

REPUBLIC OF MONTENEGRO

LAW ON WITNESS PROTECTION

(Official Gazette of the Republic of Montenegro, no. 65/04, of 25 October 2004)

1. Introductory Provisions

Article 1

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

The protection and assistance, in the sense of paragraph 1 of this Article, may, at the request of the witness, be provided to a person close to him or her as well.

Article 2

The Protection of the witness *i.e.* person close to him or her shall be provided through the application of the Protection Programme.

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

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

The Protection Programme may be applied to a minor only with the approval of the parent or guardian, and to a person completely or partially deprived of the capacity to transact business only with the approval of the person authorised for 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.

Article 4

Certain expressions used in the present Law shall have the following meaning:

1. **Witness** means any person, whatever his or her status in criminal procedural law, who possesses information about the criminal offence and the perpetrator and other important circumstances, or intelligence or information crucial and necessary for proving the criminal offence, when the divulgence thereof would expose such person to 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 Program,

3. **Protected Person** means the person with whom the Agreement on the Application of the Protection Program has been entered into.

Article 5

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

- 1) Criminal offences against the constitutional order or 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 legally prescribed punishment of 10 or more years of imprisonment.

2. The Commission

Article 6

Decisions on application, termination, cessation and 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, a representative of the Chief 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 sitting 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 by the Minister in charge of internal affairs at his proposal.

The Protection Unit shall perform such administrative tasks as may be required by the Commission.

Article 7

The members of the Commission and their deputies, save for 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 revealing of an official secret concerning the work of the Commission,
5. if, in performance of his or her official duties, the member does not abide by the regulations referring to the application of the Protection Program.

In the cases referred to in paragraphs 1 items 1-3, the 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 paragraphs 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 Commission's work 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 or her absence, his or her deputy shall manage the Commission's work.

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

Article 10

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

The Commission shall adopt its Rules of Procedure.

3. The Protection Unit

Article 11

The Protection Unit is a specialised organisational unit of the Ministry in charge of internal affairs, which carries out urgent measures, applies the Protection Program and is responsible for its application and who 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, at its request, perform 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 economic, psychological, social and legal assistance to the protected person. It shall also assist the protected person with the provision of economic and social support until the moment he or she achieves the economic independence.

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

Article 13

When measures as per Article 27, Paragraph 1, Items 1-4 of the present Law cannot be implemented otherwise, the Protection Unit may, while performing tasks from its competence conceal the identity of its employees as well as the ownership over the items used in the implementation of a certain measure.

4. APPLICATION AND EXTENSION OF THE PROTECTION PROGRAM

Procedure for Application of the Protection Program

Article 14

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

A motion initiating the submitting of the request for the Protection Programme application may be put forward by the following persons: the witness, competent state prosecutor, judge handling the case, the Director of the Institute for the Enforcement of Criminal Sanctions and the Head of the Crime Police Administration.

Article 15

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

1. information about the person with respect to whom the application of the Protection Programme is being proposed;
2. description and legal title of the criminal offence;
3. evaluation of the existing evidence;
4. importance that the testimony and information coming from the person with respect to whom the application of the Protection Programme is being proposed have for the proceedings, with the evaluation of credibility and completeness of such testimony and information;
5. circumstances which indicate that there exists actual and serious danger to the person with 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 from paragraph 1 of this Article, the Chief State Prosecutor shall submit to the Commission the motion initiating the submitting of the request and the statement of the witness or the person close him whereby he or she the consents to be included in the Protection Programme.

Article 16

Upon having received the request for application of the Protection Programme submitted by the Chief 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 Chief State Prosecutor supplement the 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 of the submittal of the request and shall inform immediately the Chief State Prosecutor and the Protection Unit about its decision.

