

Preventing Human Trafficking in the Western Balkans – A Particular Review in Albania, Kosovo and Serbia

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Abstract

Preventing and combating trafficking in human beings represents one of the major tasks today that Western Balkan countries have, because the access right of these countries to this phenomenon, can open or close your path towards the European Union. This is because most people trafficking in most cases is part of organized crime, as a condition for being part of the European Union is to prevent and combat organized crime and also trafficking of human beings. So, successful prevention also is the successful fight of human trafficking. A special importance, prevention of human trafficking, has also reports of the United States of America, which issued for each year, where the U.S. do not merely report only on U.S. territory but also for other countries in the whole world, including the Western Balkan countries and where a part of this report is devoted to the prevention of human trafficking in each of these countries and recommendations for improving the situation on the ground. The purpose of this paper is to present approaches in the Western Balkan countries to prevent human trafficking and approaches of these countries in the issuance and adapting national laws in line with European Union documents.

Keywords: prevention, trafficking, human, beings, Balkans

1. Introduction

After the evaluation of risk that might threaten the trafficked victims and their family members or evidence itself or other important evidence for criminal procedure, it is also necessary to look into taking measures for protection of victims, either when they are only victims, or when they are witness, too, or also when they do not want to cooperate at all.

Protection of victims is necessary from the moment of victim identification and identification and evaluation of risk, therefore, protection of trafficked victims can be divided into three stages, as in the following: pre-trial stage, the stage of the development of regular criminal procedure and the stage after the regular criminal procedure is over.

The division of these stages is important not only for the criminal procedure but also for the victim itself, taking into consideration that in these three stages different actions need to be taken for the protection of victims, measures which could be related also with the measures of assistance and support to trafficked victims in the aspect of health, shelter, clothing and food.

Anyway, according to Law on Prevention and combat against trafficking in human beings and protection of trafficked victims¹, personal data, private life, victims' identity of trafficking in human beings is protected by the authorities of law enforcement during the criminal procedure, whereas, registration, maintenance, and using of trafficked victims' personal data is accomplished in accordance with conditions prescribed by Law on Protection of Personal Data.

Regarding this, also the compilation of agreement on exchange of information is prescribed between the authorities which deal with the identification and assistance of victim, as well as criminal investigation via respecting in general the protection of personal data and privacy and victims' safety. All exchanged information between the victim and the professional who provides medical, psychological, juristic, or other assistance services, are confidential and are not exchanged with third persons without the consent of the victim, and in cases when the victim is a child, without the consent of his/her legal representative. Furthermore, according to this law, it is prohibited to disclose the data related to state protection measures for victims of trafficking in human being, persons who provide such a protection, as well as persons who provide assistance in combating the trafficking in human beings.

Today, all Western Balkan countries have promulgated their laws on protection of witnesses and taking into consideration all these countries, intentions to get the membership in the European Union, their laws are mainly the

¹ Law on Prevention and combat against Trafficking in Human being an Protection of Trafficked Victims in Kosovo, 2013, Article 18, p.11

same, except nominations and some internal specifications, but the purpose of all these laws is to provide the trafficked victims with assistance in the three aforementioned stages.

Besides the laws on protection of witnesses, there are also criminal procedures codes in all Western Balkans countries, which have prescribed provisions on protection of witnesses, but, although, at the first sight the existence of two legal acts, codes and abovementioned laws looks as unnecessary, these legal acts are not in contradiction with one another, but rather, supplement one another, because, as criminal procedures codes foresee provisions which regulate issues of criminal procedure, the law deals with conditions for protection, kind of protections, competencies of bodies that provide that protection and other administrative issues.

Any person who is a witness, or injured party, who reports or testifies on facts and circumstances, who are objects of a relevant proof in a criminal procedure can be a person under protection in Kosovo, for criminal acts for which is foreseen sentence by imprisonment of 5 years and more, in which is included also trafficking in human beings and due to these reports and evidences is in a serious risk².

In Albania also persons protected together or individually, are witnesses, co-operators of justice and persons related to them, which means that this counts for the witness of justice, respectively, for the person who is a witness, or injured party, testifies or provides statement on facts or circumstances statements of evidences is put in danger, because of blood connections, marriage, co-living of fact or close personal relationship that they have with the witness ...³.

In Croatia a protected person is one who is in risk him/herself and also his relatives who are exposed to a serious danger with their life, health, their body, freedom or property in a big amount is outraged, because of the testimony in the criminal procedure for criminal acts prescribed by Law on Protection of Witnesses⁴.

In Bosnia and Herzegovina a threatened witness is the one whose personal safety or his family's safety is risked due to his/her participation in the criminal procedure, as a result of threatening, frightening or similar actions that are related to his/her testimony, or the witness considers that there are grounds for fear that such a danger for sure may be the case as a result of his/her testimony⁵.

In Montenegro, a person may be a protected witness when there are grounds for fear either for him/her or for his/her relatives, due to providing testimony to prove the criminal act which is prescribed by Law on Protection of Witnesses, the possibility to protect witnesses is foreseen, if there a serious danger for their life, health, physical integrity, freedom and property in great amount, whereas, other measures for protection are not sufficient⁶.

