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LAW ON THE PROTECTION PROGRAMME FOR PARTICIPANTS IN CRIMINAL PROCEEDINGS

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LAW ON THE PROTECTION PROGRAMME FOR PARTICIPANTS IN CRIMINAL PROCEEDINGS

I INTRODUCTORY PROVISIONS

Article 1

This Law shall govern terms and procedures for providing protection and assistance to participants in criminal proceedings and their close persons who are facing a danger to life, health, physical integrity, freedom or property due to testifying or providing information significant for the purpose of proving of a criminal offence.

Article 2

The protection of persons specified in Article 1 hereof shall be provided through the application of the Protection Program.

The Protection Program shall comprise all measures provided under this Law that are applied with the objective to protect the life, health, physical integrity, freedom or property of the protected person.

Article 3

For the purpose of this Law the following terms shall mean:

- 1) A participant in criminal proceedings may be a suspect, defendant, witness-collaborator, witness, injured party, expert witness and expert person;
- 2) Close person is a person for whom the participant in criminal proceedings demands to be included in the Protection Program;
- 3) Protected person is a person included in the Protection Program.

Suspect, defendant, witness-collaborator, witness, injured party, expert witness and expert person shall have the same meaning as provided in relevant provisions of the Criminal Procedure Code.

Article 4

The Protection Program may be implemented, before, during and after the effective conclusion of criminal proceedings to the participants in criminal proceedings and close persons.

Article 5

The Protection Program shall be implemented if the participants in criminal proceedings and close persons are facing danger to life, health, physical integrity, freedom or property due to testifying or giving information significant as evidence in criminal proceedings, and without that testimony or information it would be considerably more difficult or impossible to prove in criminal proceedings the following criminal offences:

- 1) against the constitutional order and security;
- 2) against humanity and other values protected by international law;
- 3) organized crime.

Article 6

Government bodies and officials who provide and extend protection to participants in criminal proceedings are obliged to conduct the proceedings and act with exigency.

Information related to the Protection Program are particularly confidential and constitute an official secret. In addition to officials, such data may not be disclosed by other persons to whom it becomes available. An official is obliged to inform another person that such information constitutes an official secret.

II COMPETENT AUTHORITIES

a) Commission for implementing of the Protection Program

Article 7

Decisions on inclusion, extension, suspension and termination of the Protection Program shall be passed by the Commission for implementing of the Witness Protection Program (hereinafter "the Commission"), comprising three members.

One member of the Commission shall be appointed by the president of the Supreme Court of Serbia from the ranks of judges of the Supreme Court of Serbia, the second member shall be appointed by the Republic Public Prosecutor from the ranks of his/her deputies, and the Head of the Protection Unit shall be a member of the Commission by virtue of the post held.

Members of the Commission shall each have a deputy, appointed by the President of the Supreme Court of Serbia from the ranks of judges of the Supreme Court of Serbia, i.e. by the Republic Public Prosecutor from the ranks of deputy Republic Public Prosecutors.

The deputy Head of the Protection Unit shall deputize also for the Head in the Commission by virtue of the post held.

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

Article 8

Members of the Commission and deputies, except for the Head of the Protection Unit and his/her deputy, shall be appointed for a term of five years and may be reappointed.

Article 9

The membership and deputy membership in the Commission shall cease:

- 1 upon termination of function of the judge of the Supreme Court of Serbia or the deputy public prosecutor;
- 2 upon termination of employment of the Head of the Protection Unit and/or his/her deputy and/or the transfer to another job;
- 3 at request of member or deputy;
- 4 for failure to comply with regulations on the implementation of the Protection Programme;
- 5 upon expiry of the term of appointment.

Membership in the Commission of the Head of the Protection Unit and/or his/her deputy may not cease at personal request.

Article 10

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 his/her absence, his/her deputy.

The Commission shall take decisions at session by majority vote. A member of the Commission filing the request specified in Article 25, 31 or 34 of this Law may not participate in the decision taking.

Article 11

The Commission shall adopt its Rules of Procedure.

