



The importance and legal regulation of the witness in criminal proceedings: between rights and obligations

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Abstract

The role of the witness in criminal proceedings is fundamental to achieving justice, as witnesses contribute essential factual information that can influence the outcome of trials. This paper examines the dual nature of the witness's status, situated between legal rights and procedural obligations. On one hand, witnesses are entitled to protection, privacy, and respectful treatment, ensuring their physical and psychological well-being throughout the judicial process. On the other hand, they are bound by obligations such as appearing in court, telling the truth under oath, and complying with procedural requirements. The study explores the legal frameworks governing these rights and duties across various jurisdictions, highlighting both universal principles and national differences. Furthermore, it analyzes the potential conflicts arising when safeguarding witness rights may clash with the defendant's right to a fair trial, especially concerning anonymity, cross-examination, and the disclosure of sensitive information. Special focus is given to vulnerable categories of witnesses who require tailored legal measures to balance their protection with procedural integrity. Understanding the legal regulation of witnesses and the interplay between their rights and duties is critical for practitioners aiming to uphold justice while minimizing harm. Future developments should focus on harmonizing legal standards and enhancing support mechanisms for witnesses in criminal proceedings.

Keywords: procedural fairness, witness protection, legal obligations, judicial integrity, cross-examination

I. Introduction

The witness is often described as the “eyes and ears of justice” (Damaska, 1997), playing an essential role in criminal proceedings by providing crucial information necessary for uncovering the truth. The legal status of the witness is complex, oscillating between the

obligation to testify and the need for protection against the risks to which they are exposed by participating in the criminal process (Jackson & Summers, 2012).

Although their role is indispensable, legal systems seek to maintain a balance between two fundamental imperatives: obtaining truthful testimony in the interest of justice and safeguarding the individual rights of persons called to testify (Ashworth, 2015). This duality generates numerous legal and ethical issues, which remain subjects of debate in contemporary justice systems.

Research Questions

To explore the complexity of the role of the witness in criminal proceedings, this article aims to address the following research questions:

1. What is the legal definition and role of the witness in criminal proceedings across different legal systems?
2. How do legal norms balance the witness's obligation to testify with their rights to protection and confidentiality?
3. What are the main challenges associated with witness protection programs, and how effective are these measures in practice?
4. To what extent have international human rights instruments influenced the regulation of witness rights and obligations in criminal justice systems?

II. Legal status and role of the witness

In criminal law, the witness is defined as the person who possesses relevant knowledge regarding the facts under investigation and is called to relate these facts before judicial authorities (Schauer, F., 2022). The testimony of witnesses often represents one of the most important pieces of evidence in criminal proceedings, as their statements can corroborate other existing evidence or, in some cases, may be the only source of information concerning the circumstances of the acts being adjudicated. The significance of testimonial evidence is particularly emphasized in adversarial legal systems, where the principles of orality and adversarial proceedings govern the administration of evidence, and the process of establishing the truth relies to a large extent on witness statements (Jackson & Summers, 2012).

Witnesses are not parties to the criminal proceedings; however, their participation is essential for the administration of justice, since through their testimonies they contribute to establishing the factual circumstances and, implicitly, to the fair adjudication of cases. For this reason, national legislation and international legal instruments establish a complex legal status for the witness, positioned at the intersection between procedural obligations and fundamental rights. Thus, the witness is obligated to tell the truth, under the penalty of criminal liability for perjury, but at the same time enjoys legal protection against any pressure or threats that could influence the content of their statements (Ashworth, 2015).

Nonetheless, there are significant differences between legal systems regarding the procedural treatment of witnesses. In common law jurisdictions, cross-examination constitutes

a fundamental instrument for testing the veracity and consistency of witness statements. Through this method, lawyers from both sides may address questions to the witness with the purpose of identifying possible contradictions, errors, or exaggerations in their account of the facts (Damaska, 1997). This procedure reflects the adversarial philosophy of the Anglo-Saxon criminal trial, where the burden of establishing the truth lies primarily with the parties and the court, which assesses the credibility of the witness in light of the questions and answers given in open court. (Bajpai, G. S. 2009).

