

**WITNESS PROTECTION PROGRAMS FOR JUSTICE COLLABORATORS –
COMPARATIVE OVERVIEW (POSITIVE LEGAL SOLUTIONS IN THE
REPUBLIC OF SERBIA, THE REPUBLIC OF NORTH MACEDONIA, USA,
ENGLAND AND ITALY)**

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Abstract

Justice collaborators are exposed to the highest risk of retaliation, as they have decided to testify against their former associates (members and leaders of criminal organizations) through cooperation with prosecution authorities in order to gain certain privileges. In one person, the justice collaborator, two procedural features are merged: the collaborator's during the conclusion of the agreement, and the witness', after the agreement was accepted by the court and his testimony given. After the testimony was given and the criminal proceeding was completed, these persons are not unattended, but every state that faces threats of organized forms of criminal activity is obliged to provide them both procedural and non-procedural (Program) protection.

This paper presents the procedure of providing program protection to justice collaborators in the legislations of the Republic of Serbia, the Republic of North Macedonia, the United States of America, England and Italy, the extent of its efficient implementation and the real and potential difficulties in front of persons included in the Program.

Key words: *justice collaborator, organized crime, program protection*

Introduction

The activities of the authorized state bodies against the organized crime are an extremely complex issue comprising several segments. Besides defining the terms and normative definition of organized crime, specific bodies and evidentiary actions (such as undercover investigator, covert surveillance and audio and video Recording, etc) are set, aiming at more efficient collection of evidence and successful processing of organized crime groups. Without diminishing the importance of special procedural mechanisms, the institute of justice collaborator (Agreement on Justice Collaborator's Testimony) is considered both in theory and practice, to be one of the most successful forms in criminal procedure law, as on the ground of the collaborator's testimony and his negotiated confession, authorities can reach the core of the criminal organization. This individual is not only a member of the criminal organization, but someone who has committed offences and, by willing to testify truthfully, brings successful results in practice. As the violation of the *Silence Code* can usually have detrimental consequences, even deaths, many countries have adopted mandatory legislative provisions prescribing protection of these individuals and their close ones. Legislative provisions comprise procedural and non-procedural (Program) protection, as justice collaborator who testifies or has testified faces the threats of retribution before, during or after the completion of the criminal proceeding or after being released from prison. Program protection was analyzed in legislative frames of the states that prescribe this criminal procedure form. Thus, according to legislative provisions of the Republic of Serbia, the United States of America, England and Italy, justice collaborator is a product of conclusion of an agreement on testimony between a collaborator and a public prosecutor, while the legislation of the Republic of North Macedonia denotes a justice collaborator (*соработник на правдата*) as a person or member of criminal group, gang or other association against whom an indictment is filed, is convicted, but has agreed to cooperate with the bodies authorized to identify, prosecute and trial the criminal acts connected with organized crime. The Republic of Serbia has initiated the process of judicial reforms in 2001 and passed the new Criminal Procedure Code in 2011. The 2001 *Criminal Procedure Code*, *Official Gazette of the FRY*, no 70/2001 and 68/2002) has regulated the institute of witness collaborator, while the 2011 *Criminal Procedure Code* (*Official Gazette of RS*, 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019) stipulated the institute of justice collaborator. By regulating the justice collaborator institute, Serbia has approached the problem of solving of exposing and proving the organized crimes in a more contemporary way. On the other hand, the law which serves as a ground for realization of protection of the justice collaborators (*The Law on the Protection Program for Participants in Criminal Proceedings*) is not yet harmonized with the provisions stipulated in 2011 *Criminal Procedure Code*. Discrepancies are not just in terminology, but in essence. For example, in the spirit of adversarial criminal procedure (enables the collaborator to be a witness in his own criminal procedure), a signing party to the agreement may only be the collaborator, not the witness. The procedure of concluding the agreement on testimony with the collaborator, court's decision on it, testimonials, and court's final decision is more complex in comparison to former procedure for acquiring the associate witness status. According to 2011 *CPC* the investigation is initiated by an order issued by a competent public prosecutor, not the investigating judge, including new procedural participant in preliminary proceeding - a judge for preliminary proceeding who issues a decision on certain issues related to collaborator's rights and taking evidentiary actions. When it comes to the highest instance court, instead of The Supreme Court of the Republic of Serbia, by The Constitution from 2006 (*Official Gazette of RS*, 98/2006), new Supreme Court of

Cassation was established. This is why one part of this paper analyses witness' program protection and the other justice collaborator's program protection. Lately, the issue of Program protection funding has been raised. The aim of this research is to make a contribution to the efficiency of the criminal procedure and to determine differences in implementation of these measures.

