

Law No. 04/L-015

ON WITNESS PROTECTION

Assembly of Republic of Kosovo;

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves

LAW ON WITNESS PROTECTION

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose of the Law

This Law regulates special and extraordinary measures, ways and procedures for witness protection and cooperators of justice.

Article 2

Scope of the Law

This Law shall provide protection for witnesses and cooperators of justice only for the types of criminal offences foreseen in paragraph 1 of Article 4 of this Law.

Article 3

Definitions

1. Terms used in this Law shall have the following meaning:

1.1. **Close person**- a family member as provided for in Criminal Procedure Code.

1.2. **Serious threat** - a warranted fear of danger to life, physical or mental health.

1.3. **Protected person** - the person to whom the protection measures are applied and who in the position of witness or damaged party, shall notify or witness on the facts and circumstances, that comprise an object of relevant proof in an criminal procedure, for criminal offences foreseen in paragraph 1 of Article 4 of this Law and due to these notifications or proofs, is in a serious risk situation, and the person, who expiates the criminal sentence or is accused in criminal procedure, towards whom the special protection measures shall be applied, because of cooperation, notification and declarations made in criminal procedure, for criminal offences foreseen in paragraph 1 of Article 4 of this Law and that for these reasons, is in a serious threat situation.

1.4. **Program**- the Witness Protection Program as foreseen under this Law.

1.5. **Committee**- the Witness Protection Committee, as foreseen under this Law.

1.6. **Directorate**- the Witness Protection Directorate within Kosovo Police, established by this Law.

1.7. **Official Secret** - has the same meaning as in the Criminal Code of Kosovo;

Article 4

Grounds for application of protection measures

1. Protection measures may be implemented before, during and after criminal proceeding for the endangered person with regard to the investigations for criminal offences as follows:

1.1. criminal offence against Kosovo, its citizens and residents;

1.2. criminal offence against international law;

1.3. criminal offence against the economy;

1.4. criminal offence against the official position;

1.5. criminal offence which, as foreseen by the Law, is punishable by imprisonment of five (5) or more years.

2. Protection measures may be applied towards the person related to criminal offences provided for in paragraph 1 of this Article if:

2.1. there is a serious threat to that person and his close persons;

2.2. that person accepts to cooperate closely with the courts or investigatory authorities.

CHAPTER II

PROTECTION MEASURES

Article 5

Types of Protection Measures

1. Protection measure is applied to ensure the protection for the protected person from serious threat against his life, physical or mental health or to close persons defined in this Law.

2. Protection measures are as follows:

2.1. physical protection of the protected person;

2.2. temporary relocation of protected person to a secure place;

2.3. special procedures for access to data and documents related to protected persons from offices for issuing the documents and other formal information databases;

2.4. change of the protected person's place of residence, work or study;

2.5. change of identity of the protected person;

2.6. change of the protected person appearance, including plastic surgery;

2.7. financial support for the protected person;

2.8. social, legal and other necessary assistance for the protected person; and

2.9. special regime for the protected person in custody, in correctional institutions.

3. Directorate makes a proposal for applying one or more protection measures, taking into account specific circumstances and the opinion of the endangered person. Protection measures can be implemented only with the consent of the endangered person. Application of protection measures which are not accepted by the protected person is prohibited, except the case foreseen with paragraph 4 of this Article.

4. If there is a ground according to which protection measure can be applied but endangered person is not able give his consent due to his physical or mental condition, protection measures shall be ordered and implemented until the change of circumstances when the protected person will be able to give his consent to be protected, with the exception of the measure foreseen in sub-paragraph 2.6 of paragraph 2 of this Article. If protected person refuses to give consent, the applied protection measures shall be terminated.

5. The measures undertaken on the basis of the present Law shall not be applied against the minors, who are at risk, without prior approval of their parents or guardians. For persons partially or fully deprived from liability, approval shall be given by the legally authorized person for their representation or guardianship.

