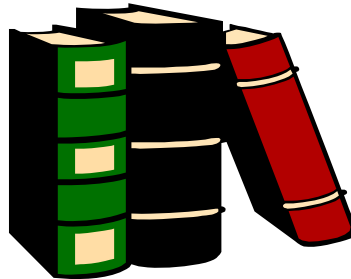




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## **Department for Legal Affairs**



# **LAW ON AMENDMENTS TO THE LAW ON PROTECTION OF WITNESSES UNDER THREAT AND VULNERABLE WITNESSES**

**“Official Gazette of Bosnia and Herzegovina”, 61/04**

**NOTE: The Law on Protection of Witnesses under Threat and Vulnerable Witnesses was Imposed by the High Representative Decision No. 102/03 and published in the “Official Gazette of Bosnia and Herzegovina”, 3/03.**

Pursuant to Article IV 4 a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina at the 44<sup>th</sup> session of the House of Representatives held on 23<sup>rd</sup> September 2004 and at the session of the House of Peoples held on 31<sup>st</sup> September 2004, has adopted the

## **LAW ON AMENDMENTS TO THE LAW ON PROTECTION OF WITNESSES UNDER THREAT AND VULNERABLE WITNESSES**

### **Article 1**

In the Law on Protection of Witnesses under Threat and Vulnerable Witnesses (“Official Gazette of BiH” No. 21/03), in Article 1, the words: “Chief Prosecutor of Bosnia and Herzegovina” shall be replaced with words: “Prosecutor’s Office of Bosnia and Herzegovina”.

### **Article 2**

Article 2 shall be replaced to read as follows:

#### **“Definitions**

(1) For the purpose of this Law, the notion of the family shall apply to the persons who are allowed to refuse to testify in accordance with the provisions of Article 83 of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: CPC BiH).

(2) Other terms used in this Law shall have the meaning that follows from CPC BiH, the Criminal Code of Bosnia and Herzegovina and the Law on the Court of Bosnia and Herzegovina, unless otherwise stipulated by this Law.”

### **Article 3**

(1) In Article 3, paragraph (1), after the words: “pertaining to his testimony”, the full stop shall be replaced with a comma punctuation mark, and the words: “or witness who believes that there are reasonable grounds for concern that such danger would probably arise as the consequence of his testimony” shall be added.

(2) In Article 3, paragraph (2) shall be deleted.

Paragraphs (3) and (4) shall become paragraphs (2) and (3), respectively.

### **Article 4**

In Article 5, paragraph (2) shall be amended to read:

“A witness under threat and a vulnerable witness shall be entitled to legal aid and assistance and support of the body for social care, in accordance with the law.”

### **Article 5**

In Chapter II of this Law, before Article 6, new Article 5a shall be added to read:

**“Article 5a**

Protection measures shall only apply with the consent of a witness.”

**Article 6**

In Article 6, after the word “Court”, the words: “provided that there is consent of the witness and without disclosure of any personal data about the witness,” shall be added.

**Article 7**

In Article 8, paragraph (2), after the words: “exceptional circumstances”, the words: “if the Court finds that that is in the best interest of the witness” shall be added.

**Article 8**

In Article 10, paragraph (2), before the words: “The accused shall be enabled”, the words: “If he has been removed from the courtroom” shall be added.

**Article 9**

(1) In Article 12, paragraph (3), after the words: “taking the decision referred to in paragraph 1” shall be replaced with words: “issuing the decision referred to in paragraph (1)”, and the words: “must be taken within 72 hours”, shall be replaced with words: “must be issued within 72 hours”.

(2) In Article 12, paragraph (8), in the beginning of the text, after the words: “The Court shall”, the words: “in all stages of the procedure” shall be added, and the words: “always bear in mind” shall be replaced with words: “take into account”.

**Article 10**

(1) The title of Article 13 shall be replaced to read as follows:

“Additional measures to ensure non-disclosing of identity of a witness”

(2) In Article 13, paragraph (2), the words: “decide that the anonymity of the witness be preserved by allowing the witness” shall be replaced with words: “decide that the identity of the witness do not be disclosed by allowing the witness”.