1. Program Protection in the Legislation of Serbia

By passing *The Law on the Protection Program for Participants in Criminal Proceeding (Official Gazette of RS, no 85/2005 – LPP)* in 2005, the Republic of Serbia has formalized a system of non-procedural (Program) protection of the participants in criminal proceedings. The law established the rights of not only the justice collaborator, but other participants in criminal proceedings as well (suspect, defendant, witness, injured party, expert witness and expert person) to a protection outside the criminal proceeding, i.e. it stipulated conditions and procedure of protection and assistance to justice collaborator in any kind of threat due to testifying in criminal proceeding. Non-procedural protection of justice collaborator is performed by his inclusion into Protection Program. Protection Program comprises range of measures (physical and technical type) undertaken for protection of life, health, physical integrity, freedom or valuable property (Art.2 LPP). Competent authorities for implementation of the Protection Programs are the Commission for Protection Program Implementation (The Commission) and the Protection Unit. Right to be included into Protection Program is entitled also to close persons of the justice collaborator, and a close person is a person for whom the witness demands to be included as close to him (Art, 1 and Art.3, Para.1, Point 2 LPP). Along to the threats imposed to the integrity of collaborators or his close ones, another mandatory condition for involvement into Program Protection is the importance and significance of the testimony or information, without which it would be extremely difficult or impossible to prove the following criminal offences: against the constitutional order and security, against humanity and other values protected by international law and organized crime (Art.5 LPP).¹ Decisions on inclusion, extension, suspension and termination of the Protection Program are passed solely by the Commission for Protection Program Implementation (Art. 7 LLP), while the Protection Unit directly implements Protection Program (Art.12 LLP). Protection Unit is a specialized organizational unit of the Ministry of Interior which implements the Protection Program and is constituted of three organizational units: Operational Unit, Operational-tactical and Security Unit and Operational Analytics, Support and Finances Unit.² The Commission is constituted of three members and are appointed for a term of five years, one member of the Commission is appointed from the ranks of judges of the Supreme Court of Serbia, the second member is appointed by the Republic Public Prosecutor from the ranks of his/her deputies, and the Head of the Protection Unit is a member of the Commission by virtue of the post held. Members of the Commission each have a deputy, appointed by the President of the Supreme Court of Serbia from the ranks of judges of the Supreme Court of Serbia, i.e. by the Republic Public Prosecutor from the ranks of deputy Republic Public Prosecutors. The deputy Head of the Protection Unit deputizes also for the Head in the Commission by virtue of the post held (Art.7 LPP). The Protection

¹Sasa Atanasov, The role of witness in discovering and proving criminal offences, Doctoral Dissertation, University of Prishtina, Faculty of Law Temporarily Located in Kosovska Mitrovica 2016, page 76-80

²[http://www.mup.gov.rs/wps/portal/sr/Direction of Police/ojdpp/Protection Unit](http://www.mup.gov.rs/wps/portal/sr/Direction%20of%20Police/ojdpp/Protection%20Unit) 5 May 2019

Unit implements the following special measures (Art.14, Para 1 LLP): physical protection of persons and property (Art.16 LLP),³ change of place of residence or relocation to another prison institution (Art.17 LLP),⁴ concealing of identity and ownership information (Art.18 LLP)⁵ and change of identity (Art.20 LLP)⁶. Besides, the Unit provides economic, social, psychological and legal assistance to the protected person (Art.12 Para 1 and 2 LLP).⁷ If the assessment of the relevant public prosecutor, investigative judge or president of the chamber finds that there is a direct threat to life, health, integrity or property of the party in criminal proceedings or close persons, he/she informs the Protection Unit of the need to take urgent measures. (Art.27 Para 4 LLP). On implementing exigent measures, the Protection Unit may apply all disposable measures within the Protection Program, except change of identity (Art. 14 Para 3 LPP). Urgent measures are applied until the Commission rules on the request for implementing the Protection Program (Art.27 Para 4 LLP). The relevant public prosecutor, investigative judge or president of the court panel may, ex officio or at the motion of a party in the criminal proceedings or by the Protection Unit after effective conclusion of criminal proceedings submit a request to the Commission to include a party in criminal proceedings and close persons into the Protection Program (Art.25 LLP). The request for the application into Protection Program includes: information on the person for whom protection is requested, description and legal definition of criminal offence due to which protection is requested, assessment of significance of testimony or information for the proceedings and circumstances indicating the risk faced by the person for whom protection is requested (Art.26 Para 1 LLP). A questionnaire is attached to the application for entering the Protection Program, stating personal information, material status, circle of close persons and other data, which is filled by the person for whom protection is, requested (Art.26 Para 2 LLP).⁸ Prior to the Commissions' decision on approving or rejecting the application of the Protection Program, Protection Unit is obliged to deliver the Assessment Report to the Commission within 15 days with assessment on threats to both the individual and the community, data on his/her health condition and recommended protection measures. After receiving the assessment from the Protection Unit, the chairman of the Commission promptly, and not later than three days, convenes the Commission which promptly, and not later than eight days (Art.28 LLP), passes a decision approving or rejecting the application of the Protection Program. The Commission immediately informs the applicant accordingly. Should the Commission approve the request for the application of the Protection Program, it shall instruct the Head of the Protection Unit

³Includes preventing of threatening to properties of the protected individual by using physical and technical measures.

⁴In the first case, protected person is temporarily or permanently relocated from place of permanent or temporary residence to location designated by the special Police Unit – Protection Unit and in second case, a person who is imprisoned is transferred from one penal institution into other.

⁵Includes making and use of ID or ownership document of the protected person with temporarily altered original data.

⁶Personal data of protected person are completely or partially altered and in certain cases, change in physical appearance may be ordered.

