

# **Decision imposing the Law on Special Witness Identity Protection in Criminal Proceedings in the Federation**

In accordance with my authority under Annex 10 for Peace Agreement and Article XI of the Bonn Document, I do hereby decide that the Law on Special Witness Identity Protection in Criminal Proceedings in the Federation of Bosnia and Herzegovina enters into force with immediate effect on an interim basis, until the Parliamentary Assembly adopts this law in due form and makes the necessary amendments to other laws to ensure consistency.

Sarajevo, 30 July 1999

Carlos Westendorp  
High Representative

## **LAW ON SPECIAL WITNESS IDENTITY PROTECTION IN CRIMINAL PROCEEDINGS IN THE FEDERATION OF BOSNIA AND HERZEGOVINA**

### **Article 1**

This Law sets the rules for a witness hearing under special conditions, aiming for complete protection of life, body, and freedom of a person and his/her close family in criminal processes in which a sentence of a long-term prison can be issued, or in any other criminal acts for which a council of judges of the Supreme Court of the Federation of Bosnia and Herzegovina (thereof Federation Supreme Court) as per the Article 2, paragraph 1 of this Law, deems appropriate.

### **Article 2**

(1) When requested by the court in charge of the case, or an authorised prosecutor, or an accused and his/her defense lawyer, a witness can be heard by a Federation Supreme Court Council of Judges, comprised of three Supreme Court judges.

(2) The request to hear a witness as outlined in the previous paragraph, is to be submitted to the President of the Supreme Court. The request shall contain data on a person's identity who is to be heard as a witness; a criminal case to which the witness-hearing is to serve; facts clearly indicating danger to life, body or freedom of the person and his/her close relatives in a case of testifying that calls for a necessary application of witness protection envisioned by this Law; and circumstances about which the witness is to be examined.

(3) The office which submits the request as per Paragraph 1 of this Article, shall submit it in a closed envelope, clearly indicating that the envelope contains a request to hear a witness as defined by this Law, and forward it to the President of the court in charge of the criminal case, or that should be in charge of the criminal case once it starts. The President of this court shall then without delay, and without getting familiar with what is in the envelope, forward this envelope to the President of the Federation Supreme Court.

(4) The organs of internal affairs can inform a prosecutor, who has jurisdiction, about the need for the special identity protection of a person who is to be heard as a witness, and the need for protection as stipulated by this Law.

### **Article 3**

(1) Upon receiving the request to hear a witness, the President of the Federation Supreme Court shall forward the case to a council of three judges, who will then act on the request.

(2) The chairman of the council shall schedule a council session to be held within the following 15 days.

(3) When requested by the chairman of the council, the council shall receive documentation of the criminal case related to the witness hearing request.

#### **Article 4**

(1) Based on the facts outlined in the request for witness-hearing and the assessment of the criminal case documents in which the witness-hearing is requested, the Council shall first decide whether there are circumstances justifying a witness-hearing as specified in this Law.

(2) If the Council deems the circumstances as unjustified, it shall inform the requester about the decision through the President of the Court, as per Article 2, Paragraph 4 of this Law.

(3) If the Council decides that the circumstances justify the hearing of a witness in accordance with this Law, it shall schedule the date, time and place of the hearing.

(4) In case the members of the Council disagree about the circumstances justifying the hearing of the witness as per this Law, the members of the Council shall vote on this, and the majority vote shall be implemented.

(5) With the approval of the Supreme Court President, a witness can be heard outside of the Supreme Court building.

#### **Article 5**

(1) Before the hearing, a witness shall be informed about a warning from Section 6, Chapter XVIII of the Criminal Code Procedure (Official Gazette F BiH, No: 43/98, dated 20.11. 1998), and shall be informed that he/she shall be heard as a specially protected witness; that his/her identity shall not be revealed to individuals other than the President of the Federation Supreme Court, the members of the Council and a secretary; and that he/she shall not appear in person before the court in charge of the criminal case.

(2) The witness is not obliged to answer questions which would indicate his/her identity, or the identities of his/her close relatives.

(3) The Council shall hear a witness in details on the circumstances suggested by the requester, as well as on all other circumstances which members of the Council deem necessary.

#### **Article 6**

(1) The record of the hearing will not contain data on the witness's identity, but will contain a pseudonym determined by the Chairman of the council, which shall be used during the trial and in the decisions of the court.

(2) The chairman, the council members, and a secretary shall sign the record of the hearing.

(3) The record of the hearing shall be promptly forwarded to the President of the court in charge of the criminal case, and the investigative judge or the chairman of the council of judges in charge of the criminal case shall inform all parties in the case.

(4) In the main hearing or a hearing before the second instance court, the court shall read the witness testimony without the prior agreement of the parties in the case and a defense lawyer, and cannot call the witness for a direct hearing.

#### **Article 7**

(1) After becoming familiar with a witness's testimony, the court can, either pursuing an official duty or following the authorized prosecutor's suggestion, or the suggestion of the defense and the accused, propose to the Federation Supreme Court to hear a witness on additional questions or to clarify previously given testimony. In this case, the case documents shall be given back to the Supreme Court Council, which will hear the witness within 15 days from the date when the request for an additional hearing was received, after which the case documents and hearing record will be promptly forwarded back to the court in charge of the case.

#### **Article 8**

When the witness is heard as prescribed by this Law, the verdict cannot be exclusively based on the witness testimony only.

## **Article 9**

(1) All persons who are present during the witness hearing, or participating in organization of the witness hearing, or persons who obtain information on the witness identity, are obliged to keep confidential the identity of the witness, place, and time of the hearing, and at any moment be aware of the need to provide full security to the witness.

(2) The Judicial Police Unit of the Federation Supreme Court shall conduct technical tasks in the witness protection.

(3) The President of the Federation supreme Court shall pass a special bill on filing witness-hearing records in court registries and keeping witness-hearing cases in Supreme Court archives.

## **Article 10**

The Criminal Procedure Code is applicable to all other situations that are not envisioned by this Law.

## **Office of the High Representative**