

24 Annex - Justice, freedom and security

178. LAW ON WITNESS PROTECTION

Pursuant to Article 88, item 2 of the Constitution of the Republic of Montenegro I hereby issue

Decree Promulgating the Law on Witness Protection

I hereby promulgate the Law on Witness Protection passed by the Parliament of the Republic of Montenegro, at the first sitting of the second ordinary session in 2004, held in Cetinje on 19 October 2004.

No: 01-1372/2

Podgorica, 21 October 2004

The President of the Republic of Montenegro

Filip Vujanovic, m.p.

LAW ON WITNESS PROTECTION

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I INTRODUCTORY PROVISIONS

Article 1

The present Law governs conditions and procedures for the provision out-of-court protection and assistance to a witness, when reasonable fear exists that testifying for the purpose of bringing evidence about criminal offences, in connection with which the protection may be provided under the present Law, would expose the witness to actual and severe danger to life, health, corporal inviolability, freedom or property of large scale, where other measures do not suffice.

The protection and assistance, within the meaning of paragraph 1 of this Article, may, at the request of the witness, be also provided to a person close to him/her.

Article 2

The protection of a witness *i.e.* person close to him/her shall be provided through the application of the Witness Protection Programme (Hereinafter referred to as: "Protection Programme").

The Protection Programme is a set of measures provided for by the present Law which are applied with a view to protecting life, health, corporal inviolability, freedom or property of large scale of the witness or a person close to him/her.

The Protection Programme may be applied only with the consent of the witness *i.e.* person close to him/her.

The Protection Programme may be applied to a minor only with the consent of the parent or the guardian, and to a person completely or partially deprived of the capacity to transact business only with the consent of the person authorised to act as his/her representation or guardian.

Article 3

The measures and activities undertaken on the basis of the present Law shall not affect the rights of the defendant in criminal proceeding.

Article 4

The specific expressions used in the present Law shall have the following meaning:

1. Witness means any person, regardless of his/her status under criminal procedural law, who possesses information about a criminal offence and the offender and other important circumstances, or data and information that are crucial and necessary for proving the criminal offence, when the divulgence or reporting thereof would expose such person or a person close to him/her to actual and severe danger to life, health, corporal inviolability, freedom or property of large scale.

2. Close person means the spouse or a relative of the witness as well as another person close to the witness who he or she designates as such, and requests to be included in the Protection Programme,

3. Protected person means the person with whom an agreement on the application of the Protection Programme has been entered into.

Article 5

The Protection Programme shall be applied only if the criminal offence cannot be proved without the testimony of the witness, or if the proving thereof in other way would be made significantly more difficult, where the following criminal offences are being proven:

1. Criminal offences against the constitutional order and security of the Republic of Montenegro;
2. Criminal offences against humanity and other values protected by international law;
3. Criminal offences committed in an organised manner;
4. Criminal offences carrying a sentence of imprisonment for a term of 10 or more years.

II THE COMMISSION FOR THE APPLICATION OF THE WITNESS PROTECTION PROGRAMME

Article 6

The decisions on the application, termination, cessation or extension of the Protection Programme application shall be passed by the Commission for the Application of the Witness Protection Programme (hereinafter referred to as "the Commission").

The Commission shall be made up as follows: a judge of the Supreme Court of the Republic of Montenegro, Deputy Supreme State Prosecutor and the Head of the Protection Unit.

The members of the Commission shall have deputies.

The members of the Commission and their deputies shall be appointed by the head of the authority whose representative is being appointed to serve on the Commission. The Head of the Protection Unit shall be a member of the Commission by virtue of the post held and his deputy shall be appointed at his proposal by the Minister responsible for internal affairs.

The Protection Unit shall perform administrative tasks for the needs of the Commission.

Article 7

The members of the Commission and their deputies, with the exception of the Head of the Protection Unit, shall be appointed for a term of five years and shall be eligible for re-appointment.

