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Societal questions of witness protection in Hungary

Introduction – international and constitutional background

Besides the approach of witness protection in criminal procedure and evidentiary theory, it is necessary to carry out empirical research mainly with the aim of developing strategies to protect witnesses from intimidation."[1] As examples of such research are difficult to find both in international and Hungarian scientific literature, I attempted to obtain relevant data by means of questionnaires using the means at my disposal. In my opinion, useful conclusions can be drawn in connection with the practical application and effectiveness of the present Hungarian legislation in force.

It should be emphasized that this kind of empirical test results are missing not only in Hungary, but, in spite of the extensive application of witness protection programmes internationally, also only a relatively small amount of international research has been done on the comparative costs and effectiveness of witness protection.[2] Different methods of witness protection and protective programmes can be regarded as a reaction to different forms of intimidation, but they do not deal with their causes.

It is essential to examine the issues that lead to witness intimidation during legal proceedings, and how fear can influence the witness during testimony. Zoltán Varga deals with the theoretically important question of witness protection whether the witness' subjective sense of fear itself can influence the application of means of witness protection or only the authority's standpoint

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1 I. Kertész, *A még különösebben védett tanú*, "Belügyi Szemle" 2001, 50, 11, 38.

2 N. Fyfe, J. Sheptycki, *Facilitating witness co-operation in organised crime cases: an international review*, Home Office Online Report 27/05, http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr2705.pdf [15.16.2009], p. 27.

based on objective facts can be regarded as standard.[3] The close examination of this question is justified since it is indisputable that "the witness may also be put in an uncertain situation by the authorities"[4], which may reduce their confidence in the judicial system as well as their willingness to testify. It may happen that the witness really is afraid in spite of the fact that no facts, data or circumstances have emerged that could threaten the witness, only "their abstract sense of fear which prevents them from testifying or influences their testimony".[5]

It may happen that a witness been the victim of genuine threats and had been intimidated, but it may also happen that she/he is not aware of any real danger. In the latter case, the processing authority has to order the witness to be protected even if the latter definitely protests against it.[6] However, it can be questioned how such a witness would co-operate during their testimony.

Furthermore, during the application of witness protective means the demand on the fact the guaranteed rights of the accused – mainly cross-examiniation and the principle of directness – should be infringed insofar as this is strictly necessary, and that witness protection means should not be used only with the aim of making it easier to prove the case. Mihály Tóth expresses the basic question: "are we able to separate justified witness protection from the situation where the aim is to avoid cross-examination for the purpose of convenience?"[7]

From the R (97) 13. Recommendation about the intimidation of witnesses and the right to protection of the Committee of Ministers of the Council of Europe in connection with the above mentioned issue the following statement can be found: in some cases easier forms of witness protection should be ensured for a witness demanding this even if its application is justified by the witness' sense of fear exclusively, without any other objective reasons (e. g. in the case of confidential disclosure of personal data). Otherwise, the rangeof Hungarian witness protection enables this, since different forms and levels of witness protection exist.

Nevertheless, the commentary on Act XIX of 1998 on criminal proceedings (in the following: Be.) contains the following: "Judging justification of defence and choosing the applied measure/disposition (…) is the task of the

3 Z. Varga, *A tanúvédelem*, "Magyar Jog" 2001, 48, 5, 268–269.

4 Á. Farkas, E. Róth, *Tanúvédelem a büntetőeljárásban*, "Magyar Jog" 1992, 39, 10, 586.

5 Z. Varga, *A tanúvédelem*, 268.

6 *Ibid.*, 269.

7 M. Tóth, *Adalékok uj büntetőeljárási törvényünk mozgalmas gyermekéveihez (Tanúvédelem és iratismertetési jog a modifikációk sodrában)*, [in:] *Dolgozatok Erdei Tanár Úrnak*, eds. K. Holé, Cs. Kabódi, B. Mohácsi, Eötvös Loránd Tudományegyetem ÁJK, Budapest 2009, 424.

authorities who act on criminal cases and not a circumstance depending on the witness' subjective assessment."[8] This interpretation is quite contrary to the interpretation of the European Court of Human Rights (in the following: ECHR) in the Doorson-case[9] where, in order to obtain permission for anonymity, it is not necessary that the witness would be subject to genuine intimidation, but it is enough if they believe that they are in danger in the given circumstances.[10]