Procedure for Application of Urgent Measures

Article 17

Should the Chief State Prosecutor assess that the life, health or corporal inviolability, freedom or property of large scale of the witness, *i.e.* person close to him or her may be immediately exposed to serious danger that cannot be removed through the use of the appropriate protection measures which the police undertake to safeguard citizens, the Chief State Prosecutor shall, simultaneously with the submission of the request for the application of the Protection Programme, inform the Protection Unit thereon so that urgent measures can be applied.

The decision on the application and 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 Chief State Prosecutor. The Head of the Protection Unit shall immediately inform the Chairman of the Commission and the Chief State Prosecutor about the decision, or, if the witness or person close to him or her is detained or serving a prison sentence, the Director of Institute for the 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 or her.

The application of urgent measures shall continue until such time as the Commission makes a decision on 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 or her to fill out the questionnaire about his or 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 in charge of internal affairs.

Article 20

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

Agreement on the Protection Program Application

Article 21

Should the Commission pass the decision on the Protection Program application, it shall authorise the Head of the Protection Unit to enter into Agreement on the Protection Program application (hereinafter referred as: “the Agreement”) with the witness, *i.e.* person close to him or her.

The application of the Protection Program 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 or her to the Protection Program application,
- statement of the witness *i.e.* person close to him or her that the information listed on the Questionnaire is true,

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

- to give the testimony in accordance with the Criminal Procedure Code and answer clearly and precisely questions put to him or her in the proceedings and to give statements on the facts which are in any way connected to the proceedings solely to the judicial authorities and to the police,
- 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 or she resides and covert monitoring, visual recording and photographing be conducted without a special court decision,
- to undertake all necessary measures for the purpose of achieving, after the application of the Protection Program has commenced, his or her economic independence until the expiration of the Agreement,
- to agree to the testing and other measures not harmful to his or her health,

- to report his or 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 or her:
 - to implement the protection measures with only necessary restrictions of his or her rights and freedoms,
 - to provide him or her with necessary psychological, social and legal assistance in the course of the Protection Program application,
 - duration and scope of the necessary economic assistance,
 4. Duration of the Protection Program,
 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 or 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 or her to have understood the contents of the Agreement and to have agreed upon 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

A parent or a guardian shall enter into 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 person authorised for representation in accordance with the law or by the guardian.

Procedure for extension of the Protection Program application

Article 24

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

Persons referred to in Article 14, paragraph 2 of the present Law may file a motion with the Chief State Prosecutor pertaining to the submission of the request for the extension of the application of the Protection Program.

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

Exceptionally, the request for the extension of the application 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 Program may be extended only with the consent of the protected person.

Article 25

The request for the extension of the application of the Protection Program must contain the following:

1. Information regarding the person the extension of application of the Protection Program is requested for,
2. Date and number of the Decision on application of the Protection Program, adopted by the Commission, and
3. Motivation based on which the extension of application of the Protection Program is requested.

Article 26

The Commission shall decide on the extension of application of the Protection Program within the periods of time 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 15 days, an evaluation of the threat to the protected person.

5. TYPES OF PROTECTION MEASURES

Article 27

The measures by which the protection of witness or person close to him or 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 the decision on application of the Protection Program, the Commission shall also determine the type of measures as per Paragraph 1 of this Article which should be implemented in order to provide protection to the witness, *i.e.* person close to him or her, having in mind that one or more measures shall be possible.

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 preventing unlawful endangering of life, health, corporal inviolability, freedom or property of the witness *i.e.* person close to him or her through the use of physical and technical measures.

Article 29

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

If the witness or a person close to him 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 in the territory of another state within the framework 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 or her, which contain temporarily changed original data of the person in question.

The measure as per paragraph 1 of this Article shall not result in the change of original contained in the official records.

Article 31

The change of identity shall consist in modifying parts or entire personal data of the witness *i.e.* person close to him or 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 or her.

The personal data that have been entered into new identity documents must not be identical to those of another person.

