

Law No. 9205 on the Justice Collaborators and Witness Protection (2004)

REPUBLIC OF ALBANIA

THE ASSEMBLY

LAW

No. 9205, Dated 15/03/2004

ON THE JUSTICE COLLABORATORS AND WITNESS PROTECTION

Based on Articles 78 point 1, 81 point 1 and 83 point 1 of the Constitution, upon the proposal of the Council of Ministers,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA

DECIDED

CHAPTER I

GENERAL PROVISIONS

Article 1

Object of the law

This law regulates the special measures, manner and procedure of protection of witnesses and justice collaborators, as well as the organization, functioning, competencies and relationships between the bodies in charge of the proposal, assessment, approval and implementation of the special measures of protection.

Article 2

Definitions

Within the meaning of this law the following terms mean as follows:

a) "Witness of justice" is considered the person towards whom the special measures of protection have been applied, who in the quality of a witness or a damaged person, notifies or testifies for facts or circumstances, which constitute evidence in the criminal proceeding of the offenses provided in letter "e" of this article, and that due to this information or testimony is in a real, concrete or serious danger.

b) "A collaborator of justice" is considered a person that serves a criminal sentence or a defendant in a criminal proceeding, towards whom special measures of protection have been applied due to collaboration, notifications and declarations made during the criminal proceeding on the offences provided in letter "e" of this article, and for these reasons is in a real, concrete or serious danger.

c) "Close persons" are considered the persons who are in a real, concrete or serious danger due to their kinship relations based on blood or marriage with the witness or the collaborator of justice in accordance to the definitions in article 16 of the Code of the criminal Procedure, and, as a rule, live or cohabit with them in a stable manner.

ç) "Related persons" are considered those persons who, due to the nature of the concrete relationship they have with the witness or the collaborator of justice, are in a real, concrete or serious dangerous situation.

d) "Protected persons" are considered, separately or jointly, collaborators of justice, witnesses and other persons close or related to them based on the definitions provided in letters "a", "b", "c" and "ç" of this article.

e) "A dangerous situation" is considered a real, concrete and serious situation, because of which, life, health and fundamental rights and freedoms as provided by law, as well as property and the rights related to it, are in danger.

f) "A serious crime", for the purpose of this law, is the criminal offense provided in articles 73, 74, 75, 79, 89, letter "a", 100, 101, 109, 110, letter "a", 111, 114, letters "a" and "b", 128, letter "b", 208, 209, 211, 213, 219, 220, 221, 222, 230, 230 letter "a", 231, 232, 233, 234, 278, letter "a", 282, letter "a", 283, 284, letter "a", "c" and "ç", 286, 287, 333 and 334 of the Criminal Code, as well as other criminal provisions included expressly in the implementation of the provisions of this law.

CHAPTER II

RESPONSIBLE BODIES FOR WITNESS PROTECTION AND COLLABORATORS OF JUSTICE

Article 3

Responsible bodies

Responsible bodies for the preparation, evaluation, approval and implementation of the special measures of protection of witnesses and collaborators of justice are as follows:

- a) Directorate for Witness Protection and Justice Collaborators;
- b) Commission for Evaluation of Special Measures of Witness Protection and Justice Collaborators.

Article 4

The Directorate for Justice Collaborators and Witness Protection

1. For preparing, pursuing and implementing the specific measures of protection, a Directorate of Justice Collaborators and Witness Protection is established, as a special central state structure in the State Police under the direct supervision of the General Director of State Police, operating countrywide in the Republic of Albania.

2. Organizational and personnel structure of the Directorate of Justice Collaborators and Witness Protection are approved by the Minister of Public Order.

3. Issues related to the treatment of the employees of the Directorate of Witness Protection and Justice Collaborators are to be regulated by a decision of the Council of Ministers.

4. Special rules related to the specific administration of the necessary assets and funds for the exercise of activities of the Directorate of Justice Collaborators and Witness Protection, are to be defined by joint instructions of the Minister of Public Order, Minister of Finances and Minister of Justice.