The Commission shall submit an annual report on its work to the relevant Committee of the National Assembly.

b) Protection Unit

Article 12

The Protection Unit is a specialised organisational unit of the Ministry of Internal Affairs which shall implement the Protection Program and perform other tasks in accordance with this Law.

In implementing the Protection Program the Protection Unit shall provide the protected person with the required economic, psychological, social and legal assistance.

All government bodies, organisations and services are obliged to render assistance to the Protection Unit, and at the request thereof undertake activities within their purview as required for implementing the Protection Program.

Article 13

The Minister of Internal Affairs shall pass a special act on the internal organisation and job classification of the Protection Unit.

The Minister of Internal Affairs shall appoint the head of the Protection Unit, in accordance with law.

III PROTECTION PROGRAM

a) Protection measures

Article 14

Within the protection Program the following measures shall be applied:

- 1) physical protection of persons and property;
- 2) change of place of residence or relocation to another prison institution;
- 3) concealing of identity and ownership information;
- 4) change of identity.

In the implementation of the Protection Program one or more measures may be applied, where the measure of change of identity may be applied only when the purpose of the Protection Program can not be achieved otherwise.

The measures of physical protection of persons and property, change of place of residence or relocation to another prison institution and concealing of identity and ownership information may be applied as exigent measures in terms of Article 27 hereof.

Article 15

The decision determining the type of measure specified in Article 14, paragraph 1, items 1 through 3 hereof shall be taken by the Protection Unit, and the decision determining the measure specified in Article 14, paragraph 1, item 4 hereof by the Commission following the recommendation of the Protection Unit.

The Protection Unit shall autonomously implement measures under Article 14, paragraph 1 hereof. Implementing of these measures towards a protected person in detention shall be instituted by the Protection Unit in cooperation with the Ministry of Justice.

When measures specified in Article 14, paragraph 1 hereof cannot otherwise be applied, the

Protection Unit may in undertaking tasks within its purview conceal the identity of its members as well as ownership data of items it is using in applying a particular measure.

In implementing the measures under Article 14, paragraph 1 hereof the Protection Unit shall provide economic and social assistance to the protected person until such time he/she becomes economically independent. This assistance may not be higher than the amount required to cover living costs and integrating the protected person within the new social environment.

Article 16

Physical protection of person and property constitutes prevention of unlawful endangerment of life, health, physical integrity, freedom or property of the protected person through use of physical/technical means.

Article 17

Change of residence constitutes the temporary or permanent relocation of the protected person from the place of permanent or temporary residence to a location designated by the Protection Unit. Relocation to another prison institution constitutes the transfer of a protected person in detention from the current to another prison institution determined by the Protection Unit in agreement with the Ministry of Justice.

Article 18

Concealing of identity and ownership information comprises issuing and use of personal identity documents or ownership documents of a protected person in which the original data has been temporarily altered.

The Protection Unit shall produce the document specified in paragraph 1 of this Article .

Implementing of measures under paragraph 1 of this Article may not result in change of original data maintained in official records.

Article 19

In concluding legal transactions that may impact on third parties, the protected person may use documents specified in Article 18, paragraph 1 hereof with agreement of the Protection Unit.

If the Protection Unit does not give an agreement for conclusion of legal transactions referred to in paragraph 1 of this Article , the protected person may designate, with the agreement of the Protection Unit, a proxy to conclude such transaction on his behalf.

Article 20

The measure of change of identity constitutes a complete or partial change of personal data of the protected person. This measure may also include the measure of change of physical characteristics of the protected person.

A change of identity may impact on the rights and obligations of the protected person only to the extent necessary to apply the Protection Program and shall not impact on obligations of the protected person towards third parties.

After an identity change the Protection Unit shall approve and supervise access to the original data of the protected person. The Protection Unit shall supervise all the status and other rights and obligations related to the original identity of the protected person.

Article 21

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

Following fulfillment of obligations referred to in paragraph 1 of this Article , the relevant authority, organization or service immediately issues personal ID or document based on the data submitted by the Protection Unit.

