

# **(“Official Gazette” of Bosnia and Herzegovina, No. 29/04)**

## **WITNESS PROTECTION PROGRAM LAW**

### **Article 1**

#### **Purpose of the Law**

The purpose of this law is to provide for efficient protection of a witness during and after criminal proceedings in order to enable the witness to testify freely and openly in criminal proceedings before the Court of Bosnia and Herzegovina (hereinafter: the Court).

### **Article 2**

#### **Area of application**

(1) For the purposes of this law a witness shall be a person without whose testimony there would be no prospects in criminal proceedings of investigating the facts or of ascertaining the whereabouts of the suspect, or such would be made much more difficult.

(2) A witness may be protected with his consent in accordance with the present Law if he or a family member as defined in paragraph 1 of article 83 of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: the BiH CPC; Official Gazette of Bosnia and Herzegovina, No. 3/03) faces a danger to life, health, or freedom because of his willingness to testify, and if he is suitable for witness protection measures. A witness may also be protected under the provisions of this law if the danger is only realized after the termination of criminal proceedings and if the danger is a result of the person having testified during the proceedings.

(3) Furthermore, with his consent a person may be protected in accordance with the present Law if the person is a family member as defined in paragraph 1 of article 83 of the BiH CPC of a witness as defined in paragraph 1 of this article or if the person is otherwise close to the witness and if he faces a danger to life, health, or freedom because of the witness' willingness to testify, and if he is suitable for witness protection measures.

(4) Measures in accordance with the present Law may be terminated if one of the conditions named in paragraph 2 and 3 did not apply at the time protection was granted or has subsequently ceased to apply. Termination of the criminal proceedings shall not result in the cancellation of witness protection measures if the danger continues to exist.

### **Article 3**

#### **Witness protection Department**

(1) The Witness Protection Department within the State Investigation and Protection Agency (SIPA) shall take all decisions independently after careful assessment of the circumstances. In particular it shall include in its consideration the gravity of the offence and the extent of the risk, the rights of the accused and the impact of the measures.

(2) Until the termination of criminal proceedings with legal effect, agreement shall be reached with the Prosecutor's Office of Bosnia and Herzegovina (hereinafter: the Prosecutor's Office) regarding the commencement and cancellation of witness protection. Subsequently, the Prosecutor's Office shall be informed of the intended termination of witness protection.

(3) Decisions of the Witness Protection Department which may have an impact on the execution of pre-trial detention, imprisonment or any other measure entailing deprivation of liberty may only be taken after consultation with the head of the respective prison.

(4) The Witness Protection Department shall also decide on and implement any measure to be taken in relation to a foreign witness present in Bosnia and Herzegovina under an agreement or arrangement between Bosnia and Herzegovina and a foreign State relating to witness protection.

**Article 4**  
**Establishment of a Witness Protection Program**

- (1) The Head of the Witness Protection Department shall establish and maintain the witness protection program to protect the safety and welfare of witnesses during and after criminal proceedings. Protection shall also cover the necessary support for the witness or the persons listed in paragraph 2 and 3 of article 2 of this Law.
- (2) The Witness Protection Department shall permit any person involved in the administration of the witness protection program to use an assumed name in carrying out the person's duties and to have documentation supporting those assumed names.

**Article 5**  
**Confidentiality and data processing**

- (1) The Witness Protection Department processes personal data concerning an identified or identifiable person under article 2 of this law and keeps records of personal and other data for the processing of which it is empowered by this law.
- (2) Decisions and measures taken under paragraph 1 of article 3 of this Law shall be documented and placed on file. The files shall be maintained by the Witness Protection Department, shall be kept confidential and shall not be part of the investigation file. They shall be made available to the Prosecutor's Office upon request. The staff of the Prosecutor's Office and of the Witness Protection Department shall be obliged to provide information regarding witness protection in criminal proceedings in accordance with the general principles of the BiH CPC, taking particular account of article 82 of the BiH CPC.
- (3) General provisions concerning the disclosure of information prescribed by the BiH Freedom of Information Act shall not apply to the processing of personal data by the Witness Protection Department.