Article 8

Membership in the Commission shall cease:

1. upon expiration of the term the member was appointed to,
2. at the member's own request,
3. if the office or employment on the basis of which the member was appointed has been terminated,
4. due to the divulging of an official secret concerning the work of the Commission,
5. if the member does not abide by the regulations pertaining to the application of the Protection Programme in the performance of his/her official duties.

In the cases referred to in paragraph 1, items 1-3, a decision on cessation of membership of the Commission shall be made *ex officio* by the head of the authority whose representative is sitting on the Commission, and in the cases referred to in paragraph 1, items 4 and 5, the decision shall be made at a proposal of the Chairman or a member of the Commission or his deputy.

Article 9

The work of the Commission shall be managed by a Chairman.

The Chairman of the Commission shall be the judge of the Supreme Court, and in the case of his/her absence, the deputy of the judge shall manage the Commission's work.

The work and the acts of the Commission shall be official secrets and must be designated as such.

Article 10

The Commission shall make decisions at sessions, by a majority of votes.

The Commission shall adopt its Rules of Procedure.

III THE PROTECTION UNIT

Article 11

The Protection Unit is a specialised organisational unit of the ministry responsible for internal affairs, which carries out urgent measures, applies and is responsible for the application of the Protection Programme and performs other tasks in accordance with the present Law.

The state authorities, organisations and other services shall be under a duty to provide assistance to the Protection Unit and to perform, upon a request of Protection Unit, such activities falling within their competence as may be required for the implementation of the measures envisaged in the present Law.

Article 12

During the course of the Protection Programme application, the Protection Unit shall provide necessary financial, psychological, social and legal assistance to the protected person. It shall also assist the protected person with the provision of financial and social support until the moment he/she achieves financial independence.

The financial and social support provided to the protected person may not be higher than the amount necessary to cover the costs of living and to make possible financial independence in the new conditions.

Article 13

Where measures referred to in Article 27, paragraph 1 of the present Law cannot be implemented otherwise, the Protection Unit may, when performing tasks falling within its competence conceal the identity of its employees, as well as the ownership over property required for the implementation of a specific measure.

IV APPLICATION AND EXTENSION OF THE PROTECTION PROGRAMME

1. Procedure for Application of the Protection Programme

Article 14

The Commission shall decide on the application of the Protection Programme at a request of the Supreme State Prosecutor.

An initiative for the submission of a request for the application of the Protection Programme may be submitted by the following persons: the witness, competent state prosecutor, judge sitting in the case, the Director of the Institute for Enforcement of Criminal Sanctions and the Head of the Crime Police Administration.

Article 15

A request for the application of the Protection Programme shall include the following:

1. information about the person in respect to whom the application of the Protection Programme is being proposed;
2. description and legal designation of the criminal offence in relation to the proving of which the protection is requested;
3. evaluation of the existing evidence;
4. bearing on the proceedings of the testimony and information coming from the person in respect to whom the application of the Protection Programme is being proposed, with an evaluation of credibility and completeness of such testimony and information;
5. circumstances which indicate that actual and serious danger threatens the person in respect to whom the application of the Protection Programme is being proposed;
6. previously undertaken protection measures, if any;
7. other information of importance for the application of the Protection Programme.

Along with the request referred to paragraph 1 of this Article, the Supreme State Prosecutor shall submit to the Commission the initiative for the submission of the request and the statement of the witness or a person close to him/her whereby he/she consents to the included in the Protection Programme.

Article 16

Upon having received a request for application of the Protection Programme submitted by the Supreme State Prosecutor, the Chairman of the Commission shall immediately, and not later than within seven days, convene a session of the Commission.

The Commission may request that the Supreme State Prosecutor supplements a submitted request with such information as might be of importance for the application of the Protection Programme.

The Commission shall decide on the request not later than thirty days as of the day when it was submitted or supplemented and shall inform immediately the Supreme State Prosecutor and the Protection Unit about its decision.

