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REPORT ON WITNESS PROTECTION[1] (BEST PRACTICE SURVEY)

To prevent witnesses from becoming victims ….

[1] Adopted by Committee PC-CO at its 3rd plenary meeting (Strasbourg, 15 – 17 February 1999)

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EUROPEAN COMMITTEE ON CRIME PROBLEMS
CDPC

Committee of Experts on Criminal law and criminological aspects of organised crime
(PC-CO)

Report on Witness Protection

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1. Background of the project

The Committee of Experts on Criminal Law and Criminological Aspects of Organised Crime was established in 1997. Its terms of reference, adopted by the Committee of Ministers at their 587th meeting on 1 April 1997, state that the Committee should - inter alia - study existing solutions to combat organised crime in Member States, that could serve as examples for other Member States. In order to fulfil this assignment the committee decided to carry out a series of best practice studies. One of these concerns a survey on the protection of witnesses and their relatives, who are at risk because they are willing to give testimony, or have already done so, against leaders and other members of organised criminal groups. This topic was chosen because:

- it frequently happens that witnesses (or their close relatives) who are willing to testify against suspects of organised crime, or other types of very serious crime, are threatened, which has consequences not only upon themselves but also upon the effectiveness of strategies against organised crime in general;
- witness protection programmes that already exist in some member States seem to be an effective tool to minimise the risk of injury or death of these witnesses;
- a growing number of member States are planning to set up a witness protection programme;
- close international co-operation in this area is highly important, since many member States are too small to guarantee safety for witnesses at risk who are relocated within their borders.

2. Purpose of the study

Although empirical data on the nature and scope of witness intimidation is lacking, the phenomenon is probably known in all member States of the Council of Europe for a long time. In the nineties the problem is becoming more and more serious because of the increase of organised crime, and an increased willingness to do something about it in most of the member States. The threatening of witnesses is often found in the area of organised crime. Some writers even consider it to be a typical aspect of this type of crime.

In many legal systems, witnesses who are reluctant to give evidence in open court are compellable. But the obligation to give testimony is only fair if the witness does not have to fear for his life. As the risk of intimidation increases, the rights and needs of persons whom the criminal justice system requires to give testimony need greater recognition. It is unacceptable that the criminal justice system might fail to bring defendants to trial and obtain a judgement because witnesses are effectively discouraged from testifying freely and truthfully. It is therefore in the interest of a fair and effective ciminal justice that governments of member States must find a way to handle the problem of witness at risk.

The objective of this best practice survey is to provide guidance to the Member States of the Council of Europe that wish either to initiate a witness protection programme or to adapt an existing scheme to a common model. In order to be able to design a model witness protection programme, the experiences with existing schemes in three member States were studied and compared to one another. As far as possible, differences in the legal systems of the countries were taken into account.

For the purpose of this study, the following definitions are used[2]:

- "witness" means any person, irrespective of his/her status under national procedural law, who possesses information relevant to criminal proceedings. This definition also includes experts as well as interpreters;
- "intimidation" means any direct, indirect or potential threat to a witness, which may lead to interference with his/her duty to give testimony free from influence of any kind whatsoever. This includes intimidation resulting either from the mere existence of a criminal organisation having a strong reputation for violence and reprisal, or from the mere fact that the witness belongs to a closed social group and is in a position of weakness therein;
- "anonymity" means that the identifying particulars of the witness remain totally unknown to the defendant.

To design a model for a witness protection programme that would fit all member States of the Council of Europe is certainly not an easy, and perhaps an impossible, task. One reason for this is the existence of significant differences in national legal systems. But there is also a more practical reason. Witness protection requires that many various aspects be balanced, and seldom a solution can be given that suits all conceivable situations. Witness protection, especially in its practical operation, must be looked at on a case by case basis. An adequate protection is not served by a too rigid set of rules. For that reason it is especially important to create good preconditions.

To give insight into the many facets of witness protection and the choices that need to be made on the framework of a programme, this report does not simply present a standard model. Instead, the main features of the existing witness protection programmes in three member States are compared and, as far as possible, considerations on particular solutions are given. A number of concrete cases are also described. This working method makes the report less conclusive but it leaves the member States more freedom and perhaps a better idea of how to implement the various elements of witness protection into their own legal system.

3. Fieldwork

The situation regarding witness protection was studied in three countries. These member States were selected on the basis of their experience concerning witness protection. Out of the three, two have acquired more than ten years of experience with a witness protection programme and one had three years of experience.

The three member States selected for this best practice survey were all visited in December 1998 by a small delegation of Committee PC-CO. The delegation was composed of Mr. Peter Csonka, secretary to Committee PC-CO, Mr. Toon van der Heijden, scientific expert, and Mr. Urmas Tammiksaar, member of Committee PC-CO. The national witness protection unit was visited in each country. In one country, the delegation also interviewed at length several representatives of the Ministry of Justice, a judge, a public prosecutor and a member of the judicial commission of the Senate. In another country, matters were also

[2] In concordance with Recommendation No. R(97) 13 concerning intimidation of witnesses and the rights of the defence

discussed with a researcher who had recently completed a thorough comparative study on witness protection legislation in three countries (including two that were included in this survey).

4. Characteristics of the legal systems of the member States in the survey

The legal systems in the three countries can be characterised as moderate inquisitorial. In one State, the system was changed about ten years ago, in the direction of a more adversial system, especially with regard to the trial phase of the penal process. Nowadays, its system can be described as a mixture of the adversarial and the inquisitorial system. Among other things, it means that the trial judge in this country is bound by the facts related to a case, in the way they are presented to him by the prosecution and the defence. In the other two countries, the trial judge also has responsibility for the hearing and can inquire the case himself, irrespective of what has been brought forward by the prosecution or the defence.

In two of the three countries, prosecution is mandatory. This means that as soon as a public prosecutor is notified of a criminal offence, he has to start an inquiry. On the results of this inquiry, he decides whether or not he will bring the case to court. In the third country, the public prosecutor has discretionary powers and can decide, on policy as well as evidential grounds, whether or not a suspect will be brought to trial.

In all three countries the public prosecutor formally supervises the investigative work carried out by the police. However, in practice the police usually works with a large degree of autonomy. In most cases, the public prosecutor becomes involved at the moment when the police want to use means of coercion, for instance in order to hear a witness. In two countries the system encompasses judges of instruction (investigating magistrate) who normally acts on request by the public prosecutor. These judges can authorise far-reaching measures against suspects and witnesses, e.g. issue arrest warrants, authorise wire tapping or house search and summon witnesses to appear.