However, the ECHR itself made an opposite decision in the case 'Krasniki vs. the Czech Republic',[11] since it ruled against the Czech authorities on the basis that they permitted the anonymity of two witnesses only because of their subjective sense of fear (the witnesses were afraid of the defendant who was a drug dealer of Yugoslav origin, because they considered South-Slavs to extremely hot-tempered people and they usually restore witnessing against them). In this case the ECHR stated that non-appearance of witness in the hearing does not necessarily mean the infringement of the right to due procedure and in connection with drug dealing potential victimisation means real danger, but in the present case in the lack of appropriate examination of justified anonymity the acting authority restricted the right of the defendant contrary to the Agreement.[12]

In connection with the significant differences between the above mentioned opinions I share Zoltán Varga's standpoint according to which "it must be concluded that official measures and the personal subjective feeling of the witness finally could meet on a common platform."[13] In my opinion if the success of a criminal case is kept in mind according to the standpoint of the Recommendation and the Doorson case, the subjective sense of fear of the witness cannot be ignored, since the witness is going to confess on the basis of their conviction and may conceal certain facts if they feel to be in danger even if they have no reason for it. Furthermore, in spite of the fact that to refuse testimony as a result of alleged threats or intimidation is not possible, the witness may avoid stating relevant facts easily by claiming "not to remember them" at the hearing.

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8 *A büntetőeljárásról szóló 1998. évi XIX. törvény magyarázata*, eds. K. Holé, E. Kadlót, II. kötet, Magyar Közlöny Lap-és Könyvkiadó, Budapest 2007, 336.

9 Paragraph 71. of *Doorson v The Netherlands*, Judgment of 26th March 1996 (case number: 20524/92).

10 *EU standards in witness protection and collaboration with justice*, ed. G. Vermeulen, Maklu Publishers, Antwerp 2005, 38.

11 *Krasniki v Czech Republic*, Judgment of 28th February 2006 (case number: 51277/99).

12 Paragraphs 75., 82. and 86. of the judgment.

13 Z. Varga, *A tanúvédelem*, 269.

Naturally, the use of means of witness protection should not be unlimited and from the point of justification priority will be given to the conclusions drawn from the objective facts.

I have been emphasizing for years on the basis of the above ideas that in some cases it should be ensured for the judicature to apply weaker forms of witness protection (mainly anonymous means of criminal procedure and the confidential disposal of personal data) discretionally for the witness who needs this if the application of these forms are justified by the witness' sense of fear exclusively, despite the lack of objective evidence for this. The Be. was modified several times during recent years in the case of confidential disposal of personal data of the witness fulfilling this demand. The interest of testimony taken completely, without intimidation is regarded as more important because it leads to successful law enforcement. It may happen that "the witness is afraid of the accused or their relatives or friends in spite of the fact that the witness has not experienced any external influences and this fact itself may influence the witness' testimony."[14] Indisputably, law enforcement and the interests of the injured party as a witness usually coincide and controversy between them can be observed only exceptionally. However, "in such a case the injured party does not intend to testify because of intimidation by the offender even if the accuser counts on her/his testimony."[15] To solve this problem there is witness protection and the former solution. It is of capital importance since it is most widely believed even today that "the best is not to see or hear anything and not to speak at all" (unfortunately, this opinion is not entirely baseless).[16] There is no mercy in organized crime even today and "those who help justice against organized crime, really risk their own lives."[17]

The above thoughts are supported by Resolution No. 104/2010. (VI. 10.) of the Hungarian Constitutional Court dated 8th June 2010, which states that in accordance with the right to protection of personal data in criminal procedures the witness within the system of witness protection has the right to informational self-determination to ask to for his personal data to be disposed confidentially and there is no constitutional reason or purpose whereby the investigating authority, public prosecutor or judge would be entitled to refuse such an application after examining the objective basis of intimidation. Consequently, if the witness applies for disposing her/his personal data confi-

[14] B. Elek, *A tanúvallomások befolyásolásának megakadályozása a gazdasági büntetőperekben*, [in:] *tanú védelmének elméleti és gyakorlati kérdései*, ed. B. Mészáros, Pécsi Tudományegyetem ÁJK, Pécs 2009, 58.

[15] T. Király, *Büntetőeljárási jog*, Osiris Kiadó, Budapest 2001, 178.

