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Fight Against Organized Crime in Ligh of Witness Protection

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Abstract:

The most efficient means of the fight against organized crime are witness protection provisions. Witnesses have key importance in eliminating criminal organizations as the court can use their declarations as an evidence. The testimony of the witness can base enforcing investigation, furthermore the criminal impeachment of the perpetrators. The aim of this study is to show the means of witness protection, which allows us to fight against criminal organizations effectively.

Keywords*: organized crime, witness protection, gathering information, threat, influence.*

1. Introduction

Several decades ago organized crime was identified as the 'Maffia', a secretely organized association, as it mainly denoted Sicilian and American groups. In Hungary, alignments characterized by being organised appeared in the 1970s, and their main field of activity was burglary.

Defining the concept of organized crime is quite difficult, so someone researching this topic is in for a hard task. Fight against organized crime can be approached from the side of criminology, criminalictics and penal law.

The concept of criminal organization has gone through several amendments in Hungary, the latest ammendment happened in the Act CXXI of 2001, 19. §. (5).[1] The legislator increased criminal consequences during fighting against organized crime, that someone who committed a deliberate crime punishable by a term of imprisonment of 5 or more years and in a criminal organization, the maximum term of punishment doubles but cannot exceed 20 years.

The act has also redefined the concept of criminal organization, that: *a group consisting of 3 or more people, organized for a longer period, operating coordinated, and aims to commit a crime punishable by a term of imprisonment of 5 or more years.*

The Act C of 2012 on Penal Law (hereinafter as Btk.), in paragraph 263/C § punishes even participation in a criminal organization:

Participation in a criminal organization

263/C. § (1) Whoever calls for committing a crime in a criminal organization, proposes, undertakes, agrees on joint perpetration, or in order to help committing the crime assures the necessary circumstances or the circumstances which makes it easier, or supports the activity of the criminal organization in other ways commits a crime and may be punished by a term of imprisonment up to 5 years.

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[1] Endre Bócz: A szervezett bűnözésről és a bűnszervezet fogalmáról (The concept of organized crime and criminal organizations), Magyar Rendészet 2008/4. szám, pages 5-18., pages 19-21.

(2) Whoever reports the crime and reveals the circumstances of the perpetration before it comes to the knowledge of the authority, must not be punished for participation in a criminal organization

The Act has introduced further tightenings, such as:

- the shortest term of fixed-term imprisonment in case of perpetration in a criminal organization is 20 years,
- cannot be entitled to conditional release who committed the crime in a criminal organization,
- cannot be exempted of the scope of permanent disqualification from pursuing a profession, who committed the crime in a criminal organization, and because of indignity they were permanently disqulified from pursuing their profession,
- in the field of seizure of assets.

In recent decades it has been proved that without witness protection we cannot take a stand efficiently against national and international crime during the investigation. Witness protection orders developed gradually during the recent 20 years.

Substantive law and procedure law regulations helping the set of means of witness protection[2]:

- calling for perjury[3] (Btk. 276. §)
- refusing testimony unduly [4] (Btk. 277. §)
- forcing in an official procedure[5] (Btk. 278. §)
- influencing a witness with bribery[6] (Btk. 295. §)

The most serious measure is enrolling in the protection programme, it is important to enroll the witness in the programme during the fight against organized crime, in which a new identity can be assured for the enrolled person.

According to paragraph (1) of the Be. 97. § those can be heard as witnesses who can be aware of the fact to be proved. Anybody can come into consideration as a witness who can have any relevant information in connection with a past event. During hearing the witnes, the investigation authority analize and evaluate the testimony, then they can make a conclusion whether the interrogated person had information about the fact to be proved or not.

In case of witnesses, an authorised person of trust can also be protected. During the protection, the protection of the witness's life, physical integrity or personal freedom is the most important. The witness shall enjoy the protection before, during and also after the interrogation.

Furthermore, it is an important aim that the witness gives a testimony without intimidation and fulfils his obligations. Often witnesses do not give a testimony because

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[2] Mihály Tóth: *Bűnszövetség, Bűnszervezet (Criminal conspiracy, Criminal organization)* 2009., pages 106-108.

[3] The witness who, before the authority, gives a false testimony concerning the essential circumstances of a case, or conceals the truth, shall commit a perjury.

[4] Whoever endeavours to force anybody for perjury, shall be punished with a maximum period of three yers imprisonment in case of committing it in a criminal case, and shall be punished with a maximum period of two years imprisonment in case of committing it in a civil affair.

[5] The witness who undully denies to give a testimony in a criminal case at the court, after being warned about the consequences, may be punished with imprisonment for a minor offence.

[6] Whoever gives or promises an advantage to anyone or regarding them to someone else, in order not to exercise their statutory rights during the court procedure, court of arbitration procedure or authority procedure, or not to fulfill their duties, may be punished with a maximum period of three years imprisonment.

they are afraid of the possible copnsequences, or they change or withdraw their previous testimony due to intimidation, and they deliberately undertake the consequences of perjury.

Witness protection persists after initiating a criminal procedure, of which content is changing, for example until the end of a procedural step, until scrapping of documents, or until the end of the witness's life. When analysing the means of witness protection, I will indicate when the witness is entitled to protection.

The witness is mainly influenced by the involved in the procedure (defendant) or their relatives and relations when giving a testimony, or they endeavour to influence the witness.

According to the Magyar Értelmező Kéziszótár (The Hungarian Concise Dictionary)' influence has a distracting impact in some (unfavourable) direction. Someone can be influenced if his will, resolution and feelings can be easily influenced. '[7]

During the criminal proceedure, influence appears at the demonstration and at the interrogation, so from the investigation to the second instance trial:

- at the interrogation the lawyer acting on behalf of the witness may be present, but must not influence the testimony,
- the accused can be held in pre-trial detention if there are grounds for suspecting that, in case of leaving the accused at large, he would hinder, endanger the demonstration or make it difficult,
- after being taken into pre-trial detention, if the accused endeavours to hinder the proceedure with the help of his contact with his defender, the defender may be excluded from the proceedure,
- restraining may be ordered if (in case of conditions provided for in the act) the accused would thwart/baffle, endanger the demonstration or make it difficult,
- before submitting the indictment, the investigation judge shall interrogate the witness under the age of fourteen for the motion of the public prosecutor, if there are grounds for suspecting that interrogating him at the trial would harmfully influence their development,
- during interrogating the especially protected witness, the investigation judge has to reveal the circumstances that may influence the credibility of the witness' testimony.