⁷ Economic and other assistance to protected persons includes monthly allowance and providing other forms of assistance until his financial independence and re-socialization in new environment. Allocated pecuniary aid is at the republic average level of salaries in commercial and non-commercial sector in Serbia У: Чарнић, Д., Где су и шта раде заштићени сведоци, *Политика*, 01.01.2014, http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=01&dd=01&nav_id=795674

20.04.2019.

⁸ Atanasov, S., *op.cit.*, page 80-81.

to enter into Agreement on Protection Program Implementation with a person whose protection is approved. The Protection Program shall be applied as of the day of the conclusion of the Agreement (Art.29 LLP). The Agreement on Protection Program Implementation contains: Agreement's parties, statement of a protected person on voluntary inclusion into Protection Program, statement of a protected person that the data from the Questionnaire is true and if otherwise the Agreement may be terminated; besides, it stipulates in particular the obligation of a protected person to: comply with the instructions of the Protection Unit during implementation of the Protection Program; inform the Protection Unit of any changes of circumstances which could affect the application of the Protection Program; present his/her accounts, legal transactions, financial and other liabilities; request consent from the Protection Unit prior to concluding legal transactions of larger scope; undertake all necessary measures to achieve financial independence until the end of the contract; Obligations of the Protection Unit: to apply protection measures only with necessary restrictions of fundamental freedoms and rights of the protected person; to determine the time period for and scope of providing economic assistance to the protected person; to provide the person with the necessary psychological, social and legal assistance; Duration of the Protection Program; Terms and conditions for termination of the Agreement; A clause that the Agreement was drawn up in a single copy and that it is kept with the Protection Unit and available only to the Commission during the application of the Program; that obligations deriving from the Agreement are not justifiable; a statement of the protected person that he/she understands the contents of the Agreement and is aware of mutual obligations, The date of signing the Agreement and signatures of the parties (Art. 29 LLP).⁹According to unofficial data for the last 14 years, since the Law was passed, more than 100 collaborators were included in the Protection Program. In 2006 and 2007, justice collaborator status was approved to 16 individuals, but this number decreased to 4 or 5 per year¹⁰, after the Amendments to the Criminal Procedure Code were adopted (*Official Gazette of RS*, no 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016). According to experience of the Serbian Protection Unit, the adaptation process to protection measures in the new surroundings, with new identity lasts for about three to four years. Between 2004 and 2014 none of the collaborators included in the Protection Unit Program was killed in retribution.¹¹

2. Program protection in the Legislation of North Macedonia

The Republic of North Macedonia has approached the standardization of justice collaborators program protection by adopting the Law on Witness Protection in 2005 (*Official Gazette of the Republic of Macedonia No.38/2005 – LWP*), with revisions and amendments adopted 13 years later, in 2018 (чл. 15-а. Закон за изменување и дополнување на Законот за заштита на сведоци, *Службени весник на Република Македонија*, 71/2018). The Law on Witness Protection prescribes the procedure and requirements for providing protection and

⁹ See. Atanasov, S., *op.cit.*, page. 81-82.

¹⁰Бозокин, М., Тема „Дневника“: Покајници у криминалним радњама – корист или терет?<https://www.dnevnik.rs/hronika/tema-dnevnika-pokajnici-u-kriminalnim-radnama-korist-ili-teret-28-02-2018>, 25.04.2019.

¹¹Carnic, D.,*op. cit.*.

assistance to justice collaborators, as well as protective measures in cases when proving the criminal act would have been accompanied with extreme difficulties or could not be conducted without a statement of a person, which, due to the possible danger of being exposed of intimidation, threatening with revenge or danger over life, health, freedom, physical integrity or property of bigger amount, does not agree in the capacity of witness, to provide statement in the crimes.¹²The mentioned law prescribes forming of two internal organization units – Council for Witness Protection (hereinafter the “Council”) and Department for Witness Protection (hereinafter the “Department”). Council makes the Decision for inclusion of a certain person in the Program, for cessation of the program and determines the measure of “change of identity”, while the Department operates within the Ministry of Interior, being directly responsible for implementation of non-procedural measures - to involve justice collaborators in the Program, upon Decision made by the Council, to decide on determination of the measures for protection, to implement the measures for protection, to give legal, psychological, financial and social aid to persons involved in program, to manage the financial resources allocated for the implementation of the Program, etc. The newly adopted 2018 LWP amendments and revisions expanded the authorities vested to the independent Public Prosecutor’s Office related to content of unauthorized communication interception (formed in 2017) and provided the option to the Council to submit the proposition for inclusion into Protection Program to a justice collaborator who had testified of crimes under jurisdiction of the Office – so called the Special State Prosecutor’s Office.¹³ Thus, the scope of criminal offences and the competent authorities involved in inclusion of justice collaborators into Protection program was expanded. Besides the justice collaborators, non-procedural protection is envisaged for witnesses and victims in capacity of witnesses who have testified in crimes against the state, against the humanity and the international law, organized crime and for which the Criminal Code stipulates sentence of at least 4 years’ imprisonment, along with their close persons (Art.3 LWP).¹⁴ The procedure for involvement the justice collaborator in the Program commences by the request submitted to the Council by the Public Prosecutor, initiated upon the request of the justice collaborator - person exposed to intimidation (Art.15 LWP), or upon the written request of the authorized Public Prosecutor, the judge who acts upon the alleged case or by the Ministry of Interior. The request for the involvement in the program submitted by the competent Public Prosecutor must contain: data about the person that is proposed to be involved into the Program (name, father’s name and last name, maiden name, unique ID number, residence, day, month, year and place of birth, profession, marital status, property, if, when and why the person was convicted, if and when he/she has served the sentenced punishment; proposed measures for protection of the person and proposal for their duration; description of the criminal act and assessment of the existing evidences; concrete facts and circumstances of substantial relevance for determining the factual situation related to the criminal act for which, the person proposed for protection, have information, but is not prepared to reveal it if his/her protection is not provided; content of the possible statement with assessment of its importance in the procedure; request by the person whose protection is