[16] Á. Farkas, E. Róth, *Tanúvédelem…*, 583.

[17] I. Kertész, *A tanú védelemre szorul*, "Magyar Jog" 1993, 40, 4, 193.

dentially, the authorities cannot refuse this, while refusal was possible before 1st January 2011, for example in the case where the witness' data were already known by the parties.[18]

In my opinion the stricter forms of witness protection and stronger methods of protection can be applied only on objective basis regarding that in such cases they guarantee rights of protection, the principle of directness and cross-examination are infringed to a great extent. However, witness protection without objective base cannot compete with the right to a fair hearing or any aspects thereof. From this point of view it is worth interpreting the resolution of the ECHR in the Doorson case, which considers the witness' personal sense of fear as sufficient grounds to permit anonymity.

To distinguish the subjective and objective basis of witness protection a brief overview of the factors influencing the witness' testimony seems to be necessary.

Factors influencing witnesses' testimony

Before the close examination of issues in connection with the witness' sense of fear it is worth briefly overviewing the factors influencing witness testimony. In the witness' mind from recognition to testimony a rather long psychological process takes place, and is influenced by factors which cannot be ignored by the judge when interpreting the testimony. In his extremely important monograph, Lajos Nagy classifies the factors according to physiology and psychology.[19] Physiological factors are age, sexual orientation, sensory impairment, and psychological factors are sense, attention, emotion and relevant pathological circumstances.

According to other divisions – for example the relevant parts of the university textbooks by Tibor Király[20] and Flórián Tremmel[21] and Balázs Elek's monograph written on this topic[22] – the facts affecting witness testimony can be independent from the witness' personality (objective) or they can depend on their personality (subjective). The objective factors affect recognition according to the nature of the facts of the testimony and at the same time the

[18] It has no significant importance in practice because confidential disposal of personal data can of course be ordered this way as well.

[19] See detailed: L. Nagy, *Tanúbizonyítás a büntetőperben*, Közgazdasági és Jogi Könyvkiadó, Budapest 1966, 126–214.

[20] T. Király, *Büntetőeljárási* jog, 240–241.

[21] Cs. Fenyvesi, Cs. Herke, F. Tremmel, *Új magyar büntetőeljárás*, Dialóg Campus Kiadó, Budapest –Pécs 2005, 238–239.

[22] B. Elek, *A vallomás befolyásolása a büntetőeljárásban*, Tóth Könyvkereskedés és Kiadó, Debrecen, 2008 42–44.

subjective factors relate to the witness' personality directly. According to this, objective factors are the following: action, awareness of space and time, recognition of people, sight and hearing, awareness of speech, passage of time and later effects. Subjective factors are: age, sex, sense perception, disability, intelligence, attention, emotion and professional skills.

In this paper I deal briefly only with the following factors related to witness protection: age, sex, attention, emotion (especially fear), action, recognition of people, recognition of speech and later effects.

Age – as an important physiological aspect concerning evaluation – focuses rather on intellectual skills, not only on somebody's actual age. For example – according to the Be. – the witness testimony of a child can be carried into effect only in case it is irrecoverable. At the same time this means the "adequate immaturity of the intellectual skills by age"[23] as well. According to empirical observations the good cognitive skills of a child under 7 are affected by imagination; the observational skills of children between 7 and 10 intensifies but their intellectual boundaries should be taken into consideration in this case as well. Children older than 10 can be reliable witnesses because of their extensive interest but in their case their potential tendency to dream and possible introverted personality should be taken into consideration, too.[24] All these data lead to the following: in case of questioning children there are a positive and a negative sides at the same time. On the positive side, we can see their sharp perceptiveness, but, more negatively, their behaviour and attitude to life are both seriously affected by their social environment and families so they can be influenced more easily in connection with "what they have to say" instead of what they really saw or heard. In the case of witness testimony of the elderly the following should be taken into consideration: the possible deterioration of psychological and intellectual skills and weakening of sense perception, all of which can lead to the deterioration of cognitive capability.

Although modern procedural laws do not differentiate between female and male witnesses, historically, this has not always been the case. In slave-owning and feudal societies women were partly or entirely not prohibited from testifying as witnesses. Nowadays witness testimonies of women and men are equal but we must not forget that their physical and physiological characteristics are different and have an effect on the testimonies. In the course of my empirical research I examined with special attention the differences between female and male respondents based on the actual questions.