By contrast, in continental legal systems, the criminal trial is characterized by a more active role of the judge in the administration of evidence. The judge has a direct and significant role in directing the questioning of witnesses, being the one who formulates questions to clarify relevant circumstances of the case. Although in these systems as well, the parties have the right to question witnesses, the cross-examination does not reach the same intensity and adversarial character as in the Anglo-Saxon procedure (Damaska, 1997). This difference stems from the philosophy of continental systems, which emphasize the pursuit of truth as the primary goal of the proceedings, assigning the judge an active role in establishing the facts of the case.

Despite these differences, the importance of the witness in criminal proceedings is universally recognized. Witnesses are considered indispensable for the administration of justice, as through their statements they help reconstruct the facts and identify the perpetrators of crimes. Furthermore, the protection of witnesses, especially those who are vulnerable or threatened, has become a significant concern in modern legislation, influenced by international instruments such as the European Convention on Human Rights, which impose obligations on states to ensure a balance between the right to a fair trial and measures to protect witnesses (European Court of Human Rights, 1996).

Therefore, the role of the witness in criminal proceedings is not merely technical or formal, but essential for the achievement of justice. Through their testimonies, witnesses support judicial authorities in reaching the fundamental goal of criminal proceedings: establishing the truth and correctly applying the law. (Njeri Kariri, J., Salifu, U. 2016).

The legal status and role of the witness vary across jurisdictions, yet certain core principles—such as the obligation to tell the truth, the right to be protected from intimidation, and the duty to appear when summoned—are universally recognized. While procedural frameworks share these fundamentals, their practical application often reflects the legal culture, procedural model, and human rights obligations of the jurisdiction in question.

In the **United Kingdom**, the Youth Justice and Criminal Evidence Act 1999 introduced a range of “*special measures*” to support vulnerable and intimidated witnesses. For example, in *R v Camberwell Green Youth Court [2005] UKHL 4*, the House of Lords upheld the use of video-link testimony for a child witness, emphasizing the need to balance the defendant’s right to cross-examination with the welfare of the witness. This case exemplifies how statutory provisions can be interpreted to prioritize psychological safety without undermining procedural fairness.

In **Canada**, the Supreme Court case *R v L.D. (1993)* confirmed that testimonial aids—such as allowing a support person to be present or permitting testimony from behind a screen—

are permissible where necessary to obtain a full and candid account from the witness. The Court highlighted that the integrity of the trial is best served when vulnerable witnesses can give evidence without fear or undue stress, reflecting the broader human rights framework under the Canadian Charter of Rights and Freedoms.

In **the Netherlands**, the use of “*threatened witness*” provisions under Article 226a of the Dutch Code of Criminal Procedure allows for anonymity in exceptional circumstances, particularly in organized crime cases. A notable example is the *Passage Case* (2013), where anonymous witness testimony was admitted to protect individuals from severe threats, provided that sufficient procedural safeguards allowed the defense to challenge the credibility of such testimony indirectly.

In **Australia**, the case of *R v MSK & MAK [2006] NSWCCA 297* demonstrated the application of closed-court orders and non-publication directives to protect the identity of child witnesses in sexual offence trials. The appellate court confirmed that these measures were necessary to uphold both the welfare of the witness and the administration of justice.

Finally, in **the United States**, *Maryland v. Craig*, 497 U.S. 836 (1990) remains a landmark decision where the U.S. Supreme Court held that child witnesses in sexual abuse cases may testify via closed-circuit television without violating the Sixth Amendment’s Confrontation Clause, provided that face-to-face confrontation would cause serious emotional distress impairing the witness’s ability to testify.

These case studies demonstrate that while the witness’s legal status is grounded in similar procedural duties and rights, jurisdictions have developed diverse mechanisms—ranging from video-link testimony and anonymity orders to physical courtroom modifications—to ensure that witnesses can fulfil their role without compromising their safety or the fairness of the proceedings. Such comparative insights underline the importance of context-sensitive procedural design informed by both legal principles and psychological considerations.

III. The balance between the witness’s obligation to testify and their rights to protection and confidentiality

Contemporary legal norms enshrine a fundamental principle in criminal proceedings: the witness has the obligation to testify; however, this obligation must be balanced by respecting their fundamental rights, particularly the right to protection and confidentiality. This balance reflects the inherent tension between the public interest in uncovering the truth and the need to protect individuals who contribute to the administration of justice (Ashworth, 2015).

