18 March 2005

Third High-level multilateral meeting
of the ministries of the Interior

Fight against terrorism and organised crime

to improve security in Europe

Warsaw (Poland)
Hotel Sofitel Victoria

17 -18 March 2005

Report by Dr Piero Luigi Vigna
National Anti-Mafia Prosecutor - Italy

The protection of witnesses and collaborators of justice in the fight against terrorism and organised crime: the Italian experience

PART I

GENERAL OBSERVATIONS

1. The expansion of serious crime and the need for special laws

From the end of the 1960s onwards, investigators and judges in our country were confronted with new forms of crime that involved repeated attacks on individuals, property and public security. This set collective alarm bells ringing and citizens began to become extremely mistrustful of their democratic institutions.

The spread of acts of terrorism and the dreadful phenomenon of kidnappings to extort ransom money forced the legislature gradually to draft laws capable of combating activities that were not linked to individual criminality but to organised crime, which itself presupposed the existence of associations committed to the continuous perpetration of destructive (terrorist) offences or to crimes subsequently to be classed as Mafia-type crimes.

The seriousness of each offence committed and the fact that none was to be seen in isolation but formed part of a complex "criminal strategy" led to major consequences with regard to investigations, trials and sentences. Firstly, specialised investigation bodies were set up and a form of co-ordination was established among the public prosecutor's offices assigned to the investigations. Secondly, it was impossible to avoid the so-called "maxi-trials" relating to the defendants' involvement in criminal associations and to many specific instances that were representative of the aims of one or other association (such as theft to fund their activities, kidnappings, attempted murder, etc) Finally, for these acts of organised crime it was necessary to provide for punishments classified on the basis of the penalties provided for in the criminal code for similar instances of individual crime.

The significant successes achieved in investigations and the united response from the institutions led to many trials and forced defendants or convicted individuals to think seriously about the choice made in the past to lead a life of crime. Moreover, it became clear to those working in the sector that the attacks carried out by organised criminals could not be dealt with by means of improvised initiatives and that it was necessary to sever the links between the criminal groups, that is to say to separate them from their environment, and to do so by creating **"special" laws** that, on the one hand provided for stiffer penalties for the perpetrators of crimes and, on the other hand, for mitigating circumstances for those who dissociated themselves from their accomplices and did all they could to prevent the commission of other crimes or helped the police or judicial authorities in the reconstruction of events or capture of perpetrators.

The option of extending the special laws to people who collaborate with the authorities with regard to Mafia offences was temporarily abandoned, probably because of the problem of the credibility of trial witnesses who demonstrated their willingness to co-operate.

There were many people who thought that a terrorist's dissociation from fellow terrorists and collaboration with the authorities was the result of an ideological crisis and the horror felt by many young people (terrorists or supporters of terrorism) with regard to the level of violence reached by the "armed struggle" of their groups. In fact, the idea was rejected that the legislature could take an interest in the scruples felt by those who had decided to co-operate or who were able to make moral assessments about why they had chosen to co-operate or dissociate themselves from their group.

There was a widespread conviction that, while it was possible to speak of a terrorist *"repenting", at least as a result of an ideological crisis, this could not be done for people who belonged to Mafia-like associations* and had entirely different character traits, aims and criminal methods.

There was a strong fear that the introduction of these special laws for collaborators was more likely to end up helping to resolve conflicts within Mafia-like organisations than meet the state's demands for the conspiracy of silence to be broken and for these organisations, which even undermine its credibility or its power to intimidate, to be split up.

The outcome of some trials, the development of certain investigations and the repetition of some very serious blood crimes led to the conviction that extending the scope of the special laws could produce significant results even in the fight against the Mafia.

Several investigations led to the discovery of conflicts between the organisations and the conviction among certain mafiosi that they were even being monitored by their accomplices, with the result that they were willing to turn to the state to obtain security for themselves and members of their family.

Moreover, the criminal organisations had shown that they sensed the explosive potential of the possible extension of the scope of the special laws and had already begun to respond by a series of acts of intimidation and savage vengeance.

2. The protection stage

The important role played in the investigations and organised-crime trials by statements from collaborators exposed both these people and their friends and family to the wrath of criminal groups, which took the form of dozens of assassinations – both direct and indirect – and forced the legislature to introduce a law aimed at

protecting collaborators and witnesses as well as people in serious danger because of their relations with them.

The first measure adopted on this subject was Decree-Law No. 8 of 15 January 1991, which was converted into Law No. 82 of 15 March 1991. This law was then amended by Law No. 45 of 13 February 2001 in order to deal with a number of serious problems caused by the previous system.