¹² Димовски, С., *Заштитениот сведок како инструмент во македонскиот правен систем*, Мај 2014, <https://www.pravdiko.mk/wp-content/uploads/2015/02/zastiten-svedok.pdf>, 20.04.2019, p. 12-13.

¹³ Navarro, C., Mier, J., *Komparativna analiza zakonodavstva o zaštiti svedoka u regionu Zapadnog Balkana*, Februar 2015, (Burnsajd, S., *Izmenjena i ažurirana verzija u novembru 2018*), p. 62.

¹⁴ Матовски, Н., Лажетик-Бужаровска, Г., Калајџиев, Г., *Казнено процесно право*, Академик, Скопје, 2011, p. 207.

proposed, for involvement in the Program of his/her close persons, if the person stated such a request; description and assessment of the danger that threatens the person suggested for protection; opinion from the Department containing the description and the assessment of the danger threatening the person whose protection is proposed, proposal of the expenses for conducting the measures for protection and proposal for measures for protection and their duration; other necessary data and information (Art.17 LWP). In order to make comprehensive assessment of the involvement into Protection Program, members of the Council for witness protection are appointed from different state bodies: representative of the Supreme Court of the Republic of Macedonia from the row of Judges, representative of the Public Prosecutor's office of the Republic of Macedonia from the row of deputy public prosecutors, the Director of the Directorate for executing sanctions at the Ministry of Justice (ex officio), representative from the MoI and the Head of the Department for witness protection at the Ministry of Interior (ex officio) (Art. 6 LWP). After considering the proposal for involvement in the Program, not later than 30 days from the day of submitting the proposal by the Public Prosecutor, the Council brings a decision for which he will inform the Public Prosecutor and the Department. The Council can bring decision if at least 4 members or their deputies are present at the session. For bringing a decision for involvement into the Program, for termination of the measures for protection, as well as for determination of the measure "change of identity", consent of at least 4 members of the Council is needed, and the other decisions are made with majority votes from the present members of the Council (Art.11 LWP). Positive decision of the Council enables the conclusion of the Agreement between the Department for Witness Protection (Department) – DWP and a justice collaborator. Agreement contains protection measures stipulated by the Department and obligations of the justice collaborator as a protected person. The Law on Witness Protection prescribes several protection measures, such as: keeping the secrecy of the identity, providing personal protection, change of the place of living or residing inside or outside the country and change of the identity (Art.26 LWP). Provisions of the Rulebook on Special Protection of Justice Collaborators (2010) prescribe protection of justice collaborators currently serving a sentence in a penal institution. Namely, this Rulebook stipulates special protection of justice collaborators in a way that they are being separated from other convicted persons and placed into special premises inside the penal institution, so called "a prison inside the prison", with restricted communication, i.e. only authorized personnel appointed by the penal institution management can communicate with them, their meals are being separately prepared and can be transferred from one sector to another within the same institution or even transferred to another penal institution, should their protection be compromised.¹⁵ Prior to introduction of protection measures, justice collaborator must be informed on their content, in order to be sure that he can change his life at all. This is the reason for inclusion mandatory agreement obligations to comply: that a justice collaborator will inform the Department on any change occurred during Program Protection, that will follow the guidelines of the Department, that for the aims of his/her protection he/she agrees to be put, without a court order, under surveillance and recording of the means for communications and the resident premises (Art. 25 LWP). By signing the Agreement, he shows that he accepts the new way of life willingly and consciously. In regards of impediments of life in new environment, economic measures are mandatory component of the protection program. Financial means for implementation of this law are provided from the Budget of

¹⁵Navarro, C., Mier, J., *op. cit.*, p. 69.

Republic of North Macedonia (funds allocated for basic life needs according to economic standards of the place of residence, employment options and other measures for provision of economic stability (Art. 41 LWP). Precondition for allocation of economic support is previous settlement of all credits, loans, debts or other financial liabilities. The person who contrary to this law reveals the information related to justice collaborator under Program protection shall be punished with imprisonment sentence, depending on the detrimental consequences. If the act leads to causing serious body injuries, the perpetrator shall be punished with imprisonment sentence of minimum eight years. And, if the act leads to death or suicide, the perpetrator shall be punished with imprisonment sentence of minimum 15 years or with life imprisonment (Art. 42 LWP).