The Obligation to testify

The witness’s obligation to appear and testify is an essential component of the proper functioning of the judicial system. In most legal systems, witnesses can be legally summoned, and in the event of unjustified refusal to appear or answer questions, they may face disciplinary, administrative, or even criminal sanctions, depending on the seriousness of the conduct (Schauer, F., 2022). This obligation arises from the significant social interest in clarifying facts and ensuring fair and effective justice (Jackson & Summers, 2012).

In Romanian law, this obligation is explicitly provided for in the Code of Criminal Procedure, which sanctions witnesses who refuse to appear or testify without legal grounds (Article 265 of the Code of Criminal Procedure). Moreover, giving false testimony constitutes a criminal offense and is punishable under criminal law (Article 273 of the Criminal Code).

The right to protection and confidentiality

Parallel to the obligation to testify, witnesses benefit from essential rights to protection and confidentiality, established both by domestic laws and by international human rights instruments.

Witness protection involves legal and technical measures designed to ensure their physical and psychological safety in the face of threats, intimidation, or violence. In complex cases, such as those involving organized crime, terrorism, or high-level corruption, witnesses may face significant pressure. Therefore, modern legislation has introduced the institution of the protected witness, who may benefit from measures such as anonymity, identity changes, physical protection, or inclusion in special relocation programs (Felföldi, E., 2006),

In Romanian law, Law no. 682/2002 on the protection of witnesses regulates these measures, establishing the conditions under which witnesses may benefit from special protection, including maintaining the confidentiality of identifying information, changing residence, and other measures necessary to guarantee their safety.

In addition, the right to confidentiality encompasses situations in which a witness has a legitimate interest in refusing to testify, such as protecting privileged relationships (e.g., lawyer-client, doctor-patient, priest-penitent) or to avoid self-incrimination, in accordance with the principle **nemo tenetur se ipsum accusare** (Jackson & Summers, 2012).

Balancing obligation and rights

Balancing the obligation to testify with the witness's rights to protection and confidentiality is a complex process governed by fundamental principles of criminal procedural law and human rights law. Judicial bodies, especially the European Court of Human Rights (ECHR), have emphasized the need to maintain this balance in their case law.

Thus, in the case of *Doorson v. The Netherlands*, the European Court of Human Rights held that the use of evidence from protected witnesses is permissible, but the defense's right to cross-examine witnesses cannot be completely eliminated, and a conviction cannot be based exclusively and decisively on the statements of anonymous witnesses (European Court of Human Rights, 1996). This jurisprudence illustrates the necessity for protective measures to be proportionate and not to undermine the essence of the right to a fair trial.

In essence, the law seeks to maintain a balance between the interests of justice in obtaining witness testimony and the protection of the fundamental rights of those witnesses, adhering to principles of proportionality and fairness. Adequate regulation in this regard contributes not only to the efficiency of judicial proceedings but also to strengthening public confidence in the criminal justice system (Ashworth, 2015).

IV.Challenges and effectiveness in the implementation of witness protection programs

Witness protection programs were conceived as indispensable tools for ensuring the proper functioning of criminal justice, especially in cases involving organized crime, terrorism, human trafficking, or high-level corruption. Their purpose is to guarantee the physical, psychological, and social safety of witnesses who cooperate with judicial authorities and who, as a result, expose themselves to significant risks (Schauer, F., 2022).

Main challenges of witness protection programs

1. Balancing witness protection and the rights of the defense

One of the most sensitive challenges is ensuring a balance between the need to protect witnesses and the fundamental right of the defendant to a fair trial, including the right to cross-examine prosecution witnesses. The case law of the European Court of Human Rights has emphasized that the use of evidence from anonymous witnesses is permissible; however, a conviction cannot be based solely and decisively on such testimony without other corroborative evidence (European Court of Human Rights, 1996). This creates practical difficulties because protecting the identity of witnesses may limit the defense's ability to assess the credibility and truthfulness of their statements (Jackson & Summers, 2012).