2. The Means of Witness Protection in the Investigation

During gathering information, different data sources are available, such as, for example, material, personal and combined ones. The personal source (hereinafter as witness) can be present at the scene of the crime, in its more distant surrondings (for example the indirect witness), who may have any information about the perpetrators and the participants of the action. (The indirect witness tells about facts told by others, so did not experience the events directly.)

The personal source may become a witness if they are aware of the fact to be proved. A person being aware of the fact to be proved becomes a witness if they are summoned by the proceeding authority, or instead of summons they are allowed to give a written testimony, furthermore if the investigation judge declares the witness to be especially protected.[8]

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[7] Magyar Értelmező Kéziszótár *(Hungarian Concise Dictionary)*, második, átdolgozott kiadás, Budapest, 2003. page 98.

[8] József Bellegi: B*üntetőeljárás jog- Kommentár a gyakorlat számára I. (Commentary of the Criminal Procedure law for practice I.),* 2014, page 486.

According to the Criminal Procedure Law (hereinafter as Be.), those can be heard as witnesses who may be aware of the fact to be proved, which is an assumption, and most of the time it is discovered only at the interrogation whether the person has any information about the relevant past action, furthermore about the action, condition, event relevant to the object of the reconnaissance and demonstration. The summoned witness must give a testimony unless otherwise provided in the act.

In most cases, the member of an authority contacts with the person being aware of the information during the data collection for the first time, which is the first station of the psychological contact, in this way we can find out whether the data source has any information about the crime and (or) the perpetrator. Furthermore, the opionion, view and stance of the data provider become available. If signs appear that the data provider tries to give an evasive answer to the questions, the reasons must also be examined.

Creating data collecting situation depends on several factors, such as for what reasons the information is needed, whether it is enough, or whether it is for reconnaissance or demonstration. Furthermore, the data collector's knowledge about the data provider's personality or cooperation willingness greatly influences creating the situation.

During the inquiry, information can be also obtained in a concealed way, with which the detection aim can be realized, but also it excludes using the obtained data as an evidence, as obtaining the information happened without concealing the real aim, and the data provider's communication does not meet the requirements of procedural law.[9]

Before preparing for data collection, the investagation authority may make a plane if it is necessary and may consider based on the following criteria:

- the information is enough for reconnaissance and based on it the authority can go on (set up versions, control, or take investigative measures),
- or obtains means of evidence in a different way.

During data collection, in most cases the investigation authority asks for providing data in connection with the concrete crime, but it may happen that the person who has worthwhile information about the perpetrators cannot help the work of the authority with their declaration. Furthermore, it may also happen that the data provider provides worthwhile information but declares that not willing to take part in the proceedure as a witness, or if they are summoned to appear, they will not tell the truth or will refuse to give a testimony, regardless that at the beginning of the interrogation the data provider is warned that:

- they must tell the truth to the best of their knowledge and conscience,
- false witness and refusing giving a testimony are violations of the law.

If the data provider would not like to take part in the criminal proceedure, different reasons may arise:

- the witness does not want to spend their time with giving a testimony as they have to appear before the investigation authority even several times,
- would not like the perpetrator to get to know their name and address because they are afraid of the perpetrator's revenge and anger,
- grievance already happened (the data provider was threatened).[10]

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[9] János Lakatos: *Kriminál taktika I. (Criminal tactics I.)*, 2001, page 76.

[10] Point 7 paragraph (1) of the Btk. 459. § defines the concept of threat: unless otherwise stated, prospecting a serious disadvantage, which is suitable for arising serious fear in the threatened, or the attack affects physical indemnity.

If the investigator is convinced that the person under data collection has worthwhile information but gives negative answers, they have to examine why the person is not willing to cooperate. If it is because of their fear of the perpetrator, then the data provider must be informed about witness protection provisions. So witness protection appears even before hearing the witness, during data collection. If the investigator informs the data source about the lower level of protection (for example about managing data in confidence), it might be appropriate, and depending on this the data provider is willing to cooperate and give a testimony.

If during the proceedure the witness changes or withdraws their former testimony because they are afraid of the perpetrator or the perpetrator's accomplices and considers their own life, physical integrity or the protection of their personal freedom more important, they must be informed about witness protection opportunities depending on the situations, which may contribute to the data provider's cooperation and also to maintain his testimony.

It is the member of the proceeding authority whose task is to find the opportunity that the data provider complies with the obligation of giving a testimony, so the information given by the witness may become means of proof in the form of a witness interrogation record. Data in the record may lead to investigation measures with which the investigation authority can have further means of proof.

According to the Be. 95. §, the witness shall be protected in order to save their life, physical integrity and personal freedom, in order to comply with the obligation to give a testimony, and in order to give the testimony without threat.