In Serbia, a threatened witness is the one whose safety or the safety of his/her family (those who have the right to not testify in a criminal procedure) is in danger because of his/her participation in criminal procedure as a result of threaten, fear, or similar actions that are related with his testimony, whereas, an endangered witness is the one whose physical, psychological integrity has been seriously endangered, traumatised of circumstances at which the criminal act was conducted or suffers from serious psychological disturbances who render him/her extraordinarily sensitive, and the juveniles⁷.

In comparison with other West Balkans countries which have nominated laws on protection of witnesses or co-operators of justice, in Serbia, the law has a more specific name as it is nominated as a Law on Programming the Protection of Participators in Criminal Procedure, and their relatives, too, who due to submission of statements or important information for verification of factual state in criminal procedure are submitted to danger for their life, health, physical integrity, freedom or property⁸.

In Macedonia, a victim who reports as a witness is the one who has been injured by a criminal act or a personal or property right of his/her is threatened, who possess important information for criminal procedure, the provision of which would endanger his/her life, health, freedom, physical integrity or property in a great amount, if he/she reports as a witness in the criminal procedure and if co-operates with judiciary bodies, whereas, as a protected person is considered the witness, co-operator of justice, a victim who reports as a witness and his/her relatives, who from the counsel on protection of witness entered in the program for protection and was agreed with for protection by witness protection units⁹.

² Law on Protection of Witnesses, in Kosovo, No. 04/L-015 of 1 September 2011, Article 3 paragraph 1, sub-paragraph 1.3, p.1

³ Law on Protection of Witnesses and Co-operators of Justice, in Albania, No. 10173 of 22.10.2009 amended by Law no. 10461 of 13.09.2011, Article 3, paragraph, 1 point 5, p. 2

⁴ Zakon o zaštiti svedoka Hrvatske, br.NN.163/03, 18/11, 2004, Article 1, p. 1

⁵ Zakon o zaštiti svedoka pod pretnjom i ugrozenih svedoka Bosne i Hercegovine, 2003, Article 3, paragraph 1, p. 1

⁶ Zakon o zaštiti svjedoka Crne Gore, službeni list RCG br.65/04, 2004, Article 1, p. 1

⁷ Zakon o zaštiti svjedoka u krivičnom postupku Srbije, službeni glasnik Republike Srbije, No. 48, 2003, Article 3, p. 1

⁸ Zakon o programu zaštite ucesnika u krivičnom postupku, Sl. Glasnik RS br.85/2005, Article 1, p. 1

⁹ Zakon za zaštita na svedoci, sl. vesnik na Republika Makedonija, No. 38/05, 2005, Article 2, paragraph 3 and 5, p. 1 & 2

2. Stages of Protection of Trafficked Victims

2.1 Protection of victims prior to the beginning of criminal procedure

The beginning to undertake measures for protection of victims can be made much earlier than the beginning of criminal procedure, because not always the trafficking offenders are aware of the time when the identification of victims is done or identification of danger, therefore, it is very important to not wait the beginning of a criminal procedure, but to start with the identification of risk indicators, their analyses, assessment and management of risk on time and in the most appropriate manner, so that when the criminal procedure begins, the victim is prepared for his/her testimony without being under pressure of fear and threatens by trafficking offenders.

Taking into consideration that the victim from the moment of identification, hence, before the beginning of criminal procedure, there may be different needs that relate with needs of health care, food, clothing or sheltering, as well as the need to move from one place to the another, without putting their lives, health, large volume property at risk or eliminating or reducing such risks, the directorate for protection of witnesses in co-operation with investigators, too, and with the competent prosecutor should undertake necessary measures, firstly for humanitarian reasons, thus to save victim's life and his/her relatives' lives, or health and property, but also because of the importance that the testimony of the victim might have as a witness in a criminal procedure.

Duration of the protection of victim in preliminary stage can never be determined preliminarily, because the necessary time for trafficking offenders to be arrested and start of criminal procedure can never be determined precisely, taking into account that usually trafficking in human beings is part of organised crime and investigatory actions usually can take time until the arrest of trafficking offenders

2.2 Protection of victims during the criminal procedure

2.2.1 General aspects

As it was mentioned above, in all countries of West Balkans, protection of victims during a criminal procedure is regulated by two basic laws, such as by criminal procedure code and law on protection of witnesses and co-operators of justice. In this chapter, the treatment of protection at this stage shall be treated in accordance with the basic laws of Albania, Serbia and Kosovo, as three countries of West Balkans, to see the way of treatment, similarities and differences between them as well as to draw conclusions for better practices.

Criminal Procedure Code in Kosovo of 2012 and Criminal Procedure Code of Serbia of 2013, are new codes and have much more provisions that regulate the position and protection of victims during a criminal procedure, than the Criminal Procedure Code of Albania.

In Kosovo this has come as a consequence of participation of representatives of European Union and United States in Kosovo, in drafting laws in Kosovo, which are engaged within the scope of European mission of the Rule of Law known as EULEX, which are part of police, prosecutorial and judicial system of Kosovo and have executive competencies in these three fields. Also the engagement of many international experts who were included within the scope of international missions in Kosovo, had an impact that the same give their contribution also in compilation of many laws of Kosovo, including the Criminal Procedure Code of 2012, which was compiled by experts of United States of America and Kosovo, and later were engaged also experts from European Union.