**Article 11**

(1) In Article 15, paragraph (1) shall be amended to read:

“The Court may determine whether it is justified to carry out the hearing of the protected witness, either *ex officio*, or at the request of a prosecutor, suspect, accused or his defense attorney”.

(2) In Article 15, paragraph (3), the words: “If the motion is made by the Prosecutor or the suspect or the accused or his defense attorney” shall be deleted.

(3) In Article 15, new paragraphs (4) and (5) shall be added to read:

“(4) The envelope with motion for a witness protection hearing shall be without delay submitted to the President of the court. The President of the court shall be bound to forward the motion to the appropriate hearing Panel or, if the indictment has not been confirmed by then, issue an order appointing the President and two additional members of the Panel that shall discuss that issue.

(5) The Court may summon the person who had submitted the motion to additionally clarify the facts of importance for the summons.”

### **Article 12**

(1) In Article 16, paragraph (1), the words: “Panel of three judges” shall be replaced with word “Court”.

(2) In the same Article, after the paragraph (2), new paragraph (3) shall be added to read:

“(3) All parties shall be notified on the decision of the Court made pursuant to paragraph (1) of this Article without delay, and not later than three days from the day when the decision on motion has been made. The said notification shall be carried out in written, but shall not contain the name or any other information pointing at the identity of the witness to which the motion applies.”

### **Article 13**

(1) In the title of Article 17, the words “of the Panel” shall be deleted.

(2) In Article 17, paragraph (1), after the word “allowed”, the full stop shall be replaced with a comma punctuation mark, and words: “and the appeal must be submitted in written form within seven days from the day the Court made its decision, in accordance with the procedure referred to in Article 15, paragraph (3) of this Law.”

(3) In Article 17, paragraph (2), before the words: “Panel of the Appellate Division”, the word “competent” shall be added.

### **Article 14**

(1) In Article 18, the words: “presiding judge of the Panel” shall be replaced with word “Court”, and after the words: “place of the hearing”, words: “as soon as it is practicable” shall be added.

### **Article 15**

(1) In Article 19, paragraph (1), the words: “Panel referred to in paragraph 1 of Article 16 of this Law” shall be replaced with word “Court”.

(2) In the same Article, paragraph (2), item b), the words: “the members of the Panel and the minute taker of the Panel” shall be replaced with words: “the members of the Court and the minute taker of the Court”.

(3) In the same Article, paragraph (2), item c), before the words: “he shall not appear in person”, words: “if he was granted the status of a protected witness” shall be added, and the word: “Panel” shall be replaced with word “Court”.

(4) In the same Article, paragraph (2), item d), the words: “he is not obliged” shall be replaced with words: “he shall not be forced”.

(5) In the same Article, paragraph (3), word: “Panel” shall be replaced with word “Court”.

## **Article 16**

- (1) In Article 20, paragraphs (2) and (3), the word: “Panel” shall be replaced with word “Court”.
- (2) In Article 20, paragraph (4), the words: “take measures to” shall be deleted.

## **Article 17**

- (1) The title of Article 21 shall be replaced to read: “Use of the protected witness testimony”.
- (2) In the same Article, paragraphs (2) and (3), the words: “judge or the Panel” shall be replaced with word “Court”.
- (3) In the same Article, paragraph (4), after the words: “witness protection hearing”, words: “in accordance with the provisions of Article 19, paragraph (2) of this Law” shall be added.

## **Article 18**

In Article 22, paragraph (2) shall be amended to read:

“The Court shall conduct an additional witness protection hearing, in manner specified in articles 18 through 20 of this Law, in extent necessary for full and correct establishment of facts. The questions and the answers shall be recorded and read out loud in the manner provided for in Article 21 of this Law.”

## **Article 19**

Article 23 shall be amended to read:

“The Court shall not base a conviction solely or in decisive extent on evidence obtained in accordance with Article 11 or articles 13 through 22 of this Law.”

## **Article 20**

After Article 24, new Article 24a shall be added to read:

### **“Article 24a**

General provisions concerning the disclosure of information, stipulated by the Freedom of Information Act of BiH, shall not be applied to processing of personal data of the witnesses in accordance with this Law.”

## **Article 21**

This Law shall enter into force on the eighth day after the day it is published in the “Official Gazette of BiH”.