Means of witness protection serve the protection of the witness (their life, physical integrity or personal freedom). The witness is entitled to protection even before the interrogation, which is conditional to the harm or to the possible harm, in addition, danger must be in connection with testimony obligations or with its compliance. The witness is entitled to protection at any phase of the criminal proceedure, but in other proceedures, let them be offence or civil proceedures, witness protection provisions are not applied. If during the procedure it is stated that crime did not happen, only offence or disciplinary action, then the acts referring to the procedure are governing, and not the witness protection provisions in criminal procedures. [11]

2.1. Managing the Witness' Personal Data in Confidence

According to the 104/2010. (VI.10.) AB decision of the Constitutional Court, the paragraph (1) 96. § of the Be. is unconstitutional, so it was annuled. The Constitutional Court noted: in the criminal procedure it is the witness' informational self-determination – within the witness protection system - to request that their data should be managed in confidence according to the witness' rights to the protection of personal data provided for by paragraph (1), 59. § of the Constitution. There is no constitutional reason or aim why the investigation authority, the prosecutor or the court have to be entitled – examining the objectivity of the witness' threat and considering its executability - to refuse the application.[12]

On the basis of paragraph (1) of the Be. 96.§., it may be ordered by the office or at the request of the witness or the lawyer acting on behalf of the witness, that the

[11] István Kónya: *Büntetőeljárás jog- Kommentár a gyakorlat számára I. (Commentary of the Criminal Procedure law for practice I.)* 2014., page 528.

[12] 104/2010. (VI.10.) Alkotmánybírósági Határozat (Constitutional Court Decision)

personal data – except the name - should be managed separately, in confidence. In exceptionally justified cases, managing the witness' name in confidence may have also been provided.

The following provision replaced the unconstitutional paragraph (1) of the Be. 96. §.:

' (1) The court, the prosecutor and the investigation authority may order, or at the request of the witness or the lawyer acting on behalf of the witness, shall order to manage the witness' personal data [85. § (2)] separated among the documents and in confidence, except the data the witness does not request to manage in confidence. In this case only the competent court, prosecutor and investigation authority may view the witness' data managed in confidence.'

At present the court, the prosecutor and the investigation authority may order, while at the request of the witness or the lawyer acting on behalf of the witness, the authority shall order and not 'may order' to manage personal data in confidence. So the investigation authority must order to manage personal data in confidence if the witness requests it and its discretion of the authority terminates.[13]

In the decision of the Constitutional Court it can be read that managing data in confidence is the first step of the witness protection system. The data of the witness may be known only by the investigation authority, the prosecutor and the court but the witness is obliged to appear and comply with giving a testimony if they do not have immunity. The authority persons of criminal calling to account are not hindered by immunity in order to check the witness' identity and to consider their credibility. Considering the right of the person subject to criminal proceedure, to the fair procedudure and to protection, it is essential that managing the witness' data in confidence shall not limit the justice of fundamental procedural rights of the defendant and the defender. The witness, the defendant and the defender shall meet at the trial, the defendant and his defender may hear the witness' testimony, they may ask questions from the witness directly, they may comment on the testimony, only the witness' name, address and job remain unknown to them. Neither the right to the fair procedure nor the right to defence may entitle the defendant or the defender to get to know the witness' personal data.[14]

The Constitutional Court emphasised that the witness, the defendant and the defender shall meet at the trial, the defendant may hear the witness' testimony, so if the testimonies of the witness and the accused contradict each other, confrontation may take place. Managing the witness' data in confidence is not a ground for refusal when confronting, but a consideration whether the witness' protection requires ignoring confrontation.[15]

If the victim has a civil claim, they act as a private party, the rules of managing data in confidence shall not apply after finishing the evidence procedure, as they declare that they do not require managing the data of all the persons in confidence.[16]

The decision on the civil claim must contain at least the name of the private party, but not necessarily their other data, because the accused may be forced to pay the

[13] 104/2010. (VI.10.) Alkotmánybírósági Határozat (Constitutional Court Decision)
[14] 104/2010. (VI.10.) *Alkotmánybírósági Határozat (Constitutional Court Decision).*
[15] 104/2010. (VI.10.) *Alkotmánybírósági Határozat (Constitutional Court Decision).*
[16] Ervin Belovics, *Büntető eljárásjog (Criminal Procedure)*, 2013., page 136.

established amount of compensation to a certain account, so the accused will not know the other data of the private party, except their name.[17]

The provisions of criminal procedural law providing for managing data in confidence may be regarded the slightest degree of protection. From the side of the authority (court, prosecution, investigation authority), nevertheless, it is an opportunity to order to manage the witness' data in confidence at the request of the witness or the lawyer, except those data which were not requested to manage in confidence. Data managed in confidence are managed separated from the documents, which may be viewed by the competent court, the prosecutor and the investigation authority. Terminating the management of data in confidence may happen only with the agreement of the witness.

The record, the name of the witness and also the closed envelope containing their further personal data must have the same serial number. One copy of the record signed by the witness must be placed into an envelope, the unsigned copies of the record must be placed among the documents of the investigation.

At the investigation measures, where the witness is involved, it must be assured that the witness' data are not known.

The record and the closed envelope must be certified with the official seal of the investigation authority and also by the signature of the interrogator. After finishing the investigation, the name and the job title of the person who accessed to the data managed in confidence, and the time of access must be enclosed to the documents.

The previous documents must be copied with covering the witness' personal data, and the copies must be placed among the documents. The original documents and the personal data must be managed together in confidence.

If the witness' personal data are already known by the participants of the crimal procedure and the interest in managing data in confidence cannot be enforced, the application must be rejected.[18]

2.2. Specially Protected Witness

The Supreme Court order of Bf. V. 2. 468/2000/7. emphasizes the following:

In recent years the institution of witness protection became one of the main questions of the European countries' judicial system. Influencing witnesses or trying to influence them were observed even earlier in certain criminal procedures. In the 1990s in Hungary the appearance of organised crime and a change in the quality and structure of crimes were detected. Therefore the regulation of witness protection was needed. In criminal cases with high significance, the physical protection of witnesses having essential information on the case must be assured, as it may happen that the person who fulfills their obligation as a witness and cooperates with the judicial system, risks their life. Therefore developing and applying means and legal institutions which assure the witness's physical and legal protection was necessary.

Between 1994 and 1998 and in 1999 Hungarian criminal procedure tried to do its best to create witness protection with its regulation in three steps, with the right to fair

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[17] Soós László: *Büntetőeljárás jog- Kommentár a gyakorlat számára I. (Commentary of the Criminal Procedure law for practice I.*), 2014., page 534.