2. Procedure for the Application of Urgent Measures

Article 17

If the Supreme State Prosecutor is satisfied that life, health or corporal inviolability, freedom or property of large scale of the witness, *i.e.* person close to him/her could be immediately exposed to actual and serious danger which cannot be removed through the use of adequate protective measures which the police takes to safeguard citizens, the Supreme State Prosecutor shall, simultaneously with the submission of a request for the application of the Protection Programme, inform the Protection Unit thereon so that urgent measures can be applied.

A decision on the application and the type of urgent measures shall be made by the Head of the Protection Unit within 24 hours as of the receipt of the notification from the Supreme State Prosecutor. The Head of the Protection Unit shall immediately inform the Chairman of the Commission and the Supreme State Prosecutor about the decision, or, if the witness or a person close to him/her is detained or serving a prison sentence, the Director of the Institute for Enforcement of Criminal Sanctions.

Prior to the application of urgent measures, the Head of the Protection Unit shall obtain a written consent of the witness, *i.e.* person close to him/her.

Urgent measures shall be applied until such time as the Commission makes a decision at the request for application of the Protection Programme.

Article 18

The measures referred to in Article 27, paragraph 1, items 1-3 of the present Law may be applied as urgent measures.

Article 19

After the decision on the application and type of urgent measures has been made, the Head of the Protection Unit shall request from the witness *i.e.* person close to him/her to complete a questionnaire about his/her personal data, property, obligations, as well as other information (hereinafter referred to as "the Questionnaire") and to undergo medical examination.

The content of the Questionnaire shall be determined by the Minister responsible for internal affairs.

Article 20

The Head of the Protection Unit shall submit to the Commission a copy of the completed Questionnaire, the medical report referred to in Article 19 paragraph 1 of the present Law, as well as an opinion on the application of the Protection Programme.

1. Agreement on the Application of the Protection Programme

Article 21

Should the Commission pass a decision on the application of the Protection Programme, it shall authorise the Head of the Protection Unit to enter into an Agreement on the Application of the Protection Programme (hereinafter referred to as: "the Agreement") with the witness, *i.e.* person close to him/her.

Prior to the conclusion of the Agreement, the witness and a person close to him/her shall complete the Questionnaire in the case it was not completed from the reasons stipulated in the Article 19 of the present Law.

The application of the Protection Programme shall commence on the day of the conclusion of the Agreement.

Article 22

The Agreement shall contain:

1. General information:

- parties to the Agreement;
- consent of the witness *i.e.* person close to him/her to the Protection Programme application;
- statement of the witness *i.e.* person close to him/her that the information provided in the Questionnaire is true;

2. Obligations of the witness *i.e.* person close to him/her:

- to testify in accordance with the Criminal Procedure Code and answer clearly and precisely questions put to him/her in the proceedings and to give statements on the facts which are in any way connected to the proceedings to the judicial authorities and to the police exclusively;
- to abide by instructions of the Protection Unit and actively participate in the implementation of the measures;
- for the purpose of protection, to agree that surveillance and technical recording by long-distance communication means, surveillance and technical recording of premises in which he/she resides and covert monitoring, visual recording and photographing be conducted without a special court decision;
- after the application of the Protection Programme has commenced, to undertake all necessary measures for the purpose of achieving financial independence in the course of duration of the Protection Programme;
- to agree to examinations, testing and other measures not harmful to his/her health;
- to report his/her accounts, legal transactions and financial and other liabilities;
- to inform, without a delay, the Protection Unit about all changed circumstances which may influence the application of the Protection Programme;

3. Obligations towards the witness *i.e.* person close to him/her:

- to implement the protection measures with only necessary restrictions of his/her rights and freedoms;
- to provide him/her with necessary psychological, social and legal assistance in the course of the Protection Programme application;
- the duration and scope of the necessary financial assistance;

4. Duration of the Protection Programme;

5. A clause that the Agreement is completed in two copies, one of which is kept with the Protection Unit, and the other one is given to the witness or person close to him/her.

For the duration of the Protection Programme, the Agreement shall be accessible only to the Commission;

6. Statement of the witness *i.e.* person close to him/her to the effect that he/she understands the contents of the Agreement and agrees with it;
7. Other information of importance for the implementation of the Protection Programme,
8. Date of conclusion of the Agreement and signature of the parties thereto.