The procedure for issuing identity documents or other documents shall not differ from the procedure for issuing an original identity document or other documents. Data in identity documents and documents may not be identical with those of another person.

The relevant organ of the Ministry of Internal Affairs shall after issuing the identity document or documents at the request of the Protection Unit make a recordation in the original data records of the protected person that the Protection Unit must be notified in respect of all issues related to identity.

Records of the relevant organ of the Ministry of Internal Affairs shall be maintained so that the new identity of the protected person can not be determined on basis of original identity information.

Article 22

When concluding legal transaction of larger scope, the protected person may use identity and other documents specified in Article 21, paragraph 2 hereof, with consent of the Protection Unit.

The protected person may designate a proxy to exercise rights and fulfill obligations transpiring from the time prior to change of identity.

When becoming cognizant of the existence of an obligation transpiring from the time prior to change of identity, the Protection Unit shall invite the protected person to meet such obligation through proxy. If the protected person fails to do so, the Protection Unit shall fulfill such obligation or proceed in accordance with Article 34, paras 1 and 2 hereof.

Article 23

If the protected person is summoned to appear before the court in the capacity of a person designated under Article 3, paragraph 1, item 1) hereof for a criminal offence committed prior to change of identity, the protected person shall participate in the criminal proceedings under his/her original identity.

In other proceedings before a court or other government authority where use of original identity is necessary, the protected person may participate only with the consent of the Protection Unit. If the Protection Unit does not give approval, the protected person exercises his/her rights in the proceedings through proxy.

If the protected person commits a felony after change of identity, the Protection Unit informs the relevant public prosecutor and the Commission.

In cases specified in paragraphs 1 and 2 of this Article summoning of the protected person is done through the Protection Unit, which shall ensure his/her appearance.

Article 24

Making and use of identity and other documents done in accordance with this Law with the aim to conceal the identity and ownership and change of identity of the protected person shall not constitute a criminal offence.

The original identification and other documents of the protected person shall be safeguarded by the Protection Unit.

b) Entering the Protection Program

Article 25

The relevant public prosecutor, investigative judge or president of the court panel may, ex officio or at the motion of a party in the criminal proceedings, submit a request to the Commission to include a party in criminal proceedings and close persons into the Protection Program.

After effective conclusion of criminal proceedings, the request specified in paragraph 1 of this Article may be submitted also by the Protection Unit.

Article 26

The request for the application of the Protection Program shall include:

- 1) information on the person for whom protection is requested;
- 2) description and legal definition of the criminal offence due to which protection is requested;
- 3) assessment of the significance of testimony or information for the proceedings,
- 4) circumstances indicating the risk faced by the person for whom protection is requested.

A questionnaire shall be attached to the application for entering the Protection Program on personal information, material status, circle of close persons and other data, which shall be filled by the person for whom protection is requested.

Prior to taking of decision the Commission shall request from the Protection Unit to submit within 15 days an assessment on:

- 1) risk faced by the person for whom protection is requested; 2) risk for the community if such person enters the Protection Program; 3) medical status of the person for whom protection is requested; 4) required protection measures.

Article 27

If in the assessment of the relevant public prosecutor, investigative judge or president of the chamber there is a direct threat to life, health, integrity or property of the party in criminal proceedings or close person, he/she shall inform the Protection Unit of the need to take urgent measures.

Head of the Protection Unit shall orders application of urgent measures, with prior consent of the party in criminal proceedings and/or close person. For a juvenile or legally incompetent person the consent is given by a legal representative.

Head of the Protection Unit shall promptly inform the Chairman of the Commission and the relevant public prosecutor, investigative judge or president of the chamber in respect of applied urgent measures.

Urgent measures shall be applied until the Commission rules on the request for implementing the Protection Program.

Article 28

After receiving the assessment from the Protection Unit, the chairman of the Commission shall promptly, and not later than three days, convene the Commission.

The Commission shall promptly, and not later than eight days, pass a decision approving or rejecting the application of the Protection Program. The Commission shall immediately inform the applicant accordingly.