Article 6

Physical protection of the protected person

1. Physical protection of protected person shall be performed in open or secret manner, and it shall be executed twenty-four (24) hours per day or for specific periods of time only inside the territory of the Republic of Kosovo.
2. During implementation of the physical protection of the protected person special physical security measures are used.

Article 7

Temporary relocation of protected person to a secure place

1. Protected person may be temporary relocated to a secure place.
2. During the temporary relocation of the protected person to a secure place, special physical and technical security measures may be used.

Article 8

Special procedures for obtaining data

1. The Committee may prohibit or restrict the release of information in relation to the protected person to the offices for the issuance of documents and to other managers of the personal databases. These data may be removed from the office for the issuance of documents or the managers of the information databases and shall be forwarded to the Directorate.
2. Data on the protected person shall be released only by the decision of the Committee for assessment of the program.

Article 9

Change of the protected person's place of residence, work or education

1. The protected person can be temporarily or permanently relocated from his residence, place of work or education. Relocation shall be organized by the Directorate.
2. Relocation of protected person will be performed within the territory of Republic of Kosovo or outside Kosovo on the basis of international agreements or on the basis of reciprocity.

Article 10

Change of the identity of protected person

1. The changing of the identity of a person is the complete or partial change of personal data

of protected person and may be temporary or permanent.

2. Personal data entered into new documents or databases can not be the same with data of another person alive or dead.
3. The decision on the change of the identity of the protected person shall be taken by the Committee.
4. Change of identity of the protected person shall not influence on the status, rights and other obligations of protected person.
5. Change of identity of the protected person shall be implemented only when the protected person fulfils obligations towards third party.
6. Documents and original data on the authentic identity of the protected person shall be kept in the Directorate.
7. If, after the change of identity of protected person, the Directorate receives a request that protected person shall fulfill an obligation before the protected person obtained authentic identity, witness protection Directorate will request from protected person to fulfill an obligation with the help of witness protection Directorate.

Article 11

Change of the protected person's appearance including plastic surgery

1. Minor or visible changes to physical appearance of the protected person through plastic surgery may be implemented in exceptional cases when other protection measures are not sufficient to protect the protected person.
2. Changes indicated in paragraph 1 of this Article should be limited as much as possible in order to provide sufficient protection for the protected person.

Article 12

Financial support for the protected person Financial support for the protected person can be provided when protected person has no sufficient financial sources to ensure a minimum living standard while being protected, as determined by the Committee for each case separately. Financial support for the protected person shall be provided for the shortest possible time period up to twelve (12) months. In the cases when Committee assesses that continuation of this protection measure is necessary a new decision shall be taken.

Article 13

Support for the protected person

Social, legal support and any other kind of support necessary for protected person shall be

offered in order to guarantee his security and his or her welfare as well as minimum living standard, as determined by the Committee for each case separately.

Article 14

Special regime for protected persons in Correctional Institutions

1. For the purpose of securing life and health of a cooperative witness while he or she is deprived of his or her liberty, special treatment and protection measures shall apply for protection of witness that may result in different treatment but not significantly enhanced than other prisoners.
2. This special regime includes special treatment that may result in different treatment but not significantly enhanced than other prisoners, for cooperative witness and use of specific areas during the time while he or she is deprived of his or her liberty.

CHAPTER III

COMMITTEE FOR WITNESS PROTECTION

Article 15

Committee for witness protection and its members

1. The Committee for witness protection shall be established with this Law.
2. The Committee is composed of three (3) members: Chief State Prosecutor of Republic of Kosovo, head of investigation unit of Kosovo Police and the director of the Witness Protection Directorate.
3. Each member of the Committee has its deputy who replaces him in necessary cases.
4. The chairperson of the Committee is the Chief State Prosecutor. In case of his absence his deputy conducts the work of the Committee for assessment of the program.
5. The committee shall take decisions only when all its members are present. The decisions are taken by majority votes of the members of the Committee.

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Article 16

Committee's functions1. The Committee is responsible for the decision:

- 1.1. of inclusion of the endangered person into the program;
- 1.2. on extension of stay in program;

- 1.3. on termination of program.
2. The work and all documents of the Committee shall be considered as official secret.
3. The Committee shall draft own internal procedural rules on its function.

