

# SECURITY OF INTEGRITY OF WITNESSES AND JUSTICE COLLABORATORS

**Research Article**  
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## **Abstract**

This article focuses on witness protection in the Republic of Macedonia, as a key component of transitional justice in an overall Macedonian institutions towards sustainable peace and possible reconciliation. This paper analyzes witness protection in Macedonia directly through the newly enforced Law on Witness Protection, giving an overview of the law and identifying key challenges for its implementation. It further examines what has been done so far in the area of witness protection in country and abroad, looking into possible alternatives for improving implementation. Finally, it analyzes two key policy options and recommends the most feasible alternative.

Macedonia is a transitional country, in parallel with the fight against organized crime and corruption, it is essential to build a strong judicial system with a high level of integrity, where the parties have confidence that their conflicts will be solved fairly and transparent based on reliable facts and evidence, and especially in witness testimony. To encourage the disclosure of information by witnesses, measures should also be taken to present them in the judicial process to be as balanced and secure as possible and not interfere with the witness's normal life

**Keywords:** witness protection, Law on witness protection, Macedonia.

## **Introduction**

This policy analysis aims to provide the public and the institutions of Macedonia with a clear understanding of the current state of witness protection in the country, its significance and implications for the justice system as well as the country's ability to follow transitional justice processes towards sustainable peace.

Around the world, witness protection is considered a key component of the rule of law and a state's ability to provide justice. In the key components the right to know, the right to justice, the right to reparation and guarantee of non-recurrence – witness protection is a condition and key component of the right to justice.<sup>1</sup>

In such cases, without a justice system in place where potential witnesses can testify without fear of revenge and risk to their person and to their family, the rule of law is

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<sup>1</sup> Swiss Peace. (2012). A Conceptual Framework for Dealing with the Past: Holism in Principle and Practice. Bern: Swiss Peace. UN ICTY. (n.d.). About the ICTY. Retrieved June 5, 2015, from United Nations International Criminal Tribunal for the Former Yugoslavia: <http://www.icty.org/sections/AbouttheICTY>

impossible.<sup>1</sup> It is therefore important to recognize the vital role of witness protection for transitional justice, and for the rule of law in general. Nonetheless, many countries going through post-conflict reconstruction, have experienced challenges in information exchange and cooperation between the relevant people and authorities who deal with prosecutions for crimes against humanity and the realities of the country's justice system and its reform.

Inadequate witness protection remains a major obstacle in the justice system and to the ability to provide justice, especially in the cases of organized crime and war crimes. As cases of witness intimidation and harassment are widespread, many witnesses are still unwilling to testify, for fear of retaliation, and the danger that they and their families are exposed to (Gardetto, 2010).

This policy analysis uses a combination of a literature review, a legal framework review. The literature review focuses on issues related to witness protection in Macedonia, but more precisely on witness protection issues that relate to the current LWP.

### **Witness Protection Law**

Witness Protection is key to transitional justice as it is a crucial pillar of a strong justice system and a country's ability to provide the rule of law. So far, witness protection has been a challenge for the transitional justice phase, and in bringing justice.<sup>2</sup>

The following are some of the core obstacles that contry in regard to human rights and the democratization of society. First, efforts to monitor and report on human rights abuses are weak, followed by a lack of enforcement of existing legislation and policies.

The Law on Witness Protection offers protection to victims and witnesses of crime. It identifies the institutional structures that will directly conduct witness protection, from top to bottom, but it does not identify all the institutions that will indirectly be linked to witness protection. Structurally, the law foresees the creation of a Committee for Witness Protection, comprised of the Chief State Prosecutor, the Head of Investigation Police and the director of the Witness Protection Directorate, and in their absence their three replacements.<sup>3</sup>