One of the aspects that impeded the proper operation of the system was the necessity to resort to the special protection programme – which was quite difficult to manage – even in the case of moderate collaboration, which did not involve much risk of harm for the person protected or their family. This had a dual effect: the gradual difficulties encountered by the Central Protection Service due to meeting the increasing number of requests from collaborators and the Ministry of the Interior's wish to restore the actual spirit of the 1991 law by only implementing the special protection programme when other types of measure ("ordinary" or "reinforced") have not been able to meet the collaborator's protection requirements.

By attempting to tackle these problems, the "new" system introduced by Law No. 45 of 13 February 2001 established the principle of *graduated protection measures* by expressly providing for collaborators and witnesses to benefit from *ordinary or special protection measures*, depending on the danger they face or, if these measures prove inadequate, *a special protection programme* (sections 9-16ter of Decree-Law 8/1991).

Only the special programme guarantees continuous and prolonged assistance since it represents a kind of alternative "life programme" for the collaborator or witness. By contrast, both the ordinary and the special measures consist of temporary protection, the scope of which is limited but differentiated (see sections 13 (5) and 13 (4) of Decree-Law 8/1991 respectively).

PART II

THE AUTHORITIES AND PROTECTION MEASURES INVOLVED

1. The Central Commission

Depending on how dangerous the situation is in which they find themselves owing to the statements they have made, collaborators and witnesses can thus benefit from *special or ordinary protection measures* or, if these measures prove inappropriate, a *special protection programme* (sections 9-16ter of Decree-Law No. 8 of 15/1/1991, converted with modifications into Law No. 82 of 15/3/1991).

Ordinary protection measures are adopted by the **police authorities** or, in the case of prisoners, by the **Department of Prison Administration.** By contrast, **special measures and the special protection programme** are defined and applied by a C*entral Commission attached to the Ministry of the Interior* (section 10 (2) of Decree-Law 8/1991).

The Central Commission is established by a joint decree issued by the **Minister of the Interior and the Minister of Justice.** It is chaired by an under-secretary of state of the Ministry of the Interior and is made up of *two judges* and *five civil servants* who have been preferably selected from a group of people who have specific experience in this area and are not assigned to offices engaged in investigative work on the case concerned or in the prosecution of organised Mafia-type or terrorist (subversive) crimes (section 10 (2) and (2-bis*)* of Decree-Law 8/1991).

The Central Commission decides on the implementation of special measures or the special protection programme on the **recommendation** *of the Public Prosecutor* in charge of the investigations or the *Chief of Police – Director General of Public Security* (section 11 of Decree-Law No. 8 of 15/1/1991, converted with modifications into Law No. 82 of 15/3/1991).

When the ***recommendation*** is made by the *Chief of Police – Director General of Public Security* it must contain the opinion of the public prosecutor who has initiated the prosecution for the offence mentioned in the statement made by the person assumed to be in serious and imminent danger. When statements concern several public prosecutor's offices, the opinion is worded in agreement with the relevant judicial authorities according to the various possible situations that have been examined beforehand (see section 11 (3) of Decree-Law 8/1991). In order to provide a full picture of the contribution made by the collaboration, the proposal should also mention:

1. the facts and the reasons for the danger;
2. the protection measures already adopted or to be adopted;
3. the reasons why any previous protection measures did not appear adequate;
4. the principal criminal acts on which the collaborator is in the process of making statements and the reasons why the latter are considered credible and significant;
5. any elements that confirm the credibility of the statements.

If the statements are made by persons belonging to a criminal group, the proposal may indicate what group it is and the collaborator's role in it. The proposal must be accompanied by a declaration in which the person to be given special protection provides full details of their family status and financial situation, any debts they may have and any criminal, civil and administrative proceedings pending, as well as details required by section 12 (1) of Decree-Law 8/1991 (diplomas, professional titles, permits, degrees and any other qualifications they possess).

The proposal also indicates that the person for whom protection is proposed has drawn up or is in the process of drawing up an **“explanatory statement on the content of the collaboration”**. If this statement has not yet been drawn up when the proposal is made, the Commission must be informed as soon as this had been done (section 16-quater of Decree-Law 8/1991).

Before giving a decision on the proposal, the Commission may carry out an **inquiry** and obtain documents and information from administrative and judicial authorities in accordance with the principle of institutional co-operation (section 13 (2) and (3) of Decree-Law No. 8 of 15/1/1991 converted with modifications into Law No. 82 of 15/3/1991).

The Commission decides on the proposal by a majority of its members (provided that at least five of them are present at the sitting). In the event of a tie, the Chair has the casting vote. If the Commission accepts the proposal, it will also specify the nature of the special measures or the special protection programme (section 13 (1) and (2) of Decree-Law 8/1991).

In certain particularly serious and urgent cases, the Central Commission or chief of police may, even if no proposal has been made or with a view to one being made, draw up a **temporary protection plan** or empower the provincial public security authority to adopt special urgent measures to provide “reinforced” protection (section 13 (1) and (4) of Decree-Law 8/1991).