CHAPTER IV

WITNESS PROTECTION DIRECTORATE

Article 17

Competences of Witness Protection Directorate

1. Witness Protection Directorate is a specialized organization unit in a direct dependence of General Director of Kosovo Police the mission of which is the implementation of witness protection measures.
2. Directorate has following responsibilities:
 - 2.1. to provide a legal opinion and assessments required by the Committee.
 - 2.2. to implement the Program;
 - 2.3. to implement urgent measures;
 - 2.4. to reach and implement the protection agreement with persons included in the Program;
 - 2.5. to keep the original documents and data of protected person;
 - 2.6. to provide administrative support required by the Committee;
 - 2.7. to cooperate with competent authorities for witness protection in foreign states;
 - 2.8. to manage financial means allocated for implementation of the Program;
 - 2.9. continuous development, education and training for officials within the Directorate;
 - 2.10. to draft standard operational procedures for administering Directorate functions.
3. The Directorate has the special financial fund, which is managed by the director of Witness Protection Directorate, according to the special instruction approved by the minister of Internal Affairs and minister of Finance.
4. While performing its functions the Directorate may conceal the identity of its officials as well as the ownership of the items used in the implementation of its tasks.

Article 18

Documents and data kept in the Directorate

1. Directorate shall keep the data as follows:

1.1. requests for permission of inclusion into the Program;

1.2. all completed questionnaires;

1.3. information related to implementation of urgent measures;

1.4. Committee's decisions related to permission for inclusion into the Program, type and duration of protection measures;

1.5. decisions for duration and termination of the permission for inclusion into the Program;

1.6. personal data of the protected person, temporary or permanent residence and all other data that have been manifested during the implementation of protection measure in accordance to this Law;

1.7. reaching the protection agreement;

1.8. information related to the protected person within the program based on international cooperation;

1.9. information related to the persons who have been granted the access on data and information.

Article 19

Cooperation and support from government and other organizations for Witness Protection Directorate

Government authorities, organizations and other institutions are obliged to offer secure and confidential support in the manner required from the Directorate.

CHAPTER V

APPLICATION OF THE PROGRAM

Article 20

Proposal and request for inclusion into the Program

1. Written request for inclusion into the program shall be submitted to the Chief State Prosecutor. The request can be submitted by the following persons:

- 1.1. competent state prosecutor;
 - 1.2. judge dealing with the case, or
 - 1.3. person at serious threat.
2. Written request for inclusion into the program contains the following information:
- 2.1. data of the person proposed for inclusion into the program shall contain: name, father's name, surname, maiden name if another surname, personal number, residence, date and place of birth, marital status, profession, ownership status, as well as all information related to criminal records;
 - 2.2. description of the criminal offence and assessment of existing evidences;
 - 2.3. the importance and evaluation of any source for the testimony or the information given by the person proposed for inclusion into the program and relation of such testimony with a specific case in criminal procedure;
 - 2.4. description and threat assessment of the person proposed for inclusion in the program or his close person;
 - 2.5. requests for urgent measures, if necessary, as well as
 - 2.6. other necessary information.
3. When the written request for inclusion in the program is submitted by endangered person, he is not obliged to provide information provided for in paragraph 2 of this Article, but the Chief State Prosecutor will request from the prosecutor or competent judge according to the phase of the proceeding to provide the information provided for in paragraph 2 of this Article.
4. Chief State Prosecutor After within twenty-four (24) hours after receiving the request shall process all information to the Directorate to enable the preparation of opinion and assessing the level of threat of the proposed person for inclusion into the program or his close person and their suitability for inclusion into the program also to undertake urgent measures if necessary.
5. When a request is received by an endangered person in compliance with paragraph 3 of this Article, Chief State Prosecutor will undertake the immediate actions within twenty- four (24) hours regarding the request. When it is ensured that all relevant information is available, the Chief State Prosecutor will forward to the Directorate all information received within twenty-four (24) hours.
6. The Directorate prepares and submits its initial opinion to the Chief State Prosecutor within thirty (30) days, starting from the day when the information was received.