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[23] T. Király, *Büntetőeljárási* jog, 240.

[24] R. Zs. Király, *Gyermek a tárgyalóteremben*, "Belügyi Szemle" 2002, 50, 1, 105.

Attention can be seen as a state of intellectual activity which depends on several factors. It is affected by age, state of health and individual experience. People observe phenomena intentionally but the details remain in their memory in a way that does not depend on their will. It depends on how unexpectedly somebody is affected by the given events and their state of mind at the time. Human attention can be divided and can notice numerous things or can concentrate only on one event and this originates mostly from outer impacts.

People are sensitive beings and react to these impacts emotionally, and therefore emotions have great effect on a witness' testimony. All these can make the evaluation of the testimony easier for the judge because the objectivity and reality can mostly be decided based on such external images.

Action noticed by the witness is such a knowledge based on behaviour, which is relevant regarding the actual case. The witness declares how, where and when they noticed the facts. The evaluation of facts should be carried out very carefully because the witness often adds circumstances besides the facts noticed; and they can also draw their own conclusions based on the facts noticed. It can be especially true regarding child witnesses as explained above. So it is crucial to evaluate witnesses' statements concerning the facts they noticed by taking other evidence into consideration

Recognition of people connected to criminal offenses involves identification based on external physical characteristics (for example physique, hair colour, and facial featues). The witness can see a fugitive during the committal of the crime if they are "lucky", so their testimony is of significant importance in such situations. The statements of the witness are highly affected by their sense of fear; an obvious example would be when they confront the accused in court.

Speech recognition could be of great help in connection identifying the offender of a criminal offense. Under suitable circumstances the offender's sex and age can be stated. From their accent and tone important conclusions can be drawn but phrases characteristic of their social background can be relevant as well. Howeverm this can also be a problem relating to witnesses, co-operating persons because the suspect can recognize them easily based on their speech even if they cannot see their faces and do not know their identity.

In posterior effects, the witness' recollection of the events that they have witnesses is altered. Having a clear memory of the facts becomes more difficult from interrogation to interrogation, and which causes the witness to change thier testimony very often. Although there is "significant scientific criminological literature on the effects of fear on the perceptions of events

and the testimony… the affects of later fear and acts of witness protection on the validity of the testimony is not known."[25] But I think it is of essential importance to analyse these questions in connection with the intimidation of witnesses nowadays.

Balázs Elek points out the following: elimination of influencing of intentional change of acquired knowledge is one of the most difficult practical questions of testimonial evidence. The form of influence can be criminal offence, or non-criminal behaviour with great influence. "It can be shown with examples that influence or intimidation can result from the actions of the interested parties or by the authorities; and it is a very practical problem. The most common forms of influence are threats and compulsion and fear triggered by threats."[26]

After analysing the objective and subjective factors it can be concluded that the means of witness protection are reliable in that they can eliminate intentional influence as well as fear and intimidation. In the following section, I will examine how these factors are real and existing problems in the legal practice based on empirical research data.

Empirical research data

In connection with witness protection only a certain amount of empirical research has been carried out so far, so this is the main reason why only limited relevant data available is available. However, such data is needed to examine the justifiability and effectiveness of witness protection. In my opinion it is impossible to get a complete and true picture of the state of Hungarian witness protection. I carried out empirical research with the participation of students of different faculties of the University of Debrecen. The sample is representative of the students questioned but it does not reflect the scale of the students of the University of Debrecen in relation to the different faculties. But this latter intention was not a purpose of the research. My research method was a probability sampling procedure or, to be more exact, simple random sampling.

The number of elements of the research was 748 persons in the following apportionment: 472 law students (63%) and 276 other students (37%). 75% (565) of the participants were female and 25% (181) male, so women were over-represented overall and in the actual faculties as well. I think the latter data is important because this way it can be examined whether sex is

[25] I. Kertész, *A még különösebben…*, 40.

[26] B. Elek, *A vallomás…*, 56–57.

a relevant factor in connection with witness testimony today. The subdivision based on law and other students is important according to special knowledge (for example means of witness protection) in connection with several significant questions.