The immediacy principle plays an very important role in two of the three countries. This means that evidence should be presented in court directly and, with some exceptions, orally. This way the trial judge can gain good insight into the available evidence and decide upon its reliability and validity. In the third country, the trial judge relies more on written testimony, but owing to judgements of the European Court of Human Rights, the use of hearsay evidence and pre-trial statements has become less common than it used to be in the past. However, the dossier, which contains the results of the preliminary inquiry, still plays an important, if not decisive, role in many criminal trials in this member State.

The rules of evidence are also relevant for this study. In one member State, the minimum requirements of evidence are less in cases in which the defendant is accused of organised crime. In such cases the defendant can be convicted on the basis of the testimonies by two co-defendants who are collaborating with the justice authorities, as long as there is some material evidence as well. The difference in the rules of evidence is important, because statements made by collaborating co-defendants are generally considered less reliable than testimonies of other witnesses. Arguments for this greater caution are that these co-defendants are often rewarded for their co-operation by a reduction of the sentence they would have had to serve under normal conditions, and that their statements may be biased in order to exculpate themselves. To enhance the validity of the statements made by such collaborators of justice, a

new law is under preparation. It proposes that such collaborators should be isolated from other witnesses and be obliged to disclose to the police everything they know about the criminal group and its activities within a limited period of time.

In the two other countries studied, deals with criminals are also possible, but owing to strict regulations, they are much less common in comparison with the member State referred to in the preceding paragraph. In one country, a law is currently pending that stipulates that a co-operating witness can be granted a maximum reduction of one third the normal prison term foreseen by law for the offence he committed. The witness protection agency does not expect that the willingness of members of organised criminal groups to collaborate with justice will significantly increase as a result of this new law.

In one of the three countries covered by the survey, there is a surveillance judge, who has the competence to deal with every post-conviction issue, for instance release on probation when a convict has given evidence of good behaviour while in custody.

5. Alternative ways of witness protection

Two member States not only have a witness protection programme, but also use certain procedures in order to prevent witnesses from becoming endangered. They are based on the same principle as witness protection programmes: avoid the endangering of the witness by making it impossible to trace him. In most cases this is done by granting partial or full anonymity to a witness.

In two of the three countries it is possible to use statements of anonymous witnesses as evidence in court, although convictions may not be based on anonymous testimony alone. These countries accept the idea that the justified interests of an endangered witness could lead to a reduction of the right of the defence to question him. In the third country anonymous witnesses are not acceptable. Great symbolic value is attached to the personal confrontation between defendant and witness, and it is thought that non-verbal signals of the witness could reveal the veracity or otherwise of his or her account.

In one country it is essential for a witness to be granted the status of an anonymous witness that s/he or one of her/his direct relatives is seriously endangered, if it was believed that the witness might testify in a case concerning serious crime. The decision on the claim for anonymity is taken by the judge of instruction, who examines the anonymous witness outside of the proper trial. The investigating judge must inquire into the identity of the threatened witness, but he ought not to mention the identity in the report of the interview. Also, he must inquire into the reliability of the witness and give an explicit account in the report. He has to interview the witness in such manner that the witness's identity remains hidden. The investigating judge may order that neither the accused and his attorney (nor the public prosecutor) attend the interview. However, the accused and his attorney may follow the interview through an audio link with a voice transformer, and must be given the opportunity to put questions to the witness either through the audio link or other means of telecommunication or in writing. Questions may also be stated to the investigating judge before the interview. The investigating judge can refuse to allow the defence to take cognisance of an answer given by the anonymous witness, if the answer possibly could reveal his identity. In such a case, the report of the hearing only states that the question has been answered.

In the same country, it is possible to grant partial anonymity to a witness. In these cases the defendant is given the opportunity to question the witness directly during the trial, but the witness does not have to state his or her name or address. The trial judge is informed about the identity of the witness. Often some disguise is used to prevent the defendant from recognising the witness. In other cases eye contact between the witness and the accused is made impossible. This procedure is primarily meant for members of surveillance or arrest teams and for police officers who have met the accused while working undercover. For them it would not be able to continue their job once their identities are known to the defendant or the public.

The procedures for granting partial or complete anonymity in this country are not used frequently, because in many cases the safeguarding of a witness' anonymity means that certain (crucial) parts of his statements cannot be included in the report, making the statement less valuable as evidence; on the other hand, reporting the complete statement of the witness would almost inevitably result in disclosing his or her identity.

In the other country, anonymous witnesses are not accepted in cases of offences that cause damage to individuals, but only in cases of serious organised crime. Such crimes are regarded as a threat to the State. In this country, neither an investigating magistrate nor a trial judge can decide upon the status of an anonymous witness, only the Executive (the Minister of the Interior) can. Anonymous witnesses are normally heard by the police, while the defence usually can put written questions to the witness. The written record of the pre-trial examination is read out at the main court hearing. Documents ensuring establishment of the identity of the witness are kept separately at the public prosecution office. They are only put in the files when the danger has passed.

Witnesses who have cognisance of a matter in their official capacity may, without having to fulfil further conditions, disclose their place of work instead of the place where they live. An endangered witness can also be shielded before and after the examination from the defendant, from other participants in the proceedings and the audience, for instance by the use of separate entrances to the courtroom. Furthermore, it is permissible for the defendant to be removed from the courtroom during examination of a witness if such examination in his presence presents an imminent danger of serious detriment to the health of the witness. The advantage of hearing a witness in absence of the defendant is that it prevents both the direct verbal or physical threatening of the witness and the more subtle ways of intimidation by the defendant, e.g. by ominous looks or gestures. Furthermore, the court may exclude the public form the hearing, of part thereof. This means that endangered witnesses may be heard at a court sitting not open to the public for their protection against public disclosure of their existence and their appearance.

6. Need for a witness protection programme

In August 1993, H.S. was arrested in relation to the import of cannabis from Nigeria. During the questioning, he stated that he usually carries a gun that he once got from K.L., a man with the reputation of a major drugs trafficker. H.S. used to be K.L.'s body guard. H.S. further said he feels seriously threatened by K.L. and that he considered his detention would form a good solution to this problem. To achieve this goal, H.S. made several accusatory statements to the law enforcement authorities. He was willing to testify in court as well. The authorities discussed with him the possibility of arranging protection, but he thought this only would become relevant once K.L. was arrested. But before the arrest took place, H.S. was

murdered in December 1993. K.L. was finally taken into custody in July 1994. In his house and car, guns and ammunition were found. In June 1995 K.L. was convicted of leading a criminal organisation, trafficking in drugs and several other crimes, and sentenced to twelve years of imprisonment and a fine of approximately half a million US dollars.

The case described above probably is not unique. In many member States of the Council of Europe the same events could occur, since most organised criminal groups operate on an international scale and frequently use violence and intimidation against members who want to quit the group or already have done so. The case illustrates the necessity to have an effective witness protection programme.