At the request of the provincial public security authority (in particular the Prefect of the place of residence of the collaborator or “witness”), the chief of police may authorise the latter to use specific appropriations for the adoption of *reinforced protection measures.* This step is taken in the case of an *exceptionally urgent situation* that prevents the Commission’s immediate intervention (for example, an essential transfer of the collaborator or witness from their place of residence). The measure ceases to have effect as soon as the Commission takes a decision on a temporary plan or protection plan requested at the same time by the chief of police or public prosecutor.

The purpose of the authorisation issued by the chief of police to the provincial public security authority is to “anticipate” the Commission’s decision on the temporary protection plan that the same chief of police or public prosecutor will request or has already requested.

2. The nature of the measures and of the special protection programme

A) The special measures and the protection programme can be instituted by the Commission for the benefit of the collaborator or “witness”. They can be extended

by the Commission to cover people living on a permanent basis with the collaborator or "witness" and, in specific situations, even to people found to be exposed to a serious and concrete danger owing to their relations with the aforementioned persons (section 9 (5) and section 16-*bis* (3) of Decree-Law 8/1991).

B) The special protection measures are adopted in cases where ordinary measures instituted by the public authority (even on the recommendation of the judicial authority) appear inappropriate. In the case of prisoners, they are adopted by the Department of Prison Administration (section 13 (4) of Decree-Law 8/1991). The special measures are adopted by the Central Commission and set up and implemented by the prefect of the place of residence of the person to whom the proposal relates.

The **special protection measures** normally consist of:

1) *surveillance and protection measures*, the institution of which is the responsibility of the local or regional police authorities;
2) *technical security arrangements* (for example, video surveillance cameras or remote alarms);
3) *measures* necessary for transfers to localities other than the place of residence;
4) *measures aimed at social rehabilitation, where applicable;*
5) *special prison arrangements,* transfers and guarding in the case of imprisoned collaborators.

In most cases, measures should be adopted at the place of origin of the person protected or during a brief transfer and without using means of concealing the person's identity. The Central Commission is responsible for deciding which of the above protection instruments to apply in an individual case.

C) In cases where the special protection measures would be inadequate given the seriousness and concrete nature of the danger facing the collaborator or "witness", the Central Commission draws up a **special protection programme** (section 13 (5-11) of Decree-Law 8/1991).

a) The programme is designed on the basis of parameters that specifically take account of actual situations and provides for additional measures to the ones already indicated, for example:
1) *transfer of persons not in prison to protected locations*;
2) special arrangement for keeping documents in the file and communications in the IT department;
3) *change of identity* (governed by Decree-Law No. 119 of 29/3/1993);
4) other *extraordinary measures* considered necessary;

5) measures to encourage the social rehabilitation of the collaborator and other people given protection;
6) measures of personal and economic *assistance*.

b) *The above* measures of economic *assistance* may comprise the following (provided that the person protected is unable to afford all or part of the sum involved):

1) *accommodation*;
2) *medical expenses* (if it is not possible to make use of public facilities);
3) *legal fees*;
4) *living expenses*.

Living expenses and legal fees are the most important economic assistance measures that can be provided for in the protection programme, while a **change of identity** is only provided for as an exceptional measure for extremely important collaborators (both for the investigations and the trial).

The procedures for changing the identity of the collaborator, the "witness" and their family are governed by Legislative Decree No. 119 of 29/3/1993 and are implemented by the Central Protection Service with a maximum of secrecy. A request for a change of identity must be sent to both the Minister of the Interior and the Minister of Justice. Its examination is the responsibility of the Central Commission (section 10 of Decree-Law 8/1991), which is charged with establishing the extent of the danger facing the person protected and how essential the measure requested is.

A change of identity is implemented by means of a decree issued by the Ministers of the Interior and Justice. It contains the new first name, family name and date and place of birth of the person protected by this specific provision as well as any information (for example medical or fiscal) relating to their rights and obligations.

As soon as the identity has been changed, the individual obtains a new position even in relation to the *registry office files*. In this connection, the Central Protection Service can adopt various administrative solutions (it being understood that those who issue the new "false" documentation are exempt from any responsibility). For example, it can either obtain an entry in the registry office files of a birth certificate with the new cover identity or request the registry office to provide certificates or documents to be filled in with the new identity details while allowing the person to remain registered in the files with their original identity.

The change of identity does not affect the civil, penal or administrative relationships existing at the date of the change.

The decree authorising a change of identity can be cancelled if and when the individual fails to meet the obligations set out in section 12 of Decree-Law 8/1991, in particular those relating to compliance with rules concerning security, the prohibition of maintaining contacts with persons involved in crime and the meeting of obligations entered into.