It is important to mention how many persons from the 748 participants had experience as a witness in criminal or in other cases. 157 participants participated in various cases (civil law, labour law, misdemeanour proceedings and other); 103 persons were law students and 54 persons were other students. From all the participants 142 persons (19%) participated in criminal proceedings as witnesses and from this group 84 were women and 58 men. From the 142 persons there were 94 law students and 48 other students. Among the law students there were 55 female and 39 male participants.

So it can be stated that 20% of the law students and 17% of the other students had been witnesses at least once in a criminal proceeding and this way no significant difference can be pointed out between these two groups. 80 persons (47 law students and 33 other students) testified as witnesses only during investigation, 18 persons (16 law and 2 other students) only during trial and 44 persons (31 law and 13 other students) during both investigation and trial. It can be stated that more than half of the participants deposed witness testimony only during investigation so they have experience in connection with witness testimony only during investigation and about the behaviour of the investigating authorities. 1/3 of the participants could compare their impressions from investigation and trial. It should be highlighted that some participants had already been witnesses in criminal proceedings more than once.

In most of the cases the participants were witnesses in cases in connection with crimes against property (law students 44 times and other students 17 times). In the case of law students crimes against property are followed by crimes against the person (24 times) and traffic offfences (18 times). In the case of other students the opposite is the case, as traffic offences were followed (11 times) by crimes against the person (10 times).

From the total number of witnesses in criminal proceedings (142) 80 persons (56%) answered that they felt anxiety or fear before giving testimony. This proves that a great number of witnesses feel anxious or afraid as a result of witness testimony, which in turn implies that the above mentioned facts are real problems, which have to be solved in legal practice. From the 80 persons 50 were female and 30 male. 59% of female witnesses and 52% of male witnesses felt anxiety or fear before testimony according to the following data: from the 142 participants 84 were female and 58 male. So it can be

concluded that significant differences cannot be demonstrated by the sex of the participants.

From the 80 persons who felt fear or anxiety before the witness questioning 54 were law students and 26 others students. Taking into consideration that from the 142 participants who took part in criminal proceedings 94 were law students and 48 other students we can state that 57% of the law student witnesses and 54% of other student witnesses felt anxiety or fear before the testimony so in this regard no significant difference can be concluded either.

To sum up, the above statistics imply that participants who actually took part in a criminal court case, think almost the same way regarding the problems associated with such proceedings, regardless of their education or sex.

Regarding the question as to the origin of these emotions, the most frequent answer was that participation in a criminal case itself generates anxiety and fear even in the absence of concrete threats or violence. This kind of answer was given by 71 persons of 80 so almost in 90% of the cases the witness' subjective sense of fear was in the background. I think this is an important circumstance because according to these data moderate means of witness protection can be applied in the cases where its objective basis is missing. In the opposite situation it is a real danger that without such protection the witnesses do not depose a complete testimony that covers all the parts of facts they know.

8 participants (10%) stated that members of the authority carrying out the questioning acted in such a way that caused them to feel fear before testifying. This figure means that this is a real problem, which has to be solved because members of the authorities should conduct themselves in an appropriate manner when questioning witnesses. Therefoe I think – as shown by empirical data – that witness protection cannot be limited only to threats from the suspect or those associated with them. It must be added that only one participant said that there was a threat coming from the suspect or their relatives in connection with their testimony.

To question whether the participants were somehow adversely affected after the questioning from the 142 persons – who were witnesses in criminal proceedings – 141 persons gave answers. 132 persons gave answered in the negative, so 9 (7% of the total number of witnesses) witnesses suffered some negative results after the witness testimony. From the 9 witnesses one stated that they were misused by the suspects and her/his relatives and one was misused by other people. One person was threatened by the suspect and their relatives in connection with the witness testimony. The remaining 5 participants stated that they suffered disadvantages by the officers of the authori-

ties after the questioning because the officer carrying out the questioning behaved in a manner that they found frightening.

I think it is very thought-provokingand at the same time sad that even among university students we can find three witnesses who were physically misused because for performing their civic duty and deposing testimony. But at the same time it is important that more than three participants (five persons) noted inappropriate and intimidating behaviour of the authorities as reasons and this means that this problem is also important. I think that perhaps these latter problems would be the easiest to solve by preparing and training the members of these authorities properly.

