



Strasbourg, 15 May 2018

CDPC(2018)10

EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

DRAFTING WORKING GROUP ON WITNESSES AND COLLABORATORS OF JUSTICE

Paris, 19 April 2018 (9.00) - 20 April 2018 (13.00)

Council of Europe Office in Paris, Room 1

SUMMARY MEETING REPORT

Document prepared by the Secretariat
Directorate General I – Human Rights and Rule of Law

BRIEF FOREWORD

The drafting working group:

- adopted the agenda;
- took note of the information provided by the Secretariat on the reasons for dealing with the issue of witness protection and collaborators of justice;
- considered the Council of Europe's legal instruments to be taken into consideration when reviewing the recommendation Rec (2005)9 of the Committee of Ministers to Member States on the protection of witnesses and collaborators of justice;
- considered the report prepared by Prof. Dr. Lorena Bachmaier and Mr Iwan Waltenburg entitled "Report on the Assessment of the answers to the questionnaire: Review of the Recommendation Rec(2005)9 on the protection of witnesses and collaborators" and held a discussion on the main points in the report, notably the replies received to the 19 questions;
- held a discussion regarding the ways of distinguishing "threat assessment" from "risk assessment" used in different European countries;
- discussed the relevant domestic and European law and practice regarding witness protection and collaborators of justice;
- considered and defined the main aspects of the future non-binding legal instrument on witness protection and collaborators of justice;
- decided to present a preliminary draft recommendation at its next meeting.

1. The drafting working group on witness protection held its first meeting in Paris, France, on 19-20 April 2018 at the Council of Europe office premises.

I. Opening of the meeting and adoption of the agenda

2. The agenda was adopted (see Appendix I).

II. Chair

3. Mr Jesper Hjortenberg, co-ordinator of the activities related to Transnational Organised Crime, (hereafter, TOC), chaired the meeting. He presented the Council of Europe White Paper on TOC and its Action Plan.
4. Each representative of the drafting working group introduced herself/himself with a view to getting acquainted.

IV. Information by the Secretariat

5. Mr Carlo Chiaromonte, Head of Criminal Law Division, presented the terms of reference of the European Committee on Criminal Problems (CDPC) which include the elaboration of a non-binding legal instrument on witness protection.
6. He introduced Mr Oscar Alarcón, who will be the Secretary of the drafting working group on witness protection and presented the terms of reference of the drafting working group [[CDPC \(2017\) 25](#)], as adopted by the CDPC at its 73rd Plenary session (Strasbourg, 28 November – 1 December 2017), putting emphasis in particular in the following items to be tackled by the non-binding legal instrument (the challenge of new technologies - biometrics, social media and the internet; the co-operation of collaborators with the justice system and the needs and rights of victims and collaborators as witnesses; international co-operation when implementing witness protection measures and programmes).

V. Council of Europe related work on witness protection and collaborators of justice

7. The drafting working group took note of the existing Council of Europe legal instruments related to the topic, which should be taken into consideration when drafting the new non-binding legal instrument¹.

¹ [Recommendation No. R \(97\) 13](#) of the Committee of Ministers to Member States concerning intimidation of witnesses and the rights of the defence; [Recommendation Rec \(2005\)9](#) of the Committee of Ministers to Member States on the protection of witnesses and collaborators of justice; **Resolution 1784 (2011)** Protection of witnesses as a cornerstone for justice and reconciliation in the Balkans; [Resolution 2038 \(2015\)](#) Witness protection as an indispensable tool in the fight against organised crime and terrorism in Europe; [Recommendation 2063 \(2015\)](#) Witness protection as an indispensable tool in the fight against organised crime and terrorism in Europe.

VI. Preliminary considerations

8. The drafting working group took note of the presentation provided by the scientific experts on the current trends and main concerns in Council of Europe member States in the field of witness protection and collaborators of justice, following the “Report on the Assessment of the answers to the questionnaire: Review of the Recommendation Rec(2005)9 on the protection of witnesses and collaborators”; it also considered the report prepared by prof. Dr. Lorena Bachmaier Winter on “Review Recommendation Rec (2005)9 on the protection of witnesses and collaborators” and held a discussion on the main items of the report.
9. The representatives of the working group gave information during a *tour de table* on the current legislation in their national systems in the field of the protection of witnesses.
10. The working group considered the means used in different European countries to identify “threat assessment” and “risk assessment” and distinguish between them.
11. The working group also discussed the relevant domestic and European law and practice presented by the representative from EUROPOL. The participants expressed a particular interest in the case law of international courts on the topic.

