

The Topic of the Issue: WITNESS PROTECTION

HOW TO SIMULTANEOUSLY PROMOTE WAR CRIMES PROSECUTIONS AND RESTORE TRUST IN THE COURTS



THE LIFE AHEAD OF LAW

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In only one case District Court in Belgrade has detected numerous problems in relation to witness protection that should be legally solved

By the end of 2002 in Belgrade was held a two day international conference 'The role of witnesses and victims in the war crimes proceedings', which was organized by the Center for anti-war action. The conference was inspired by the specific way in which it is being proved that war crimes are criminal offences – written evidence and material traces are rare in war crimes trials – and also by a fundamental goal of war crimes prosecutions – reaching the truth and justice. In order to achieve the mentioned goals, participants of the conference have, among other, proposed legal regulations of witness protection before, during and after the trial, and have set forth certain preconditions for providing assistance to war crimes victims. At that moment witness protection was regulated by the Article 109 of the Criminal Procedure Code, and partially based on the Law on Organization and Competence of the State Authorities in the Organized Crime Proceedings.

Three years later-where do we stand?

The life runs ahead of the law. In only one case the District Court in Belgrade has detected numerous problems in relation to witness protection that should be legally solved.

The Belgrade District Court first faced witness protection pursuant to Article 109 of the Criminal Procedure Code in a trial against the defendant Saša Cvjetan who was charged with committing war crime against civilian population better known in public as 'The Podujevo case'. Pursuant to Paragraph 3 of the mentioned Article, the president of the panel addressed the former president of the Belgrade District Court with an argued proposal, requesting him to implement 'special protection measures' for one of the witnesses in the mentioned trial. What does this exactly mean? Having in mind that according to the Criminal Procedure Code the aforesaid measures are being implemented by the law enforcement authorities, the conclusion could be that those measures should be envisaged in separate regulations of the Interior Affairs. Various measures of police protection could be implemented: guarding and escorting a witness in and outside of the Court, securing the apartment and family, especially the children, with relocation to another place not being excluded. The president of the District Court in Belgrade ordered for those protection measures to be implemented for the witness, but did not explicitly state which and what kind of measures were to be implemented. The police insisted for the measures to be specified in his order. Can the Court, that is the president of the court, anticipate measures that are to be implemented in an actual situation 'on the spot' towards a witness? Without any doubt, this question is a rhetorical one. Upon the persistence of the law enforcement authorities the solution was complemented with measures that the police are authorized to implement, but *exempli causa*.

Who bears financial costs of the protection?

The logic presented the answer – the one who ordered the protection is the one that bears the costs, in this case the Court. Is the court the only guardian watching the interests of justice – successful and efficient prosecution of the perpetrators of the most severe criminal offences? At the time of these pioneering efforts in providing witness protection, back at the end of 2003, it seemed that the answer to these questions was a positive one.

How are the protection costs being paid?

Initially, the invoices were being sent to the court via a public fax. Those invoices were explicitly showing where and for how long a witness was under protection. The only thing missing was witness's name. While in the process of payment the invoice went to at least 5 individuals... Was the witness really protected!?

The witness had physical protection. Being separated from his family and the outside world, it was essential to provide him with moral, psychological and social support. Are these as well under the Court's competence and should they be specified in an order?

It is obvious that in this single case the Court faced numerous problems, and did not miss any

opportunity to publicly speak about it. A part of the raised questions was solved according the Law on the Protection of Participants in Criminal Proceedings which, at the time of these writings, was before the National Assembly of the Republic of Serbia. The second and, in the author's view, for the criminal proceedings the more important part of the problem, refers to the witness and victims support and it remained legally unsolved.

Namely, the Law on the Protection of Participants in Criminal Proceedings is dealing with the most complicated and consequently the most expensive protection measures like witness relocation and change of identity. ICTY experience shows that the number of witnesses that were protected by implementation of these measures is less than 1% in relation to the total number of witnesses that testified. The majority of witnesses testified without any protection (61%), following are witnesses that were protected by implementation of direct measures during the proceedings: voice and/or picture distortion while testifying in the court room, testifying in a closed session, testifying under pseudonym, testifying via video-conference link and the combination of all these measures (about 36%). Besides the video-conference link envisaged by the Law on Organization and Competence of Government Authorities in War Crimes Proceedings current regulations do not recognize any of the stated or similar measures that may be implemented to protect witnesses during criminal proceedings, i.e. directly in the court, which is different situation in comparison to the surrounding countries including Montenegro. The lack of mentioned regulations to some extent points out the willingness of the legislator and those authorized to propose laws to systematically approach war crimes prosecution and to provide all the necessary tools for the court on its way to reaching justice...

When witnesses ask questions

In a situation without procedural protection measures can the Court take other, 'other than legal' measures, which could break the 'conspiracy of silence' and encourage witnesses and victims to tell their stories before the court and thus contribute to understanding the truth and reaching justice? Article 11 of the Law on Organization and Competence of Government Authorities in War Crimes Proceedings envisages the founding of a Special Department for administrative-technical tasks, tasks related to witness and victim protection and facilitation of conditions for the application of procedural provisions of the Law. Unclear remained the legislator's intention whether the same persons should perform administrative-technical tasks and tasks related to the witness and victim protection. However, the afore said regulation, together with the regulations of the Court's operative procedures, pertaining to the establishment of information services within larger courts provide the legislative basis for establishing services within courts that would provide answers for potential witnesses' various questions: 'Where is the courtroom?' 'How do I enter the courtroom?' 'Where do I stand/sit down?', 'Am I going to meet the defendant in the courtroom?', 'How many times will I have to come here?', 'Why do you summon me when I have already given my statement to the investigative judge?', 'What will happen to me if I don't come?', 'Who is going to pay for my testimony?', 'Where is the restroom?'... When speaking about the war crimes trials the answers to these questions are given by the employees of the civilian department or the judges themselves. The establishment of appropriate services within the Court, printing pamphlets and brochures does not cost a lot, and would enable the access to information pertaining to the Court, and procedural rights and obligations of the witnesses in other procedures and to the general public as well.

The final outcome: faster, more efficient, and more prudent implementation of justice, which undoubtedly leads to strengthening the trust in the institutions of justice. Correct and timely public information about the work of the Court is closely related to the reputation that the judicial branch enjoys in the public. To build this trust (or restore it) can only be performed by the branch it self!