According to Criminal Procedure Code of Kosovo, the first duty of the police, after the identification of trafficked victim, is the notification of the Unit on Protection of Victims¹⁰, as a special unit created only for assistance and support to victims. Among all countries of West Balkans, only Kosovo possesses this unit or division, which has taken this as a model form United States of America, where these units or divisions have shown many results in practice and have created a respectful system in service to the victims of crime in general and trafficked victims in particular.

In Kosovo also in regard of protection of victims during a criminal procedure, provisions are foreseen by law on prevention and combat of trafficking in human beings, too, and protection of trafficked victims, in which possibilities are foreseen that in cases when before a court are reviewed issues in relation with acts according to this law, for persons identified as victims, the prosecutor and other authorised parties should request from the court to permit the application of

¹⁰ Criminal Procedure Code of the Republic of Kosovo, 2012, Article 77 paragraph 1, p.28

special investigation possibility, in compliance with Criminal Procedure Code¹¹.

When the question is about trafficked victims – children during investigations and criminal procedures in Kosovo also are foreseen some specific rules, according to which without prejudicing the rights of protection, and in compliance with the individual evaluation conducted by authorities, child victims receive a special treatment which aims prevention of re-victimisation.

Number of interviews of child victims, may be more than one, just for the purpose of special and complex investigations, in compliance with the Juvenile Justice Code, Criminal Code and Criminal Procedure Code¹².

According to Criminal Procedure Code of Albania from 2008, which has undergone some changes until 2011, the protection of witnesses and co-operators of justice was treated, only in relation to essential procedural issues, including questioning of these persons from a distance, with the purpose to protect their identity and take appropriate measures in order to enable that the face and voice of the person to not be distinguished from parties, but, if in case the recognition of an identity is necessary or looking at the person, the court orders taking the necessary measures to avert the distinguishable view of the face of a person, whose identity had been changed¹³.

Criminal Procedure Code of Serbia has foreseen many provisions on protection of witnesses from the beginning of a criminal procedure until its end and regardless if the question is about protection of witnesses, in this case it should be meant also protection of victims of the injured, because usually victims are the ones who experienced the consequences of trafficking in human beings and are the most important witnesses in criminal matter, therefore, their protection as witnesses means also their protection as victims.

2.2.2 Protection of victims, according to Criminal Procedure Codes – comparative aspects in Albania, Serbia and Kosovo

In procedural - criminal aspect, Albania has not foreseen any concrete provisions that would treat the protection of victims of the injured in a criminal procedure, but, it refers this matter to the Law on Protection of Witnesses and Co-operators of Justice¹⁴, in cases when the question is about witnesses and co-operators of justice.

According to Criminal Procedure Code of the Republic of Albania, in Article 103, paragraph 4, attention was paid to the protection of the identity or generalities and publication of photos of the defendants and juvenile witnesses, accused and injured by the criminal act, whereas, there is only one exception, when the publication turns in the interest of the juvenile or when the juvenile reaches the age of 16, which means that the adults or persons above 16 years-old do not enjoy protection as per this provision.

Provision of article 157, paragraph 2 of the Criminal Procedure Code of the Republic of Albania, which cites for the right of witness to not testify on facts from which can result a criminal responsibility for it, although it does not expressly mention the victim or the injured by the criminal act, this provision is applied also in the cases when the victim reports as a witness in a criminal procedure.

Also in cases of holding trials with closed doors, in the Republic of Albania was foreseen the possibility that in case the question is about the need to protect the safety of witnesses, the trial shall be held with closed doors¹⁵. In these cases, the possibility to have a trial with closed doors means also the possibility for trafficked victims, because usually these victims are also witnesses in a criminal procedure.

It is also worth mentioning that the provision of Article 361, paragraph 7 of Criminal Procedure Code of the Republic of Albania¹⁶, according to which the witness may be questioned from a distance inside or outside the country through audio-visual appliances, but, paying attention to protection means, whereas, this provision is supplemented also by provision of Article 361/A of this code, where it was foreseen that the face and the voice of a person to not be distinguishable by the parties.

Furthermore, the provision of Article 364 of the Criminal Procedure Code of the Republic of Albania is interesting¹⁷, too, according to which provision the court may examine the witness at his home, too, in case of the absolute

¹¹ Law on prevention and combat against trafficking in Human Beings and Protection of Trafficked Victims in Kosovo, 2013, Article 15, p.10.

¹² Law on prevention and combat against trafficking in Human Beings and Protection of Trafficked Victims in Kosovo, 2013, Article 15, p.10 and 11

¹³ Criminal Procedure Code of the Republic of Albania, 2008 with amendments, Article 361, paragraph 7 and 361/a, p.145

¹⁴ Ibidem, Article 37/A, paragraph 2, p. 28

¹⁵ Ibidem, Article 340 paragraph 1, point c, p.180

¹⁶ Law No. 9276 of 16.09.2004 on amendment of the Criminal Procedure Code of the Republic of Albania

¹⁷ Law No. 8833 of 13.06.2002 on amendment of the Criminal Procedure Code of the Republic of Albania

impossibility to report to court, one of the members of trial panel in presence of parties but excluding the public has the possibility to take the testimony from the witness. In this case, too, the court may apply this provision in cases of trafficked victims, if they cannot report to court. Here, it is worth mentioning that the text "absolute impossibility" is not very clear, however, hereby the court is given the right to decide what can be understood by the word "absolute impossibility".