3. Program Protection in the Legislation of the USA

Due to impediments in proving organized crime criminal offences by special investigation methods, the American criminal justice introduced the practice of justice collaborator's testimony based on agreement with attorney general just around the time when the competent authorities began to face new form of criminal activity (during and after the repeal of the Prohibition). In the USA this consensual procedural form is usually related to offences of drug abuse which are core activity of most criminal organizations, due to high profit. Specific hybrid function of one subject is imminent to adversarial model of criminal procedure where collaborator may be also act as witness. This resulted in merging two functions in one individual, the collaborator's function which he had on conclusion of the agreement and the witness' function which he had once the court approved the agreement and when he began to testify. When the court finds the testimony reliable, complete and significant, in the sense that it may support indictment against members or/and leaders of criminal organization, the court issues more lenient sentence to the justice collaborator, as previously settled in the agreement between the collaborator and the attorney general. Protection during imprisonment will be provided if persons against whom he has testified are among the fellow convicts. Prior to introduction of formal protection program, the first collaborator who was provided protection during imprisonment was Joseph Valachi, the first mob insider. In fear of retribution by the Boss of Mafia Genovese Family, 200 US Marshals guarded Valachi in a Federal Court while he insisted on preparing his own meals, in fear of getting poisoned.¹⁶ Aware of what could be the consequences of breaking one of basic rules of criminal organization, the "Silence Code", U.S. Justice Department has put protection program to formal stipulating frames in the *Organized Crime Control Act* from 1970.¹⁷ Prior to directing a collaborator to an institution to serve a term of imprisonment, attorney general is obliged to provide data on collaborator and convicts he should be separated from to a warden of the institution or in case of a federal prison to the U.S. Marshals Service. Depending on whether he/she is serving in a local or federal institution, FBI agents are responsible for his/her security. In order to prepare a person for living conditions under protection program once he is free, competent authorities from the Marshals Service will have a talk with him/her at the

¹⁶*Good Practice for the protection of witnesses in criminal proceedings involving organized crime, United Nations Office on Drugs and Crime, Viena, New York, 2008, p. 7.*

¹⁷<https://www.usmarshals.gov/duties/factsheets/witsec.pdf>, 04.11.2018.

appropriate time, six or nine months prior to release.¹⁸ *Witness Security Protection – WITSEC* introduced by *The Organized Crime Control Act* (Title V of the Organized Crime Control Act, Public Law 91-452, 84 Stat., October 15, 1970) was not entirely precise or comprehensive and was administered unsystematically. After more than a decade, it was reformed and *The Witness Security Reform Act* was adopted in 1984. This Law stipulated certain segments of program protection and amended the first one by adding¹⁹: strict criteria for inclusion into protection program, including risk assessment, especially the level of security threats to witnesses, signing the Memorandum of Agreement by the witness entering the Protection Program, which actually marked his voluntary participation, stipulating precise obligations imposed by Memorandum once he enters the Program, denoting sanctions in case of violation of the obligations, sanctioning unauthorized publicity by anyone, as data on program participants remain classified. The *Witness Security Reform Act* is still applied with some amendments in the Section 18 of the *United States Code*, a Section related to collaborator protection (§ 3521, Collaborator relocation and protection, Title 18 of the United States Code).²⁰ The procedure for inclusion into program protection and criteria that need to be fulfilled, stipulated by this Law, are applicable in the whole territory of the USA, because the legal regulations were actually adopted on a federal level. Depending on nature and type of conditions required by an individual, we can divide criteria into two categories: general and special. General conditions relate to type of offences, and only a witness who has previously testified in criminal proceedings related to organized crime, drug trafficking, racketeering, violent criminal²¹ will be taken into consideration. These severe offences threaten the security of witness to a great extent. Should this general condition be fulfilled, public prosecutor will submit the application form to the Witness Protection Unit at the Crime Section of U.S. Justice Department. Application Form data denote special conditions in order to initiate program protection. Firstly, the Attorney General submits resume of testimony in a written form, as an evidence of collaborator's actual testimony in criminal proceedings for offences of organized crime followed by the results of testimony. Based on results of testimony, collaborator's risk assessment is made. This may be court records which clearly show that the collaborator's testimony has contributed to either revealing of the accomplices' offences or sentencing them in court. Regardless of collaborator's previous criminal record, it is not a pre-condition for inclusion into protection program, as criminal record is something which can be expected from an individual who was a part of criminal organization, but must be taken into consideration in order to have general picture on future participant of the protection program and what risk level he may be exposed once he is relocated to a new environment. Finally, psychological assessment of him and his family is very important, as well as conclusion that they are ready to adapt to a new environment. By considering whether stated criteria are fulfilled, the initial phase of the procedure for involvement into protection program is initiated. Next phase goes step further and the collaborator signs the Memorandum of Agreement. Memorandum contains specified list of obligations and, by signing it, the justice collaborator complies with

¹⁸<https://www.justice.gov/jm/jm-9-21000-witness-security#9-21.130>, 04.11.2018.

¹⁹ Lawson, M. R., *The Federal Witness Protection Program Revisited and Compared: Reshaping and Old Weapon to Meet New Challenges in the Global Crime Fighting Effort*, University of Miami Law School Institutional Repository & Comparative Law Review, vol. 21, 2014, p. 198-199.