3. Witness protection

A) In application of the procedures already put in place, the provisions introduced by Law No. 45 of 13/2/2001 expressly state that the measures to assist criminal trial witnesses must be broader in scope than those provided for collaborators. In the case of witnesses, they must ensure that the person protected continues to lead – until the moment when they can do so without help – a personal and family life that is not inferior to the life they were leading before the collaboration (section 16-ter of Decree-Law No. 8 of 15/1/1991 converted with modifications into Law No. 82 of 15/3/1991).

Accordingly, the "witness" has, for example, the right:

- to the payment of a sum *"for loss of earnings"* as soon as they and their family have had to stop work to be transferred to a safe place;
- to the acquisition by the state of the property they possess from the moment when, owing to their collaboration, they are forced to move home to settle in another town;
- to a one-off payment in the form of a cheque to cover subsistence and housing expenses calculated for the entire period in which the protection programme is likely to be applied (*capitalisation of economic assistance expenses)*
- to obtain *low-interest loans* for the complete reintegration into economic and social life of the individual and their family.

The extent of the assistance measures benefiting "witnesses" enables them to resume their former occupation more easily (albeit in a different environment) or to undertake similar work by turning to account the experience already acquired and the funds obtained.

B) Although it may appear strange, the path of social reintegration is much more complex for the collaborator. It is in fact rare for collaborators who have been members of a criminal gang to have had previous occupational experience or even proper vocational training, so their attitude in many cases is that it is better to live permanently on state assistance.

It is precisely to avoid situations like this that officials involved on the ground discovered a long time ago that it could be made easier for people gradually to give up this lifestyle by seeking the right opportunities for reintegration (with the help of the Central Service) and that provision could be made for money to be advanced to them to begin a new career. These practical solutions were finally given formal recognition by the rules introduced by Law No. 45 of 13/2/2001.

At the moment when the special measures are modified or cancelled, the collaborator or "witness" can obtain from the Commission, through the Protection Service, a payment of financial support or even a sum earmarked for a specific purpose (the amount of which is decided by the Central Commission) or (in the case of "witnesses") low-interest loans. These individuals can benefit from rules relating to the preservation of the job they had (in the private or state sector) when they were admitted to the ordinary protection measures programme, the temporary protection plan or the special measures programme. The job can be preserved under various arrangements (eg, by granting leave of absence, by freezing a job with a company or a position different from the original one held, by preserving retirement or salary benefits, etc). If it proves necessary, the job can also be preserved by means of shielding arrangements (in databases or computerised files) that prevent the persons protected from being recognised.

C) Measures aimed at the social reintegration of the persons protected may even include action linked to the development of **international co-operation**. It is known that, as a result of the experience in Italy and co-operation with the Italian police forces and the Central Protection Service, many countries are going to equip themselves with new (investigation and judicial) systems to combat organised crime and set up a new system of rules relating to collaboration. In this context, recommendations have already been drawn up by European organisations aimed at evaluating assistance measures to accommodate protected witnesses abroad and promoting an exchange of information among authorities in charge of protection programmes.

D) The issuing of a **cover document** to the person protected also serves the purpose of social reintegration (as well as, in general, confidentiality and security). The cover document is temporary and anticipates the change of identity, which is normally only called for at the end of the protection programme. It is issued by the authority responsible at the request of the Central Protection Service. The official who has signed the false document is not punished and is not liable in any other way (under the civil law or disciplinary regulations) (section 13 (10) of Decree-Law 8/2001).

The cover document (driving licence, identity document, medical card etc) plays a crucial role as it permits the person to be "camouflaged" at a protected place. It cannot be used to conclude contracts and its validity depends on the effectiveness

of the protection programme. Once the programme is terminated, it is withdrawn. This is often done in order to implement a change of identity. At the moment when the person receives it, they are required to hand over the document with their true identity to the Central Protection Service.

E) The issues of social reintegration and, more generally, personal assistance for the individual protected are particularly problematic in the case of **minors**. As far as they are concerned, the law defers the question of implementation to an interministerial decree. In this connection, it will suffice to point out that in the case of minors (who constitute 45% of the group protected), the primary concern must be to ensure their education. However, another aspect also has to be considered, namely the need to strike a balance between educational requirements and confidentiality, and care must be taken to avoid the possibility that a minor will have a feeling of being "uprooted" after being placed in a new situation (accompanied by the use of a different dialect and the obligation to conceal their identity at school). This feeling is particularly strong when minors are not only obliged to leave their place of origin but also grow up in circumstances where the family is split up, such as when one of the parents is in prison and often a long distance away because of the trial or when the other parent has not agreed with the spouse's decision to collaborate.