[18] 23/2003. (VI. 24.) BM-IM együttes rendelet a belügyminiszter irányítása alá tartozó nyomozó hatóságok nyomozásának részletes szabályairól és a nyomozási cselekmények jegyzőkönyv helyett más módon való rögzítésének szabályairól. (23/2003. (VI. 24.) Minintry of the Interior and Ministry of Justice)

procedure and the requriments of European legislative harmonization in mind. Act LXXVIII of 1998 was enacted on 1st March 1999 and amended the Act I of 1973.

Criminal procedure indicates testimony at the first place among means of evidence. The testimony of the specially protected witness is a documentary evidence, an extract of the record made by the appointed judge, which contains the relevant data concerning the case, but may not give any information on the data provider. Sentence practice should create the new balance according to the current procedural rules between the witness' rights, the interests of jurisdiction, the rights of defence and the principle of fair procedure.

On 18th May 1999 the Supreme Court at its session dealt with the theoretical and practical questions of applying the new legal institution, and published its guideline in the 9th issue of Bírósági Határozatok (Court Decisions),1999. It points out that, concluding from the principle of the freedom of demonstration, the probative force of the specially protected witness' damning testimony may not be lower than the one of the witness interrogated at the trial. Considering the recommendation of the European Committe, however, a judgement of quilt may not be based exclusively –or mainly- on a specially protected witness' testimony. The probative force of the specially protected witness' testimony and its significance must be evaluated together with all the other direct and indirect evidences and in their relations.

The Supreme Court also gave a guideline for case law, and according to that, the judge may also know about the hearing of the specially protected witness and about the identity of the witness because, otherwise, - either ex officio or at a motion- summoning the protected witness to the trial in the form of completing evidence derails the witness's anonimity and defence.[19]

The 8. B. 1131/1997/74. verdict of the Pest County Court mentions that introducing the institution of the specially protected witness was necessary because of:

- *the change in the inner structure of criminality,*
- *the extreme aggressivity of certain classes of perpetrators,*
- *the rise in organized crime.*

Furthermore, according to the judgement the institution serves the witness' increased protection. A crack may appear in one important basic principle, the principle of immediacy but also in the principle of publicity, as the witness must not be heared in person at the trial, and the witness' identity is not known by the defendant, defender or even by the judge. However, the act builds in a guarantee with regard to the credibility of the witness' testimony, and the legality of obtaining the testimony. The content and formal requirements of the documentary evidence (the extract of the record) completely match the real person(s)' testimonies written in the record so it may be used as an evidence without any worry. Regarding the probative force of the specially protected witness' testimony: the same requirements stand for it as the veracity of the witness' testimony who gives a testimony at the trial in person. They may only serve as an evidence if another evidence or other evidences do not argue their content and regarding the facts to be proved, they have a logically fitting content.

It the procedure three specially protedted witness' testimony shall serve as an evidence. The protected witnesses' testimonies, as (documentary) evidences, and also the probative force of the content of the testimonies may have been established comparing them with other evidences.[20]

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[19] Legfelsőbb Bíróság (The Supreme Court) Bf. V. 2.468/200/7. számú végzése. pp. 8-11.

[20] Pest Megyei Bíróság (Pest County Court) 8. B. 1131/1997/74. Ítélete, pp. 1-51.

Organized criminal groups do not hesitate to threaten the witness or using physical force. The problem often emerges that investigating these crimes and proving them at the court is almost impossible without the witnesses' participation, it is helped then by the opportunity of declaring the witness specially protected. During the criminal procedure, the witness shall remain anonymous, may not be summoned to trial, may not be heard, questions may not be asked them directly, and may not be confrontated.[21]

According to the 97. § of the Be. the witness may be declared as specially protected if:

- their testimony refers to essential circumstances of a highly significant case,
- their testimony may not be replaced by other evidences,
- their identity, place of residence and the fact that the prosecutor and the investigation authority would like to interrogate them are not known by the defendant and defender,
- the life, physical integrity or freedom of the witness or their relatives would be in serious danger in case of disclosing their identity.

If the evidence in the witness' interrogation record may be proved with a physical or documentary evidence, it is not practical to interrogate the witness, and declaring the witness specially protected can be ignored. If there are two witnesses who have information on the same fact but the conditions of the special protection are no longer met for one of them because the witness' identity or place of residence are known by the accused, in that case the known person must be interrogated but defence must be assured in a certain form as they are exposed to threat.[22]

The witness may not be declared specially protected in the judicial procedure, it is possible only until submissing the indictment. If the witness' identity is known by the defendant and the defender, the witness may not be declared specially protected, but their personal protection or applying the protection programme may be used.[23]

If disclosing the witness's identity threatened the witness or their relatives, the witness would have been declared specially protected on the basis of the Be. 97. § d.).[24]

On motion of the prosecutor the investigation judge will decide on declaring the witness specially protected.

At the specially protected witness' interrogation, besides the investigation judge, the recorder, the interpreter and:

- the attorney,
- the lawyer acting on the witness' behalf may be present.

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[21] Zoltán Varga: A tanú a büntetőeljárásban (A witness in criminal proceedings), Complex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft., Budapest 2009, pp. 101-115.

[22] László Soós: Büntetőeljárás jog- *Kommentár a gyakorlat számára I. (Commentary of the Criminal Procedure law for practice I.),* 2014., page 542.

[23] László Soós: *Büntetőeljárás jog- Kommentár a gyakorlat számára I. (Commentary of the Criminal Procedure law for practice I.)*, 2014., p. 543.

[24] The notion of threat is defined by point 7.) of the Btk. 459.§.: unless otherwise stated, prospecting a serious disadvantage, which is suitable for arising serious fear in the threatened. Declarance of special protection may also be applied in case of relatives. The notion of relative is defined by point 14.) of the Btk. 459.§.:

a) lineal relatives and their spouse or cohabitant,

b) the adoptive and the foster parent (the cohabiting step-parent is also included), the adopted and the foster child (the cohabiting step-child is also included),

c) the sibling and the sibling's spouse or cohabitant,

d) the spouse, the cohabitant,

e) the spouse's or the cohabitant's lineal relative and sibling.