**Article 6**  
**Personal Data Protection**

- (1) Information that a person who performs official duties in connection with witness protection measures acquires in the course of those duties constitutes an official secret.
- (2) No person or public agency involved in witness protection may disclose any information relating to a witness or person under paragraph 1 to 3 article 2 of this Law and relating to any protective measure which may have become known to him without authorisation, including beyond the time of the cancellation of witness protection as well as after the termination of the employment.
- (3) It shall be ensured during the transfer and exchange of data transmission within the public and non-public agencies that harm is not caused to witness protection.
- (4) The public and non-public agencies shall inform the Witness Protection Department without delay of any request to disclose barred data or data otherwise designated by them.

**Article 7**  
**Temporary cover identity**

- (1) Public agencies shall, at the request of the Witness Protection Department and in accordance with the data communicated by the Witness Protection Department, produce or temporarily alter for a person subject to protection, certificates or other documents necessary to create or maintain the identity temporarily altered (cover documents), and may process the altered data.
- (2) The person subject to protection may participate in legal transactions using the temporarily altered identity. The Witness Protection Department shall ensure that the person subject to protection can be reached for the purpose of legal transactions.
- (3) Paragraphs 1 and 2 of this article shall apply in relation to employees of the Witness Protection Department where this is indispensable to carry out their tasks.

**Article 8**

## **Cancellation of witness protection measures**

If a witness protection program as a whole is terminated, or if individual measures are no longer necessary, the Witness Protection Department shall inform the public and non-public agencies involved, taking account of the interests of witness protection. Public agencies shall cancel the measures taken in accordance with this Law. The Witness Protection Department shall withdraw cover documents which no longer need to be used.

### **Article 9 Claims against third parties**

- (1) Claims against third parties of the persons subject to protection shall remain unaffected by measures taken in accordance with the present Law.
- (2) If it is necessary to ensure claims of persons subject to protection against public agencies, the Witness Protection Department shall inform these agencies of admission to the witness protection program. The Witness Protection Department shall communicate the facts that are relevant for the decision on the claim.

### **Article 10 Third-party claims**

Claims by third parties against the person subject to protection shall remain unaffected by measures in accordance with the present Law. The person to be protected shall disclose these claims to the Witness Protection Department upon admission to the witness protection program.

### **Article 11 Allowances provided by the Witness Protection Department**

Allowances may only be provided by the Witness Protection Department to the extent that this is necessary for witness protection. Allowances shall be refunded if they were granted on the basis of false information that was provided deliberately.

### **Article 12 Witness protection in other proceedings**

A person subject to protection who is to be questioned in different proceedings than the criminal proceedings involved in shall be entitled to provide personal information only on his previous identity and to refuse to provide information on his present personal details and place of residence or whereabouts.

### **Article 13 Expulsion of foreigners**

- (1) A foreigner who is a person to be protected within the meaning of article 2 of this law may only be expelled or deported with the approval of the Witness Protection Department.
- (2) The Witness Protection Department shall without delay inform the competent authority of the commencement and cancellation of witness protection for a foreigner.

### **Article 14 Supervision**

Duties related to the protection of witnesses prescribed in the Law on the State Investigation and Protection Agency, this law and other laws, as well as to the promotion of co-operation and exchange of information with authorities of foreign States and international organizations responsible for the protection of witnesses are carried out under the supervision of the Director of the State Investigation and Protection Agency by the Witness Protection Department of the State Investigation and Protection Agency.

**Article 15**  
**Reporting to the Minister**

The Witness Protection Department shall give an annual report on the general activities of the Witness Protection Department to the Director of SIPA and the Minister of Security.

**Article 16**  
**Entry into force**

This law shall enter into force 8 days after its publication in the Official Gazette of Bosnia and Herzegovina.