This Committee is mandated to evaluate requests sent by state prosecutors, or directly by the potential witness and/or victim. The mission of the Witness Protection Directorate, is to implement the protection measures for witnesses from the moment they enter the program until program termination. Nonetheless, the main responsibility for evaluation of potential witnesses and/ or victims of interest to the state lies with the state prosecutor, who is mandated to approach the witness, and subsequently submit requests with the Committee for acceptance into the Witness Protection Program. The LWP defines the mode of cooperation between the witness and/ or victim and the institutions that directly provide witness protection, but it does not address modes of cooperation between all institutions involved in

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<sup>1</sup> United Nations Office of Drugs and Crime. (2008). Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime. New York: United Nations. United Nations Security Council. (2007, March 26). United Nations Security Council. Retrieved June 11, 2015, from United Nations Office of the Special Envoy: [http://www.unosek.org/docref/Comprehensive\\_proposal-english.pdf](http://www.unosek.org/docref/Comprehensive_proposal-english.pdf)

<sup>2</sup> McAuliffe, P. (2013, June 26). Authors meet Readers series: Dr Pádraig McAuliffe on Transitional Justice and Rule of Law Reconstruction. Retrieved from Centre for Criminal Justice and Human Rights: <http://blogs.ucc.ie/wordpress/ccjhr/2013/07/26/authors-meet-readers-series-dr-padraig-mcauliffe-on-transitional-justice-and-rule-of-law-reconstruction/>

<sup>3</sup> Buzarovska, G., Procesni merki za zastita na svedoci vo komparativното i domasното pravo, Zastita na svedocite, sorabotnicite na pravdata i na zrtvite vo domasното i vo megunarodното pravo, IOM.

witness protection. It only generally addresses government support and institutional cooperation.

A significant number of detailed articles within the LWP define the measures of protection in general and in particular, such as physical protection, relocation, change of workplace or school, identity change and, as well as the procedures for inclusion into a witness protection program.<sup>1</sup> In many countries the criteria for inclusion into a WPP include detailed lists of the type of information, significance to the state and risk to the witness.

At the discretion of the Committee for Witness Protection, applications for entrance into the Witness Protection Program are treated on a case-by-case basis. Here, besides risk to the witnesses, the credibility of the testimony is crucial, in addition to its relevance for the state and its proportionality (in importance) with what the Witness Protection Program Offers. Nonetheless, there are still concerns on the part of the Prosecution that the law is too short on criteria, as well as lagging behind in meeting international best practice. One example is the fact that Article 4 of the LWP conditions a person's acceptance into the WPP with mandatory cooperation with justice. Article 4 does not make any exceptions, such as those made by many other countries in highly sensitive cases such as human trafficking. In such cases, a person at high risk can enter the WPP without cooperating, yet without fearing legal ramifications against them.<sup>2</sup> It is worth noting that the Republic of Macedonia Code of Criminal Procedure obligates witnesses to testify to all they know, but does not force them to say more if that endangers them or family, which is a contradiction.

Concerns have also been voiced regarding the balance between the rights of defendants and of claimants. Their equal rights are guaranteed by law, but the risk to a person's life in cases of potential witnesses sometimes can tip the balance in favor of the claimant. Of course, this is in cases of a credible testimony and official assessment of risk. Regardless, the defense and defendant always have the right to question/ cross-examine the claimant, though they cannot physically see them or know their identity. Furthermore, their testimony has to be corroborated with other factual proof, to ascertain the credibility of the testimony.

The first direct contact in the process of applying for and/ or entering the WPP usually involves the Police WPD who carry out the risk assessment for potential witnesses, since this capability does not exist within the prosecution. While the witness comes to the Prosecutor first, the actual assessment is done by WPD then the request drafted by the prosecutor for the Committee for Witness Protection who then gives a final decision on acceptance or refusal. Finally, protection and legal assistance is available to potential witnesses in three different phases: when identifying the potential witness and their risk, which can happen before the criminal procedure and investigation phase; during the criminal procedure, the official risk assessment and the program entrance phase; and after the criminal procedure, if the risk persists.

