

---

## Recommendation CM/Rec(2022)9 of the Committee of Ministers to member States on the protection of witnesses and collaborators of justice

*(Adopted by the Committee of Ministers on 30 March 2022  
at the 1430<sup>th</sup> meeting of the Ministers' Deputies)*

---

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve greater unity among its members;

Aware of the need for member States to develop a common and co-ordinated crime policy in relation to the protection of witnesses and collaborators of justice;

Noting that there is growing recognition of the special role of witnesses and collaborators of justice in criminal proceedings and that their evidence is often crucial to securing the conviction of offenders, especially in respect of serious crimes and other forms of criminality where other evidence may be difficult to obtain and/or where knowledge of the perpetrators and organisation of the crimes may be critical to securing the conviction of both the perpetrators and orchestrators of such acts;

Considering that in some areas of criminality, such as organised crime, international crime, terrorism and other forms of crime where perpetrators use threats and violence as means of coercion, there is an increasing risk that witnesses will be subjected to intimidation;

Considering that the final report of the Multidisciplinary Group on International Action against Terrorism (GMT) and the subsequent decisions of the Committee of Ministers recognise the protection of witnesses and collaborators of justice as a priority area of the Council of Europe's legal action against terrorism;

Recalling that in Resolution No. 1 on Combating International Terrorism approved at the 24th Conference of European Ministers of Justice (Moscow, 4-5 October 2001), the Committee of Ministers was invited to adopt urgently all normative measures considered necessary for assisting States to prevent, detect, prosecute and punish acts of terrorism, such as the improvement of the protection of witnesses and other persons participating in proceedings involving persons accused of terrorist crimes;

Recalling that in Resolution No. 1 on Combating Terrorism approved at the 25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003), the Committee of Ministers was invited to, *inter alia*, pursue without delay the work with a view to adopting relevant international instruments on the protection of witnesses and collaborators of justice;

Convinced that, while all persons have a civic duty to give sincere testimony as witnesses if so required by the criminal justice system, there should also be greater recognition given to their rights, concerns and needs, including the right not to be subject to any undue interference or be placed at personal risk;

Considering that member States have a duty to protect witnesses and collaborators of justice against such interference by providing them with specific protection measures aimed at effectively ensuring their safety;

Considering the special needs of vulnerable witnesses such as victims, including victims of sexual and gender-based violence, minors and witnesses with medical or special needs;

Considering that it is unacceptable for the criminal justice system to fail to bring defendants to trial and obtain a judgment because witnesses or collaborators of justice have been effectively discouraged from providing relevant information and testifying freely and truthfully;

Noting that such discouragement could be brought about by a lack of trust in the criminal justice system and a failure to provide adequate protection and safeguards to witnesses and collaborators of justice;

Aware that the protection of witnesses and collaborators of justice requires confidentiality and reassurance throughout the entire judicial process and that efforts should be made to ensure that effective measures are taken to thwart attempts to trace witnesses and collaborators of justice, in particular by criminal organisations, including terrorist organisations;

Aware of the challenges for the protection of witnesses and collaborators of justice that arise from the widespread use of social media and new technologies, including biometric technology and other technologies which may identify or expose protected witnesses and collaborators of justice;

Aware of the differences in the legal frameworks and procedures of the member States with regards to the protection of witnesses and collaborators of justice and therefore emphasising the continued need for further harmonisation and stronger international co-operation and exchange of best practices in matters related to the protection of witnesses and collaborators of justice, with a view to adopting common principles and standards as well as compatible procedures and practices;

Bearing in mind the provisions of the European Convention on Human Rights (ETS No. 5) and the case law of the European Court of Human Rights, which recognise the rights of the defence to examine the witness and to challenge his/her testimony;

Considering that the standards contained in Recommendation Rec(2005)9 of the Committee of Ministers to member States on the protection of witnesses and collaborators of justice need to be revised and updated in order to reflect the developments which have occurred in the field of protection of witnesses and collaborators of justice in Europe, including addressing some of the new challenges caused by developments in information, biometric and communication technologies;

Having regard to:

- Recommendation CM/Rec(2012)4 of the Committee of Ministers to member States on the protection of human rights with regard to social networking services;
- Recommendation CM/Rec(2012)3 of the Committee of Ministers to member States on the protection of human rights with regard to search engines;
- Recommendation Rec(2006)8 of the Committee of Ministers to member States on assistance to crime victims;
- Recommendation Rec(99)5 of the Committee of Ministers to member States on the protection of privacy on the internet;
- Recommendation Rec(97)13 of the Committee of Ministers to member States concerning intimidation of witnesses and the rights of the defence, in particular with respect to the measures to be taken in relation to vulnerable witnesses, especially in cases of crime within the family;
- Recommendation Rec(96)8 of the Committee of Ministers to member States on crime policy in Europe in a time of change;
- Recommendation Rec(91)11 of the Committee of Ministers to member States concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults;
- Recommendation Rec(87)21 of the Committee of Ministers to member States on assistance to victims and the prevention of victimisation;
- Recommendation Rec(85)4 of the Committee of Ministers to member States on violence in the family,
- Recommendation Rec(85)11 of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure;

Taking further into account the Council of Europe Action Plan on Combating Transnational Organised Crime (2016-2020);

Replaces by the text of the present Recommendation the Recommendation Rec(2005)9 of the Committee of Ministers to member States on the protection of witnesses and collaborators of justice.

Recommends that governments of member States:

- i. be guided, when formulating their internal legislation and reviewing their criminal policy and practice, by the principles and measures appended to this Recommendation;
- ii. ensure that all the necessary publicity for these principles and measures is distributed to all interested bodies, such as judicial organs, investigating and prosecuting authorities, witness protection units, bar associations and relevant social and international institutions.

*Appendix to Recommendation CM/Rec(2022)9***I. Definitions**

For the purposes of this Recommendation, the term:

- “witness” means any person who possesses information relevant to criminal proceedings about which he or she has given and/or is able to give testimony (irrespective of his or her status and of the direct or indirect, oral or written form of the testimony, in accordance with national law) and who is not included in the definition of “collaborator of justice”;
- “collaborator of justice” means any person who faces criminal charges, or has been convicted of taking part in a criminal association or other criminal organisation of any kind, or in offences of organised crime, but who agrees to co-operate with criminal justice authorities, particularly by giving testimony about a criminal association or organisation, or about any offence connected with organised crime or other serious crimes;
- “victim” means any natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of the criminal law of a member State. The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim to the extent that they have suffered harm by association;
- “intimidation” means any direct or indirect threat, carried out or likely to be carried out, to a witness or collaborator of justice, which may lead to interference with his or her willingness to give testimony free from undue interference, or which is a consequence of his or her testimony;
- “threat assessment” means the process by which the threat is understood; it identifies and examines, *inter alia*, potential source(s) of threat, the capability, propensity and history of violence and the potential or the intended use of any form of violence, intimidation or interference towards potential witnesses and collaborators of justice, whether or not actual harm is caused;
- “risk assessment” means the process by which risk is understood; it examines, *inter alia*, the likelihood and consequence of the threat materialising and the nature, seriousness and pattern of offences the person to be protected possesses information on and identifies his or her level of involvement in the investigation and/or case, the relevance of the contribution, the seriousness of the intimidation and the circumstances that contribute to these factors. It informs appropriate decision making and action with the aim of reducing risk;
- “anonymity” means that the identifying particulars of the witness or collaborator of justice are not generally divulged to the opposing party or to the public in general;
- “people close to witnesses and collaborators of justice” includes the relatives and other persons in a close relationship to the witnesses and the collaborators of justice, such as the partner, children, grandchildren, parents and siblings;
- “protection measures” are all individual procedural or non-procedural measures aimed at protecting the witness or collaborator of justice from any intimidation and/or any dangerous consequences of the decision to co-operate with justice;
- “protection programme” means a formalised set of individual protection measures adapted to the needs of the individual, to the threat and to the risk, which can, for example, be described in a memorandum of understanding, signed by the responsible authorities and the protected witness or collaborator of justice;

- “witness protection unit(s)” refers to the competent national entity (or entities) responsible for implementing, co-ordinating and supervising the protection of witnesses, collaborators of justice and other persons afforded protected persons status under national law, authorised to implement protection programmes. It should be responsible for assessing the threat and risk to participants in the programme and ensuring the confidentiality of the programme, its procedures and participants. It facilitates the integration of protected persons into their new environment with a view to eventual self-sufficiency by offering access to legal, vocational, educational, psychological, social and technological assistance, and, if appropriate, care and financial assistance, with due regard to the confidentiality and integrity of the programme.