It is not surprising that hardly any empirical evidence on the nature and scope of witness intimidation in member States could be found. The nature of the phenomenon means that its scope is also difficult to determine. Witnesses who have successfully been intimidated will not inform the police, but will either keep silent, withdraw, or alter their incriminating statements. It is evident that the need for witness protection in member States of the Council of Europe is growing, especially because of the expansion of organised crime and the increasing use of violence and intimidation by organised criminal groups.

Perpetrators of organised crimes, such as drugs trafficking, fraud, money laundering and trafficking in human beings, are hard to trace and prosecute due to the fact that in many cases, there is hardly or no material evidence. There is often a great number of people involved in these criminal activities, which are not concentrated in time and place. The fact that many organised criminal groups that are active in member States of the Council of Europe are operating on an international level makes combating them more difficult. Also, the increasing professionalism of criminal groups leads to a reduction of the number of suspects that are willing to confess their crimes. The effect of these trends is that law enforcement authorities need to rely more and more on the testimonies of co-defendants willing to co-operate and provide evidence against their former comrades.

One may assume that a system where pre-trial statements of witnesses or testimonies of anonymous witnesses are generally regarded as valid evidence, these procedures can provide effective protection of witnesses. If the defendant is not aware of the identity of a witness, it is more difficult to prevent the latter from testifying. In cases where a witness already has made a statement which can be used as evidence, threatening a witness will not prevent the defendant from getting convicted. Therefore, the need for actual witness protection is probably lower than in countries where these possibilities do not exist. On the other hand, the demand for witness protection is influenced to some extent by the perception of the risk of an accidental disclosure of the anonymous witnesses' real identity by the police, prosecutors or judges. Another reason why granting anonymity to witnesses is not always effective, is that in many cases with endangered witnesses relevant details must be kept secret in order to prevent disclosure of their identities. This often reduces the value of the testimony significantly. In such cases, an actual witness protection scheme can be a useful alternative to the system of procedural protection measures. However, because actual witness protection measures usually are more drastic and expensive than procedural measures, the last type is generally preferable.

In some legal systems, only the prosecution and the defence are parties to the proceedings. In these systems, it is more difficult to take into account the interests of victims and witnesses. However, the expansion of serious and organised crime may lead to an

insurmountable obstacle to fair trials if witnesses are no longer willing or able to give testimony. For that reason, also in countries that have an adversial system, witness protection may be or may become an important instrument of justice.

7. Legal basis

It can be argued that because witnesses are obliged by authorities to testify, they in turn are entitled to protection on the basis of Articles 2 and 8 of the European Convention on Human Rights. These articles guarantee everyone the right to life and the right to respect for privacy. Therefore, authorities who compel an endangered witness to testify, should take appropriate measures in order to protect his/her life. This does not mean that the state is obliged to rule out all possible violence to witnesses. However, it does mean that member States should organise their criminal proceedings in such a way that the interests of witnesses are not unjustifiably imperilled.

In one of the three countries, the witness protection programme is based on a formal law. In the second one, the programme is based upon an instruction issued by the Council of Procurators-General (senior prosecutors). In the third member State, the first initiatives to establish a witness protection programme were taken by the police, and general guidelines were provided by the Ministries of Interior Affairs and Justice.

In the two member States where the protection programme does not have a formal basis in law, the respective protection agencies hold the opinion that existing laws are not adequate to the requirement of effective witness protection measures. Among other matters, this refers to the changing of the identity of a witness. In all three countries this measure is applied, though not frequently. In the member State that has a legal basis for the witness protection programme, the law provides for the change of personal data and the use of covert documents, such as passports, medical insurance passes, driving licenses, et cetera.

Witness protection should not be seen as a kind of reward for the co-operation of the witness with law enforcement authorities. Instead it should be viewed upon as a way of safeguarding the criminal trial and the securing of life and limb of the witness (and his/her relatives). The fact that in practice, in two member States, it is not uncommon for a witness to be rewarded for his co-operation with law enforcement authorities, e.g. by a reduction of his sentence, does not effect this basic principle.

8. Types of crime for which witness protection is used

Entering a witness protection programme usually leads to a total disruption of the normal life of the witness and his/her relatives. For that reason and for reasons of cost it is advisable to restrict witness protection programmes to cases of (very) serious crime. The best results are obtained in the combating of organised criminal groups. In combination with a legislation on sentence-reduction for suspects that co-operate with justice authorities to get their co-defendants convicted, it is also considered highly effective in the fight against terrorist groups.

The fact that witness protection is especially important in the fight against organised crime and terrorism can be explained by the closed character of the groups involved, which makes it very difficult to use traditional investigative methods successfully. In such cases,

considerable significance is attached to the testimony of witnesses who, by virtue of their personal proximity to the planning and commission of crime, are in a position to make statements leading to the identification of the organisers and beneficiaries of the crimes in question. In view of the fact that in such cases, material evidence is often insufficient, the protection of individuals who are prepared to testify takes an even greater importance.

Another category of crime for which witness protection is frequently used are capital and other violent crimes, especially in cases where the suspect already knew the victim(s) and the witness(es). If the risk of retaliative measures against witnesses by the perpetrator or his 'friends' is such that they are not willing to testify in court, a witness protection programme can offer a solution.

The use of witness protection in cases of human trafficking is seen as less effective, at least from a prosecutorial viewpoint. This is due to the fact that the illegal immigrants involved usually only have information on one or two traffickers and therefore their testimony is not sufficient to dismantle the criminal organisation.

9. Admission procedure

In the three countries studied, the initiative to request inclusion of an individual to the witness protection programme usually is taken by the candidate himself or by the police. The request must contain information on the nature of the criminal investigation, the role of the candidate in the criminal activities and the endangerment of the witness. From here on, the admission procedures in the respective member States included in this survey differ substantially.

In one country, two paths are possible. In cases when the witness protection is part or the investigation and prosecution of a criminal or of a criminal group, requests go to one of the Chief Public Prosecutors. If he agrees, he sends a motivated application to a Central Assessment Board. This Board advises the Council of Procurators-General on the basis of the principles of opportunity and subsidiarity. Members of the Board are representatives of the Public Prosecution Service, the police and the Ministry of Justice. Should the Central Assessment Board decide not to send the application on, and should the Chief Public Prosecutor disagree with this decision, the matter is decided by the Council of Procurators-General. The second path is taken when the individual involved will not give testimony in court. In this case, the formal application also comes from one of the Chief Public Prosecutors but instead of the Central Assessment Board, the National Public Prosecutor for Anti-Terrorism acts as an intermediary to the Council of Procurators-General.