²⁰<https://www.law.cornell.edu/uscode/text>, 20.06.2019.

²¹ Seabrook, L. A.; Stewart, J., *Snitches Get Stitches: Combating Witness Intimidation in Gang-Related Prosecutions*, United States Attorneys' Bulletin, Vol. 62, No. 3, 2014, p. 88.

it: that he would not reveal classified information of the protection program, regularly inform the program officer on all the activities he undertakes, especially on his whereabouts or residence and especially obliges not to commit any offence while under the program (§ 3521(d)(1) Title 18 of the United States Code). U.S. Justice Department is competent authority to pass a decision on inclusion into program while the protection measures are executed by the program officers of the Witness Protection Unit. Protection measures include protection of the collaborator and members of his family against violence, their relocation and moving to a more secured area, providing psychological assistance by the professionals for easier adaptation to a new environment (§ 3521(b)(1) Title 18 of the United States Code). They receive financial assistance from special funds designated exclusively for such purposes in order to meet their basic needs, while designated amount reflects living standards of a new environment, local economy, protected family size (in USA designated average sum for each witness (participant) and his family members equals 60 000 USD § 3521(b) (1) (d) (e) (x) Title 18 of the United States Code). They are provided with this sum of money till they become independent and they also get help in finding work. The most important segment of program protection is change of identity of the collaborator and his family. This comprises issue of new identification documents, change of social security and health insurance numbers,²² and in case of highest risk assessment, change of physical appearance by performing certain surgery interventions, again being financed from the special fund. As the identity change includes new name and family name, the collaborator and his family members should be cautious and practice a lot in order to prevent occasions in which some family members, especially children, blurt out their real name and family name to someone in everyday communication. New location and identity data are strictly confidential and in case of reveal, the 5000 USD fine is stipulated as main pecuniary punishment or five years imprisonment (§ 3521(b)(3) Title 18 of the United States Code). Since 1970, US Marshals Service put under program protection measures almost 7700 collaborator and 9800 family members.²³ Among them were the individuals who testified on the ground of cooperative settlements. WITSEC has served as a pattern for legislation in European countries in regards of regulation of basic components of program protection. We have chosen the legislations of England and Italy as they both regulate justice collaborator's testifying within consensual criminal procedure form.

4. Program Protection in the Legislation of England

In England, collaborator's testimony was a powerful evidentiary tool against organized crime offences, especially during 19th century when there was no systematic investigation or organized police enforcement, which represented a hampering circumstance in collecting prosecution evidence.²⁴ Agreement on justice collaborator's testimony was settled in 2005, after years of turmoil, by adopting the Law stipulating exclusively the suppression of organized crime, the *Serious Organized Crime and Police Act*. The reversal happened when the England, country traditionally inclined to European-continental criminal procedure

²² Лукић, Т., *Посебности кривичног поступка за организовани криминал, тероризам и корупцију*, Универзитет у Новом Саду, Правни факултет, Центар за издавачку делатност, Нови Сад, 2008, стр. 260.

²³ Вулевић, О., *Институт заштићеног сведока и његово функционисање у законодавству Републике Србије*, *Безбедност*, 3/2017, стр. 187.

²⁴ Hughes, G., *Agreements for Cooperation in Criminal Cases*, *Vanderbilt Law Review*, vol. 45, no. 1, p. 3.

system, opted in practice for the adversarial elements of criminal procedure,²⁵ instead of former investigative procedure. Protection program of participants who testified according to the Agreement was regulated in Chapter IV of the *Serious Organized Crime and Police Act*. In its essence, the terms for inclusion into Program are the same as in USA with certain discrepancies related to type of offences. Basic conditions refer to whether a person who was an accomplice in crime and member of a criminal organization committed serious act of crime. The legislation in England denotes only organized crime offences as serious, unlike the American legislation that considers serious some other offences, like racketeering, drug trafficking, violent organized crime. When the court issues a decision finding the justice collaborator guilty, sentencing him to a more lenient punishment, the court also evaluates not only the importance of justice collaborator's cooperation, but the risk he is exposed to. In the judicial practice in England, there are records of court being extremely mild in reducing the sentence (Blackburn)²⁶, so the sentence was shortened. Even then, after risk assessment, the justice collaborator is provided with assistance, but compared to the American, it is quite short-termed. Decision on inclusion into Protection Program passes the Head of *UK Protected Persons Service*, formed as a part of *National Crime Agency – NCA*, while the officers of the Unit execute protection measures. In order to bring the right decision, Head of Service coordinates with the Attorney General, who, as a party in conclusion of the Agreement, is well informed on all the details of the proceeding. Based on court records submitted by the Attorney General, Head of Service is firstly assured that the individual has testified according to the Agreement in a criminal proceeding against one or several criminal offences of organized crime. In order to make risk assessment, Head of Service must have insight into court records in order to see whether a collaborator contributed to disclosure or conviction of his former accomplices. Besides the procedural condition, one other condition is evaluated – collaborator's personality. Before the expiry of sentence, an expert person will evaluate the psychological side of his personality and decide whether he is capable of adapting to a new way of life (Art. 82. (1),(2),(3),(4) *Serious Organized Crime and Police Act 2005*. This is especially important when it comes to change of identity being the vital segment of protection program, but is not approved to everybody, as they are not ready to face this change and deal with it accordingly. On evaluation of fulfillment of conditions, the collaborator signs Memorandum of Agreement. Content of the Memorandum is exact to the one prescribed by the American legislation. The only difference is related to punishment stipulated by legislation in case of unauthorized publishing of information in regards of any segment of program protection (by signing the Memorandum, collaborator commits to keep confidential all data on current location, change of identity, etc). For this criminal offence, legislative provisions in England stipulate punishment by a term of imprisonment of two years. In average, funds allocated to each participant range from 10 000 to 50 000 GBP and the precise sum is set according to local economy and number of participants in the program.²⁷ Local economy may