Article 21

Proposal for inclusion

1. Chief State Prosecutor shall within three (3) days from the day of receiving the initial opinion and assessment of the Directorate according to Article 20 paragraph 4 of this Law:

1.1. submit written proposal to the Committee for inclusion in the program; and

1.2. organize a meeting with the Committee.

2. Written proposal for inclusion in the program contains:

2.1. specified information in Article 20, paragraph 2 of this Law, and

2.2. initial opinion from the Directorate that contains description and threat assessment for the proposed person for inclusion into the program, proposal for the protection measures, its duration as well as the results of medical and psychological assessments, estimation of expenses for implementation of protection measures and a copy of a completed questionnaire.

Article 22

Conditions for inclusion in the program

1. When deciding regarding the proposal for inclusion in the program, Committee shall take into consideration following criteria:

1.1. the importance of the information which is acceptable as testimony in the main trial that can not be provided from any alternative source. Request for the inclusion in the program should contain information that the proposed person for inclusion in the program regarding criminal offence, perpetrators and other important data and information which are necessary and substantial for the prosecution of the criminal offence;

1.2. seriousness of the threat;

1.3. willingness of the proposed person for inclusion into the program to cooperate with courts or investigatory authorities while implementing the program.

1.4. suitability of the proposed person for inclusion in the program to act in accordance with the program and creating a belief that the witness relocation will not cause any danger to life or health of others.

Article 23

Decision on the proposal for program application

1. Committee shall decide in relation to inclusion into the program within fifteen (15) days after receiving the written proposal.

2. The Committee may request from the prosecutor or the judge, depending from the stage of proceedings, additional data and information related to the proposal for inclusion in the program.

3. Before making a decision regarding the proposal for inclusion of the person into the program, evaluative Committee shall request a written consent from the person, except the case foreseen in paragraph 4 of Article 5 of this Law.

4. If the Committee makes a positive decision related to inclusion of the person into the program, the Directorate shall conclude a written agreement for protection of endangered person.

Article 24

Urgent measures

1. In specific and urgent cases, after the request of competent prosecutor and judge of criminal case, within twenty-four (24) hours the director of Directorate can take a decision for implementing the program of urgent protection measures. For implementing the urgent measures, there should be contracted a temporary protection agreement between the protected person, except the case foreseen in paragraph 4 of Article 5 of this Law.

2. Committee should decide within thirty (30) days from the day of beginning of implementation of program of urgent protection measures for including the protected person in the Witness Protection Program.

3. Urgent measures continue till the decision of the Committee for witness protection.

4. Urgent measures can be implemented only after written consent from the endangered person, except the case foreseen in paragraph 4 of Article 5 of this Law.

5. Only protection measures indicated in Article 5 paragraph 2 sub-paragraphs 2.1, 2.2, 2.3, and 2.9 of this Law can be implemented as urgent measures.

6. After taking the decision for implementing urgent measures, the Director of Directorate requests the consent from the person to whom the urgent measures apply to undergo a medical and psychological assessment and fill in the questionnaire with personal data, property, criminal records, obligations and other information. The form and content of the questionnaire shall be determined by the Director of Directorate.

Article 25

Extension of the program

1. The Directorate can present the proposal for extension of the program. The written proposal shall be submitted to the Committee not later than thirty (30) days before the expiration of the program. Exceptionally in specific cases the proposal can be done after expiration of the program.

2. Extension of the program may be approved only after the written consent of the protected person.

Article 26

Agreement for Protection

1. After the decision for inclusion into the program of the endangered person, written consent and completed questionnaire of the person included into the program will be protected and archived by the witness protection Directorate. After concluding a special agreement between witness protection Directorate and any person at risk, such person shall be considered as protected person.

2. The protection agreement shall contain:

2.1. general information;

2.2. obligations of the protected person included into the program as follows:

2.2.1. to give testimony in accordance with the provisions of Criminal Procedure Code, to answer questions clearly, sincerely, fully and precisely providing factual statements, that serve for the development of criminal proceeding, to investigation bodies and court;

2.2.2. to follow all instructions and data given by witness protection Directorate and actively participate in the implementation of the program.