The investigation judge has to reveal and check if necessary:

- the witness' trustwothiness**,**
- the reliability of the witness' knowledge,
- the circumstances influencing the credibility of the testimony.

The obtained data must be written in the record about the interrogation. An extract must be made from the record which must contain the following data:

- the investigation judge's name,
- the prosecutor's name,
- the fact that the witness is declared specially protected,
- the specially protected witness' testimony.

On motion the investigation judge may order to record the witness' interrogation with a video or audio recorder, or with other devices, if the interrogation of the specially protected witness or witness whose data are managed in confidence is recorded, the provisions of the Be. 213. § (4) must be applied concerning managing data in confidence.

In case of the specially protected witness, not only personal data must be managed in confidence but all the data and facts which help to identify the witness, so those data should be deleted even in case of distortion. In case of the specially protected witness, recording the testimony is unnecessary as the law does not allow to play it and use it at the trial, except the court terminates the special protection.[25]

As a taking of evidence, the investigation judge may interrogate the specially protedted witness, the witness in life danger, or the witness under fourteen, and the prosecutor is entitled to propose it. At the session the investigation judge shall make a decision on the motion of taking evidence, and the judge shall uphold or refuse the motion.[26]

The decision on special protection shall be managed in confidence by the investigation judge and they must not give it to either the prosecutor or the judge. The exctract of the testimony shall contain only the investigation judge's name, the prosecutor's name, the fact of the special protection and the witness' testimony. The extract shall be managed separately from other documents by the prosecutor until submitting the indictment. Besides the prosecutor, the investigation authority may get to know the extract until submitting the indictmen. Declaring the witness specially protected may happen not only at the session but also before that, so the declaration of the protection and the interrogation may be separated. The interrogation record and also the decision on the declaration must be managed separately and confidentially.[27]

On the basis of the detailed rules of those investigation authorities' investigation that belong to the management of the minister of the interior, and on the basis of the paragraph 26. § of the 23/2003. (VI. 24.) BM-IM (Minintry of the Interior and Ministry of Justice) joint regulation about the rules recording investigation measures in another way instead of a record, the investigation authority shall immediately present the indictment of declaring the witness specially protected the prosecutor if its requirements exist according to the data available. The means of evidence must also be obtained on the basis of the indictment too, despite the attorney has submitted a motion,

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[25] Zoltán Varga: *A tanú a büntetőeljárásban (A witness in criminal proceedings),* 2009., pp 132-133.

[26] Mészár Róza, Büntetőeljárás jog- *Kommentár a gyakorlat számára II. (Commentary of the Criminal Procedure law for practice II.),* 2014., p. 1019.

[27] Mészár Róza, Büntetőeljárás jog- *Kommentár a gyakorlat számára II.(Commentary of the Criminal Procedure law for practice II.),* 2014, pp. 1020-1022.

and a special attention must be payed not to hurt or endanger the witness' or their relatives' legitimate interests.

According to paragraph (3) of the Be. 207. §, it is the investigation judge's task to interrogate, on the motion of the prosecutor, the specially protected witness or the witness whose life is in direct danger, before submitting the indictment. The witness and the lawyer acting on behalf of the witness may initiate a motion of interrogating the witness at the attorney. If during the trial preparation or during the trial the court orders it, the investigation judge shall interrogate the specially protected witness again. The prosecutor shall enclose the record-extract of the specially protected witness' testimony to the documents which serve as the base of the indictment if they wish to use the specially protected witness' testimony as an evidence in the court procedure, and shall inform the defendant and the defender on the opportunity wieving it according to paragraph (4) of the Be. 219.§. If enclosure happens after knowing the documents of the investigation, the defendant and the defender must be assured to get to know the enclosed document.

During the trial preparation, the president of the Judicial Counci,l simultaneously with delivering the indictment, shall tell the defendant and the defender that they may have a look at the record-extract of the specially protected witness' testimony and they may propose to terminate the declaration of special protection.[28] If the attorney would like to use the specially protected witness' testimony as a means of evidence, the president of the Judicial Council shall obtain the record on the interrogation of the specially protected witness and the decision on declaring the witness specially protected from the investigation judge. Only the members of the court may wiev the record and the decision on declaring the witness specially protected, and a copy may not be made.[29]

Asking questions from the specially protected witness may be proposed by:

- the defendant,
- the defender,
- the prosecutor,

furthermore the president of the Judicial Council. If a question is asked, the court shall order the investigation judge, simultaneously with sending the record back on the interrogation of the specially protected witness and the decision on declaring the witness specially protected, shall order to interrogate the specially protected witness again on the asked questions.[30]

The court shall terminate the declaration of the special protection if the accused or the defender names the specially protected witness or identifies the witness in another undoubted way. In that case general rules are applicable for summoning and interrogating the witness. The president of the council shall apply other means of witness protection if he considers it necessary or if it is proposed.[31]

When supplementing evidence, on the basis of paragraph 3 of the Be. 305. §, the prosecutor, the defendant and the defender may propose asking further questions from the specially protected witness, compared to the result of taking evidence. The court may also ask questions from the specially protected witness. The specially protected

[28] 1998. évi XIX. törvény 263.§ (3) (Act XIX of 1998 on Criminal Proceedings Criminal).
[29] 1998. évi XIX. törvény 268.§ (3) (Act XIX of 1998 on Criminal Proceedings Criminal).
[30] 1998. évi XIX. törvény 263.§ (4) (Act XIX of 1998 on Criminal Proceedings Criminal).
[31] 1998. évi XIX. törvény 263.§ (8) (Act XIX of 1998 on Criminal Proceedings Criminal).

witness must not be interrogated at the trial, questions must not be asked directly from them, and must not take part in confrontation.