As a kind of protection at a criminal procedure can be considered also the exclusion from the obligation to testify, for the person who is injured or one of her relatives in that criminal procedure¹⁸.

This is because the injured party in such cases can choose if she will use this possibility and continue with providing evidence or not, in case she considers that the testimony would endanger her safety.

In case of Serbia, the Criminal Procedure Code of 2013 has foreseen special measures on the protection of witnesses, which means also the protection of the injured when they report as witnesses, taking into account special protection measures.

According to Article 102 of the Criminal Procedure Code of Serbia of 2013, the body that hold the procedure is obliged to protect the injured or the witness from insults, threatens or any kind of attack. In the provisions of this code is included also the hiding identity not only from public but in extraordinary cases also from the defendant and his defence¹⁹, this protection is provided in accordance with official duty or the request of parties or the witness herself²⁰.

This defence in accordance with the Criminal Procedure Code of Serbia means that the bodies which conduct the procedure are obliged to consider every situation as per their official duty, when the witness/victim needs protection and meanwhile action even if there is a request by the parties in procedure or the witness of victim herself as a witness.

It is for appraising that the existence of a special category of witnesses, in the code of Serbia and existence of witnesses with special sensitivity, which are distinguished from other witnesses as per age, life experience, life style, gender, health state, nature, the manner and consequences of conduction of a criminal act, respectively, other circumstances of special sensitivity. In this category may be included also trafficked victims, therefore, the protection of these victims, in special manner means also the protection of trafficked victims when they are witness in a criminal procedure, because the manner of the interview itself of these persons means the need to be treated differently from other persons.

According to Article 105, paragraph 2 of the Criminal Procedure Code of Serbia of 2013, means for special protection, by which the right of defendant and his defence is denied to have access in the data or identity of the protected witness. The court may undertake exclusively if two conditions are fulfilled, such as: by the statement of witness or prosecutor it is verified that life, health of freedom of witness or her relatives are in danger in the amount that the restriction of the right of defence is justified and that the witness should be reliable, respectively, her statement should be true.

In the occasion of taking protective measures of the witness in Serbia, the judge of the preparatory procedure in the decision to announce a person as a protected witness notes only a nickname of the protected witness, the duration and manner of applying the protective measure, the change and removing the evidence of the data on the identity of witness, hiding the view of the witness, interviewing her in special premises besides changing her voice, making the interview through technical appliances transformation and change of the voice and photography²¹.

Moreover, during the interview of the witness/victim in accordance with Article 109, paragraph 3 and 4 of the code of Serbia of 2013, the court draws the attention of all the participants that they are obliged to protect as secret the data of the protected witness and her relatives as well as other circumstances which may result up to the disclosure of the identification of the witness and that the disclosure of this secret presents a criminal act. In this case, the court prohibits any question that requires an answer through which the identity of protected witness could be disclosed.

As regards Kosovo, in addition to general provisions mentioned above, related to protection of witness and injured identity, the Criminal Procedure Code of the Republic of Kosovo has foreseen one more specific chapter related to protection of injured and witnesses and this is the chapter XIII, in which details have been foreseen for all actions which need to be undertaken in the course of a criminal proceeding with the aim of protection of injured and witnesses, including the definitions of serious risk, anonymity and members of families.

As regards identity of victim witness, the Criminal Procedure Code of the Republic of Kosovo in many provisions

¹⁸ *Ibidem*.

¹⁹ *Criminal Procedure Code of the Republic of Serbia*, "Sl. glasnik RS", no. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013, Article 105, p.53

²⁰ *Ibidem*, Article 107, p. 53

²¹ *Criminal Procedure Code of the Republic of Serbia*, "Sl. glasnik RS", no. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013, Article 108 paragraph 2, p. 54

has foreseen restrictions for persons who are entitled to be notified about the case files, in cases of protected witnesses or also in cases of interviewing where the possibility is foreseen to interview in distance through video or audio link²², thus giving a higher importance to protection of victim witnesses than the right to have access to case files.

According to Kosovo code, family members entitled to protection are considered as follows: husband, extra-marital husband, a person in direct blood relation, adopting parent, adopted child, brother, sister or adopting parent²³. As noted, uncle (father's brother or mother's brother) and aunt (father's sister or mother's sister) cannot be considered as members of family, except sister or brother although they are in indirect blood relation and also family members cannot be considered father in law and mother in law or their children.

Although the Criminal Procedure Code of the Republic of Kosovo has not expressly specification of situations when a person is protected only by public and situation when a person is protected also from the defendant and exceptions from the defence of the defendant, this may result from the provisions which deal with protection of witnesses.

Protection from the public implies protection of identity from public, thus, is this situation the identity of victim or witness is known for the defendant or his defence, but not for the public although in these cases the defendant and the defence of the defendant are obliged not to make public the identity of protected person and this obligation derives from court order for witness protection.