²⁵ Landsman, S., *Rise of the Contentious Spirit: Adversary Procedure in Eighteenth Century England*, Cornell Law Review, vol. 75, no. 3, 1990, p. 604.

²⁶ Stated according: Slater, E., *Special report: The return of the supergrass*, 8 October 2012, <https://www.independent.co.uk/news/uk/crime/special-report-the-return-of-the-supergrass8201325.html>, 8 Nov 2018 Blackburn testified against two accomplices in a murder case and he was acting as an accomplice. Court has reduced his sentence from 12 to 2 years and 6 months, which is a significant reduction by 79%.

²⁷ Fyfe, N., Sheptycki, J., *International Trends in the Facilitation of Witness Co-Operation in Organized Crime Cases*, *European Journal of Criminology* 3(3), 2006, p. 332.

refer to any new relocation venue in England or some other country, in case of high risk. Besides the adults who have challenges with change of identity, there is especially vulnerable category of children and teenagers for whom new life in most cases becomes a life under armor.²⁸ One of the biggest challenges comes from modern technology. Since early age, children use mobile phones, while social networks have become a sort of disease. Once they and their parents are included into protection program, they must pay extra attention when using means of modern technology. For example, Service officers had to relocate family twice when a teenager, member of protected family, shared the name of a Mall where he shopped his clothes on a social network.²⁹ Shared information must be treated with great caution. In the period from 2006 to 2011, England program protection included 140 justice collaborators and from 2013 to 2016, 45 justice collaborators (*supergrasses*).³⁰ These records would certainly have increased, should data on family members be included, too.

5. Program protection in the Legislation of Italy

The Italian legislation has started the initial cooperation between the justice collaborator and competent authorities in criminal offences related to terrorism. After members of Brigade Rose (Red Brigades) testified in exchange for more lenient punishments, the authorities have achieved successful results in suppression of criminal activities of this terroristic organization, which resulted in present defeat in most of the Italy.³¹ Although organized forms of criminal activities emerged before terrorism, the Italian legislator has regulated the issue of penitism in criminal offences of organized crime only after being convinced of its significance, as a result of positive experience in combating against terrorism. In The Law no 152 dated 13 May, 1991, collaboration between justice collaborators and competent authorities in criminal offences of organized crime has been regulated for the first time. For a defendant who is accused in a criminal proceeding for a criminal offence of organized crime and has decided to plead guilty on the criminal offence and testifies against his accomplices, by collaborating with the Attorney General, in Italy is used the term “collaborator to justice” (*collaboratore di giustizia* or *pentiti*). This Law also stipulates non-procedural measures of justice collaborator’s protection and by the Law no 45 dated 13 February, 2001 these measures include also the “witness to justice”.³² Among these laws, there are no essential differences in non-procedural measures of collaborators to justice. These measures were introduced firstly in case of Tommaso Buscetta, a collaborator to justice, in 1984 when normative framework has not existed yet. Still, this man was provided protection, after he was released from prison (he was relocated to unknown location with new identity),

²⁸ Fyfe, N., McKay, H., *Desperately Seeking Safety*, The British Journal of Criminology, Vol 40, No. 4, 2000, p. 676.

²⁹ <https://www.independent.co.uk/news/uk/crime/special-report-life-in-witness-protection-2075422.html>, 10.11.2018.

³⁰ Stated as per: Slater E., *op.cit.*

³¹ Tak, P. J. P., *Deals with Criminals: Supergrasses, Crown Witnesses and Pentiti*, European Journal of Crime, Criminal Law and Criminal Justice, vol. 5, no. 1, 1997, p. 19.

³² Essential difference between associate to justice and witness to justice is in their procedural characteristic. Associates to justice are the defendants who take testimony, while witness to justice are merely witnesses with direct or indirect information of criminal offences committed by members or leaders of criminal organizations.