2. Costs and logistical resources

Implementing witness protection programs entails significant costs, associated with measures such as identity changes, relocation of witnesses and their families, and the provision of means for subsistence, education, and integration into new communities. These costs place pressure on the budgets of the institutions involved and raise questions about the financial sustainability of the programs, especially in states with limited resources (Schauer, F., 2022).

3. Adapting witnesses to new living conditions

Witnesses included in protection programs often face major difficulties in adapting after changes to their identity and social environment. The rupture from extended family, loss of employment, or disruption of previous social connections generates psychological stress, mental health issues, and, in some cases, the desire of witnesses to leave the program, thereby exposing themselves again to risks (Damaska, 1997).

4. Vulnerabilities in cybersecurity and data protection

Another contemporary challenge relates to cybersecurity and the protection of personal data. In the digital age, the risk of information leaks regarding the identity of protected witnesses due to cybersecurity breaches has increased significantly. Ensuring the absolute confidentiality of witnesses' data is a difficult task, vulnerable to sophisticated cyberattacks (Jackson & Summers, 2012).

5. Effectiveness of witness protection programs in practice

Despite the challenges mentioned, witness protection programs have proven effective in numerous contexts, contributing to the dismantling of organized criminal groups and the investigation of serious offenses. Many complex cases could not have been resolved without

the cooperation of protected witnesses, who, under normal circumstances, would not have testified out of fear of reprisals (Schauer, F., 2022).

Nevertheless, the effectiveness of these programs is not uniform and depends on multiple factors: the financial resources allocated, the existing legislative framework, the degree of inter-institutional cooperation, and the level of professional training of the involved structures. Moreover, the success of a protection program cannot be evaluated solely by the number of protected witnesses but also by the extent to which they manage to lead a normal and safe life after their cooperation with the authorities has ended (Ashworth, 2015).

In conclusion, witness protection programs remain an indispensable tool of modern justice; however, their effectiveness is conditioned by a delicate balance between ensuring the safety of witnesses and respecting the fundamental rights of defendants, as well as by the resources and institutional capacity to manage the complexity of these measures.

V. The influence of international human rights instruments on the regulation of the legal status of the witness in criminal justice

In recent decades, the protection of fundamental rights of individuals involved in criminal proceedings has become an essential element of modern justice systems. International human rights instruments have had a significant influence on how the legal status of the witness is regulated, contributing to the development of a normative framework aimed at ensuring a balance between the public interest in uncovering the truth and the protection of the individual rights of witnesses (Jackson & Summers, 2012).

The enshrinement of fundamental principles

One of the most important instruments in this area is the European Convention on Human Rights (ECHR), which, through Article 6, enshrines the right to a fair trial. Although the text of the Convention does not explicitly regulate the status of witnesses, the case law of the European Court of Human Rights (ECtHR) has been essential in shaping the principles governing witness protection, especially in cases where there are risks to their safety (European Court of Human Rights, 1996).

The ECtHR has established that the accused's right to an effective defense includes the possibility to cross-examine prosecution witnesses. However, the Court has admitted that, in certain situations, it is permissible to restrict this possibility, provided that the limitation is justified, necessary, and proportionate. Thus, in the case of *Doorson v. The Netherlands*, the Court ruled that the use of statements from protected witnesses does not automatically violate the right to a fair trial; however, a conviction cannot be based exclusively and decisively on such statements (European Court of Human Rights, 1996). This jurisprudence has had a considerable impact on national legislation, obliging states to ensure a balance between witness protection and the defendant's right to a defense (Ashworth, 2015).

Regulations at the level of the european union

The European Union has also paid increasing attention to witness protection in the context of combating cross-border and organized crime. Instruments such as Directive 2012/29/EU, establishing minimum standards on the rights, support, and protection of victims

of crime, contain provisions relevant for witnesses, especially regarding the protection of vulnerable witnesses or those exposed to the risk of reprisals.

Moreover, European legislation on judicial cooperation in criminal matters provides for measures allowing witnesses to be heard remotely, using audiovisual technology, precisely to reduce the risks to which they may be exposed and to ensure a safe and efficient framework for giving testimony (Jackson & Summers, 2012).