## **II. General principles**

1. Appropriate legislative and practical measures should be taken to ensure that witnesses and collaborators of justice may report crime, provide information and testify freely and without being subjected to any act of intimidation.
2. While respecting the rights of the defence, the protection of witnesses, collaborators of justice and people close to them should be organised, where necessary, before, during and after the trial.
3. Acts of intimidation against protected witnesses, collaborators of justice and people close to them should, where necessary, be made punishable either as separate criminal offences or as part of the offence of using illegal threats.
4. Subject to legal privileges providing the right of some persons to refuse to give testimony, witnesses and collaborators of justice should be encouraged to report any relevant information regarding criminal offences to the competent authorities and thereafter agree to give testimony in court.
5. While taking into account the principle of free assessment of evidence by courts and the respect of the rights of the defence, procedural law should enable the impact of intimidation on testimonies to be taken into consideration and statements made during the preliminary phase of the procedure to be allowed (and/or used) in court.
6. While respecting the rights of the defence, alternative methods of giving evidence which protect witnesses and collaborators of justice from intimidation resulting from face-to-face confrontation with the accused should be considered and made available where needed.
7. The personnel involved in the criminal justice process, in conducting threat and risk assessments and in the granting of witness protection, should have adequate training and guidelines to deal with cases where witnesses or collaborators of justice might require protection measures or programmes, or other relevant support measures or reassurances to testify.
8. All the stages of the procedure related to the adoption, implementation, modification and revocation of protection measures or programmes should be kept confidential; the unauthorised disclosure of this protected information should be made punishable as a criminal offence where appropriate, especially to ensure the security of a protected person and prevent impunity and further unlawful disclosure and interference with the criminal justice process.
9. The adoption of protection measures or programmes should also take into account the need to strike an adequate balance with the principle of safeguarding the rights and expectations of victims.

## **III. Protection measures and programmes**

10. When designing or updating a framework of measures to combat serious offences, including those related to organised crime, international crime, terrorism, and other forms of crime where perpetrators use threats and violence as means of coercion, appropriate measures should be adopted to protect witnesses and collaborators of justice against intimidation, interference or harm.
11. No terrorism-related crimes should be excluded from the offences for which specific witness protection measures/programmes are envisaged.

#### A. Entitlement to protection measures and programmes

12. The following criteria should, *inter alia*, be taken into consideration when deciding upon the entitlement of a witness or collaborator of justice to protection measures or programmes:

- involvement of the person to be protected (as a victim, witness, co-perpetrator, accomplice or aider and abetter) in the investigation and/or in the case;
- relevance of the contribution;
- seriousness of the offence;
- seriousness of the intimidation and threat;
- willingness and suitability to being subject to protection measures or programmes;
- risk to the programme and community.

13. When deciding upon the adoption of protection measures and assessing the criteria mentioned in paragraph 12, it should be considered whether the information or testimony provided by the witness or collaborator of justice is essential for the case, or whether other information or evidence, which would not necessitate exposing the witness or collaborator of justice to risk, could be deemed sufficient to establish a case.

#### B. Scope and application of protection measures and programmes

14. Proportionality between the nature of the protection measures and the seriousness of the intimidation and threat to the witness or collaborator of justice should be ensured.

15. Witnesses or collaborators of justice being subjected to the same kind of intimidation and threat should be entitled to similar protection. However, any protection measures/programmes adopted will need to take into account the particular characteristics of the matter and the individual needs of the person(s) to be protected. Special consideration and protection measures should be given to vulnerable groups of witnesses, such as victims, including victims of sexual and gender-based violence, minors and witnesses with medical or special needs.

16. Procedural rules aimed at the protection of witnesses and collaborators of justice should ensure that the balance necessary in a democratic society is maintained between the prevention of crime, the needs of the witnesses, collaborators of justice and victims and the safeguarding of the right to a fair trial.