In certain cases, abovementioned measures are insufficient and the need arises to undertake additional measures for protection in effective manner the person who needs protection and by undertaking these additional measures a higher degree of protection is achieved known as the stage of anonymity.

Anonymity according to Article 220 paragraph 1.3 of the Criminal Procedure Code of the Republic of Kosovo implies as follows: lack of information given for identity or whereabouts of the injured, cooperative witness or witness, identity or whereabouts of family members of the injured, cooperative witness or witness, or the identity of whichever person that is related to the injured, cooperative witness or with the witness.

The stage of anonymity can be applied in cases when: there is a serious risk for witness or member of his/her family and full anonymity of the witness is necessary to prevent such a serious risk; the evidence of witness is so important for the matter so that it makes unfair the realisation of protection without it; the credibility of witness is investigated and disclosed fully for the judge in a closed session; and the need for witness anonymity is more important for doing justice than the public interest or the interest of the injured to know the identity of the witness in implementation of the procedure and anonymity would prevent the serious risk for the injured, cooperative witness or the witness²⁴.

An analysis of the criminal procedure codes of the Republic of Albania, Republic of Kosovo and the Republic of Serbia indicates that the codes of Kosovo and Albania have many more advantages than the code of Albania, because they have provided for numerous provisions regulating to detail the protection of witnesses, inclusive protection of victims of trafficking when they are as witnesses, whereas the code of Serbia in relation to the code of Kosovo has also provisions regulating protection of other persons involved in protection of witnesses which are not foreseen in the code of Kosovo, such as: covert investigators, experts, professional advisors and other professional persons and the obligation of police and prosecutor to notify citizens when obtaining information related to protective measures.

These novelties brought by the code of Serbia are very important for the progress of criminal proceeding and for the safety of involved persons in protection of those persons and at the same time they have their impact in disciplining bodies of prosecution: police and prosecution while collecting information in such cases.

As regards Albania, it is necessary that the criminal procedure code is amended and needs to include all provisions provided for by codes of Kosovo and Serbia and at the same time provisions which may suit better to the legal - criminal system of Albania and the needs for protection of witnesses and trafficking victims when they appear as witnesses, based on circumstances and conditions which are specific for Albania.

2.2.3 Victim protection in accordance with the laws on protection of witnesses and justice cooperative witnesses or parties in criminal proceedings

Protection of trafficked victims as mentioned above must be treated into two aspects, in the procedural aspect and in the operational or administrative aspect, because while in the procedural aspect victim protection is treated in relation to the criminal proceedings, according to operational aspect the protection is treated also in relation to measures undertaken by

²² Criminal Procedure Code of the Republic of Kosovo no. 04/L-123, 2012, Article 96 paragraph 4.7.3, p. 43, Article 130 paragraph 3, p.43, Article 149 paragraph 8, p. 68 and Article 213 paragraph 3 and 8, p. 96

²³ Ibidem, Article 220 paragraph 1 sub-paragraph 1.2, p. 100

²⁴ Ibidem, Article 223 paragraph 3 and 224 paragraph 2 point 2.2 and paragraph 5, pp. 101 and 102

the directorates for protection of witnesses. Both these aspects are important for the trafficked victim, because they are interrelated with each other and they complement each other, so that the victim and its relatives feel safe not only in the course of criminal proceedings, but also before and after conclusion of the criminal proceedings.

Conclusion of the regular trial proceedings does not imply automatic cease of potential risk existence for the trafficked victim, for his/her relatives and for his/her property in a large volume, in contrary, exactly the reasons for revenge because of the imposed sentences shall be even stronger after conclusion of the criminal proceedings.

In cases when along with the sentences, the trafficking criminals are also confiscated the property obtained through commitment of criminal offences, shutting down of businesses where trafficking was carried out, and obliging for compensation of damages caused to the trafficking victims, are additional reasons indicating that trafficking offenders have enough reason to take revenge and to endanger the life, health, freedom and property in a large volume to trafficked victims who need protection also after conclusion of criminal proceedings.

In Kosovo, Albania and Serbia, witness and witness victim protection is regulated by specific laws, which are named by different denominations. This law is named in Kosovo as Law On Protection Of Witnesses, in Albania it is named as Law on Protection of Witnesses and Justice Co-operators, whereas in Serbia it is named as Law on the Program for Protection of Parties at Criminal Proceedings, but, although denomination of these laws for protection vary in names, in essence these laws contain quite similar provisions, because their aim is almost the same.

Although Kosovo law is denominated as Law on Protection of Witnesses, when it deals with the scope of the law, it specifies that this law offers protection for witnesses and for co-operators of justice²⁵ and when it elaborates issues of persons enjoying the right to protection, it includes as follows: witnesses or injured persons who make announcements or witness about the facts and circumstances amounting subject to relevant evidence in a criminal proceeding²⁶, therefore, denomination of this law in Kosovo does not reflect the purpose it has as a law, but this purpose derives from the content of the law itself, whereas according to Serbia's Law on Program for Protection of Parties at Criminal Proceedings, in the category of persons enjoying protection are included as follows: the suspect, the defendant, cooperative witness, witness, the injured, expert or professional person²⁷, whereas as far as Albanian Law is concerned, although it does not mention victims, in essence it includes the victims too, but on condition that they are witnesses in the criminal proceedings.