Article 23

The parent or the guardian shall enter into the Agreement on behalf of minors. In the case of persons completely or partially deprived of the capacity to transact business, the Agreement shall be entered into either by the guardian or legal representative.

4. Procedure for extension of the Protection Programme application

Article 24

Should it be determined that after the expiration of the period of the Protection Programme stipulated in the Agreement the protected person still requires protection, the Supreme State Prosecutor or Head of Protection Unit shall submit a request for extension of the application of the Protection Programme to the Commission.

Persons referred to in Article 14, paragraph 2 of the present Law may submit the initiative for the submission of a request for the extension of the Protection Programme to the Supreme State Prosecutor.

The request for the extension of the application of the Protection Programme shall be submitted not later than 30 days before the expiration of the period of application of the Protection Programme.

Exceptionally, the request for the extension of the Protection Programme may be submitted after the expiry of the Protection Programme, if the reasons of the protected person's safety so require.

The application of the Protection Programme may be extended only with the consent of the protected person.

Article 25

The request for the extension of the application of the Protection Programme shall contain the following:

1. Information regarding the person in relation to which the extension of the Protection Programme is requested;
2. Reference and number of the decision on application of the Protection Programme;
3. Reasons for which the extension of the Protection Programme is requested.
- 4.

Article 26

The Commission shall decide on the extension of the Protection Programme within the time limits laid down in Article 16 of the present Law.

Before making the decision referred to in paragraph 1 of this Article, the Commission may request from the Protection Unit to submit, within 16 days, an assessment of the threat to the protected person.

V TYPES OF PROTECTION MEASURES

Article 27

The measures by which the protection of witness or person close to him/her is provided shall be as follows:

1. physical protection of person and property,
2. relocation,
3. concealing identity and information about ownership,
4. change of identity.

When passing a decision on the application of the Protection Programme, the Commission shall also determine the type of measures referred to Paragraph 1 of this Article which should be implemented in order to provide protection to the witness, *i.e.* person close to him/her, having in mind that one or more measures may be implemented.

The Protection Unit shall implement the measures as per Paragraph 1 of this Article.

Article 28

The measure of physical protection of person and property shall consist in the prevention of unlawful endangering of life, health, corporal inviolability, freedom or property of a large scale of the witness *i.e.* person close to him/her through the use of physical and technical measures.

Article 29

The measure of Relocation of the witness, *i.e.* person close to him/her shall consist in temporary or permanent resettling from the place of his/her residence to another location determined by the Protection Unit.

If the witness or a person close to him/her is a person deprived of liberty, the measure of relocation shall consist in the transfer of such person from the organisational unit wherein he or she is held to another organisational unit of the Institute for Enforcement of Criminal Sanctions or in the transfer to another prison facility designated by the Protection Unit.

The measure of relocation may be carried out within the territory of the Republic of Montenegro (hereinafter referred to as "the Republic") or at the territory of another state within the framework of international co-operation.

Article 30

The measure of concealing identity and information about ownership shall comprise the creation and use of personal documents and documents related to the property of the witness *i.e.* person close to him/her, which contain temporarily changed original data of the person in question.

The implementation of the measure referred to in paragraph 1 of this Article shall not result in the change of original data contained in the official records.

Article 31

The change of identity shall consist in modification of parts or entire personal information of the witness *i.e.* person close to him/her. There shall be possible to combine this measure with the change of the physical appearance of the witness or a person close to him/her.

The personal information which has been entered into new identity documents must not be identical to those of another person.

The change of the identity may have an impact on rights of the witness *i.e.* person close to him/her only to the extent that which is necessary for the purpose of applying the Protection Programme and shall not affect the obligations of the witness or a person close to him towards third parties.