From the questions examined above, it is clear that from the 142 participants who had experiences in criminal proceeding as witnesses, 80 persons (56%) answered that they felt anxiety or fear in connection with witness testimony. Based on the whole sample – including the participants who have not been witness yet – from the 748 participants 359 (48%) answered that they would be afraid of deposing witness testimony in a criminal proceeding. This data also proves that the witnesses' sense of fear is a real problem of criminal procedural law; and according to the witnesses' subjective feelings some actions concerning witness protection are needed. It should be highlighted that the among the participants who have already been witnesses in criminal proceedings actually the scale of persons who experienced fear was higher than among the participants who have yet not been witness (56% compared to the 48% of the entire sample). So I think this way the supervening of the concrete actions (for example receiving the witness summons and the fact of acknowledgement) can modify these rates.

Taking into consideration the breakdown of the figures according to gender, 291 out of 359 women (51.5% of all the women asked) and 68 men (37% of all the men asked) expeienceda feeling of fear, so in this regard a significant difference can be observed between these two groups. According to this data, women are more afraid to depose witness testimony in criminal proceedings than men. As we could see it earlier this kind of discrepancy did not emerge related to the participants who had already been witnesses in criminal proceedings (59% of women and 52% men declared that they had felt anxiety or fear). It can be concluded that these scales and significant differences are dominated by the answers of male participants who do not have these kinds of experiences. Out of the 359 persons, there were 210 law students (44% of all the law students) and 149 other students (54% of all the other students) and this means that among people without real legal knowledge the rate of persons who do not want to depose witness testimony in

criminal proceedings is higher, but this phenomenon did not show up among the participants who had already been witness. So in my opinion the latter data analysed strengthens my previous standpoint as follows: these rates can be modified easily if the obligation for giving evidence becomes real.

From the 359 participants who would be afraid to give evidence in a criminal proceeding 314 persons answered that their fear depends on the nature of the specific criminal case and 45 participants said that this does not affect their fear. The above mentioned 314 participants could choose from more categories of criminal offences – they could choose more categories at the same time – as follows: they would be afraid to depose witness testimony the most in crimes against person (250 votes), crimes against freedom and human dignity (152 votes) and crimes against marriage, family, youth and sexual morality. These are mostly crimes in connection with organized crime and domestic violence and these are referenced in the Recommendation. I therefore think that these are really the types of crimes in connection with which the importance of witness protection is very high.

Another important question is that what kind of knowledge the citizens have about their rights and obligations in a criminal proceeding and especially the possibility and legal means of witness protection. From the 748 respondents 141 persons (19%) declared that they did not have any relevant knowledge about witness protection whatsoever. From these 141 persons 45 persons were law students (32%) and 96 other students (68%). It can be concluded that the lack of relevant information as a problem emerges primarily among the non-law students. 217 respondents said that they did not have precise knowledge in this topic but they knew witness protection at least from hearsay. From this 217 persons 124 were law students (57%) and 93 other students (43%). The specified means of witness protection were known among the 748 respondents as follows:

- confidential disposal of the witness' personal data: 312 respondents (42%), out of which 276 law students (58% of all of the law students) and 36 other students (13% of all of the non-law students);
- confidential disposal of witness' name: 357 respondents (48%), from this 280 law students (59% of all of the law students) and 77 other students (28% of all of the other students);
- declaration as especially protected witness: 328 respondents (44%), from this 261 law students (55% of all of the law students) and 67 other students (24% of all of the other students);
- physical witness protection: 284 respondents (38%), from this 229 law students (48.5% of all of the law students) and 55 other students (20% of all of the other students);

- witness protection programme: 234 respondents (31%), from this 199 law students (27% of all of the law students) and 35 other students (13% of all of the other students).

From these data it can be stated that law students naturally have more information on the legal means of witness protection than non-law students.

The last question of the questionnaire was to judge the compliance of the legal means of witness protection according to the respondent's opinion and possible experience; are they enough to prevent fear and intimidation in the event of witness testimony? The 748 respondents answered as follows:

- 291 respondents (39%) answered that in Hungary the legal possibilities are rather weak and the authorities' procedures are not appropriate regarding witness protection;
- 197 respondents (39%) answered that in Hungary the legal possibilities might be adequately effective but the authorities' procedures are not appropriate regarding witness protection;
- 167 respondents (22.3%) answered that in Hungary there are no effective legal possibilities for the authorities regarding witness protection;
- 93 respondents (12.4%) answered that in Hungary both the legal possibilities and the procedures of the authorities are effective and adequate.