2.3. The Personal Protection of Those Involved in the Criminal Procedure

The president of the Judicial Council, the prosecutor and the investigation authority may initiate in especially justified cases:

- defendant,
- defender,
- victim,
- other parties involved,
- the representative of other parties involved,
- witness,
- expert,
- consultant,
- interpreter,
- authorised person of trust,
- having regard to any of the above listed, someone else has personal protection (e.g. friend, colleague).

In addition, the authorised person of trust is entitled to be protected.

Establishing the crime of violence against a person or a crime causing collective danger res judica is not a condition for initiating or ordering personal protection.[32]

Means of witness protection regulated on the basis of the Be. only apply to the witness determined in the criminal procedure. The scope in relation to persons of the

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[32] On the basis of point 26 of the Büntető Törvénykönyv (Penal Code) 459.§., violent crimes against individuals are:

a) genocide [paragraph (1) 142. §], crime against humanity [paragraph (1) 143. §], apartheid [paragraph (1)-(3) 144. §],

b) violence against the military ambassador (148. §), violence against protected persons [paragraphs (1)-(2) and (4) 149. §], other war crimes (158. §),

c) murder (first-degree) [paragraph (1)-(3) and (5) 160. §], manslaughter (second-degree murder) (161.), assault [paragraphs (3)-(6) and (8) 164. §],

d) kidnapping [paragraphs (1)-(4) 190. §], trafficking in human beings [paragraphs (1)-(6) 192. §], forced labour (193. §), violation of personal freedom, (194. §), forcing (195. §),

e) sexual forcing (196. §), sexual violence [paragraphs (1)-(4) 197. §],

f) violating the freedom of conscience and religion (215. §), hate crime [paragraphs (2)-(3) 216. §.], violating the right to freedom of association and of assembly, and the right to participation in an election meeting (217. §)

g) violent change of the constitutional order [paragraph (1) 254. §.], a rebellion [paragraphs (1)-(2)256. §.],

h) physical violence in an official procedure [paragraphs (1)-(2) 301.§.], physical violence in a public person's procedure [paragraphs (2)-(2) 302.§.], forced interrogation [paragraphs (1)-(2)303.§.], unlawful detention (304. §),

i) physical violence against officials [paragraphs (1)-(3) and (5)310. §.], physical violence against a public person (311. §), physical violence against the supporter of an official or of a public person (312. §), physical violence against the internationally protected person [paragraph (1)313. §.],

j) terrorist act [paragraphs (1)-(2) 314. §.], seizure of vehicle [paragraphs (1)-(2) 320. §.],

k) robbery [paragraphs (1)-(4) 365. §.], bribery (367. §), vigilantism [paragraphs (1)-(2) 368. §.],

l) aggravated riot [paragraphs (2)-(6)442. §.] and violence against the hierarchical superior or the service personnel [445. §].

witness protection programme and of the personal protection is different. Personal protection shall include the defendant, the defender, the victim, other parties involved, the representative of the victim and the other parties involved, the witness, the expert, the consultant, the interpreter, the authorised person of trust, the court, the prosecutor, the members of the investigation authority and the penitentiaries, furthermore, with regard to any of the above listed, another person, and the probation officer. On the other hand, the protection programme shall include the defendant, the victim, the witness and their relatives, forthermore another person being in a threatened situation with regard to the affected person.[33]

2.4. Provisions Concerning Persons Involved in the Witness Protection Programme

The defendant, the victim and the witness may be involved in the witness protection programme. The participant must be summoned or notified via the protection authority, or other official documents must be delivered by the protection authority. During the criminal procedure, the persons involved shall tell their original data but shall give the address of the protection authority as a permanent address or a place of residence. A copy of the documents inolving the data of the protected person, or any information in connection with the person may only be given if the authority protecting the person allows it. The witness and the defendant may deny the testimony concerning information which may conclude their new identity, their new address or place of residence. [34]

The highest level of measures serving the witness' protection is the participation in the witness protection programme. On 12th November 2001 the Parliament enacted the Act LXXXV of 2001 on the Protection Programme (hereinafte as: Tvdt.) of the participants in criminal procedure and the helpers of justice. The act aimed to provide protection to the persons involved in the criminal procedure, the persons helping justice, furthermore to persons in close relation to them. Further aim was that the person in a threatened situation would help the fight agains criminality (especially first-degree crimes[35], first of all organized crimes), and effectively realize the interests of justice.

Tvdt. makes the Protection Programme: *the protection of the witness, the victim, the defendant involved in the criminal procedure and their relatives, furthermore another person in a threatened situation with regard to the affected person whose protection may not be assured within the frame of organized personal protection,*

a) which is done by the police – within the framework of civil legal relationship – according to the contract with the person in threatened situation, and

b) during which applying special measures (16. §), and - in order to help the social integration of the affected person- providing mental, social, economic, human and legal assistance are needed.

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[33] László Soós: Büntetőeljárás jog- *Kommentár a gyakorlat számára I.(Commentary of the Criminal Procedure law for practice I.)*, 2014, p. 545.

[34] 1998. évi XIX. törvény 98/A. (Act XIX of 1998 on Criminal Proceedings Criminal).

[35] On the basis of the provisions of the Tvdt., a first-degree crime is: especially the crime where the features of organized crime or international crime can be recognized, or of which object is related to terrorism, blackmail, money laundering, drug or weapon trafficking, prostitution, pedophilia, and related to crimes against life and physical integrity committed in connection with the above mentioned crimes.

The Service may apply the following special precautions:

a) moving the affected person to a secure place with changing their addres, place of residence, and transporting the detainees involved in the Programme to another penitentiary (moving and transporting between penitentiaries);

b) using personal protection;

c) ordering data quarantine in registers, and signalling on requests in connection with the registered data (signalling data quarantine and data requests);

d) change of name;

e) change of identity;

f) participation in international cooperation.