4. The application and cancellation of measures and the programme

A) In order to have access to the various measures and the special protection programme established by the Commission, the collaborator or "witness" is required to enter into a number of **commitments** (section 12 of Decree-Law No. 8 of 15/1/1991, converted with modifications into Law No. 82 of 15/3/1991):

1) *to submit to questioning,* examinations and any other procedure involved in the investigation (including the drawing up of an "explanatory statement on the content of the collaboration");
2) *not to make statements* to persons other than the judicial authority, the police or the defence counsel;
3) *not to meet* or contact persons already co-operating with the judicial authorities.

B) The collaborator (but not the "witness") admitted to the package of measures or the protection programme is also required to **specify** in detail all the property they have or control, either directly or through a third party, and any other assets they possess either directly or indirectly. Within the limits to be specified, money (which must be handed over spontaneously by the collaborator), goods and assets the criminal origin of which has been established are seized by the judicial authority (section 12 (2) (e) of Decree-Law 8/1991).

Part of the collaborators' property is earmarked for the following (see section 12-sexies (4-bis) and (4-ter) of Decree-Law No. 306 of 8/6/1992 converted with modifications into Law No. 356 of 7/8/1992):

- the application *of the special protection measures;*
- *donations for victims* of terrorism and organised crime (see Law No. 302 of 20/3/1990);
- the *creation of a solidarity fund* in cases where the victim has not been able to obtain, either fully or in part, the damages due as a result of the crime.

C) The measures and special protection programme can be modified or cancelled by the Central Commission.

D) The request for modification or cancellation can be made by the authority that has made the proposal, the Central Protection Service or the prefect, depending on whether the individual has been admitted to a programme or granted protection measures.

a) The measures or the programme are always cancelled if the "explanatory statement on the content of the collaboration" has not been drawn up (or has been drawn up late) or it turns out that the person is aware of particularly serious offences but has not mentioned them in the statement (section 16-quater (7) and (8) of Decree-Law 8/1991) ("*cancellation for failure to comply"*).

b) In general, for the modification or cancellation purposes, the Commission can take into consideration:
- the concrete and serious nature of the danger;
- the behaviour observed by the individual;
- compliance with the commitments entered into.

E) *The action, even if it is only temporary,* taken by the Commission to set up, reject, modify or cancel measures or the protection programme may be challenged *before the administrative tribunal.* The effect of this action may, however, only be suspended (for a period not exceeding six months) in the case of efforts to modify or cancel the protection afforded (section 10 of Decree-Law 8/1991).

5. The Central Protection Service

The task of applying and executing the **special protection measures** (section 14 of Decree-Law No. 8 of 15/1/1991, converted with modifications into Law No. 82 of 15/3/1991) is given to the prefects and other public authorities at the place of residence of the person protected. This is co-ordinated with the chief of police. On

the other hand, the task of applying and executing the *protection programme* (as well as the temporary plan) is assigned to the **Central Protection Service**, which has been set up at the Department of Public Security under the umbrella of the Central Directorate of the Criminal Police.

The Service is divided into **two autonomous sections**, which are called *divisions* for administrative reasons (one for collaborators and the other for "witnesses"). They are assisted by two sector offices, one responsible for **accounts** and the other for **staff** and **general management**. The latter comprises the judicial affairs section and the section responsible for handling changes of identity or cover documents. This office is normally staffed (the criteria being technical and professional competence) by police personnel, carabinieri, the Customs Service (*Guardia di Finanza)* and the Civil Administration of the Minister of the Interior.

The Service employs *territorial operational protection units* (known by their Italian acronym NOP), which implement assistance measures and measures aimed at "camouflaging" the person protected (especially with regard to accommodation).

The duties involved in ensuring the security of the individual (guarding their home, accompanying them to hearings, etc) are the responsibility of the local or regional police, who naturally take account of the technical assessment made by the units themselves.

The Protection Service is also responsible for authorising the issue of cover documents and providing the Central Commission with information, especially when it is necessary to set up a *temporary protection plan* (section 10 (1) and (11) of Decree-Law 8/1991).

PART III

COLLABORATION

1. Features of collaboration

In order to deal with critical aspects of the system and ensure the “qualitative selection” of collaborators, (ordinary and special) protection measures are now only applicable to people who “collaborate” on crimes of subversion or terrorism or the Mafia-type crimes referred to in section 51 (3-bis) of the Code of Criminal Procedure (Mafia-type association; association for the purpose of trafficking in drugs; association for the purpose of smuggling tobacco products; kidnapping to extort ransom money; crimes involving intimidation committed by Mafia-type associations or perpetrated with the aim of assisting the activities of these associations).
For the purpose of the application of protection measures, the collaboration only plays a role if it is essentially credible and is important because it is new and extensive or owing to other aspects. The importance of the collaboration can be assessed on the basis of investigations already begun or trials in progress as well as with regard to its value for crime prevention investigations relating to the structures, behaviour and aims of, as well as the links between, the most dangerous criminal organisations.