UN Standards and other international instruments

At the global level, the United Nations (UN) has issued various relevant instruments, such as the United Nations Convention against Transnational Organized Crime (Palermo Convention, 2000), which imposes concrete obligations on states to protect witnesses. Article 24 of the Convention provides for measures including physical protection, changes of identity, and the relocation of witnesses, emphasizing the need for international cooperation in such situations.

These international instruments establish common principles and require states to adopt domestic legislative measures to protect witnesses from threats, intimidation, and retaliation, particularly in cases involving organized crime or terrorism (Schauer, F., 2022).

Impact on National Legislation

The influence of international instruments is also reflected in the domestic laws of European states, including Romania. Thus, Law no. 682/2002 on the protection of witnesses largely transposes European and international requirements, providing a legal framework for measures such as the protection of identity, relocation of witnesses, and other forms of support for those exposed to risks. At the same time, Romanian legislation establishes clear rules for the use of evidence obtained from protected witnesses, ensuring respect for the right to defense and the principles of a fair trial (Code of Criminal Procedure, Articles 126-130).

Recent technological developments have significantly influenced both the protection and the rights of witnesses, offering new opportunities as well as complex challenges for criminal justice systems. Advances in secure digital communication, such as encrypted video-conferencing platforms, enable witnesses to testify remotely from safe locations, thereby reducing the risk of intimidation or retraumatization while maintaining procedural transparency. The adoption of blockchain-based evidence management systems can enhance the integrity of recorded witness statements by ensuring tamper-proof storage and verifiable chain-of-custody records. Artificial intelligence-driven tools, including automated voice and facial anonymization technologies, now allow for real-time masking of identifying features, making it possible to protect vulnerable witnesses without impairing the ability of the court to assess the substance of their testimony.

However, these innovations also raise important legal questions regarding the accused's right to confront their accuser, the admissibility of technologically mediated evidence, and the potential for algorithmic bias in automated systems. The integration of such technologies requires clear procedural guidelines and judicial oversight to ensure that witness protection measures do not inadvertently infringe on fair trial guarantees. By critically examining the interplay between technological tools, human rights obligations, and evidentiary reliability,

future legal reforms can harness innovation to create a more secure, efficient, and equitable framework for witness participation in criminal proceedings.

Conclusions and Discussion

The witness occupies an essential position in criminal proceedings, acting as a crucial link in the process of uncovering the truth and delivering justice. Across diverse legal systems, the role of the witness is shaped by a delicate balance between obligations to testify and rights to protection and confidentiality. This duality underscores the fundamental tension between the societal interest in achieving justice and the need to preserve individual rights (Ashworth, 2015; Jackson & Summers, 2012).

International human rights instruments, particularly the European Convention on Human Rights, have significantly influenced national regulations concerning the legal status of witnesses. Through jurisprudence such as the landmark *Doorson v. The Netherlands* decision, the European Court of Human Rights has established critical principles regarding the use of testimony from protected witnesses. These principles emphasize that while witness protection is permissible, it must not compromise the core rights of the defense, such as the right to cross-examine witnesses. Consequently, legal systems are required to adopt procedural safeguards to prevent convictions based solely and decisively on anonymous witness statements (European Court of Human Rights, 1996).

Moreover, the European Union and the United Nations have developed specific standards and legal instruments that reinforce the obligation of states to implement effective witness protection mechanisms, particularly in cases involving organized crime, terrorism, and corruption. These measures include anonymity, relocation, and physical protection, all designed to mitigate risks faced by individuals who choose to cooperate with justice systems (Schauer, F., 2022).

Despite substantial progress in the legal protection of witnesses, significant challenges remain. Balancing the witness's security with the defendant's right to a fair trial, managing the high costs and logistical complexity of protection programs, and addressing psychological difficulties faced by witnesses adapting to new identities all pose persistent obstacles. Furthermore, in the digital age, safeguarding the confidentiality of protected witnesses' identities against cybersecurity threats has become increasingly complex (Damaska, 1997; Jackson & Summers, 2012).

From a practical perspective, witness protection programs have proven effective in enabling prosecutions in complex and dangerous cases, contributing decisively to dismantling criminal networks and securing convictions that would otherwise be impossible. However, their success cannot be measured solely by the number of protected witnesses, but also by the extent to which these individuals can lead secure and stable lives after cooperation with the authorities has concluded (Ashworth, 2015).