In the second country, the decision whether or not a person should be admitted to the protection programme is taken by a Central Commission on the basis of a proposal by the prosecutor of state. The president of the commission is an under-secretary of the ministry of interior. The members are two judges (usually a prosecutor of state), four police officers and one administrator of the Ministry of the Interior.

In these two countries, the protection service is not represented officially in the decision making body, but gives information and advice to it. This usually entails information on the nature and seriousness of the threat against the applicant (or his/her relatives) and the suitability of the person for the protection programme.

In the third country, the public prosecution service hardly plays any role in the admission procedure. This can be explained by the fact that witness protection was initiated about ten years ago by the police on an informal basis. In this country, applications go directly to the protection service and the decision whether or not to admit a witness to the programme is taken by the service itself. If the service takes a positive decision with respect to acceptance of a witness into the programme, an analysis of the potential danger is prepared with assistance of the investigating police force. Based upon the results of this threat analysis, the candidate for protection is classified accordingly. The next step is the preparation of a specific protection concept, commensurate with the estimated likelihood of an attack.

In two of the three member States, pre-trial statements made by applicants who are not admitted to the protection programme, cannot be used as evidence in criminal proceedings. However, the information provided can be used for intelligence purposes and sometimes leads law enforcement authorities to the higher ranks of criminal organisations, where they can try and find one or more individuals who are able and willing to give testimony, either as protected or as ordinary witnesses. In the third country in the study, granting anonymity to a person whose application to the programme was rejected, sometimes makes it possible to use his/her pre-trial statements as evidence in court. If this is not a realistic alternative, e.g. because the witness's identity could be derived from the contents of his/her statement, the information can only be used to help the police in the gathering of other evidence.

10. Criteria

Essential criteria for admittance to a witness protection programme in the three countries are:

- the individual is involved (usually as a witness) in a case in which persons suspected of serious crime are to be prosecuted;
- the individual him- or herself or his/her close relatives are endangered in relation to this case;
- the individual voluntarily wishes to enter the programme;
- the individual is suited to participate in the protection programme.

In the countries involved in this survey, individuals that meet these four criteria and their direct relatives are admitted to the witness protection programme. Other categories of witnesses can also be included in the scheme. In one country, persons whose protection is no longer in the interest of the criminal case can participate in the programme as well, for example informers who gave statements to the police but do not appear as witnesses in court.

The voluntary entry of witnesses means that the measures taken should impose no restrictions upon individual freedom beyond those required in the interest of security or in the interest of the trial(s) for which the testimony is needed. The voluntariness is important, because witnesses must not only comply with but actively support all measures taken to ensure safety and prevent danger to personal life and limb. However, it does not mean that protected witnesses cannot be kept in detention. In one member State, protected witnesses who are co-defendants are isolated from other collaborators of justice in order to prevent collusion. This sometimes is done by detention in special prisons. In the two other countries included in this

survey, a number of protected witnesses are also serving their time in prison, either in special units or under other than their own identities.

The criterion 'suited to participate in the programme' is rather vague. It refers to the psychological, social and medical conditions of the applicant. If (s)he is a habitual criminal, addicted to alcohol or other drugs, or mentally ill, normally (s)he will not be admitted. The basic reason for this is that his/her statements are less reliable and it is not very likely that (s)he will be able to behave according to the rules of conduct. If the applicant is not willing to give insight into his/her financial situation, this can also be an insurmountable obstacle. Because it is not possible to formulate general rules regarding this type of conditions, every application is handled separately and the suitability of every person involved is assessed individually.

Witness protection programmes are not meant for children and young adults whose health was damaged by being a witness or a victim of a serious crime. Although they may feel threatened, and therefore could use psychological help or financial compensation, this category does not belong to the target group of the protection agencies of the countries in the survey, but they rather may be aided by victim support schemes. The only exceptions to this rule are cases in which there is a concrete danger for them if they testify in court and their testimonies are essential for a successful prosecution of the perpetrator(s).

Considering the number of relatives that may join the endangered witness in the programme, in all countries the following aspects were taken into account:

- only relatives that are endangered as well or stand very close to the threatened witness should be admitted. The risk for relatives of endangered witnesses is higher in a country where organised criminal groups show no reservation in the use of violence against individuals who belong to this category. The number of relatives of whom one can say that they stand close to the witness is partially determined by the family culture of the country;
- every individual (except small children) must freely choose to enter the programme. Sometimes not everyone sees the necessity for protection measures or is of the opinion that only the witness is responsible for the situation and that he should take care of the situation all by himself;
- each and every single individual must be suited to fit in the protection programme Relatives that are considered unreliable, are addicted to alcohol or narcotic drugs or are unsuited for other reasons, cannot enter the programme;
- the more relatives involved, the more difficult it is to make everybody comply with the code of conduct.

A balance should be found between on the one hand, reducing of risks for relatives to become a victim and, on the other hand, maximising the security for the protected witness him- or herself, who is more at risk when s/he is accompanied in the protection programme by a large number of relatives.

Of course, the larger the number of relatives, the heavier the workload of the protection service. However, all witness protection services stipulated that this argument does not play a decisive role in the discussion on the admission of relatives.

11. <u>Types of witnesses in the programme</u>

There is some variation between the three countries in the type of people that can participate in the witness protection programme. In all States, the most common type is the co-defendant who has decided to co-operate with the justice authorities and who is prepared to give testimony in court against his former associates.

In the second place, the programme is meant for witnesses who are not suspected of a crime. This category is for the larger part comprised of innocent bystanders who happened to be present when something happened that was relevant from a criminal investigative viewpoint. In one country, this category includes a number of relatives (wives and girlfriends) of members of organised criminal groups who were murdered. In all three countries, it is only a very small percentage of the participants in the witness protection programme who do *not* have a criminal background.

In one of the three member States, about 40% of the protected witnesses are of foreign origin. In the other two countries in the study, this percentage was much lower. In general it is more difficult to provide adequate protection to people of foreign origin, because they attract attention in a different social and cultural environment more easily and are inclined to enter into relations with other people of the same ethnic background. This heightens the safety risk, especially if it concerns a small or relatively closed ethnic community. Linguistic differences complicate the assimilation in a new environment. Of course these factors also hamper contacts with staff members of the protection agency.

12. Number of people in the programme

Over the years, all three countries have experienced a growth, both in the number of applications and in the number of witnesses (and their relatives) admitted to the protection programme. Nevertheless there are important differences with respect to these numbers.

In one member State, where the programme exists for about three years, the number of applications in 1997 was approximately 1 per million inhabitants. The great majority of applications were approved. In 1998, the number of applications increased by about fifty percent. A further growth in the next few years to 2 to 3 applications per million inhabitants is foreseen. The proportion of applications that are rejected is going up as well, from less than 10% to a figure between 10 and 20%.