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<sup>1</sup> Refaeil, N. (2012). Challenges in Dealing with the Past in Kosovo : From Territorial Administration to Supervised Independence and Beyond. *Politorbis* , 87-94. (2011, September 1).

<sup>2</sup> McAuliffe, P. (2013, June 26). Authors meet Readers series: Dr Pádraig McAuliffe on Transitional Justice and Rule of Law Reconstruction. Retrieved from Centre for Criminal Justice and Human Rights: <http://blogs.ucc.ie/wordpress/ccjhr/2013/07/26/authors-meet-readers-series-dr-padraig-mcauliffe-on-transitional-justice-and-rule-of-law-reconstruction/>

## **Weak Justice System**

Implementing a law that has such a sensitive issue within it requires an all-encompassing effort in order to succeed. Witness Protection involves not only the primary actors in providing protection, but all the indirect actors and institutions as well, and their utmost professionalism, discretion, and ability to safeguard information. As it is, there has been no training, joint awareness campaign or conference, where all relevant institutions are brought to the table and informed about the sensitivity and importance of their role in witness protection.

Furthermore, local prosecutors, who are the first in contact with and key to handling potential witnesses, are not yet familiar with how to handle potential witnesses, as they have not been trained or technically equipped to be able to approach, process or make offers to potential witnesses.

They are currently bogged down with cases, , regardless of sensitivity. They work in offices that are not properly equipped to deal with potential witnesses of crime, located in buildings that do not fulfill any criteria for dealing with potential protected witnesses. These buildings have multiple checkpoints, long halls where many other offices receive parties on a daily basis, and through which a protected witness could not even pass without their identity being revealed.

There is also no secure information system to use and store sensitive data related to any crime or protected witnesses. There is no system where sensitive information is archived and where special clearance is required for access. As it is, every special prosecutor risks their own lives and those of witnesses, by having to store all files out in the open in their offices, minimizing inputs into computers, which have no information security systems installed.

So far, the perception created is that the justice system is seriously flawed and suffers much distrust by citizens. Part of this perception is unsupported by facts, while other elements are supported by the many public judicial processes where witness identity was revealed

and judicial processes failed. This creates distrust amongst citizens and potential witnesses.

Witnesses therefore hesitate to engage with the justice system, because they know they have to testify, and their identity and person is at risk. The chain of institutions that is supposed to protect a witness is fundamentally flawed, as it is never known where a information leak comes from: the court, the prosecutor, the judges, the archives, or translators. Given the local context with revelation of information through institutional loopholes, the media, or even people related to the potential witness, addressing punishment for revealing information regarding a protected witness is crucial, and key to the implementation of this law.

## **Socio-Demographic factors**

Small territory, family links. Macedonia is a small and pretty homogenous country, which makes relocation of a witness within Macedonia very difficult and in many cases completely impossible. On the other hand, family links are still very strong, as the society is still quite conservative. With strong family ties and big families in close proximity, being discreet about a family member's identity when they are involved in a case as a protected witness is in most cases impossible. Both factors undermine Macedonia as an option for witness protection and suggest that the only safe way to actually protect a witness, especially

when they are testifying about war crimes or organized crime, is to relocate them outside the country altogether.

## Conclusion

To continue with the status quo, bearing in mind the problems, trends, causes and consequences above, would not be advisable. While it is institutions, regardless of justice system weaknesses, have not previously had the responsibility of protecting a witness, and that they are suffering the negative legacy left, they have even at this stage identified room for improvement. These loopholes which have been identified early will, if appropriately addressed, prevent failure in protecting a witness, which will then have major positive rather than negative ripple effects.

In conclusion, while witness protection and the successful implementation of the LWP seem to have many legal, systematic, structural, technical and other obstacles, strong political will from the, followed by a strong push for improvement and accountability will steer processes in the right direction. In the case of Macedonia, this would create a successful witness protection program that would lead to a better justice system, a possible transitional justice phase, greater rule of law, and - ultimately - sustainable peace and development.

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