VI IMPLEMENTATION OF MEASURES OF CONCEALING IDENTITY AND INFORMATION ABOUT OWNERSHIP AND CHANGE OF IDENTITY

Article 32

The protected person may use the documents referred to in Article 30, paragraph 1 of the present Law when concluding legal transactions which might have an impact on third parties, only with a prior consent of the Protection Unit. If the Protection Unit does not consent to the conclusion of the legal transaction in such manner, the protected person may, upon the consent of the Protection Unit, nominate a proxy who will conclude the legal transaction in his/her real name and for his/her account.

Article 33

If the measure of change of identity has been approved, the Protection Unit shall invite the protected person to perform his/her due obligations towards third persons.

In the case the protected person fails to fulfil his/her obligations referred to in Paragraph 1 of this Article, the measure of change of identity shall not be applied until such time as the obligations have been performed.

Exceptionally, the measure of change of identity may be implemented even though the witness was not in the position to perform the obligation referred to in paragraph 1 of this Article, in which case, the Protection Unit shall perform the obligation.

Article 34

For the purpose of exercising rights and performing obligations which have not ceased after the change of identity, the protected person may, with consent of the Protection Unit, nominate a proxy to represent him/her.

If, after the identity has been changed, the Protection Unit learns about an obligation which emerged before, while the protected person still had his/her original identity and of which the protected person had no knowledge previously, the Protection Unit shall invite the protected person to perform his/her obligation through the Protection Unit. In the case the protected person cannot or does not want to perform his/her obligation, the Protection Unit may either perform the obligation by itself or request the Commission to terminate the application of the Protection Programme. The termination of the Protection Programme may not be effectuated to the detriment of the protected person.

Article 35

The Protection Unit shall provide to the protected person identity documents with the new identity and ensure that the new data are entered into appropriate records if the measure of change of identity is being implemented.

Upon the request of the Protection Unit and based on data provided by it, the body or service competent for issuing identity documents shall issue new identity documents to the protected person immediately or at the latest within 15 days as of the day when the request was submitted.

After having issued identity card or document, the competent body or service shall enter into records containing original information about the protected person a note to the effect that the Protection Unit must be informed about issues pertaining to the identity. The records shall be kept in a manner which prevents that the new identity be learned from the information on the original identity of the protected person.

The bodies and services referred to in paragraph 2 of this Article may provide information about the protected person only after having obtained a prior approval of the Protection Unit.

Article 36

All contacts of the protected person pertaining to his status and other rights and obligations shall be conducted with his/her consent through the Protection Unit.

Article 37

In the case of prosecution for a criminal offence committed by the protected person before the change of identity, the Protection Unit shall, upon the request of the court, ensure that the person appears at court, in which case the protected person shall participate in criminal proceedings with his/her original identity.

In the case referred to in paragraph 1 of this Article, the court may decide that the protected person participates and testifies in criminal proceedings in a special way.

In the case of prosecution for a criminal offence committed by the protected person after the change of identity, the Protection Unit shall inform the Supreme State Prosecutor and the Commission, who may pass a decision on termination of the Protection Programme.

Article 38

In the case that the protected person has been summoned to appear as witness in criminal proceedings concerning criminal offences committed before the application of the Protection Programme has commenced, the summons shall be served on him/her through the Protection Unit, who shall ensure the protected person's appearance at court.

Article 39

The protected person may participate in official proceedings in which the use of his/her original identity is necessary only with the approval of the Protection Unit and in accordance with its instructions.

If the Protection Unit does not consent to the protected person's participation in the official proceedings in his/her original identity, the protected person shall exercise his/her rights in the proceedings through a proxy. The protected person shall appoint a proxy with the consent of the Protection Unit.

Article 40

Should it be determined that security of the protected person can be ensured by the implementation of some other measure stipulated in Article 27, Paragraph 1, Items 1-3 of the present Law, the Protection Unit may, with the consent of the protected person, propose to the Commission to terminate the measure of change of identity.

Article 41

The creation and use of personal documents for the purpose of implementation of measures of concealing identity and information about ownership or change of identity, pursuant to the present Law, shall not be considered a criminal offence.