2. Collaboration of witnesses

For “witnesses”, collaboration may be important even if it relates to crimes other than terrorist-subversive or Mafia- type offences. Contrary to the situation with collaborators of justice, the collaboration of “witnesses” may therefore concern **any crime** and, for the purpose of the application of measures or the protection programme, may play a role whenever it is **reliable,** even if it is of **secondary importance**.

However, protection measures can naturally only be applied to witnesses who are in a situation of danger, which must according to the general rules (section 9 (6) of Decree-Law 8/1991) be assessed by taking account of the value and importance of the statements made and of the extent to which the criminal group of which the persons accused are members are able to react and exercise intimidation, even at the local level. This reference to “witnesses” gives us the opportunity to make it clear that only the *victims and individuals who have nothing to do with the criminal offence* can be described as “witnesses”.

Assistance measures are more extensive since they ensure that the person concerned can lead a similar life to that led before the decision to collaborate and enable specific benefits to be paid in cases where a person has had to give up the job they had before taking that decision.

3. The sincerity of the collaboration

On several occasions, it has been suspected that statements by collaborators could have been “agreed” or “amended, combined and adapted” more and more in order to complicate the assessment of the outcome of the trial, to enhance the value of the statement or to have easier access to prison benefits, sentence reductions or more favourable assistance measures. Hence, it is appropriate to require the “crystallisation” of the collaboration and establish a series of instruments capable of ensuring the **transparent management of the collaborators** by making certain that their statements are truthful (or at least unadulterated).

A) Under the law, the purpose of the obligation to draw up the “explanatory statement on the content of the collaboration” immediately is to avoid statements becoming progressively accusatory (which happened in the past with statements coloured by the person’s mood) and thus produce the first instrument for assessing whether the collaborator is telling the truth and can rightfully be granted the benefits that the law provides for.

B) Under the same law, other bodies are responsible for ensuring that the truthful content of the collaboration (either proven or to be proven) is not compromised, albeit only apparently, by “suspect” conduct:, such as a failure to identify the collaborator’s assets, the grant of new benefits (especially economic or other assistance) or the absence of checks on meetings and contacts with other collaborators.

In particular:

1) In order to emphasise the actual availability of the collaboration, the collaborator (but not the “witness”) is required to specify the articles they possess so that the judicial authority can seize them immediately. The failure to comply with this obligation will result in the immediate cancellation of the protection measures (sections 12 (2) (e) and (13-quarter) (2) of Decree-Law No. 8 of 15/1/1991 converted with modifications into Law No. 82 of 15/3/1991).

2) In order to assess whether the content of the statements can justify the grant of special assistance measures or other “external” interventions:

   a) section 13 (6) of Decree-Law 8/1991 obliges the trial judge to obtain, at the request of the defendants’ legal counsels, a statement of the total expenses paid by the person protected as well as details of the measure following which that person was granted an increase in living allowances.

b) section 16 (1) and (2) of Decree-Law 8/1991 stipulates that the judge, when examining or interrogating a collaborator or "witness", shall decide, at the request of a party, to obtain for examination a copy of the "explanatory statement on the content of the collaboration" and of the interview files. This is in order to check whether the collaborator or witness has already made immediate statements on the case in respect of which they are being questioned and whether these statements were influenced by preceding "informal" interviews with the judicial authorities or the police.

3) In order to avoid any suspicions regarding the truthfulness of the statements, it has been ruled that collaborators and "witnesses" must not meet or contact people involved in crime or other individuals collaborating with the judicial authorities. This ban may be lifted, subject to this being authorised by a judicial authority in the case of important family needs ("serious difficulties" in the case of collaborators, but only "considerable difficulties" in the case of witnesses). Non-compliance with this obligation may result in the immediate cancellation of the protection measure (section 12, (2) (d); section 13 (9) and section 13-quater (1) of Decree-Law 8/1991).

C) Finally, particular safeguards apply to imprisoned (or interned) persons who have not been proposed for, or have not requested, a protection measure (even temporary) but have shown they are *willing to collaborate* (see section 13 (13-15) of Decree-Law 8/1991). In order to avoid the danger of "agreed" statements or statements that are biased towards the criminal organisation or influenced by the benefits to be derived from them, the following measures have been devised:

1) *"différentated detention"* in places that meet specific security needs and guarantee the sincerity of the collaboration, especially given the impossibility of meeting people already collaborating with the judicial authorities;

2) *a ban on correspondence (written or telegraphic) or telephone calls* as well as on meetings with other collaborators, interviews with specialised police authorities for the purpose of conducting an investigation or with the national anti-Mafia prosecutor (section 18-bis of Law No. 354 of 26/7/1975 – Prison Ordinance) while statements are being prepared and until the "explanatory statement on the content of the collaboration" has been drawn up. *A breach of these bans* (on being interviewed, having meetings and engaging in correspondence while the explanatory statement is being drawn up) will in certain cases mean that it is impossible to use the statements made to the public prosecutor and the police after the date of the breach.