The number of witnesses (excluding relatives) that participated in the protection programme of this country at the end of 1998 was approximately one per million inhabitants. Usually protected witnesses had two or three direct relatives (mostly wives and children) included in the programme as well.

In another member State, where the protection programme has been in place for about ten years, its popularity grew enormously in the period 1992-1995. The increase of the number of witnesses in the programme was 576% in 1993, 288% in 1994 and 141% in 1995. This spectacular growth can be attributed to a major change in the law concerning co-operating witnesses, which came into force in 1991, and to an intensified combat of law enforcement bodies against organised crime between 1992 and 1995. In the following two years there has been a decline: by 15% in 1996 and 61% in 1997. In the first half of 1998, the number of admissions was 84% of the total number in 1997; this suggests that the number is growing again.

In the period between January 1992 and July 1998 the number of witnesses admitted to the protection programme fluctuated between 2 and 7 per million inhabitants per annum. The average number of admissions was 3.7. By mid 1998, about twenty witnesses per million inhabitants participated in the protection programme. The average number of relatives that accompanied the witness in the programme was 3.8. This means that by mid 1998, more than ninety people per million inhabitants participated in the programme.

In the third country, between 1992 and 1997, the annual number of witnesses admitted to the protection programme varied from 2 to 3 per million inhabitants, with an average of 2.3. In more than 20% of the applications no agreement was reached. An exact percentage cannot be given, because there is no registration of initiatives that come to an end before they reach the national level. At the end of 1997, the protection programme encompassed approximately five witnesses per million inhabitants. In this country, the average number of relatives who also participated in the protection programme was a little less than one. Thus the total number of protected people in this country was ten per million inhabitants.

The big differences between the three countries regarding the number of people that get access to the witness protection programme can be attributed to several factors. Probably the most important factors are the following:

- the level of organised crime and the ferocity of the organised criminal groups that operate in a country;
- the ease with which one is admitted to the programme and acquires the status of a protected witness;
- possible alternatives to the protection of witnesses by a protection scheme. In this respect one may think - inter alia - of granting anonymity to witnesses and of using (more extensively) the results of other investigative methods (e.g. wiretapping) as evidence in criminal trials. Under certain conditions, application of short term (physical) security measures during the trial is regarded as sufficient. In one country, sometimes a lump sum was paid to a witness for him to ‘organise’ his own security. This measure was applied in several cases in which the witness was considered unsuited for the protection programme.
- concerning the number of relatives taken into the programme, the family culture in a country undoubtedly plays an important role.

It is important to acknowledge that most of the above mentioned factors are difficult to influence by law enforcement authorities. Therefore, a witness protection agency should have surplus capacity to keep functioning in a situation when the number of witnesses that require protection is exceptionally high. In view of the differences between the number of applications per country and per annum, it remains very difficult to estimate the future capacity needed for witness protection in a particular member State. Because of this it should be possible to increase the capacity of the witness protection service at rather short notice. Also budgetary restraints should not hamper the admission of endangered witnesses to the programme.

In the three member States (and also in the United States of America), the number of participants in the protection programme increased very much in the first few years after its establishment. This probably can be attributed to the amount of attention given to the new method of combating organised crime. Many law enforcement authorities are willing to try

each and every new method to fight serious and organised crime, which in general is hard to combat effectively. Perhaps part of the growth can be explained by the fact that for a number of criminals the programme offers a long sought opportunity to leave the criminal fraternity. After some years, when experience with the protection programme has been gained and the drawbacks of the method have manifested themselves in practice, the admission criteria become stricter and the programme is applied more selectively. In one member State more applicants were turned down in recent years because their testimonies were not necessary for the criminal proceedings against their co-defendants, partly due to the large number of witnesses who were willing to co-operate with law enforcement authorities.

13. Memorandum of Understanding

The witness protection services in the member States in this survey all make use of a sort of Memorandum of Understanding (MoU). In a formal sense this is not a contract, so the protected witness cannot derive any rights from it. It is better to view upon it as a code of conduct, which primarily describes what the protected witness should and what he should not do in certain situations. In all three countries, the contents of the MoU are discussed at length with the candidate and his/her adult relatives. They are entitled to legal assistance, which is paid by the protection service. However, the candidate should choose a lawyer him- or herself and not make use of a governmental lawyer, because that could later lead to the accusation of being prejudiced. If necessary, an interpreter should be present during the discussions on the MoU and the agreement should be translated into the native language of the candidate before (s)he is asked to sign.

The MoU usually contains passages on the following subjects:

- confirmation of the free choice of the individual to enter the protection programme;
- the goal of the protection scheme;
- the obligation of the protection service to take the necessary measures to protect the individual and his/her relatives;
- the fact that the duration of the protection measures depend upon the risks as evaluated by the protection service;
- the obligation of the individual to keep his or her former identity, old address, role in the criminal proceedings and all details concerning the protection scheme secret;
- the obligation of the individual to restrain from any activity that could enlarge the risk for himself, his relatives or the staff of the protection service;
- the obligation of the witness to co-operate fully in the criminal proceedings against his co-defendants in all possible ways, including the obligation to testify in court in all criminal cases in which the authorities consider his/her testimony relevant;
- the obligation for the individual to try and find a job as soon as possible, taking into account the above mentioned commitment to give testimony in court;
- arrangements for outstanding accounts, mortgages, contracts and other financial obligations;
- the conditions under which the protection scheme will be ended (including the diminishing of the threat, the breaking of the rules of conduct, the committing of a crime or any act which could endanger himself, his/her relatives or the protection service in any way).

Both the witness who wants to enter the programme and his/her adult relatives that want to accompany him or her, are obliged to fill in the forms completely and sign them. For security reasons, they do not receive a copy of the memorandum.

One of the protection services stressed the importance of obtaining a complete list of outstanding accounts and other financial obligations, in order to prevent harm to creditors' interests and to avoid attempts by creditors to trace protected witnesses who are unwilling to pay their debts.

In one country, where the public prosecution service is a dominant factor in the admittance procedure, the protection service paid a lot of attention to getting a complete overview of promises made by law enforcement authorities that could be relevant for the protection scheme of the individual. In most cases this refers to deals between the witness and the public prosecutor on matters like whether or not the witness would be brought to trial, possible reductions of the sentence or the conditions under which a sentence would be carried out. In some cases, rewards were promised to a candidate and in some other cases the change of his/her identity was vowed by the police or the public prosecution. As police officers and prosecutors are not authorised to make such promises, the protection service usually refuses to fulfil them.

