligation to provide a fair and secure forum for witnesses and victims to testify? As you can see, the costs are therefore, in many ways, relative to costs of not doing anything at all.

Interestingly, public policy aside, the actual costs associated with such a program are sometimes overestimated. While it is true that physical protection is a costly proposition, relocation, whether inside or outside Serbia, may be much less. Through the establishment of regional cooperation, exchanges of witnesses can be made for minimal living costs in many cases.

Recently, at a U.S. Department of Justice sponsored conference, which hosted several witness protection units from the region, it was concluded that many European countries desire to participate in either bi-lateral or multi-lateral regional witness exchange programs. These cooperation programs, if implemented, would reduce witness relocation costs to the living costs in respective countries, which would actually be cheaper than physical protection in country. As a result of this conference, a future initiative is under way to quantify the cost of exchanges of witnesses throughout Europe.

CONCLUSION

Despite the lack of witness protection legislation, Serbia has made significant results in the actual protection of witnesses. It has provided successful protection not only to witness collaborators, but also to many witnesses coming from Bosnia, Croatia and Kosovo to testify about war crimes, as well as to human trafficking witnesses/ victims. The results of some recent cases have highlighted the importance of witness protection. Overall, the ingenuity of those prosecutors, judges and police involved in witness protection should be commended.

Nonetheless, adoption of the laws and rules regulating witness protection remains a crucial pre-condition for institutionalization of this concept and further progress in this area. Official establishment of the witness protection unit within Ministry of Interior, together with the adoption of the law regulating witness protection procedure, would serve as a cornerstone for further capacity building activities in this area. Furthermore, it would also increase Serbia's chances to appear as an equal partner in regional witness exchanges.

The U.S. has already provided substantial initial support to Serbia's witness protection unit. The U.S. Department of Justice, together with the U.S. Marshals and the leadership of Deputy United States Marshal Joe Paonessa, will continue to support the capacity building of the Serbian witness protection unit, by providing more advanced training, equipment, legal advice, and regional cooperation initiatives.

The "truth" is that the actual "truths" about witness protection dispel the myths. By committing itself to strong witness protection program, Serbia will continue to develop one of the most important tools in combating organized crime and prosecuting war crimes and other serious crime.