The decision of the Commission is final.

Article 29

Should the Commission approve the request for the application of the Protection Program, it shall instruct the Head of the Protection Unit to enter into Agreement on implementing of the Protection Program with the person whose protection is approved.

The Protection Program shall be applied as of the day of conclusion of the Agreement.

The application of urgent measures shall last until the beginning of the Protection Program.

The application of urgent measures shall cease following the decision rejecting the request for the implementation of the Protection Program.

Article 30

The Agreement on implementing of the Protection Program shall contain:

- 1 Parties to the Agreement;
- 2 Statement of the protected person on voluntary inclusion in the Protection Program;
- 3 Statement of the protected person that the data from the Questionnaire is true and if otherwise the Agreement may be terminated;
- 4 Obligation of the protected person: to comply with the instructions of the Protection Unit during implementation of the Protection Program; to inform the Protection Unit about any change of circumstances which could affect the application of the Protection Program; to present his/her accounts, legal transactions, financial and other liabilities; to request consent from the Protection Unit prior to concluding legal transactions of larger scope; to undertake all necessary measures to achieve financial independence until the end of the contract;
- 5 Obligations of the Protection Unit: to apply protection measures only with necessary restrictions of fundamental freedoms and rights of the protected person; to determine the time period for and scope of providing economic assistance to the protected person; to provide the person with the necessary psychological, social and legal assistance;
- 6 Duration of the Protection Program;
- 7 Terms and conditions for termination of the Agreement;
- 8 A clause that the Agreement was drawn up in a single copy and that it is kept with the Protection Unit and available only to the Commission during the application of the Program; that obligations deriving from the Agreement are not justifiable; a statement of the protected person that he/she understands the contents of the Agreement and is aware of mutual obligations,
- 9 The date of signing the Agreement and signatures of the parties.

If the protected person is a juvenile or legally incompetent person, the Agreement shall be signed by their legal representative or guardian.

Article 31

The relevant public prosecutor, investigative judge or president of the panel may, ex officio or following the proposal of the Protection Unit or the protected person submit a request to the Commission for extension of the Protection Program.

After effective conclusion of criminal proceedings, the request specified in paragraph 1 of this Article may be submitted also by the Protection Unit. The request for extension of the Protection Program is submitted at latest within 30 days before expiry of the time for which the Contract on application of the Protection Program has been concluded. Provisions of Article s 28 and 29, paragraph 1 hereof shall accordingly apply in deliberation of the request to extend the Protection Program.

Article 32

The request to extend the Protection Program shall contain: 1) the designation of the decision on inclusion in the Protection Program; 2) data of the protected person; 3) description and statutory designation of the felony due to which extension of protection is requested; 4) circumstances indicating continued presence of danger to the life of the protected person;

Prior to deciding on the request, the Commission shall request of the Protection Unit to submit within 15 days an assessment on: 1) the danger threat to the protected person; 2) danger threat to the community in the event of extension

of the Protection Program; 3) medical status of the protected person; 4) required protection measures.

d) Suspension and Termination of the Protection Program

Article 33

The Programme shall be suspended: 1) if the requirement for protection no longer exists; 2) if during application of the Protection Program criminal proceedings are instituted against the protected person for a felony that questions the justifiability of application of the Protection Program; 3) for reason specified in Article 30, paragraph 1, item 3 hereof;

- 4) if the protected person fails to fulfill his/her obligations from the Agreement without justification and thus compromises or frustrates application of the Protection Program;
- 5) at the request of a foreign government on whose territory the protected person is resettled.

Article 34

The relevant public prosecutor, investigative judge or president of the panel may ex officio or at the recommendation of the Protection Unit submit to the Commission a request to discontinue the Protection Program.

The request referred to in paragraph 1 of this Article may be also submitted by the Protection Unit after effective conclusion of criminal proceedings.

Provisions of Article 28 hereof shall accordingly apply in deliberation of the request to suspend the Protection Program.