In the other two countries, arrangements concerning trial proceedings and sentencing conditions never are part of a MoU. Whenever applicable, such matters are discussed in a separate document.

It is evident that complete secrecy needs to be maintained with respect to the measures implemented. In practice, this rule is broken by (in most cases former) participants in the programme in two of the three countries. Sometimes, they talk to journalists or even appear on television and reveal particulars of the protection programme. In general, the witness protection services do not react in public on the statements made by ex-protected witnesses, even when lies are presented, in order to avoid a discussion in which more details would be revealed.

14. The protection programme

The witness protection schemes of the three member States resemble one another in many aspects. The witness protection scheme may specify measures ranging from the regular observation of an individual's residence to complete resettlement and, if required, intensive personal guidance and support. Especially during the application procedure, it is considered important to have control over the witness, for reasons of security and because (s)he can have contacts with other witnesses and suspects. Such contacts generally undermine the trustworthiness of the applicant. Furthermore, it is common practice to provide physical protection at the times when a witness has to appear in court.

In most instances the protected witness is removed from the place where (s)he used to live and is relocated, possibly together with his/her direct relatives, to a place where (s)he is not easily recognised. In one member State, it is not uncommon for a protected witness of foreign origin to be relocated in his home country. Often, a protected witness is relocated more than once, mostly because (s)he or his/her relatives make a mistake which could lead to an increased security risk. Sometimes, a relative wants to leave the programme and returns to his

or her original environment. This also makes it necessary to relocate the remaining relatives once again.

In all three countries measures are taken to prevent the tracing of protected witnesses by questioning official administrations, such as population registers, telephone books and vehicle registers. Usually this is done by marking the witnesses' records as 'secret', which leads to a refusal to answer questions by unauthorised people about the contents of these records. Sometimes the records of protected witnesses and their relatives in the municipal population register are marked in a way that indicates they have left the municipality without notice.

Usually a protected witness receives a monthly allowance as long as (s)he is not able to provide a regular income for him- or herself. Sometimes the protection service tries to help a participant to find a regular job or acts as a mediator between a participant and an employer. However, because of the criminal background of many protected witnesses, the service will not provide good references for applications. Many participants experience difficulties in finding a regular job and stay economically dependent on the monthly allowances given to them by the protection agency for a very long time. In one country, witnesses are obliged to accept a job that is offered to them. Refusals can occur, but a second or third refusal is a reason to revoke the programme.

A common element in the protection schemes of the member States participating in the survey is the regular assessment, for the entire duration of the programme, of the degree of danger for the witness. In all three countries the duration of the participation in the programme depends upon the respective current evaluation of the threat and can extend through all phases of the investigation, the entire trial phase and the period beyond the conclusion of the proceedings. The threat assessment is repeated at least once a year. Only if and when the danger has decreased to a minimum, the participation of the witness in the programme comes to an end.

Protection agencies differ in the intensity with which they monitor compliance of protected witnesses with the code of conduct. One of the agencies would like to have the possibility to apply wire tapping or surveillance on protected witnesses. The national agencies in the other two countries did not share this wish.

Often in the last phase of the protection programme, there is hardly any contact between the participant and the protection service. Only if there is a problem for which the witness thinks the protection service should do something about, (s)he will contact the service. In one member country, there is a special arrangement with the local police. They are not informed about the fact that a protected witness is located in their region, but they do receive a closed envelope which has a code written on the outside. If the witness thinks (s)he is in danger, (s)he can call the usual alarm number of the local police and mention the code. This entitles the local police to open up the envelope and read the instructions that it contains. One of the instructions is to contact the protection agency immediately.

In another member State the national protection service has local units in municipalities where a number of protected witnesses are residing. They are available soon after they receive a request for help from a participant in the programme.

The admittance of an individual to a witness protection programme can result in the improvement of his economic situation. However, this should not be a motive for entering. The three witness protection agencies in this survey all held as a basic principle that the economic conditions of protected witnesses should resemble their situation before admittance as long as this was above the usual social minimum of the country involved. Only legal sources of income are taken into account. If these economic conditions used to be below the social minimum, the allowance given to the protected witness is at the minimum level.

In all three member States, it is not uncommon that a protected witness stays in detention. In two countries there are special prison units designated for them. In the third country, the witness is given a false identity while remaining in a regular prison.

15. The change of identity

In the three countries studied, the changing of an individual's identity is not used very often, mainly because it causes many legal and bureaucratic problems. A consequence of a change of identity could be that the individual would be deprived of his constitutional right to vote and to become elected. Other problems occur in the application of family laws (e.g. with reference to divorces) and the law of succession.

An example of bureaucratic problems that can arise is the situation in which a public official refuses to make a change in an official register of which he knows that it does not correspond to the truth. It is often necessary to take measures that are not in accordance with privacy regulations in order to prevent people from tracing protected witnesses by consulting official registers.

The change of an individual's identity often has serious psycho-social consequences. The person involved must give a new meaning to his/her life and renounce his/her social role and his/her network of friends and acquaintances. For people with a criminal background it sometimes means giving away the social status they acquired over the years in the criminal fraternity and giving up a lifestyle that was made possible by the 'easy' money they earned, although this can also count for criminals in the programme who keep their original identity. The psychological pressure can become quite high because of the constant risk of becoming discovered by the source of the threat and because the restrictions in the social intercourse with people who belong to the new environment. The prohibition of showing who (s)he really is/was may even cause feelings of schizophrenia.

On the other hand it can be stated that the new identity provides an effective cover under which the individual can move more freely in society. In many cases, the only alternative would be a long term isolation of the witness and his/her relatives from society.

Even in the only country in the survey where the change of identity is legally possible, it is carried out in less than 10% of cases. In these cases, both the protected witness and the relatives that accompany him or her in the programme receive new documents. The decision to provide a witness with a new identity is taken at a high national level. A witness who receives a new identity not only gets new identity papers; also a new personal history ('legend') is formulated and all necessary documents are produced as well.

In the other two countries, the procedure used to change someone's identity is not based on a formal law. Only the most necessary documents are provided for and much less effort is put into the formulating of 'legends' for people whose identity is changed.

The new identity can be withdrawn, which happens occasionally. In case a witness with a new identity is suspected of a crime, he is prosecuted as he normally would be. The trial judge in his case is informed about his former life, so he can take into account any criminal antecedents the defendant may have and the way he helped the law enforcement authorities.

An investigation against a protected witness needs to be handled very carefully, because the suspicion could be a 'set up' by the source of the original threat to the witness. Ending the programme for the suspect in such a case obviously would increase the risk for him of getting hurt of even killed.

In general it is possible for authorities of another country to question a protected witness. It is also possible for a participant in a protection programme to be extradited. In that case, the police of the country to which he is extradited becomes responsible for his safety.