VII. Drafting a recommendation on witness protection and collaborators of justice

12. The working group agreed on the scope, definitions (witness protection unit, risk assessment, etc.) and some basic aspects of the future recommendation. It decided to concentrate mainly on certain areas of witness protection units such as: analysis of capability, financial management, IT capabilities and psycho-social support.
13. In the light of the discussions, the participants considered whether the question of international co-operation was still a challenge; the length of the programmes of witnesses (maximum 2 years); whether re-socialisation of the witnesses was the principle to be used; the responsibility of the witness protection unit to inform the witness on the use of social networks, duties and rights; whether there should be a possibility of consulting witness protection specialists.
14. The participants agreed that two principles (confidentiality of the whole process and trust) should be included in the preamble of the new recommendation. They also agreed that the questions of health issues, juveniles and reciprocity, in particular in the case of small/poor countries and financing of certain costs arise, should also be considered.
15. The working group agreed on the main points of a future recommendation, in particular:
 1. to underline that there should be a legislative basis, identifying the minimum content of these rules. Delimitation of this minimum content;

2. to introduce a definition of *Risk assessment* and *Threat assessment*. In this regard, to take into account that under risk assessment the 2005 Recommendation introduces the concept of “serious intimidation”;
3. to introduce a definition of Witness Protection Units, which should be different from Witness Protection Programmes (Item 22 to 24 of the 2005 Recommendation).
4. to consider the following elements:
 - physical protection
 - case management, logistics, psychosocial, witness security, witness handling
5. to introduce best practices;
6. to review item IV of the 2005 Recommendation (International co-operation);
7. to enhance e-protection: IT capacities;
8. that one of the principles should be “*integration and re-socialisation self-efficiency*”;
9. to introduce social support. Facilities should also be granted to integrate witnesses into working and social life, etc. Both countries (the sending and receiving country) should aim to facilitate the life of witnesses:
 - inclusion of the witness at the “immigration programmes”;
 - What kind of permission to stay for witnesses? legal basis; asylum status requirement of co-ordination between entities/authorities/ministries for relocation;
10. to introduce biometric protection. How to overcome the biometric identifier?
11. infringement of the obligations of the protected person:
 - Which are the effects on relatives under the protection programmes?
 - Issue of social responsibility;
 - responsibility from the witness protection unit in informing the witnesses of the use of social networks, duties and rights in IT;
 - to consider the possibility of consulting witness protection specialist;
 - to provide capacity building to stakeholders (judges and prosecutors). Every decision maker involved with the protection of witness should receive a briefing (awareness). Need for co-operation in view of the same goal and efficiency of the system;
12. the need for certain measures to build trust;
13. to cover psycho-social support.

VIII. Other business

16. The working group decided to present a draft preliminary recommendation at its next meeting as a basis for discussion.
17. The next meeting of the PC-GR-DD is scheduled for September/October 2018.

Appendix I



Strasbourg, 16 April 2018

Working Group WP (2018)OJ EN

DRAFTING WORKING GROUP ON WITNESSES AND COLLABORATORS OF JUSTICE

Paris, 19 April 2018, 09 a.m. - 20 April 2018, 1 p.m.

Council of Europe Office in Paris, Room 1

DRAFT AGENDA

1. OPENING OF THE MEETING	
2. ADOPTION OF THE AGENDA	WG WP (2018)OJE
3. WORDS FROM THE CHAIR: TOC COORDINATOR	
4. INFORMATION BY THE SECRETARIAT	
4.1 Terms of reference of the European Committee on Crime Problems (CDPC)	CDPC ToR
4.2 List of decisions of the last meeting of the European Committee on Crime Problems, November 2017	CDPC (2017) 27
4.3 Council of Europe Action Plan on Combating Transnational Organised Crime (2016-2020)	Action Plan on TOC
4.4 Terms of reference of the drafting Working Group	CDPC (2017) 25
5. COUNCIL OF EUROPE PREVIOUS WORK ON WITNESS PROTECTION	

5.1 Recommendations and Resolutions

- [Recommendation No. R\(97\)13 of the Committee of Ministers to Member States concerning intimidation of witnesses and the rights of the defence](#)
- [Recommendation Rec \(2005\)9 of the Committee of Ministers to Member States on the protection of witnesses and collaborators of justice.](#)
- Parliamentary Assembly of the Council of Europe:
- [Resolution 1784 \(2011\) Protection of witnesses as a cornerstone for justice and reconciliation in the Balkans.](#)
- [Resolution 2038 \(2015\) Witness protection as an indispensable tool in the fight against organised crime and terrorism in Europe.](#)
- [Recommendation 2063 \(2015\) Witness protection as an indispensable tool in the fight against organised crime and terrorism in Europe.](#)

6. PRELIMINARY CONSIDERATION ON WITNESS PROTECTION AND COLLABORATORS OF JUSTICE

- 6.1 Presentation by the scientific experts on the Report on the Assessment of the answers to the questionnaire: Review of the Recommendation Rec(2005)9 on the protection of witnesses and collaborators
- 6.2 Presentation by each member of the Working Group. Information of any (particular) measure to be included in the updated recommendation
- 6.3 Discussion

[CDPC \(2017\) 21](#)
[Rev](#)

7. DRAFTING OF THE REVIEW RECOMMENDATION

- 7.1 Main items to be included in the updated recommendation
- 7.2 Discussion

8. OTHER BUSINESS

- 8.1 Forthcoming meeting of the Working Group
- 8.2 Other