2.2.3. to not commit any criminal offence;

2.2.4. to achieve agreement on surveillance and tapping of communication means, recording and secret surveillance of premises in which he or she resides without special court decision, and to provide the protected person's consent on restrictions of some personal rights and freedoms with the purpose of protection after the approval from the Directorate;

2.2.5. phone calls and other electronic communication only upon approval of witness protection Directorate;

2.2.6. to undertake all necessary actions achieving economical independence until expiration of protection agreement;

2.2.7. to agree to all actions which are not harmful to his health;

2.2.8. to report all his accounts or legal transactions financial and other liabilities;

2.2.9. to inform without delay the directorate about all circumstances which may influence the implementation of the program;

2.2.10. not to give interviews to media or to allow to be photographed;

2.2.11. not to write books or reports on witness protection or on his case or not to provide any other information that the Directorate considers important for ensuring the safety of the protected person;

2.3. obligations towards the person included in the program are:

- 2.3.1. to implement only necessary restriction measures of his rights of movement during the implementation of the program;
 - 2.3.2. to provide protected person with necessary psychological, social and legal assistance during the implementation of program;
 - 2.3.3. to provide him with necessary economical support including medical support for a certain period;
 - 2.4. duration of the program and the conditions of termination of the program;
 - 2.5. a clause saying that the protection agreement is made in a single copy and it shall be kept in the witness protection Directorate;
 - 2.6. the obligations deriving from the agreement for protection cannot be subject to civil or penal contest, or any other judicial conflict whatsoever. All actions undertaken by the officials of Department and Committee during the exercise of official duties can not be the ground for the charge and are not a subject to legal liability;
 - 2.7. a statement that the protected person understands and agrees with the content of the protection agreement;
 - 2.8. a statement that the questionnaire filled by protected person is an integral part of protection agreement;
 - 2.9. other information necessary for implementation of the protection agreement;
 - 2.10. date and signatures of parties.
3. Each person included into the protection program shall sign a separate protection agreement.
 4. The agreement for protection of minors or persons with limited abilities shall be signed by the parent, legal representative, or the guardian in case they are not able to do so.
 5. In case of the protected person who is involved in the program during this period of time causes any damage to another person, then the injured party has the right to request the compensation for damage.
 6. Persons involved in the program have a right to maintain contacts and visits with their children and other relatives who are not involved in program, with the condition that is not coming to the risk of the program. The Committee decides regarding allowance or non-allowance in the specific cases.

CHAPTER VI

TERMINATION OF THE PROGRAM

Article 27

Termination of the Program

1. The program may be terminated under following conditions:
 - 1.1. when the protection agreement expires;
 - 1.2. the protected person or his legal representative refuses to be protected;
 - 1.3. when the protected person breaches seriously the protection agreement which can lead to serious threat, protection agreement shall cease upon the notification in writing by the Directorate after taking the consent from the Committee;
 - 1.4. in case of death of protected person;
 - 1.5. if the protected person, without a sound reason, declines to accept the employment offered by Directorate, or if he or she does not perform any activity for earning income;
 - 1.6. when the foreign state in territory of which the protected person is relocated requests the termination of protection agreement.
2. The program may be terminated with a decision from the Committee or at the proposal of the director of the Directorate.
3. The conditions and procedure for termination of the Programme shall be regulated with the Standard Operation Procedures of the Directorate

CHAPTER VII

INTERNATIONAL COOPERATION AND FUNDING

Article 28

Basis for international cooperation

1. International cooperation for the implementation of the program shall be approved on the basis of international agreements, bilateral and multilateral agreements, on the basis of reciprocity after the approval from the committee in the other individual cases also.
2. When requesting relocation of the person the police witness protection Directorate shall submit a request to competent authority in another state responsible for implementing protection measures according to this Law. The competent authorities should make maximum efforts to maintain the identity of protected witness.
3. When receiving the request for accepting a protected person from another state, witness protection Directorate evaluates the request and in case of a positive assessment shall propose to the Committee to approve protection measures in the territory of Kosovo, in accordance

with this Law.