2.5. Further Procedural Rights and Tactical Opportunities of Witness Protection:

- the witness shall give an evidence in writing,
- ignoring confrontation,
-during showing for recognition,
- ordering preventive custody for the protection of the witness,[36]
- excluding the defender,
- restraining order,[37]
- interrogating the witness via a closed telecommunications network,[38]
- ignoring notification at certain investigation measures,[39]
- ignoring notification in case of a delegated or a requested judge,[40]
- closed trial for the interest of the witness,[41]
- prohibition of questions suitable for influencing the witness,[42]
- sending the defendant out of the courtroom,[43]
- the presence of a lawyer at the witness' interrogation,[44]

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[36] It is only allowed if there are substantial grounds for believing, that in case of leaving them at large, especially with influencing or intimidating the witness, they would hinder the evidence or would make it difficult.

[37] It may be oredred if ordering the defendant's preventive custody is not needed but – especially considering the relation between the defendant and the victim – there are substantial grounds for believing that leaving them in their residential area, with influencing the violated witness, would hinder the evidence, would make it difficult or would endanger it.

[38] During the interrogation, the witness physically is not in the court room but in another room.

[39] Notifying the suspect, the defender, the defendant and the defendant's supporter about the investigation measure may be exceptionally omitted if it is reasonable because of the urgency of the investigation measure. Furthermore, notifying may be ommitted if the witness's data managed in confidence became known by the defendant, the defender, the victim and the victim's supporter.

[40] Notifying the accused, the defender and the defendant must be ommitted if the witness' data managed in confidence became known by the above listed as a conseqence of their appearance.

[41] The court may exclude the whole public from the whole trial or from part of the trial with a reasoned decision: because of an ethical reason, in order to protect the minor involved in the procedure, in order to protect the persons or the witness involved in the procedure, or in order to protect classified data.

[42] If the question is suitable for influencing the accused, or the question involves the answer, or it does not refer to the case, or it was asked by an unauthorized person, or it hurts the prestige of the trial, or it aims at the same fact again, the president of the Council shall forbid to answer the question.

[43] If the presence of the defendant would disturb the witness during the interrogation.

[44] At the witness' interrogation the defender acting on behalf of the witness may be present, who may inform the witness on their rights and obligations, but must not do any other actions.

- ignoring notification,[45]
- substituting the victim,[46]
- the special witness protection provision of the military criminal procedure,[47]
- and it is worth mentioning the telephone-witness programme representing anonimity.

During the written testimony, on the basis of paragraph (5)-(6) of the Be. 85. §, the court, the prosecutor and the investigation authority may allow the witness to give a testimony in writing, after the oral interrogation or instead of that.

In case of the written testimony, the witness shall write down and sign their testimony in manuscript by them, or shall electronically sign the testimony made in the form of an electronic document, or the testimony written down in other ways shall be attested by a judge or a notary.

If the witness gives a testimony in writing without an oral interrogation or after the oral interrogation, from the written testimony it must be clear that the witness gave the testimony knowing the burdens of giving a testimony and the consequences of perjury. The witness must be warned about it and also about the consequences of perjury simultaneously with allowing the written testimony.

Further most important protection opportunity is ignoring confrontation, and its base is that a person under fourteen may only be confronted if it does not fill them with fear. The investigation judge shall interrogate the witness under fourteen before submissing the indictment, if there are grounds for suspecting that interrogating the minor at the trial would adversely affect the minor's development, except if at the time of the trial the minor completed the age of fourteen and the interrogation at the trial is especially justified.

If, because of the victim's fear, the victim does not wish to participate in the confrontation, it may not be considered a procedural offence affecting the cogency of the judgement.[48]

Witness protection provision is that, for the request of a foreign citizen, at the foreigner's interrogation the consular officer of the foreign state may be present.

In case of interrogating the foreigner witness being in refugee status, the presence of the consul may have dangerous, as the consul may get to know the witness' place of residence, personal circumstances, therefore notifying the consul is compulsory only at the request of the foreign citizen.[49]

During the investigation against organized crime, often for the interest of the witness, different tactical steps must be performed during the identification parade[50]:

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[45] If it is reasoned by the urgency of the investigation measure, and the witness' data managed in confidence became known by the defendant, the defender, the victim and the victim's supporter.

[46] The Act XXIV of 1994 on the police allows, within the framework of secret information collection not connected to the judge's permission, a policeman to substitute the victim – in order to protect their life and physical integrity – if there are no other opportunities to prevent, hinder, or reconnoitre a crime, or to catch or identify the perpetrator.

[47] Where special grounds exist for doing so, the witness doing their military service may ask for commanding or transferring them to another duty station.

[48] Bírósági Határozat 1999.544. (Court Decision).

[49] László Láng: Büntetőeljárás jog- Kommentár a gyakorlat számára II. (Commentary of the Criminal Procedure law for practice I.), 2014, page 900.

[50] The court, the prosecution and the investigation authority shall order and hold an identification parade if it is nedded in order to recognize a person or an object.

- undercover identification parade,[51]
- hidden identification parade,[52]
- identification parade via storage device.[53]

The defender may be excluded from the procedure,[54] but the legislator prescribes the ability to prove the defender's actions, which must be stated on facts and data. The defendant's correspondence is regulated by the 16/2014. (XII. 19.) IM (Ministry of Justice) provision on the detailed rules of implementing imprisonment, custody, preventive custody and custody instead of fine, based on that correspondence may happen randomly. So on one hand, a datum which can be proved may occur in connection with the accused's correspondence, or during the investigation the authority becomes aware of some information which may exclude the defender from the procedure.[55]

Collecting the means of evidence contributes to the success of the investigation, it is important that the witness shall fulfill the requirements of giving a testimony, therefore if it has grounds for suspecting that the defendant would hinder, make it difficult or endanger the evidence with influencing or threatening the witness, then the conditions of preventive custody are reasonable.