It is clear that the general sense of security of the citizens mentioned in Chapter I. (Introduction – international and constitutional background) should be significantly improved because only 12% of the respondents thought that the present situation was appropriate in every regard. More than 65% of the respondents thought that the authorities' procedures were not adequate (first and second elements of the second list above), which also turns our attention to the fact that often it is not threats on the part the suspect or their relatives that cause the witness' sense of fear, but rather the authorities' behaviour during the proceedings.

Conclusion

In my opinion the witness' sense of fear is indeed oa real and current problem of criminal procedural law and it has to be solved as soon as possible. Furthermore the application of moderate forms of witness protection is also justified and they should be applied according to the witness' subjective sense of fear. Also, the authorities' inappopriate behaviour during the questioning is harmful as well. I would like to state that the following proposition – which was declared already previously – generates very urgent tasks: the citizens' faith in criminal judicature and witness protection guaranteed by the state is constantly declining.

There are some spheres of witness protection, which fall beyond the scope of legal sciences but in case of appropriate action they can improve the witness' sense of security to a great extent. One of the most fundamental problems in Hungary is that – in contrast to the layout of court buildings some European countries – the witness and the accused or their relatives have to wait in the same corridor. Most of the Hungarian court buildings were "built in a more peaceful world, when the authority of the judicature was great; when almost nobody wanted to cause trouble in court or to oppose the court etc."[27] Even the staff who are responsible for the security of the courts cannot guarantee an adequate sense of security for the witness. Imre Kertész argues that these findings mean that a special law enforcement organization for courts is needed[28] and I also think that this would be necessary and justified.

Uninfluenced witness testimony and the elimination of the sense of fear can also be guaranteed by mean of an independent room in the court buildings where the witness can wait so they can avoid meeting the accused and their relatives. Furthermore, it would be the most helpful if the different parties in criminal proceedings could use different doors to enter the building. "In England new court buildings are built and old buildings are renovated so that witnesses for the prosecution and the defence can wait for their questioning in separate rooms, with different access."[29]

In spite of all these issues I can state that the Hungarian legislation does not fall behind most European countries in terms of witness protection; furthermore, compared to for example France, it is a few steps ahead in several aspects. But in the field of effective judicature several problems can be observed, which are not remediable, or have to be remedied by the means of criminal procedural law or by some other area of the law. To achieve this result some solutions which have been used in other countries would be useful; this does not require further legislation but rather effective co-operation of the relevant authorities. As a conclusion I would like to state that all these problems should not lead us to ignore the fact that witness protection has been comprehensively regulated in the Hungarian legal system within a decade. This is a remarkable achievement and should be appreciated, despite all the challenges that the system still faces.

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[27] E. Bócz, *A tanúvédelem egyes jogértelmezési és egyéb gyakorlati kérdései a magyar büntető igazságszolgáltatásban*, [in:] *A tanúvédelem útjai Európában*, ed. E. Róth, Bíbor Kiadó, Miskolc 2002, 65.

[28] I. Kertész, *A büntetőeljárásban résztvevők, az igazságszolgáltatást segítők védelmi programjáról szóló törvény tervezete*, [in:] *A tanúvédelem útjai Európában*..., 70.

[29] E. Bócz, *A tanúvédelemről*, "Kriminológiai Közlemények" 1996, 54, 109.

Abstrakt
Społeczne kwestie dotyczące ochrony świadków na Węgrzech

Autor artykułu bada temat współczesnej ochrony świadków na Węgrzech. Ochrona świadków jest ważną kwestią w procedurach prawa karnego i reguluje ją szereg ustaw na Węgrzech. Pojawia się wiele pytań dotyczących słuszności i podstawy prawnej ochrony świadków. Autor zamierza porównać międzynarodowe przypadki i podstawę konstytucjonalną owej procedury. Autor skupia się na kwestiach praktycznych; jednak bierze pod uwagę najważniejsze podstawowe pytania odnośnie teorii ochrony świadków, zwłaszcza ich bezpieczeństwa i poczucia bezpieczeństwa podczas sądowych spraw karnych. Autor bada tematykę pod względem społecznym w celu udowodnienia głównych tez na podstawie przeprowadzonych badań empirycznych i analizy danych.

Słowa kluczowe: prawo karne proceduralne, ochrona świadków, zeznanie świadków