Article 35

The request to suspend the Protection Program shall contain:

- 1) designation of the decision approving the Protection Program;
- 2) data of the protected person;
- 3) description and statutory designation of the felony due to which protection was approved;
- 4) circumstances indicating existence of one of the reasons specified in Article 33 hereof.

Depending on the reasons for requesting suspension of the Protection Program, the following shall be attached thereto: 1) Opinion of the protection Unit regarding the existence of grounds specified in Article 33, items 1 and 4 hereof;

- 2) effective court decision on instituting criminal proceedings against the protected person; 3) questionnaire with data of the protected person;
- 4) request of the foreign government.

Article 36

The Protection Program shall terminate:

- 1) upon the expiry of the Agreement;
- 2) by death of the protected person

- 3 by statement of the protected person or legal representative or guardian renouncing protection;
- 4 by issuing of decision on terminating the Protection Program.

Article 37

The Protection Unit submits ex officio to the Commission the request to terminate the Protection Program.

The session of the Commission to decide on termination of the Protection Program is convened pursuant to Article 28, paragraph 1 hereof.

Article 38

The request to terminate the Protection Program shall include:

- 1) designation of the decision approving the Protection Program;
- 2) data of the protected person;
- 3) description and statutory designation of the felony due to which protection was approved;

Depending on the reasons for requesting termination of the Protection Program, the following shall be attached thereto: 1) Agreement on application of the Protection Program or extension thereof; 2) Death certificate of the protected person; 3) Statement of the protected person or legal representative.

IV INTERNATIONAL COOPERATION

Article 39

International cooperation in implementing the Protection Program provided under this Law shall be realized on basis of international agreement or reciprocity. In conformity with the requirements specified in paragraph 1 of this Article, the Protection Unit: 1) submits an application to the foreign government to accept the protected person and apply measures specified in Article 14, paragraph 1 hereof; 2) proceeds pursuant to the application of the foreign government to accept the protected person and apply protection measures in the Republic of Serbia.

V RECORDS AND DATA PROTECTION

Article 40

The Protection Unit shall keep the following records: 1) Personal data of the protected person, his/her residence, information related to the change or concealing of identity and ownership data, as well as on all other data of significance for

implementing the Protection Program; 2) Data from the questionnaire specified in art. 26, paragraph 2 hereof; 3) Concluded agreements on application and extension of the Protection Program; 4) Protected Persons included into the Protection Program pursuant to ratified international

agreement or reciprocity; 5) Agreements given in terms of art. 19, 22 paragraph 1, Article 23 paragraph 2 and Article 30, paragraph 1, item 4 hereof; 6) Persons granted access to data related to the Protection Program pursuant to Article 41, paragraph 1 hereof.

Article 41

The Head of the Protection Unit shall approve and supervise access to data related to the Protection Program. The Commission decides on declassification of data under paragraph 1 of this Article . Data on the protected person whose identity has been changed shall remain permanently in the records of the Protection Unit.

Article 42

Funds for implementing of this Law shall be provided by the Republic of Serbia budget. For their engagement in the Commission, members and their deputies shall be entitled to special compensation set by decree of the Republic of Serbia Government.

VII TRANSITIONAL AND FINAL PROVISIONS

Article 43

The Minister of Internal Affairs shall pass the act on internal organization and job classification of the Protection Unit and shall appoint the Head of the Protection Unit within 45 days of coming into force of this Law.

The Minister of Internal Affairs shall pass bylaws on implementing the Protection Program and use of funds specified in Article 42 paragraph 1 hereof within 45 days of coming into force of this Law.

Article 44

The Minister of Justice shall pass bylaws on implementing the Protection Program in prison institutions within 45 days of coming into force of this Law.

Article 45

The relevant ministry shall pass bylaws related to Article 21, paragraphs 2 and 3 hereof within 45 days of coming into force of this Law.

Article 46

The Commission shall be established within 60 days of coming into force of this Law. The Commission shall pass its Rules of Procedure within 30 days following its constitution.

Article 47

This Law shall come into force on January 1. 2006.