„The expression of has grounds for suspecting refers to such a future happening or action which can be foreseen and predicted, can be imagined, can be expected, can be suspected from the current circumstances and facts, so it is possible."[56]

The basis of prolonging the preventive custody of the accused is that the person involved in the procedure tries to send out a letter to their relatives which contains information intending to hinder the procedure or make it difficult.[57]

Keeping preventive custody for more than a year is reasonable if information on threatening the victims and (or) witnesses – by the accused – arises and therefore the evidence procedure shall be in danger (e.g.: in one case the victim witness indicated in several applications that he was threatened, he is afraid of the accused persons, so the possibility of making the procedure difficult may not be excluded, and considering those facts, the reasons for preventive custody written in points b), c) and d), paragraph (2) of the Be. 129. §, are still applying, so keeping the restraining measure is legal).[58]

On the basis of the act, there is a place to arrest the defendant in a procedure on a crime which shall be punishable with terms of imprisonment and when it has grounds for suspecting that in case of leaving the defendant at large, especially by influencing or

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[51] The subject of the identification parade is disguised from the person to be identified, which means that the recognizer cannot be noticed (behind a detective mirror), or they can be noticed (proper clothes, accessories, wig, glasses, mask …) but cannot be recognized.

[52] The person to be identified (e.g. the suspect) does not know that an identification parade is going on.

[53] Most of the time, photos (about the object to be identified and about indifferent objects) are displayed for the person to be identified.

[54] If the defendant, after being taken into preventive custody, endeavours to hinder the procedure with keeping the contact with their defender, or with influencing or intimidating the witness, the court may exclude the defender from the procedure.

[55] Ágnes Czine: Büntetőeljárás jog- *Kommentár a gyakorlat számára II. (Commentary of the Criminal Procedure law for practice II.)*, 2014, pages 717-718.

[56] Ágnes Czine: Büntetőeljárás jog- *Kommentár a gyakorlat számára II. (Commentary of the Criminal Procedure law for practice II.)*, 2014, page 600.

[57] Bírósági Határozat 2000.390. (Court Decision).

[58] Bírósági Határozat 2006.280. (Court Decision).

threatening the witnesses, would hinder the evidenve, would make it difficult or would endanger that.

The provision represents the witness' interests, so that the witness shall fulfill their statutory duties without being threatened, and shall tell about the experienced relevant past events honestly.

3. Conclusion

The risk of threatening the witness is increasing in certain fields, such as organized criminality.

The listed criminal procedural provisions and tactical aspects have contributed to the data provider shall cooperate as a witness during the procedure. The witness' testimony is essential in terms of reconnaissance and evidence, as the declaration may be used as an evidence and may help taking further measures.

The knowledge of the measures listed in my study is important in terms of obtaining evidences, but it is needed that the investigation authority shall inform the data provider on the protection opportunities. The knowledge of the means of witness protection is essential even at the begining of the investigation, even during data collection, and not only when starting the interrogation.

NOTES

József Bellegi: Büntetőeljárás jog- Kommentár a gyakorlat számára I.(Commentary of the Criminal Procedure law for practice I.), 2014., page 486.

Ervin Belovics: Büntető eljárásjog (Criminal Procedure), 2013., page 136.

Endre Bócz: Magyar Rendészet, A szervezett bűnözésről és a bűnszervezet fogalmáról (The concept of organized crime and criminal organizations), Budapest, 2008/4., Rendőrtiszti Főiskola nyomdája, pages. 5-18., pages 19-21.

Ágnes Czine: Büntetőeljárás jog- Kommentár a gyakorlat számára II. (Commentary of the Criminal Procedure law for practice II.), 2014., page 600., pages 717-718.

István Kónya: Büntetőeljárás jog- Kommentár a gyakorlat számára I. (Commentary of the Criminal Procedure law for practice I.), 2014., page 528.

János Lakatos: Kriminál taktika I. (Criminal tactics I.), 2001., page 76.

László Láng: Büntetőeljárás jog- Kommentár a gyakorlat számára II. (Commentary of the Criminal Procedure law for practice II.), 2014., page 900.

Rózsa Mészár: Büntetőeljárás jog- Kommentár a gyakorlat számára II. (Commentary of the Criminal Procedure law for practice II.), 2014., pages 1019-1022.

László Soós: Büntetőeljárás jog- Kommentár a gyakorlat számára I. (Commentary of the Criminal Procedure law for practice I.), 2014., page 534., pages. 542-543., page 545.

Mihály Tóth Mihály: Bűnszövetség, Bűnszervezet ((Criminal conspiracy, Criminal organization) 2009., pages 106-108.

Zoltán Varga: A tanú a büntetőeljárásban (A witness in criminal proceedings), 2009., pages 101-115., pages 132-133.

Magyar Értelmező Kéziszótár (Hungarian Concise Dictionary), Akadémiai Kiadó, második, átdolgozott kiadás, Budapest, 2003., page 98.

Legfelsőbb Bíróság (The Supreme Court) Bf. V. 2.468/200/7. számú végzése. pages 8-11.

Pest Megyei Bíróság (Pest County Court) 8. B. 1131/1997/74. ítélete. pp. 1-51.

Magyar Köztársaság Legfelsőbb Bírósága Bf. V. 2. 468/2000/7. számú végzése. pp. 1-21.

104/2010. (VI.10.) Alkotmánybírósági Határozat (Constitutional Court Decision).

Bírósági Határozat 1999.544. (Court Decision).

Bírósági Határozat 2000.390. (Court Decision).

Bírósági Határozat 2006.280. (Court Decision).

23/2003. (VI. 24.) BM-IM együttes rendelet a belügyminiszter irányítása alá tartozó nyomozó hatóságok nyomozásának részletes szabályairól és a nyomozási cselekmények jegyzőkönyv helyett más módon való rögzítésének szabályairól. (23/2003. (VI. 24.) BM-IM (Minintry of the Interior and Ministry of Justice)

2001. évi LXXXV. törvényt a büntetőeljárásban résztvevők, az igazságszolgáltatást segítők Védelmi Programjáról.

2012. évi C. törvény a Büntető Törvénykönyvről (The Act C of 2012 on Penal Law).

1998. évi XIX. törvény a büntetőeljárásról (Act XIX of 1998 on Criminal Proceedings) .