As it is necessary to ensure transparency in the handling of the collaborator, it is justified to establish rules that prevent several collaborators who are accusing the

same person from having the same defence counsel (see sections 105 (5) and 106 (4-bis) of the Code of Criminal Procedure).

4. The explanatory statement on the content of the collaboration

A) The statement must be seen to have the value of an investigation document because the law indirectly defines it as such (section 10 (2) of Decree-Law No. 8 of 15/1/1991, converted with modifications into Law No. 82 of 15/3/1991) and, above all, because of the “environment” of the procedure under which it is drawn up and the nature of the authority concerned (the public prosecutor or the police after this task has been delegated by the latter) and owing to the possibility that it will be added to the trial file and thus used with respect to the judgment.

1) The explanatory statement is drawn up by the public prosecutor or the police (section 16-quater (9) of Decree-Law 8/1991). Considering the aforementioned purposes of the statement, it can be assumed that the police can only collect statements after this job has been delegated to them by the public prosecutor and only when they have been made by a person who is not detained in respect of the same trial for which they are collaborating (see section 370 of the Code of Criminal Procedure).

2) The explanatory statement is drawn up in summary form and, owing to the risk that it may subsequently be unusable, is recorded on audio or video tape (section 141-bis of the Code of Criminal Procedure; section 16-quater (3) of Decree-Law 8/1991).

3) In the case of imprisoned (or interned) persons, when the explanatory statement is drawn up it must be guaranteed that the prisoner (or internee) will not– within the above-mentioned limits – have any correspondence or contacts with other collaborators or interviews for investigation purposes (with the national anti-Mafia prosecutor or staff of the centralised police services) (section 13 (14) of Decree-Law 8/1991).

B) The explanatory statement details (section 16-quater (1,2,4 and 5) of Decree-Law 8/1991):

a) *all information useful for the reconstruction of the facts* and the circumstances in respect of which the person is being questioned, as well as serious offences that pose a danger to society and are known to that person;

b) useful information for the detection and arrest of the perpetrators of offences known to the person concerned;

c) information necessary for the identification, seizure and confiscation of the money and property belonging to the person concerned or to others (this rule does not apply to "witnesses").

d) a statement by the person concerned that they have no knowledge of information concerning particularly serious offences other than those specified;

e) *where applicable, details of interviews held for investigation purposes. The explanatory statement only contains information that can be the subject of testimony* (section 194 of the Code of Criminal Procedure; section 16-quater (4) and (6) of Decree-Law 8/1991) and can thus legitimately be used for the purposes of the prosecution.

The explanatory statement provides an overview – depending on the facts, offences and individuals concerned – of the declarations that the collaborator or witness will make to the public prosecutor or police in the form of summary information or responses to questions. It is therefore a **preliminary** statement (a fact that should perhaps be emphasised more in the event of the law being amended in order to avoid any misunderstanding in this connection) and its **content is in summary form** and sets out the information that the collaborator or witness possesses and is or is about to formalise in procedures that are typical of the preliminary inquiry (summary information, interrogation of the person under caution, questioning of a defendant in related proceedings, statement by "assisted witnesses").

In practice, the statement *summarises in advance what the "witness" or collaborator knows* (even specifically with regard to particular individuals) about the criminal offences at which they were present or which they know have been committed by their group or other groups close to it.

5. False declarations by the collaborator and, in particular, retrials

New inquiries and new statements may bring to light the falseness of all or some of the collaborator's declarations.

a) In this case, the protection measures adopted can obviously be modified or cancelled even after a request has been made by the authority that made the proposal (section 13-quater (1) and (4) of Decree-Law No. 8 of 15/1/1991, converted with modifications into Law No. 82 of 15/3/1991).

b) *The prison benefits* granted as an exception to the rules in force can also be modified or cancelled by the judge responsible, even of his or her own motion (section 16-octies (7) of Decree-Law 8/1991).

c) The procedure is more complex when the collaborator has made false (or incomplete) declarations to benefit from the mitigating circumstances provided for co-operating with the authorities on Mafia or terrorist crimes.

In these cases, section 16-septies of Decree-Law 8/1991 introduces a provision for removing the time-limits for the appeal but increasing the limit for defamation and a review of the judgment.