VII CESSATION AND TERMINATION OF THE PROTECTION PROGRAMME APPLICATION

Article 42

The Protection Programme application shall cease:

1. upon the expiry of the period of application of the Protection Programme envisaged in the Agreement;
2. if the protected person dies;
3. in the case that the protected person, parent or guardian of the minor who is a protected person, or guardian or the person authorized for representation of the protected person completely or partially deprived of the capacity to transact business, waives protection,
4. upon a decision on termination of the Protection Programme application.

In the cases referred to Paragraph 1, Items 1-3 of this Article, the Commission shall pass a decision on the cessation of the Protection Programme application at a proposal of the Head of the Protection Unit.

Article 43

At a substantiated proposal of the Supreme State Prosecutor or the Head of the Protection Unit, the Commission may pass a decision on the termination of the Protection Programme application:

1. if the reasons justifying the Protection Programme application no longer exist,
2. if the protected person fails to perform his/her obligations defined by the Agreement,
3. if, during the course of the Protection Programme application, criminal proceedings are instituted against the protected Person for a criminal offence that brings into question the justifiability of the Protection Programme application,
4. if the protected person, without a justified reason, declines to accept the employment offered by the Protection Unit or if he/she stops performing other activity in relation to earning of income,
5. if the country at the territory of which the protected person is located, requests the cessation of the Protection Programme application for the reasons set forth by an international treaty or agreement;
6. if the protected person enters false information into the Questionnaire .

VIII INTERNATIONAL COOPERATION

Article 44

International cooperation in the application of the Protection Programme shall be carried out on the basis of an international treaty, bilateral agreement or on the basis of reciprocity.

Under the conditions set forth in paragraph 1 of this Article, the Protection Unit shall:

1. submit an application to another state to accept a protected person and apply the measures envisaged in the present Law,
2. proceed upon requests of another state for acceptance of a protected person and implementation of the protection measures in the Republic.

IX PROTECTION OF DATA AND RECORDS

Article 45

The employees of the Commission, Protection Unit, State authorities, organisations and services shall treat all documents and data pertaining to the application of the Protection Programme as official secret, regardless of the manner by which those employees became privy to such documents and data, which must be designated as such.

For justified reasons relating to the conduct of proceedings before the court or other state body, or for security reasons, the Commission may release the persons mentioned in Paragraph 1 of this Article from the duty of keeping an official secret.

Information pertaining to the protected person in respect to whom the measure of concealing identity and information about ownership or measure of change of identity has been implemented, as well as the identity documents with the original identity shall be kept with the Protection Unit and must be designated as an official secret. The access to such information and documents shall be approved and supervised by the Head of the Protection Unit.

The Commission shall pass a decision on declassification of protected data and documents.

Article 46

The Protection Unit shall keep the following records pertaining to application of the Protection Programme:

1. requests for the application of the Protection Programme,
2. completed Questionnaires;
3. implemented urgent measures;
4. decisions of the Commission on the application of the Protection Programme, type and duration of the measures;
5. decisions of the Commission on the cessation, termination and extension of the application of the Protection Programme;
6. personal data of the protected person, his/her permanent or temporary residence, as well as on all other data which have emerged in the course of application of measures and activities as provided for by the present Law;
7. concluded Agreements;
8. protected persons in respect to whom the Protection Programme is being applied on the basis of international cooperation,
9. persons who were granted access to information about the application of the Protection Programme, pursuant to Article 45, paragraph 3 of the present Law.

Article 47

The funds for the implementation of the present Law shall be provided in a special line of the Republic Budget allocated to the ministry in charge of internal affairs.

X TRANSITIONAL AND FINAL PROVISIONS

Article 48

The regulations for the implementation of the present Law shall be passed within six months from the date of entry into force of this Law.

The Commission referred to in Article 6 of the present Law shall be established within the time limit referred to in paragraph 1 of this Article.

Article 49

The present Law shall enter into force on the eighth day of its publication in the Official Gazette of the Republic of Montenegro, and it shall apply from 1 April 2005.