

## **WITNESS PROTECTION IN THE REPUBLIC OF KOSOVO – CAUSES OF THE CORE PROBLEM**

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### **Abstract**

This paper focuses on witness protection in the Republic of Kosovo and causes of the core problem, directly through the newly enforced Law on Witness Protection, giving an overview of the law and identifying key challenges for its implementation. Witness protection constitutes a significant challenge in Kosovo, where the impunity of powerful perpetrators of politically- or ethnically-motivated crimes has not been effectively confronted. Therefore, an unwillingness to protect witnesses of war crimes and organized crime in post-conflict Kosovo, and the permanent threats they are faced with, create real challenge to the stability of the country and the democratization of society in the long term. While the need to investigate and prosecute serious crimes arises at an early stage, it can take years to enact legislation and to establish effective mechanisms to protect witnesses, including the building of capacity and ensuring the integrity of those who implement these mechanisms.

*Keywords:* Law on Witness Protection, Kosovo, core problem

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### **1. Introduction**

As many post-conflict countries, even Kosovo has made significant efforts in economic, social and political spheres to achieve stability, because dealing with the past it is an essential step of transitional justice. (Zupan&Servaes, 2007). Witness Protection is a crucial element to transitional justice as it is a key pillar of a strong justice system and country's ability to provide the rule of law. To a certain extent, witness protection has been a challenge for the transitional justice phase and also in bringing justice.

Consequently, it has been difficult for the society of Kosovo to regain trust in justice system because for a long time they had felt a dose of skepticism about the public institutions dealing with justice.

All around the world but in particular in post-conflict countries, witness protection is considered a key component of the rule of law and as well state's ability to provide justice. There are four crucial components of conflict transformation such as: 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 (Swiss Peace,2012).

Hence, witness protection is essential in transitional justice of post-conflict countries such as Kosovo. In such cases, justice system plays an essential role because potential witnesses can prove without the fear of revenge or risking their family otherwise the rule of law is impossible. For that reason, it is important to acknowledge the vital role of witness protection for transitional justice and also for the rule of law in general. (McAuliffe, 2013). Kosovo as a newly independent country born out of a violent conflict represents a unique case study, since 2000 Kosovo has gone through a transitional phase of reconstruction trying to establish security and stability by creating new institutions with self-governing capacities.

## **2. The causes of the Core Problem**

Witness protection is a relatively new concept even though as a notion it has been used in many countries and as well in many international criminal courts, as such witness protection constitutes a significant challenge in Kosovo, because many perpetrators with politically or ethnically motivated tendencies still have not been punished or confronted. Therefore, an unwillingness to protect witnesses of war crimes and organized crime in post-conflict Kosovo, and the permanent threats they are faced with, create a real challenge for the stability of the country and the democratization of society in the long term.

While the need to investigate and prosecute serious crimes arises at an early stage, it can take years to enact legislation and establish effective mechanisms to protect witnesses, including the building capacity and ensuring the integrity of those who implement these mechanisms (Arifi, K. 2015).

## **3. Local factors- Lack of Experience**

Immediately after the armed conflict of 1999 and during the state building process, security in Kosovo has been provided and monitored by the international military troops and legal presence, in the beginning the security of Kosovo was monitored by North Atlantic Treaty Organization (NATO) troops in Kosovo, KFOR, the United Nations Administration, but later even through European Union Rule of Law Mission in Kosovo known as (EULEX) and International Civilian Office (ICO), and (Organization of Security and Cooperation in Europe, 2016). Until the expiration of the Ahtisaari Package which the deadline was valid until 2013 for limitation in the security sector, any local attempt, even through legislation, to shift the responsibility for security provision from international actors to local ones, especially in sensitive areas like the military or even witness protection (dealing with war crimes and organized crime) were delayed. This was reflected in Kosovo institutions by taking into consideration and making the first steps in witness protection. Since Kosovo's institutions dealing with justice were not mandated to deal with witness protection without a doubt there was a predominant dose of skepticism of the weakness and incapacity about Kosovo's institutions until the Law of Witness Protection LWP entered into force, but without a doubt the institutions faced problems in successfully implementing the Law of Witness Protection.

Protecting a witness and successfully running a Witness Protection Program (WPP), without a doubt requires a well-organized network of communication and a great coordination among the institutions which somehow in direct or indirect way are linked to the witness protection.

This does not mean that only Law Enforcement, Prosecution and Judiciary have to deal with all of the above but this process requires also the involvement and engagement of the Ministry of Health, Ministry of Education, Science and Technology, Ministry of Finance, Ministry of Internal Affairs and all other parties involved in protecting the identity of a witness, or changing it all together. A person's relocation means changing their identity, which could include their physical appearance, profession, educational data, criminal record, fingerprints and, it is therefore a joint institutional involvement and not a single institutional effort (Kabashi-Ramaj, 2015).