PART IV

ADDITIONAL REMARKS

1. The use of videoconferencing for collaborators

Collaborators normally describe details of offences liable to be linked to the group to which they belong. This results in the simultaneous institution of several criminal proceedings and the need for collaborators to make their statements at several trials. It thus becomes necessary to avoid prolonging the trials at which collaborators are required to testify and ensure that there are no continuous transfers from one venue to another that could lead to the danger of attacks on these people and those in charge of protecting them. For these reasons and, more generally, in order to adapt the trial process to take account of technological advances, the participation and examination of collaborators have often taken place at a distance by making use of **videoconferencing**.

It is the responsibility of judges or presidents of tribunals or assize courts to ensure that **the procedure to be carried out conforms with the law**: they are required to make certain that the persons present with the collaborator can all be seen at the same time and to establish that a judicial official is present. They must also guarantee, if necessary, the collaborator's defence rights (by taking care to ensure the confidentiality of the conversations between the collaborator and the defence counsel).

2. The evaluation of the collaborator's statements at the trial

It is worthwhile pointing out what criteria should be applied, according to Italian case law and legislation, to the evaluation of statements made by collaborators.

Under section 192 (3) and (4) of the Italian Code of Criminal Procedure, "statements made by person co-accused of the same crime or by person accused in related proceedings" or of a related crime (see sections 12 and 371 of the Code of Criminal Procedure) "shall be evaluated at the same time as the other evidence that confirms their authenticity".

The Court of Cassation has ruled that the evaluation (which clearly also relates to the statements made by the collaborator since this person is normally accused of a crime or related offence) must be carried out in accordance with a logical three-stage procedure:

a) Firstly, the truthfulness of the person giving the testimony must be established (= *credibility of the testifier*) by considering their personality, social and

economic status, their past, their relations with the accused and the reasons that have induced them to confess or accuse the accomplice.

b) Secondly, it is necessary to verify the credibility of the statements (= *intrinsic or general credibility* of the statements) by considering their seriousness, precision, coherence, consistency and spontaneity.

c) Thirdly, it is necessary to check the existence and importance of verification elements outside the statements themselves (= *extrinsic or specific credibility* of the statements).

The checks on the existence and importance of verification elements outside the statements themselves must logically follow those relating to the credibility of the person making them and that person's general credibility.

It is not possible to carry out a complete assessment of the statements and the evidence that confirms their credibility before eliminating doubts about them that may have arisen independently of any elements of extrinsic verification.

With regard to the necessity for the verification and the characteristics it must have to support the credibility of the accusation, it can be stated that:

- the need for "verification" even arises with respect to the stages preceding the assessment of the accused's involvement. It arises in particular when the judge (as during the preliminary investigation) has to assess whether there is compelling evidence of the accused's guilt that justifies the application of a precautionary measure (detention in prison, compulsory residence order). In these cases, if the accused is incriminated by a collaborator of justice the statements they have made can only constitute serious evidence of guilt if they are "verified" (as required in the trial itself), that is to say accompanied by other elements that confirm their credibility (see section 273 (1-bis) of the Code of Criminal Procedure).

- *The verification* required to permit the use of the statement is necessarily "extrinsic" but may consist of any type of evidence (non-predetermined with regard to its nature and quality) and therefore of statements originating from another person.

- However, an extrinsic element of verification must:
  - *c)* consist of a fact that is independent of the statement;
  - *d)* relate to the participation in the crime of each accused *("distinguishing verification")* and thus only not be limited to the reconstruction of the offence;
  - *e)* have a specific feature and not be made up of general circumstances;
  - *f)* in the case of similar statements made by another individual (= cross-verification), it must not result from consultation between, or the mutual influence of, the persons concerned.

3. Numbers of collaborators of justice

In December 1996, 7,020 persons were protected (1,214 collaborators, 59 witnesses, 5,747 family members); in June 1997, 6,041 persons were protected (1,037 collaborators, 54 witnesses, 4,950 family members); in December 1997, 5,256 persons were protected (1,028 collaborators, 56 witnesses, 4,181 family members); in June 1998, 5,263 persons were protected (1,041 collaborators, 51 witnesses, 4,167 family members); in December 1998, 5,282 persons were protected (1,067 collaborators, 59 witnesses, 4,166 family members); in June 1999, 5,345 persons were protected (1,079 collaborators, 59 witnesses, 4,207 family members); in December 1999, 5,262 persons were protected (1,100 collaborators, 56 witnesses, 4,106 family members); in June 2000, 5,246 persons were protected (1,110 collaborators, 62 witnesses, 4,084 family members); in December 2000, 5,147 persons were protected (1,110 collaborators, 61 witnesses, 4,003 family members); in December 2001, 5,124 persons were protected (1,104 collaborators, 74 witnesses, 3,748 members of collaborators' families, 198 members of witnesses' families).

Today (at 31 December 2004), the number of persons protected is 970 collaborators, 71 witnesses, 3.059 members of collaborators' families, 219 members of witnesses' families.

Piero Luigi VIGNA