



## **World Conference on Social Sciences, Law and Public Policy**

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### **THE ADMISSIBILITY OF EVIDENCE OBTAINED IN THE PROCESS OF ENSURING THE SAFETY OF PARTICIPANTS IN CRIMINAL PROCEEDINGS: A COMPARATIVE LEGAL ANALYSIS**

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#### **Abstract**

The safety of participants in criminal proceedings has become a paramount concern across jurisdictions, especially in cases involving organized crime, terrorism, or vulnerable witnesses. While protective measures such as anonymity, witness relocation, and special interrogation techniques are essential, they often raise complex questions regarding the admissibility and reliability of evidence obtained under such circumstances. This article examines the legal standards and practices concerning the admissibility of evidence collected during protective procedures, with a focus on comparative developments in the United States, the United Kingdom, the European Union, and international criminal law. Through an analysis of landmark cases and legislative frameworks, the article identifies emerging trends, legal dilemmas, and potential safeguards to ensure both fair trial rights and the protection of justice system participants.

**Keywords:** Admissibility of evidence, Witness protection, Criminal proceedings, Fair trial, Confrontation rights, Anonymous witnesses, Special measures, Comparative criminal law, Human rights in criminal justice, Evidence and due process, International criminal law, Safety of participants, Procedural safeguards, Remote testimony, Judicial discretion



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Criminal justice systems face a growing challenge in balancing the protection of participants—such as witnesses, victims, and experts—with the defendant's right to a fair trial. In high-risk cases, especially those involving mafia-related crimes, terrorism, or gender-based violence, witness protection becomes indispensable. However, protective measures, by their nature, may impact the transparency and verifiability of the evidence presented in court. The core issue is whether evidence obtained through such measures complies with fundamental rights standards, especially the right to confront one's accusers and the right to an adversarial trial. This article explores how foreign legal systems navigate the delicate intersection between safety measures and evidentiary admissibility. It also considers how courts interpret the fairness of such evidence and what procedural safeguards are employed to mitigate prejudice.

The principle of a fair trial is enshrined in many international legal instruments, including Article 6 of the European Convention on Human Rights (ECHR), the Sixth Amendment of the United States Constitution, and Article 14 of the International Covenant on Civil and Political Rights (ICCPR). These provisions guarantee the right to a public hearing, equality of arms, and the right to examine witnesses.

Protective measures can include:

- Witness anonymity orders
- In-camera (closed) hearings
- Use of voice and facial distortion
- Pre-recorded testimonies
- Remote examination via video link
- Witness relocation and identity changes



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While these techniques aim to secure the safety of participants, they must be carefully balanced against the accused's procedural rights. Jurisdictions differ in how they maintain this balance.

In the U.S., the Sixth Amendment's Confrontation Clause grants defendants the right to confront witnesses. The landmark case *Crawford v. Washington* (541 U.S. 36, 2004) held that testimonial evidence is inadmissible unless the witness is unavailable and the defendant had a prior opportunity to cross-examine them. However, exceptions exist. For instance, in cases involving children or domestic violence victims, courts may permit testimony via closed-circuit television (as upheld in *Maryland v. Craig*, 497 U.S. 836, 1990), provided there is a compelling state interest, such as protecting the welfare of the witness.

The Witness Security Program (WITSEC) also plays a vital role in protecting witnesses through relocation and identity changes. Testimony from protected witnesses remains admissible if the court is satisfied that procedural safeguards have preserved the defendant's rights.

### **United Kingdom: Special Measures and Judicial Discretion**

The UK has developed a comprehensive legal regime under the Youth Justice and Criminal Evidence Act 1999 (YJCEA), which outlines special measures for vulnerable and intimidated witnesses. These include the use of screens, live video links, and pre-recorded cross-examination.

Courts are empowered to issue anonymity orders in rare circumstances, particularly in terrorism and gang-related cases. The House of Lords in *R v. Davis* [2008] UKHL 36 emphasized that anonymous witness evidence could breach the right to a fair trial. Nevertheless, the Coroners and Justice Act 2009 established a statutory framework for anonymous witnesses, provided their identity



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concealment is necessary for safety and does not compromise the fairness of the trial.

### **European Court of Human Rights: Fairness as a Whole**

The European Court of Human Rights (ECtHR) has issued several decisions on the admissibility of evidence obtained under protective measures. In *Doorson v. The Netherlands* (1996) and *Al-Khawaja and Tahery v. the UK* (2011), the Court held that the use of anonymous witnesses is not per se a violation of Article 6, but the overall fairness of the trial must be assessed.

The ECtHR requires that:

- There is a compelling reason to grant anonymity;
- The defense is given a chance to challenge the witness's credibility;
- Convictions are not based solely or decisively on anonymous evidence.

These standards aim to ensure a balance between witness protection and the accused's right to defense.

### **International Criminal Tribunals and Hybrid Courts**

International tribunals, such as the ICTY, ICTR, and ICC, frequently deal with cases involving vulnerable witnesses, often victims of war crimes or sexual violence. These courts utilize extensive protective measures, including:

- Use of pseudonyms
- Voice and image distortion
- Private testimony sessions

For example, Rule 75 of the ICTY Rules of Procedure and Evidence permits protective measures where necessary. The ICC's Rome Statute (Article 68) mandates special attention to the needs of victims and witnesses, particularly children and victims of sexual violence.



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However, these courts also underscore that protective measures must not prejudice the rights of the accused. In *Prosecutor v. Tadić*, the Tribunal held that fairness requires alternative mechanisms to allow for effective cross-examination without jeopardizing witness safety.

### **Emerging Trends and Best Practices**

Across jurisdictions, several trends are apparent:

1. **Increased use of technology** to facilitate remote testimony.
2. **Codification of protective measures** within procedural laws.
3. **Judicial training and guidelines** on assessing evidence from protected witnesses.
4. **Multi-layered protection systems**, combining legal, physical, and psychological support.

Best practices suggest that courts should:

- Conduct individual risk assessments before granting protective measures.
- Ensure transparency through judicial reasoning.
- Provide defense counsel with alternative means to challenge evidence.

The admissibility of evidence obtained under safety protocols is a complex yet critical issue in modern criminal justice systems. While protecting participants is essential for the effective functioning of justice, it must not come at the cost of fairness. Comparative analysis reveals that although jurisdictions adopt different procedural tools, the core principle remains: the need to strike a careful balance between security and due process.

Future legal reforms should aim at enhancing procedural clarity, judicial oversight, and international cooperation, ensuring that justice is both safe and just.



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