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

6. IMPLEMENTATION OF MEASURE OF CONCEALING IDENTITY AND INFORMATION ABOUT OWNERSHIP AND MEASURE OF CHANGE OF IDENTITY

Article 32

When concluding legal transactions that might have an impact on third parties, a protected person may use the documents as per Article 30, paragraph 1 of the present Law 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 or her real name and for his or her account.

Article 33

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

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

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

Article 34

For the purpose of exercising rights and fulfilling obligations, which did not cease after the change of identity, the protected person may nominate a proxy to represent him or her.

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

Article 35

The Protection Unit shall provide to the protected person personal documents with new identity and shall take care 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 of submittal of the request.

After having issued identity documents, 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 such a manner that the new identity cannot be learned from the information on the original identity of the protected person.

The bodies and services referred to in paragraph 1 of this Article may impart the information about the protected person only after having obtained a prior opinion of the Protection Unit.

Article 36

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

Article 37

In the case of prosecution for a criminal offense 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 such case, the protected person shall participate in the criminal proceedings with his or 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 offense committed by the protected person after the change of identity, the Protection Unit shall inform the Chief State Prosecutor and the Commission who may pass a decision on termination of the Protection Programme.

Article 38

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

Article 39

The protected person may participate in the official proceedings in which the use of his or 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 or her original identity, the protected person shall exercise his or her rights in the proceedings through a proxy. The protected person shall appoint the proxy with the consent of the Protection Unit.

Article 40

Should it be determined that the security of the protected person can be ensured by the implementation of any 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 pursuant to the present Law, and in order to implement measures of concealing identity and information about ownership and the measure of change of identity, shall not be considered a criminal offense.

7. CESSATION AND TERMINATION OF THE PROTECTION PROGRAM APPLICATION

Article 42

The Protection Program 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 legal representative of the protected person completely or partially deprived of the capacity to transact business, renounces the protection,
4. by way of a decision on termination of the Protection Program application.

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

Article 43

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

1. if the reasons justifying the Protection Program application no longer exist,
2. if the protected person does not fulfil his or her obligations under the Agreement,
3. if, during the course of the Protection Program application, criminal proceedings have been 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 good reason, declines to accept the employment offered by the Protection Unit or if he or she stops performing other activity for earning income,
5. if a foreign country, in the territory of which the protected person has been located, requests the cessation of the Protection Program application for the reasons set forth by an international treaty or agreement;
6. if the protected person enters false information into the Questionnaire .

8. INTERNATIONAL CO-OPERATION

Article 44

International co-operation in the application of the Protection Programme shall be carried out on the basis of 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 an application by another state seeking acceptance of a protected person and carrying out of the protection measures in the Republic.

9. 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 Program as official secrets, regardless of the manner by which those employees became privy to such documents and data.

For justified reasons relating to the conducting proceedings before the court or other state body, or for security reasons, the Commission may declassify an official secret from being such with respect to the persons mentioned in Paragraph 1 of this Article.

The data pertaining to the protected person with respect to whom the measure of concealing identity or information about ownership or the measure of change of identity has been implemented, as well as the protected person's documents with the original identity shall be kept with the Protection Unit and must be marked official secret. The access to such data 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 records on the following:

1. requests for the application of the Protection Program,
2. filled Questionnaires,
3. implemented urgent measures,
4. decisions of the Commission on 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 or 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 with respect to whom the Protection Programme is being applied on the basis of international co-operation,
9. persons who were granted access to the information about the application of the Protection Programme, pursuant to Article 45, paragraph 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 referring to the Ministry in charge of internal affairs.

11. TRANSITIONAL AND FINAL PROVISIONS

Article 48

The regulations for the implementation of the present Law shall be passed within six months from the day of coming into force of the present Law.

Within the period of time referred to in paragraph 1 of this Article, the Commission referred to in Article 6 of the present Law shall be established.

Article 49

The present Law shall come into force on the eighth day after being published in the "Official Gazette of the Republic of Montenegro", and its application shall commence on 1 April 2005.