The problem stands more at cases when victims of trafficking do not want to give their testimony and to cooperate with justice, because all the three abovementioned laws require that for a person to enter in protection program, he/she must cooperate with justice²⁸, or such persons should give their evidence and due to such evidence the risk may appear for them or for their relatives.

In such cases, these stances at first glance will seem as if they were in contravention to international standards for support and giving aid to trafficking victims, and for lack of punishment of it in cases of non-cooperation, but if this problem is seen in the aspect of justice interest, so, to decide rightfully in a criminal case, which aims at protection and support of trafficking victim, by making justice in the country and by giving the opportunity to the victim to be compensated, in a costly procedure for the country, then it would be considered as normal and logical for the state to receive the support or the cooperation from the victim in order to bring justice to place. So, it would be a reciprocal support between the state and the victim, even more when in such cases lack of victim cooperation would bring irreparable damages to victim herself and would also lead to failure of the criminal proceedings, because the victim is the most appropriate person to shed light to many important facts in a criminal proceeding, because she herself was part of the whole history of her trafficking.

Criminal punishment of the offender of the criminal offence of trafficking in human beings is another distinctiveness between Kosovo, Albania and Serbia, because trafficking victims in Kosovo can benefit from the program of witness protection if the offender is charged by a criminal offence where the foreseen punishment is 5 or more years of imprisonment and for other specific offences such as offences against international law where trafficking in human beings is included, whereas in Albania this punishment must be not less than 4 years as minimum and it applies for all such offences without specifying any other type of criminal offence, whereas in Serbia no punishment has been foreseen but there are only mentioned the criminal offences for which the program of protection applies, and the criminal offences are as follows: criminal offences against the constitutional order and security, those against humanity and other goods

²⁵ Law on Protection of Witnesses, in Kosovo no.04/L-015, 2011, Article 2, p. 1

²⁶ Ibidem, Article 3, p. 1

²⁷ Zakon o programu zastite ucesnika u krivicnom postupku, Sl. Glasnik RS br.85/2005, Article 3, p. 1

²⁸ Law on Protection of Witnesses, in Kosovo no.04/L-015, 2011, Article 5, paragraph 2 point 2.2, p. 2 and Law on protection of witnesses and justice co-operators, in Albania no.10173, 2009, as amended by Law No. 10461,2011, Article 10 paragraph 1, p.5 and Zakon o programu zastete ucesnika u krivicnom postupku Srbije Sl. Glasnik RS br.85/2005, Article 1, p.1

protected by international law and organised crime²⁹.

2.2.4 Conditions for victim protection

As regards to conditions for protection of victims when they are witnesses, codes of Albania and Kosovo have not foreseen provisions to regulate the procedure for introduction of witnesses into their protection programs, but they have referred to special laws for this field, namely those for protection of justice co-operators, in this case also of the injured or victims in case they are reported as witnesses, thus criminal procedure codes have only regulated the procedural matters which are related to measures needed to be undertaken in cases when protected persons are summoned to give their testimony, for the manner of posing questions and preservation of their identity in the criminal proceedings, and not their protection following completion of the criminal proceedings.

To be part of the protection program in Albania, the following conditions must be met: implementation of usual measures of protection has not been sufficient and suitable for protection of witness of justice co-operator, if he (so, the witness or the injured as witness) accepts to willingly cooperate with the prosecution and the court, and through statements and/or full testimony, given without conditions or reserves, to give grounded details which constitute decisive evidence for discovery, investigation and trial of crimes and their perpetrators. Implementation of witness protection program for the witness or justice co-operator is decided only if he is at a dangerous situation, is appropriate to be included in the program (will implement the rules of protection program and will not endanger his own life and health, the life and health of other persons) and by his/her own free will accepts to actively participate in implementation thereof³⁰.

In Kosovo, the protection measures can be implemented against a person if: information given by a person is important, which is deemed admissible as evidence while in trial review and that is considered that it cannot be ensured through any other alternative source, the risk is serious, readiness of the person proposed to be included in the program to cooperate with investigation and court bodies while implementing the program and eligibility of the proposed person for inclusion into the program in order to operate in concordance with the program for convincing that displacement of witness will not cause any risk for life or health of other persons³¹.

As it may be seen, Albania and Kosovo at this point have two conditions in common, they are: cooperation with justice and existence of risk, whereas for other points, the law of Albania is more comprehensive and has more in detail foreseen conditions as to when a person may in this case a victim be included in the protection program, whereas as regards to Serbia, almost all conditions are required as in the case of Kosovo.

2.2.5 Types of protection measures

As far as protection measures are concerned, in Albania the following measures have been provided for: changing of identity; changing the residence; issuance of false documents; temporary protection of the identity, of the data and documents; giving testimony through another identity and administration through special means for voice or view image distortion and other types of forms as provided for by the law, in compliance with the Article 361/a of the Criminal Procedure Code (the question of justice co-operators and protected witnesses); physical and technical protection at the place where the person stays, and while in his/her moves; social rehabilitation; providing financial support; professional requalification; provision of advice and specialised legal support; any other measure which is estimated and approved as necessary in compliance with this law.