Giving young children other names may cause (extra) distress and can easily lead to mistakes that jeopardise the protection scheme. For this reason, it might be better to change only the family name or to change the first name of the child(ren) only slightly.

16. Urgent measures

In urgent cases, protection measures can be taken at short notice in all three countries. This often means moving the individual (and usually also his or her relatives) to a secret place located in another part of the country. This place can be a hotel, but also a police office, a tenement-house or another public building designated specially for this purpose. When the candidate is a suspect of one or more serious crimes, a prison is used. This can either be an ordinary prison or a special unit.

In the country where the protection service can decide about the witness' admittance to the programme, the necessary urgent measures can be taken almost immediately. In the other two countries, the approval of a public prosecutor is needed. In one country, a national prosecutor is authorised to decide at short notice on a request made by a chief public prosecutor. This procedure does not take more than a few hours. In such a case the national prosecutor can give an oral order to the witness protection service to take temporary measures for the protection of the individual involved. The oral order is confirmed in writing within twenty-four hours. In this member State, there is no maximum duration of the temporary measures specified, but usually the admission procedure will be started at about the same time as the temporary measures, so that within several weeks, a final decision on the admission of the individual can be taken. In the other member State, a commissioner of police can ask a prosecutor of state for urgent measures for a period of three months, which can be renewed once for another three months. The maximum duration of six months is sufficient to finish the normal admission procedure.

The protection services in all three countries do their best to end temporary measures as soon as possible, because they are often costly. Also it is stressful for the candidate and

his/her relatives to know that they are at risk, while at the same time they do not know whether they will be admitted to the protection programme.

In all three member States, the financial costs of temporary measures are paid by the protection service.

Case:

A drugs trafficker, staying in a foreign prison, was visited by a delegation of the police from his home country several times in a short period of time. Fellow inmates then concluded he was collaborating with the police and threatened him seriously. Although he was not admitted to the witness protection programme yet, it was decided to transport him to his home country immediately and put him in the special unit of the normal prison.

17. Duration of witness protection measures

The course of witness protection measures is influenced to a large extent by the progress of criminal investigations and court proceedings. Thus all specific measures need to be co-ordinated with the police and judicial authorities involved, particularly the public prosecutor's office. This becomes essential especially in cases requiring the maintenance of secrecy during witness' questioning with respect to the location of residences, the questioning site or the whereabouts of the witness or where a witness is living under an assumed identity.

On average, the minimum duration of the protection is determined by the length of the trial proceedings. For this reason protection measures in most cases in one of the member States are usually required for more than two years. The average term of a witness to participate in the programme in this country is three to five years.

In another member State the average programme lasts for two years. The trial stage is usually ended then. Afterwards, final protection measures, such as the change of identity, are taken and the witness can go and live on his/her own. At that stage, the protection service officially ends the programme, but there is still contact possible whenever the witness wants it.

For several reasons, the duration of the participation of a witness in a protection programme cannot be specified at the beginning of the case. In the first place the threat can diminish very soon but it can also last for years. In the second place, the inability of a protected witness to behave according to the rules of conduct can lead to the cancellation of the programme for him or her. Compliance on the part of the witness with all agreements and stipulations in the MoU, particularly with regard to behaviour that could risk his personal safety, is an essential requisite for continuation of the protection measures. In one country, during the first half of 1998, 16% of the witnesses violated the conditions set in the programme. 3 % committed a crime, and 4% of the protected witnesses violated the rules of conduct so seriously that the programme was revoked. Comparative figures for other countries are not available.

18. Financial aspects

Witness protection is expensive. Even when the costs for the protection service are not taken into account, the financial burden caused by witness protection in the three countries is heavy. In one country, the costs vary between 80,000 and 160,000 US dollars for each

participant, but occasionally it could also amount to more than 250.000 USD where the programme lasts for more than the average 2 to 3 years. In another member State, the average witness with a family of 3 people costs about 80.000 USD a year. Taking into account an average duration of five years, the financial burden caused by the protection of one witness (including his family) in this country is approximately 400.000 USD, excluding the costs for the protection service itself.

The costs for witness protection in general are for the major part made up by the following posts:

- The protection service (especially the salaries for the staff)
- Removals and temporary residences
- Economic subsistence
- Housing
- Medical costs
- Legal assistance

Medical costs can be high because participants do not always have medical insurance.

In one country, legal assistance accounts for one third of the total costs for the protection programme (excluding the costs for the protection service itself). Legal assistance is only paid for by the service as far it concerns crimes committed before the entry of the witness to the protection programme.

In general, the height of the costs for economic support of protected witnesses is determined by the level and by the duration of the allowances given to them. Economic subsistence is not always conceived of as a monthly allowance; it can also entail a gift in order for the participant to start a small enterprise. In one member State this is done quite frequently, partly because many protected witnesses are experiencing difficulties in finding a regular nine-to-five job. This problem is also encountered in the other countries. Because many protected witnesses are used to an irregular income from illegal sources, they find it difficult to adjust to the daily routine of a regular job and to the discipline of working under the authority of a superior.

19. <u>The witness protection agency</u>

In order to ensure the objectivity of witness protection measures, it is important to separate witness protection agencies from investigative and prosecutorial units with respect to personnel and organisation. However, because of the fact that the investigating agency usually is acquainted with the criminal environment of the applicant, it is common practice that this agency assists the protection service in the assessment of the threat to the applicant and his direct relatives.

The type of work of the staff of witness protection units can be distinguished in three categories:

a) activities related to the admission of witnesses to the programme,
b) protective measures, and
c) supplementary measures.

Regarding the admission procedure the protection agency usually carries out a threat assessment and an assessment of the suitability of the witness and his relatives. When applicable, the protection service analyses the nature and seriousness of the intimidation on the basis of information provided by the investigating agency on the characteristics of the criminal group involved. However, if the source of the threat is unknown, it is very difficult to assess the risks for the applicant, because investigative methods, such as wire tapping, cannot be used to gather the information necessary for the threat assessment. Psychological tests and medical examinations are frequently applied as a means to check the suitability of the applicant and his/her associates. For this purpose, the protection services have contracted psychologists and doctors or even recruited them as part of the staff.

Protective measures aim at the prevention of any harm from the source of the threat to the witness and his/her relatives. In this connection the staff provides physical protection from the start of the admission procedure for as long as is necessary, and is responsible for finding a place where the witness can be safely relocated. Activities related to the changing of an individual's identity belong to this category as well.

Supplementary measures support the protected witness in the building up of a new life after the inclusion in the programme. In this connection, the staff helps to settle all kinds of financial matters for the participant, to find a regular job, a new school for his/her children, et cetera. The basic principle is that a protected witness should be enabled to live a normal life as much as possible and as soon as possible. After all, the witness protection agency should try and let participants leave the programme and take care of themselves completely again the moment this can be done safely.