In conclusion, the regulation of the legal status of witnesses reflects an evolving intersection between the pursuit of justice and the protection of individual rights. The continued development and refinement of legal frameworks, both nationally and internationally, remain essential to ensure that witnesses can fulfill their crucial role without undue risk, while

upholding the integrity and fairness of criminal proceedings. Future research and legislative efforts should focus on addressing existing gaps and emerging challenges, particularly those posed by technological advancements and transnational criminal activity.

Practical Implications

Practically, the findings underline the necessity for national legal systems to implement robust, well-funded, and flexible witness protection mechanisms. Legal practitioners and policy-makers must ensure that protective measures do not infringe upon the defendant's fundamental rights, especially the right to a fair trial. Institutions need to allocate sufficient resources for witness relocation, psychological support, and cybersecurity infrastructure to prevent data breaches that could expose witnesses to retaliation. Moreover, there is a critical need for training judicial staff and law enforcement in managing delicate situations involving vulnerable or threatened witnesses, while ensuring procedural fairness.

Beyond these immediate priorities, the results also emphasize the importance of creating multidisciplinary teams—including psychologists, social workers, and digital forensic experts—to assess risks comprehensively and provide tailored protection plans. Such an approach moves away from purely reactive measures and fosters preventive strategies that anticipate threats before they materialize. Another practical dimension is the necessity to strengthen transnational cooperation, since witness intimidation often transcends borders. Harmonized protocols and secure channels of communication between EU Member States and international organizations would reduce procedural gaps and enhance the credibility of witness protection programs.

Additionally, courts and prosecutors' offices should adopt standardized guidelines for balancing competing rights: on the one hand, safeguarding witnesses from secondary victimization, and on the other, guaranteeing defendants' rights to challenge the evidence. This balance requires continuous monitoring and the development of jurisprudential benchmarks that clarify acceptable limits of anonymity, remote testimony, and restricted disclosure.

Finally, the practical implications extend to policy reforms aimed at raising public trust. By communicating transparently about the existence, accessibility, and fairness of witness protection mechanisms, institutions can counteract the fear of reprisals that discourages witnesses from coming forward. In the long term, such reforms will contribute not only to the efficiency of criminal justice systems but also to the broader goal of upholding the rule of law and human rights in democratic societies.

Theoretical Implications

Theoretically, the topic contributes to the ongoing discourse regarding the balance between individual rights and public interest in criminal proceedings. It highlights how legal concepts such as due process, fairness, and proportionality must evolve in response to challenges posed by modern forms of crime, technological advances, and international cooperation. The jurisprudence of the European Court of Human Rights sets important doctrinal standards, prompting continuous reflection on how to reconcile the sometimes conflicting goals of witness protection and the rights of the defense.

Beyond this, the study enriches theoretical debates on the dynamic nature of criminal justice systems in a globalized context. It demonstrates how classical guarantees of procedural justice—such as the principle of immediacy, the right to confrontation, and equality of arms—are being reinterpreted when confronted with security imperatives. By doing so, it situates witness protection at the intersection of constitutional theory, human rights law, and criminology, showing that it is not merely a practical tool, but also a conceptual testing ground for redefining the contours of fair trial standards.

The topic also contributes to comparative criminal procedure scholarship, offering insights into how different legal traditions—adversarial, inquisitorial, or hybrid—manage the role and protection of witnesses. These differences underscore the theoretical richness of cross-jurisdictional dialogue, as solutions adopted in one legal system can inspire doctrinal innovation in another. Furthermore, the analysis underscores the need to integrate perspectives from psychology and victimology into legal theory, highlighting how vulnerability and trauma can and should influence the design of procedural safeguards.

Ultimately, this area of study advances the theoretical understanding of how law adapts to emerging risks without undermining its foundational values. It illustrates the tension between flexibility and stability in legal doctrine, suggesting that the evolution of witness protection regimes can serve as a paradigmatic example of how modern criminal law negotiates the delicate balance between protecting individuals and upholding the collective interest in effective justice.

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