The following protective measures are provided for in Kosovo: physical protection of the protected person; temporary displacement of protected person to a safe place; special procedures for access to data and documents related to protected persons, from the office for issuing documents and other formal databases; change of residence, work or education of the protected person; changing the identity of the protected person; change of physical appearance of protected person including plastic surgeries; financial support for protected persons; social, legal and any other type of support, as necessary for the protected person and special regime for protected person in custody, in correctional institutions³².

²⁹ *Ibidem*, in Albania, Article 2, p.1 in Kosovo Article 4 paragraph 1, p. 2, in Serbia Article 5, p. 2

³⁰ Law on Protection of Witnesses and Justice Co-operators, in Albania no. 10173, 2009, as amended by Law no. 10461,2011, Article 10 paragraph 1 and 2, p. 5

³¹ Law on Protection of Witnesses, in Kosovo no. 04/L-015, 2011, Article 22, p. 8

³² Law on Protection of Witnesses, in Kosovo no.04/L-015, 2011, Article 5, paragraph 2, p. 3 and Law on Protection of Witnesses and Justice Co-operators, in Albania no.10173, 2009, as amended by Law no. 10461,2011, Article 12, p. 6

The following protective measures are provided for in Serbia: physical and property protection, change of residence and settling in any other security institution, hiding of identity and the data for ownership and changing of identity³³.

From this diversity of protective measures, it resulted that there are some distinctions between Albania, Kosovo and Serbia, given that the laws in Kosovo and Serbia have expressly foreseen the measures, whereas in Albania except expressive numbering of some measures, the text also is added specifying that "every other measure assessed and approved as necessary in compliance with this law", this implies that the law of Albania has left the possibility open to undertake other measures which have not been expressly numbered in this provision and it is completely implementable.

An essential similarity between the above mentioned laws of Albania, Kosovo and Serbia is also the fact that by the three laws, each protective measure can be implemented only upon consent of the protected person and not against his/her will. In the three, signing of agreement is required in between the directorate and the protected person and if deemed necessary other urgent protective measures can be taken too, until a decision is made by Commission for protection.

2.2.6 Responsible bodies for implementation of protective measures

As regards the responsible bodies for preparation, evaluation, approval and implementation of the witness and justice co-operators or parties at a trial proceeding protection program, in the three cases, the following have been foreseen: the Commission for Evaluation of the Protection Program, then in Albania and in Kosovo – Directorates, whereas in the case of Serbia – the Unit for Implementation of the Program for Enforcement of Protective Measures.

In Albania, the Commission is chaired by Deputy Minister of Internal Affairs, covering the issues of public order and it consists of the following: a judge proposed by High Council of Justice in the position of deputy chair; a prosecutor proposed by General Prosecutor in the position of a member and a judicial police officer as proposed by General Director of State Police in the position of a member and the director of directorate (for witness protection) in the position of a member³⁴.

In Serbia the Commission consists of one judge from Supreme Court of Serbia as appointed by the President of Supreme Court, a deputy Republican Prosecutor as appointed by Serbia Republican Prosecutor and the chair of the Unit (Directorate) for implementation of protective measures³⁵.

In Kosovo, the Commission consists of three (3) members: Chief State Prosecutor of the Republic of Kosovo, chair of the office of investigation from Kosovo Police, and the Director of Directorate for Witness Protection, whereas the Chief State Prosecutor is the chair of the Commission³⁶.

As it may be noted, and as regards to the responsible bodies for implementation of witness and justice co-operator and trial proceeding parties protective measures, there are distinctions related to related to the level of representations, because while in Kosovo members of the Commission hold leading positions in the institutions they come from, in Albania and Serbia there come persons who are proposed by leaders of institutions they come from, except the director or head of the directorate or unit for witness protection coming based on the position.

From the composition of the commissions, the power and the level of responsibility of commission results proportionately in the cases when decided to include a person in the protection program, therefore Kosovo has an advantage in this direction, because the responsibility has been conveyed to higher levels of bodies dealing with provision of protection for endangered persons and this indicates a serious approach when treatment of this important matter is in question, not only for the lives of protected persons, but for the criminal proceeding too and for the integration of these countries into European Union.

2.2.7 Duration of the protection program

As regards the duration of the protection program, this program in Albania as a rule is implemented for an indefinite time and can extend into all stages of criminal proceedings, and even after their conclusion, and this depends on the existence

³³ *Zakon o programu zaštite ucesnika u krivicnom postupku Srbije, Sl. Glasnik RS br.85/2005, Article 14, p. 5*

³⁴ *Law on Protection of Witnesses and Justice Co-operators, in Albania no. 10173, 2009, as amended by Law no. 10461,2011, Article 9 paragraph 2, p. 5*

³⁵ *Zakon o programu zaštite ucesnika u krivicnom postupku Srbije, Sl. Glasnik RS br.85/2005, Article 7, p. 3*

³⁶ *Law on Protection of Witnesses, in Kosovo no. 04/-L-015, 2011, Article 15, paragraph 2 and 4, p. 5*

and condition of the risk, eligibility of the protected person, in relation to the particular protective measure that is being implemented, and based on the implementation by the protected person as regards to protection agreement foreseen obligations.