The staff of protection agencies receives special training. This includes subjects like the psychology of witnesses, physical protection and legal aspects. In one country, for the training in the handling of applicants, participants and their relatives in the protection programme use is made of sociodrama, which is recorded on video and discussed afterwards.

For the purpose of this study it is also interesting to have a look at the number of staff in comparison to the number of protected witnesses. In the first of the three countries in the survey, there is one member of staff for every three witnesses in the programme. In the second country, this ratio is one staff member per 1.5 witnesses. The ratio in the third country lies in between the other two.

The witness protection agencies in the three countries studied for the most part consist of staff with a police background, who are paid roughly the same as other police officers.

In the two large member States that were included in this best practice survey, there was not only a unit operating at national level, but there also were units on local or regional level. In one country these local units were part of the same national organisation, while in the other country the local units belonged to the regional police forces. Some of these local units were staffed by part time personnel. This was considered a less ideal situation, because these people did not always acquire enough experience to do the work properly. Furthermore, it was acknowledged that working with protected witnesses, who often have a criminal background, requires an attitude which differs significantly from those of detectives. Instead of tracing and interrogating criminals, the staff of a protection service should be prepared to assist them in

their daily needs. Resistance to stress and to corruptive attempts are also important personnel characteristics. In one of the three member State, a few years ago, there has been an serious attempt to corrupt staff of a protection agency.

Aside from the implementation of protection measures, the national units assume specific national, international and co-ordinating functions, such as the periodic preparation of progress reports, in which new trends and developments are described and statistical overviews are presented, the organisation and conduct of training and continuing education measures and the co-ordination of activities involving organisations from several regions or states. The national units also play an important advisory role in the preparation of new laws concerning witness protection.

20. International co-operation

The professionalism of criminal organisations and the international level on which they operate, make it necessary for witness protection to be organised in an international manner as well. The existing witness protection agencies in Europe already work together on an informal basis. Because the number of national protection agencies is rather small, the heads of the agencies know each other personally. They meet more than once a year to exchange experiences and discuss developments, e.g. concerning changes in the legal systems that could influence the demand for witness protection. The existing agencies are also helping authorities in other member States establish their own witness protection programme.

The existing national protection agencies help each other when a witness needs to be transferred out of his/her own country. When witnesses are relocated abroad, this happens primarily in member States in which there is a witness protection programme. Sometimes the protection service of the country where a witness is relocated provides the necessary (national) documents for him/her. The costs for the protection of foreign witnesses are paid by the authorities of the sending country.

The fact that the co-operation between the existing national protection services is good can be partly explained by the fact that all schemes resemble one another, because they are more or less derived from the witness protection programme of the United States of America. Furthermore, all agencies are well aware of the fact that they do need each other in order to be able to relocate endangered witnesses abroad.

21. Effectiveness of witness protection programmes

The witness protection programmes in the three member States are highly effective in the sense that not a single participant nor a relative of a protected witness has become the victim of an attack by the source of the threat. The effectiveness is underlined by the fact that there have been attacks, some of them fatal, on relatives not participating in a protection programme and on witnesses who chose to leave the programme at a moment when the responsible protection agency did not consider the situation safe. It is also relevant in this respect that in all member States studied there have been serious attempts by criminals to trace protected witnesses. In a number of cases they were so close by that it was necessary to relocate the participant and his relatives once more.

According to the representatives of protection agencies in the three countries, the re-socialising effect of witness protection programmes is minimal. The main reason for this is the fact that the vast majority of the participants are experienced criminals who used to be involved in serious and organised crime for a long time. However, because participants are well aware of the risks they encounter if the protection scheme was terminated for them, there might be a re-socialising effect for some of the protected witnesses.

The major effect of witness protection programmes is the conviction of numerous leaders and other important members of highly organised criminal groups on the basis of testimonies that otherwise would not have been given. Not only staff of protection services is convinced of the magnitude of this effect; also the representatives of the police, the public prosecution, the parliament and other institutions acknowledged that witness protection programmes are indispensable in the fight against organised crime. Exact figures on the number of convictions on the basis of statements by protected witnesses are not available in any of the countries studied. In general, it can be stated that the successes in the combating of organised crime should not be attributed to witness protection measures alone but to the combination of a witness protection programme and a system of regulations concerning the collaboration of co-defendants with justice authorities.

22. Conclusions

The legal obligation for a witness to give testimony in a criminal trial is only fair if he (s)he does not have to fear for his/her life when (s)he complies with this obligation. But particularly as a consequence of the increase of organised crime and anti-crime actions in most member States of the Council of Europe, intimidation of and violence against witnesses seem to occur more and more. Apparently the leaders of organised crime groups, who are making vast profits, and others who benefit from their ill-gotten means, are willing to take whatever measures are necessary, beginning with intimidation and ending with torture and contract murder, to ensure that their ability to continue to make, and enjoy the fruits of, these profits is not eroded. Legal systems must find a way to handle the problem of witness intimidation if justice is to be done. Protection programmes offer an effective method to counter the threat to witnesses. Although the legal systems of the three countries in the survey differ, no legal obstacles have been discovered that would make it impossible to implement far reaching protective measures for witnesses. The only exception is the formal change of a witness's identity. However, in member States where there are no legal ways to change an individual's identity, practical solutions have been found to overcome this obstacle.

The high number of leaders of organised groups and other key figures in serious and organised crime arrested in the countries studied show, that witness protection is a very powerful instrument in the combat against organised criminal groups, especially when combined with a system of rewards for collaborating co-defendants. Although witness protection is not cheap, the costs are reasonable compared to labour intensive investigative measures such as infiltration or long term surveillance. And the strong impression is that witness protection is more effective and efficient than those other methods, especially in cases of organised crime.

Not in the first place because of the high costs but primarily because of the impact on the privacy and the family life of the witness and secondarily because of the complexity and long duration of witness protection programmes, member States should be restrictive in their

admittance procedures. Only in criminal cases when a) there are clear indications that an individual or his/her direct relatives are in serious danger in relation to the criminal proceedings in which (s)he will be (or was) giving testimony and b) his/her statement is considered essential evidence without which no conviction would be expected, should a witness be included in a protection programme.

International co-operation between member States of the Council of Europe will make witness protection for every single country more effective, simply because the more countries a protected witness can reside in, the more difficult it will be for the criminal fraternity to trace him or her. Furthermore, a common way of protecting endangered witnesses will enhance the ease with which witnesses can be relocated abroad. For this purpose, an international instrument seems more than necessary.