17. While ensuring that the parties have adequate opportunity to challenge the evidence given by a witness or collaborator of justice, the following protection measures aimed at preventing identification of the witness or collaborator of justice prior to, during and after the criminal proceedings, may, *inter alia*, be considered:

- using pseudonyms and redacting identifying information throughout the entire criminal proceedings;
- recording, with the help of audiovisual means, statements made by witnesses and collaborators of justice during the preliminary phase of the procedure;
- using statements given during the preliminary phase of the procedure as evidence in court when it is not possible for witnesses to appear before the court or when appearing in court might result in actual danger to the witnesses or collaborators of justice or to people close to them; pre-trial statements should be regarded as valid evidence if the parties have, or have had, the chance to participate in the examination and interrogate and/or cross-examine the witness and to discuss the contents of the statement during the procedure;
- disclosing information enabling the witness or collaborator of justice to be identified at the latest possible stage of the proceedings, when there might be less risk of interference or when additional measures are in place, and/or releasing only selected details;
- excluding or restricting the media and/or the public from all or part of the trial, for example by conducting parts of hearings in private or closed session when necessary to protect the identity of the witness or collaborator of justice;
- using devices preventing the physical identification of witnesses and collaborators of justice, such as using screens or curtains, disguising the face of the witness or distorting his or her voice;

- using all available means offered by information and communication technologies under national law and regulations on procedure and evidence to facilitate the protection of witnesses and collaborators of justice, including video-conferencing.

18. Any decision to grant anonymity to a witness or collaborator of justice in criminal proceedings will be made in accordance with domestic law and European human rights law.

19. Where available, and in accordance with domestic law, anonymity of persons who might give evidence should be an exceptional measure. Where the guarantee of anonymity has been requested by such persons and/or temporarily granted by the competent authorities, criminal procedural law should provide for a verification procedure to maintain a fair balance between the needs of criminal justice and the rights of the parties. The parties should, through this procedure, have the opportunity to challenge the alleged need for anonymity of the witness, his or her credibility and the origin of his or her knowledge.

20. Any decision to grant anonymity should only be taken when the competent judicial authority finds that the person involved, or of the persons close to him or her, is seriously threatened, the evidence appears to be significant and the person appears to be credible.

21. When anonymity has been granted, the conviction should not be based solely, or to a decisive extent, on the evidence provided by anonymous witnesses or collaborators of justice.

22. Where appropriate, witness protection programmes should be set up and made available to witnesses and collaborators of justice who need protection in accordance with national witness protection legislation or internal regulation. These programmes should, where feasible in the context of the competent authority, be implemented, supervised and co-ordinated by specialised witness protection units with the required degree of autonomy, and their main objective should be to support the criminal justice process by safeguarding the life, personal security and well-being of witnesses and collaborators of justice, and people close to them, aiming in particular at providing the appropriate physical, psychological, educational, social and financial protection and support. Member States should ensure that these units are adequately staffed, resourced and trained, and have access to covert logistics and finances, in order to provide adequate protection and support to persons in the protection programme.

23. Protection programmes implying dramatic changes in the life or privacy of the protected person (such as relocation, change of identity or deletion of digital identity) should be applied to witnesses and collaborators of justice who need protection beyond the duration of the criminal trials where they give testimony. Such programmes, which may last for a limited period or for life, depending on the persistence of threat, should be adopted if no other measures are deemed sufficient to protect witnesses and collaborators of justice and those close to them.

24. The adoption of such programmes requires the informed consent of the person(s) to be protected and an adequate legal framework, including appropriate safeguards for the rights of the witnesses or collaborators of justice according to national law. Witnesses and collaborators of justice should also be sensitised to the risks associated with the use of information and communication technologies, in particular the internet and social networks, and their duties and rights with regard thereto. Interagency co-operation between authorities dealing with personal data should be promoted in order to avoid risks of protected witnesses and collaborators of justice being identified and exposed.

25. Where appropriate, protection measures could be adopted on an urgent and provisional basis before a protection programme is formally adopted.

#### C. Special needs of collaborators of justice

26. Given the essential role that collaborators of justice may play in the fight against serious offences, and the particular risks they face, they should be given adequate consideration and incentives to collaborate, such as penalty reductions or immunities in exchange for providing information to be used in criminal proceedings. Where necessary, protection programmes applicable to collaborators of justice serving a prison sentence may also include specific arrangements such as special penitentiary regimes.