In Serbia the program of protection of parties at a trial criminal proceeding is implemented in a duration as estimated by Commission and the duration depends on the case circumstances, whereas in Kosovo the duration of protection program for some measures is not defined, for some of them it may last initially up to a maximum of 12 month duration, but it can be extended again if the same ground conditions continue to exist based on which the measures have been assigned³⁷.

As for the program duration compared between Albania, Serbia and Kosovo, there are two distinctions, one of them is related to initial duration, considering that this duration in Kosovo is set for 12 months, whereas in Albania and in Serbia it has not been defined and the other one is related to initiation of application of the protection program. In Kosovo this program includes the pretrial stage of the procedure, the stage while the criminal proceeding is ongoing and after the criminal proceeding conclusion, whereas in Albania and in Serbia this program may be implemented only during the criminal proceeding and after conclusion of the criminal proceeding, whereas the pretrial stage of the criminal proceedings is not included.

2.2.8 International cooperation while implementing the protection program

Taking into consideration the sensitivity of protection of witnesses and justice co-operators or parties at trial criminal proceeding, Albania, Serbia and Kosovo have foreseen international cooperation, in the cases of including certain persons in the protection program. This cooperation is necessary because in certain cases it is almost impossible to provide safe protection for certain persons depending on the seriousness of the criminal offence and the type and level of risk involved.

In Albania, the international cooperation is provided for by Article 27 of the Law on Protection of Witnesses and Justice Co-operators and it is carried out based on obligations deriving from international agreements, in which the Republic of Albania is a party, or through agreements for concrete cases made by the director of directorate with the similar units in other countries. According to this law, the agreements for the concrete protection program may provide for the mutual implementation of protection program, including the change of residence and stay of protected persons in respective territories of the parties.

Law on Protection of Witnesses, in Kosovo, has provided for the international cooperation by Article 28, and according to this provision the international cooperation must be approved based on the international agreements, bilateral and multilateral agreements, based on comity, following the approval by the Commission also in other individual cases.

As regards Serbia, the international cooperation has been foreseen by Article 39 of the Law on Program for Protection of Parties at Trial Criminal Proceedings, and based on such provision this cooperation is realised based on international agreements or based on reciprocal agreements and based on the request for protective measures from the other state as submitted to the Unit for Implementation of Protective Measures.

In this case also, it is obvious that the international cooperation is mainly normed in the same way, but there are differences contained in the law of Albania related to "classified information" contained in the international cooperation agreement, for signing the agreement, because the general rules are not adhered as in the case of international agreements and in this case the agreement shall be signed by the director of directorate, whereas according to the law of Serbia, the Unit (directorate) for implementation of protective measures is competent for international cooperation, whereas according to the law of Kosovo, it is said that the agreement is signed by the Commission.

3. Concluding Summary

As a conclusion in dealing with protection of victims in Albania, Serbia and in Kosovo, it may be stated that these states have the same aims which are related to trafficking victims' protection when they appear as witnesses, always based on victims consent or will, and that the directorates/units of the three countries have the possibility to undertake similar measures for protection of witnesses, which are foreseen by respective laws of these countries.

In the three cases the state has taken as obligation creating of mechanisms for protection, it has allocated financial means for functioning of directorates for witness protection, they have established or helped in establishing shelter

³⁷ *Ibidem*, in Albania Article 11, p. 6, in Serbia Article 31, p. 12 and in Kosovo from Article 6-14, p. 3-5

facilities or safe houses for protected persons, although in the financial aspect of supporting directorates and safe houses, the government of both countries would need to do more to achieve the goal of protection.

Likewise, the three countries have acted in accordance with the European Council Convention on actions against trafficking in human beings of the year 2005, requiring from member states (although Kosovo is not yet a member of Council of Europe) that each party will protect the private life and the identity of victims, will approve the measures to secure, in particular that the identity or details allowing identification of children, victims of trafficking are not made public, through media or by any other means unless in extraordinary circumstances and in compliance with Article 10 of the Convention for Protection of Human Rights and Fundamental Freedoms, interpreted by the European Court of Human Rights, will approve measures aiming at encouragement of media to protect the private life and identity of victims through self-regulation or through regulatory measures or co-regulation³⁸. Thus, all the three states have undertaken the measures as required by this convention by making protection of witnesses and justice co-operators as part of laws.

Aiming at protection of trafficking victims, Albania has foreseen as obligations to make the national strategy and the operational cadre for improvement of special programs for witness protection, through strengthening the directorate for protection of witnesses and justice co-operators³⁹, whereas Kosovo and Serbia although in their strategies or action plans have foreseen protection of victims, they have not provided for any plan or action towards improvement of the program for witness protection.

Also when in question is protection of trafficking victims, a cooperation will be necessary not only between Albania, Serbia and Kosovo, but also between these countries with other states of Western Balkans and other states of European Union, because all countries of Western Balkans are small countries by territory and number of inhabitants and the possibilities of risking the trafficking victims are always present. Therefore, this cooperation would help in cases when it is required for victims to be sent to third countries or where they would be safer.

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³⁸ Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw 2005, Article 11

³⁹ National Strategy of Combating against Trafficking in Human Beings in Albania, 2008-2010, operational cadre, II protection, item 4. (b).1, p. 55