Article 29

Funding

1. The funding for implementation of this Law shall be provided from the Budget of Republic of Kosovo.
2. The funding provided for in paragraph 1 of this Article, may be financed from international resources and programs.

CHAPTER VIII

PROTECTION OF DATA AND RECORDS

Article 30

Main provisions for protection of data and records

1. The Committee, Directorate, governmental authorities, organizations, services as well as persons shall treat all documents and data regarding the implementation of the witness protection program as official secret.
2. The Committee may disclose an official secret document pertaining program for protection of witnesses, with the request of prosecutor or court, or for reasons related to national security.
3. Data on the change of identity of protected person as well as protected person's documents with the original identity shall be kept within the directorate and marked as official secret. Access to such data and documents shall be approved and supervised by the director of the directorate.
4. Disclosure of official secret, which is in contradiction with the provisions of this Law, comprises a criminal act in compliance with provisions of Criminal Code of Kosovo.

Article 31

Punitive provisions

Anybody who cheats or puts into error the Committee and the Directorate through presenting the false proofs and facts in order to acquire a protection measure according to the provisions of this Law shall be condemned in compliance with the provisions of Criminal Code of Kosovo.

CHAPTER IX

FINAL AND TRANSITIONAL PROVISIONS

Article 32

Transitional Provisions

1. From the coming into force of this Law until the expiration of the mandate of the EULEX Mission in Kosovo, the Committee and the local Directorate have responsibility for witness protection in accordance with this Law except where a request for inclusion in a EULEX witness protection programme has been made and accepted under paragraphs 5 and 6 of this Article.

2. EULEX Witness Security Unit shall provide technical assistance to the Directorate to develop its capacity in line with international recognized standards and European best practices, which shall include but shall not be limited to:

2.1. training of staff at the Directorate;

2.2. assistance in developing the organizational structure of the Directorate;

2.3. assistance in developing Standard Operation Procedures (“SOPs”), drafting internal rules and regulations and all other documentation necessary for the effective functioning of the Directorate;

2.4. assistance in the design and implementation of witness protection programmes;

2.5. assistance in specific cases;

2.6. assistance in establishing contacts and signing cooperation agreements with witness protection units in other countries.

3. The details of the technical assistance, provided for in paragraph 2 of this Article, shall be regulated by a technical arrangement.

4. During the transitional period, the EULEX Witness Security Unit and the EULEX Security Review Group shall function independently and separately from the Directorate within the Kosovo Police and shall function according to their own procedures and management structure.

5. During the transitional period, a request for inclusion in the EULEX witness security programme shall be made to the EULEX Witness Security Unit. A request in writing may be submitted by:

5.1. Chief State Prosecutor;

5.2. EULEX police;

5.3 EULEX Prosecutor assigned to the criminal proceedings.

6. A request for inclusion in the EULEX witness security programme shall be considered and decided upon by the EULEX Witness Security Review Group.

7. The EULEX Witness Security Unit shall decide on the specific witness protection measures and shall implement the program of protection after the decision of the EULEX Witness Security Review Group for inclusion in the EULEX Witness Security Program.

8. The Kosovo Witness Protection Directorate and the Government authorities, organizations and other public institutions shall provide support to EULEX Witness Security Unit as requested by the EULEX Witness Security Unit.

Article 33

Implementation of the Law

1. Ministry of Internal Affairs within six (6) months after the entry into force of this Law, shall issue sub-legal acts for the implementation of this law.

2. Witness Protection Directorate and the Committee for Witness Protection, provided for in this law, shall be established within one (1) year after the entry into force of the Law.

Article 34

Entry into force

This Law shall enter into force one (1) year after its publication in the Official Gazette of Republic of Kosovo.

Law No. 04/L-015

29 July 2011

President of the Assembly of the Republic of Kosovo

Jakup KRASNIQI