27. Protection of collaborators of justice should also be aimed at preserving their credibility and public security. Adequate measures should be undertaken to protect against the risk of the collaborators of justice committing further crimes while under protection and therefore, even involuntarily, jeopardising the case in court. The intentional perpetration of an offence by a collaborator of justice under protection should, according to the relevant circumstances, imply the revocation of protection measures.

#### D. Witness protection units

28. Dedicated witness protection units specifically dealing with the protection of witnesses and collaborators of justice should be established where feasible in the context of the competent authority. These units should be staffed with highly specialised personnel with required expertise including, but not limited to, in the fields of physical security and protection, reidentification and legend building, covert logistics and finances, psychosocial assessment and support, information and communication technologies, threat and risk assessment, care and financial management. Specialised personnel should also be available for vulnerable groups of witnesses, such as victims, including victims of sexual and gender-based violence, minors or witnesses with medical or special needs. Due consideration should also be given to ensuring adequate gender representation, language expertise and knowledge and sensitivity to ethnic, cultural and religious needs of witnesses and collaborators of justice in the programme. Adequate and continuous training should regularly be provided to personnel in order to ensure the highest degree of protection, confidentiality and support to individuals in programmes, including in the fields of information and communication technologies, digital security and cyber-security.

29. While respecting the fundamental principles of administrative organisation of each State, staff dealing with the implementation of protection measures should be afforded operational autonomy and should not be involved either in the investigation or in the preparation of the case where the witness or collaborator of justice is to give evidence. Therefore, an organisational separation between these functions should be provided for. However, an adequate level of co-operation and contact with and between law-enforcement agencies should be ensured in order to successfully adopt and implement protection measures and programmes and ensure a co-ordinated and holistic approach to collaborators of justice and witness protection and support throughout the process, from investigation to trial and beyond. When possible, such co-operation and co-ordination should begin before the first witnesses and collaborators of justice are contacted and interviewed to ensure good practices and minimise the risk of exposure.

#### IV. International co-operation

30. While respecting the different legal systems and the fundamental principles of administrative organisation of each State, a common approach to international issues related to the protection of witnesses and collaborators of justice should be followed. Such a common approach should aim at ensuring proper professional standards and compatible procedures and practices, not least in the crucial aspects of confidentiality, integrity, required information, assessment of risk and threats, and training. Member States should ensure sufficient exchange of information, best practices and co-operation between the authorities responsible for protection programmes.

31. Measures aimed at fostering international co-operation should be adopted and implemented in order to facilitate the examination of protected witnesses and collaborators of justice and to allow protection programmes to be implemented across borders.

32. The scope and the effective and rapid implementation of international co-operation in matters related to the protection of witnesses and collaborators of justice, including with relevant international jurisdictions, should be improved.

33. The following objectives should, for example, be considered:

- to provide assistance in temporarily or permanently relocating abroad protected witnesses, collaborators of justice and persons close to them and ensuring their protection, in particular in those cases where no other solution can be found, where appropriate supported by bilateral or multilateral agreements;



- to provide psychosocial support to witnesses and collaborators of justice and persons close to them who are temporarily or permanently relocated, including by setting up programmes to integrate them into the working and social life of their new place of residence and specifying the legal basis for their residence permit;
- to facilitate and improve the use of information and communication technologies, and the security thereof, while safeguarding the rights of the parties;
- to co-operate, exchange best practices and develop common solutions to face the challenges posed by rapidly developing new technologies susceptible of endangering the safety of witnesses, collaborators of justice and persons close to them, including those which may expose or reveal their identity through biometric authentication (for example, facial recognition, fingerprints, etc);
- to continue to co-operate and improve the exchange of best practices through the use of existing networks of national and international witness protection units and experts;
- to continue to co-operate and establish common standards and principles among member States to facilitate effective and rapid relocation abroad of witnesses and collaborators of justice at high risk, including by establishing common principles regarding financing, immigration procedures and other levels of support;
- to contribute to the protection of witnesses and collaborators of justice within the context of co-operation with international criminal courts and tribunals, joint investigation teams, special investigative task forces, international fact-finding bodies and commissions and relocated specialist judicial institutions.