



A Comparative Study of Formal Measures to Protect Witnesses Against Threats (Article 214 of the Criminal Procedure Law and its Executive Regulations)

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Abstract

The dual right and duty of the prosecuting authority and the victim in presenting evidence emphasizes the importance of evidence to prove the crime, on the other hand, the accused insists on presenting various evidence, including the testimony of witnesses, in order to escape from conviction, assuming the gravity of the accusation. Therefore, it is appropriate that the implementation of these rights should be respected and supported by the legislator and the judicial system, and no external factors such as threats, torture, defects and ineffectiveness of the laws should prevent the implementation of the rights of the victim. Protecting witnesses against threats is a manifestation of adherence to the principles of fair proceedings and guaranteeing the rights of litigants, however, the procedure of different countries is various in this field. Iranian criminal producer law has taken a big step towards fulfilling this task. Although the protection of all kinds of life, material and dignified values of witnesses in Iranian law is considered a positive point, but the challenges and basic questions regarding the quality of protection for witnesses of special security crimes and economic corruptions, vulnerable and intimidated witnesses, the need to pay full attention to The financial dimensions and the allocation of legal and psychological assistance, the use of the capacity of civil society, as well as the quality of the conflict of these protective measures with the rights of the accused can still be proposed and need to be answered, which in this article, while using the descriptive and analytical method and using library sources In the process of comparative study and presentation of numerous examples, with emphasis on the laws of England, America and Italy, an attempt has been made to answer and provide suitable examples to the Iranian legislator. For example, it seems that because the protection programs impose significant restrictions on the rights of the accused, entry into these programs should be done on a minimal basis, in cases of necessity and assuming that



certain conditions are met, for example, the United Nations Office on Drugs and Organized Crime. In explaining the reasons that justify the inclusion of witnesses in support programs in organized crimes, he mentions four important preconditions; 1- The level of danger that threatens the person must be serious, 2- The importance of the case, 3- The testimony of the witness is vital for the success of the case, 4- There should be no other way available to ensure the security of the witness. Entering the support programs considering the mentioned conditions, although it causes restrictions on the rights of the accused, but it has several benefits; First, it is not possible to fulfill the mentioned conditions in all cases; Therefore, the adoption of support programs is limited to more limited cases, secondly, as much as guaranteeing the defendant's defense rights is important, the rights and security of other people present in the lawsuit are also important, and the fulfillment of the mentioned conditions and entering into the support programs represent the level of The importance of the case and the need to ensure the safety of other litigants was. Such an approach is also noticeable in Iranian law to some extent, and considering the beginning of Article 214 of the Criminal Procedure Law, the existence of danger and necessity of testimony; The two key elements in the entry of the witness into support programs are considered, although the void of attention to the importance of the case and the lack of alternative support measures are still felt. Considering the numerous suggestions of the article resulting from the comparative studies, it is used that in addition to the necessity of the practical application of legal regulations and executive regulations, the Iranian legislator should take serious and firm steps in order to adopt special protective measures for vulnerable witnesses, provide wider financial support to witnesses, provide assistance Legal and psychological counseling and criminalization of abuse of support programs by witnesses. Criminalizing abuse of support programs by witnesses, whether to enter or continue in them, and counting it as an aggravating factor for the crime of defamation, as in Italy (paragraph (1) of Article 22 of the law on the protection of judicial witnesses in 2018), as well as financing a part of Support programs based on the monetary penalty prescribed for the crime of threats or other monetary penalties related to each case are two important proposals that can be presented to Iranian law, which can both prevent the misuse of these programs by individuals, and help allocate programs to the needy. The most intuitive and also the financing of support measures should be used. Final point; It is necessary that the practical procedure of the courts, as a mirror of the full view of executive-judicial criminal policy, in relation to the protection of witnesses, should play an active role at the current stage, because this matter is important in several ways, first; The purpose of establishing laws is to guarantee the rights of individuals or to assert their rights, and the requirement to achieve this is their implementation, not symbolic status, secondly, it is during the implementation of laws that legal gaps and basic needs regarding witness protection become apparent. And then researches such as the current article can be used and exploited.

Keywords: Witnesses, threats, witness protection, testimony, witness protection regulation, criminal procedure law, English law.



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