## **4. Credibility and trust are crucial in bringing in witnesses.**

Citizens need to have trust in institutions in order for them to go forward but Kosovo institutions are required to tackle the issue of distrust created previously by EULEX and as well by the Kosovo's justice system.

Even why the LWP is into force and has created structural capabilities still Kosovo has to take major steps to fulfill the necessary conditions in order for the witnesses to feel safe and secure to prove themselves.

Beyond the structural and institutional challenges there are also cultural challenges when it comes to a witness to prove and testify.

Many potential witnesses in Kosovo claim to be perceived as traitors if they testify (Kabashi-Ramaj, 2015) especially in cases related to war crimes, and this can be attributed to the Albanian perception before the period of armed conflict that collaborators with the government (then Serbian) were traitors. Other reason for not testifying or proving are the fear of penalty and in some cases also the lack of facts to confirm their testimony.

## **5. Lack of training, equipment and facilities**

Until now the Kosovo Police has conducted some training in witness protection in the form of an informative workshop about the law and its implications, but only some prosecutors attended (Kabashi-Ramaj, B. 2015). As for the Witness Protection Directorate (WPD), there are officials well trained which deal directly with witnesses but the exact number of members is unknown. Within the prosecutorial system there were organized many trainings but unfortunately, they were not sufficient in dealing with the issue of witness protection because these trainings only focused on the legal aspect of LWP, leaving behind the idea of how to handle protection of witnesses in practical terms.

While theoretically there are special prosecutors who are knowledgeable and well trained, even they have problems in practice regarding how to approach potential witness from a remote area. On paper, they know they are supposed to use video link, but in practice they cannot because though Special Prosecution would be the place most needing to be equipped with this technology, they do not have it (Kabashi-Ramaj, B. 2015).

## **6. Data storing and data security infrastructure.**

All staff involved in WP, the Kosovo Police (KP)/ WPD, prosecution, judiciary is obligated to guard all information regarding witnesses, according to the LWP and Code of Criminal Procedure, which identifies two categories of witnesses based on risk. In one case the Defense and Defendant both know the identity, while in the other where the risk to the witness is very high, the identity is known only by the prosecutor, judge and WPD (Law on witness protection of Kosovo, 2011).

While there is no such thing as absolutely secure information in today's technologically advanced world, in the case of the prosecution system in Kosovo, they try to store the minimum amount of information (only that which is absolutely necessary) in their computers, in order to avoid possible hacking. This is because the prosecution does not have any special equipment for Witness Protection, including no specialized computer operating systems/ trusted operating systems.

Furthermore, they do not have an archiving system, a special room or technology sufficient for that. In the absence of this system a prosecutor's room gets filled with named boxes and folders, out in the open, for all who enter the office to see, jeopardizing the identity and safety of the individuals involved in the cases as well as the prosecutor herself/ himself. There are currently no special rooms for interviews of protected witnesses or potential witnesses, even in Special Prosecution.

As a result, to get to a room for an interview, the potential witness has to go through three police checkpoints,

A long hall with staff, outside parties, lawyers, and prosecutors, and on the way back has to go through the same route again, which makes identity revelation a real possibility. Some potential witnesses are interviewed in the offices of the prosecutor, enabling them to see the discouraging state of a prosecutor's office, which shows the weaknesses of the system and can affect their willingness to testify (Criminal Procedure Code of Kosovo, 2016).

## **7. Socio-Demographic Factors**

Kosovo is a small, unitary and homogenous country, which makes relocation of a witness within Kosovo very difficult and in many cases completely impossible. On the other hand, family links are still very strong, because the society is very 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 Kosovo 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 (OSCE, 2016).

## **8. Conclusion**

Lack of experience in general, amongst all institutions involved in witness protection, is a huge problem for successful implementation of the LWP. Protecting a witness and successfully running a WPP means that there is a need for a well-organized communication and coordination between institutions (directly and indirectly linked to the protection of the witness). This means that not only Law Enforcement, Prosecution and Judiciary have to do all of the above but also the Ministry of Health, Ministry of Education, Science and Technology, Ministry of Finance, Ministry of Internal Affairs and all other parties involved in protecting the identity of a witness, or changing it all together.

A person's relocation means changing their identity, which could include their physical appearance, profession, educational data, criminal record, fingerprint and, it is therefore a joint institutional involvement and not a single institutional effort.

If the problems mentioned above do not improve with time and if the trends don't progressively develop in positive way based on best practices of the other states with similar characteristics, and if the causes of the problem are not addressed immediately the consequences will be inevitable.

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