as his life in freedom was compromised due to threats of the Sicilian Mafia.³³This Law has not only specified the program protection, but was winning over witnesses for collaboration with competent authorities, proving to be a stability factor for security preservation. A justice collaborator can be included into program protection under the following conditions (Art. 2. of the Legge 13 febbraio 2001, n. 45, G.U. n. 58 del 10 marzo 2001 – Supplemento ordinario n. 50): his testimony should relate to criminal offences of illegal drugs, murders and organized crime; collaboration between justice collaborator and the Attorney General should terminate within 180 days since the beginning of negotiations while the court finds the testimony complete, truthful and significant; that he has served ¼ of a prison sentence, and in case of a severe criminal offence, 10 years of a prison sentence; that he is, according to competent authorities' evaluation, under threat of retribution after release from the prison. Same as in the USA, the Italian legislator has prescribed wider range of criminal offences that need to be committed in order to fulfill a condition for inclusion into protection program. Decision on evaluation of conditions and inclusion into program is passed by the Central Commission of the Ministry of Interior, after proposition submitted by the Attorney General. The Commission is composed of judges and investigators, long-term professional experts in suppression of organized crime. Proposition submitted by the Attorney General should comprise short factual description of the collaboration, state the results of the collaboration, if any, and if achieved, state their importance. At the end, the proposition should describe all the circumstances of the case, in order for Commission to evaluate them as dangerous and emergency (Art. 6. (1) of the Legge 13 febbraio 2001, n. 45, G.U. n. 58 del 10 marzo 2001 – Supplemento ordinario n. 50). Application Form contains same obligations as the Memorandum of Agreement in USA and England. Finally, by signing the Memorandum, the justice collaborators acknowledge that they comply with its contents. There are no substantial discrepancies of protection measures, compared to American and English legislation. They are executed by the Central Protection Service and they comprise: relocation in or out of the country, change of identity, measures of economic support.³⁴ Average costs per participant sums up to 14 500 GBP, which according to data of the Ministry of Interior puts a financial burden of 72 million of pounds to the state, for a total of 5000 protected witnesses per year.³⁵ Decision on duration and suspension of protection measures is passed by the same Commission that decides on the inclusion. Re-evaluation of collaborators' obligations stipulated in the Agreement is done periodically, every six months (Art. 8. (2) of the Legge 13 febbraio 2001, n. 45, G.U. n. 58 del 10 marzo 2001 – Supplemento ordinario n. 50). Suspension usually happens in cases of committing criminal offences, continuing with his criminal career or failing to commit to stipulated obligations. From 1995 to 2007, 9500 justice collaborators coming from famous crime organizations of Cosa Nostra, Camorra, 'Ndrangheta and Sacra Corona Unita have been brought up before the Italian judiciary authorities. Including members of their families, measures of protection programs included a total of 13 334 individuals. In support to fact that the majority of them

³³*Good Practice for the protection of witnesses in criminal proceedings involving organized crime*, p. 13.

³⁴Allum, F.; Fyfe, N., *Developments in State Witness Protection Programs: The Italian Experience in an International Comparative Perspective*, Policing: A Journal of Policy and Practice, Vol. 2, No 1, 2008, p. 93. (92-102)

³⁵Fyfe, N.; Sheptycki, J., *op. cit.*, p. 332.

were liable to their program commitments, goes the fact that the Commission passed a decision on suspension of the Program in only 554 cases.³⁶

Conclusion

Program protection of individuals who has testified against their former associates upon the Agreement is certainly a significant segment in combating against organized crime. The decision of justice collaborators to break the “Silence Code” is under influence of, on one hand, offered privileges and on the other, liabilities of the state that may be characterized as non-agreement (measures of program or non-procedural protection). During the collaboration with the Attorney General, the collaborator will always have a dose of fear or apprehension, as measures of sentence’s reduction and commencement of protection measures are not effective immediately, but only after the collaborator give significant contribution to disclosure or indictment of members and leaders of criminal organizations. It is actually a transitory period in which he is provided with protection during criminal proceeding, in order to overcome difficulties. Measures of procedural protection, sentence reduction and non-procedural measures have a cumulative function of creating sense of safety to the witness. First measures are being realized during the trial, second after the trial. Program protection was designed not only to keep a collaborator safe, but to prepare him for the testimony. A foundation to program protection was set by the American legislation, while legislations of the European countries simply accepted it, with not so significant discrepancies. The content of program measures remains the same, with discrepancies present only in some segments of repressive, financial character and the authorities deciding on the inclusion into program. On term of imprisonment that the witness is sentenced to serve, if he does not comply with program obligations, decides a competent authority according to adopted penal policy in each state. Protection program model which includes decision passed by a Commission is adopted in all countries, except the England. Annual allocation of funds for protection program participants also differs. Key role plays a number of persons willing to participate, not the scope of organized criminal activities. According to experience from comparative legislation, non-procedural protection has its positive and negative sides. The majority of protected witnesses who usually have criminal background have complied with the liabilities stipulated in Memorandum and accepted the new way of life. Low recidivism rate comes as a result of their rational choice to stop their criminal career and start a safe life. On the other hand, to get accustomed to new life is extremely hard not only for the witness, but also for his family members, especially the children. Besides the measures of physical protection, providing financial assistance, overcoming the problems related to accustoming to new environment, psychological support also play the important role. On annual level, each state allocates significant funds for financing program participants which draws huge criticism in public. However, none of the states will desist from investing into program measures due to awareness of its importance in combating against organized crime. When a testimony contributes in indictment of members and leaders of criminal organizations to a long term of imprisonment, the size of criminal activities diminishes accordingly.

³⁶http://www.camera.it/_bicamerale/leg15/commbicantimafia/documentazionetematica/25/schedabase.asp#Normativa 08.11.2018.

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