Article 5

The area of activity of the Directorate of Justice Collaborators and Witness Protection

The Directorate for Justice Collaborators and Witness Protection exercises the following competencies:

a) prepares for review by the Commission of Evaluation of Special Measures of the Witness Protection and Justice Collaborators, proposals sent by the prosecutor for taking special measures of protection;

b) upon the request of the Prosecutor or the Commission of Evaluation of Special Measures of the Witness Protection and Justice Collaborators, and after performing the necessary verifications, presents additional information related to the technical aspects of the proposal for implementing the special measures of protection;

c) decides the application of temporary measures of protection until the final decision is taken by the Commission of Evaluation of Special Measures of the Witness Protection and Justice Collaborators in the cases and manner provided in this law;

ç) prepares and signs the agreements on the special measures of protection with the protected persons in accordance to this law;

d) follows up the implementation of the special measures of protection, approved by the Commission of Evaluation of Special Measures of the Witness Protection and Justice Collaborators;

dh) administers the database related to the activity of the Directorate and the progressing of the special measures of protection, and takes measures to safeguard and administer them in compliance with the appropriate level of the classification of the information, in accordance to the provisions in force;

e) administers the assets and funds in the disposal of the Directorate for the exercising of its activity and implementation of the special measures of protection;

ë) proposes and takes measures for coordinating the work with other institutions for the development of activities and implementation of the special measures of witness protection and justice collaborators;

f) manages the issues of collaboration with international bodies or other states, in the area of witness protection and justice collaborators;

g) prepares periodical reports on its activities, and makes proposals for the improvement of the legislation and activities of the institutions, for the implementation of special measures of witness protection and justice collaborators.

2. The Directorate of Witness Protection and Justice Collaborators, after receiving the approval in principle of the Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators, prepares the rules of a technical and operative character, for the conditions, methodologies and procedures of verification, preparation and implementation of ordinary and special measures of protection, for the manners, forms and means of communication, as well as for the administration of acts and information related to its activity.

Article 6

1. For evaluating the proposals and approving the special measures of protection program, amending, revoking or terminating them, the Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators is established.

2. The Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators is headed by the Deputy Minister of Public Order, and is composed of:

a) a judge deputy chairman;

b) a prosecutor member;

c) an officer of the judicial police member

3. The High Council of Justice, General Prosecutor and General Director of State Police, each appoint respectively one of the members for the composition of this Commission. They are convened in the meetings of the Commission by the chairman of the Commission.

High Council of Justice, the General Prosecutor and the Director of State Police appoint respectively another alternative member, which will attend the meetings of the Commission when the respective members of the commission appointed in compliance with the above paragraph of this article are absent.

4. The judges, prosecutors and officers of the judicial police appointed as members of the Commission on Evaluation of Special Measures of Witness Protection and Justice Collaborators, should be reliable and have a pure moral character, should have experience and special professional skills in the criminal field in general and in serious and organized crime in particular.

5. The members of the Commission are appointed for a term of three years and may be re-appointed. The mandate may end earlier in these cases:

The Commission on Evaluation of Special Measures of Witness Protection and Justice Collaborators

a) when the member does not hold anymore the position in the institution from where he/she was appointed;

b) upon his/her request, presenting the reasons for the request;

c) when the member violates the legal provisions of this law and the rules of functioning of the Commission.

6. The decision on the end of mandate of the member of the commission, in the case of letter "a", of point 5 of this law, is taken and made known by the competent body for their nomination, whereas in the cases of letters "b" and "c", respectively, upon the request of the member himself or the commission.

7. The judges, prosecutors and officers of the judicial police that are members of the commission, cannot take part in discussion and decision-taking, when they are informed that the proposal for special measures of protection has to do with criminal procedures or activities that are investigated or tried by them. The above mentioned ban is also valid for cases where there are conflicts of interests or doubts for a bias position as provided in the Code of the Criminal Procedure and in other legal provisions in force.

8. The detailed rules on the criteria and procedures for convening and participating in the meetings of the commission, the workload, absences, obstacles, and non-feasibility of assigning and performing this assignment are to be defined in common instructions of the General Prosecutor, Minister of Public Order and Minister of Justice.

Article 7

The meetings of the Commission

1. The Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators is convened by its chairman, or in case of absence, by the deputy, within 5 days from the submission of the proposal of the prosecutor for implementing the special measures of protection, as well as when it is requested by the General Prosecutor. In particular and emergency cases, the Commission is convened immediately.

2. The meetings of the Commission are valid when 3 members are present. The decisions of the commission are valid when they are approved by three members present in the meeting.

3. The Commission should take decisions not later than 10 days from the first meeting, and in any case, not later than 30 days since the submission of the relevant documents and the prosecutor's proposal.

4. All acts and information on the activities of the commission are considered as classified information.

5. The detailed rules related to the functioning and procedures of the work of the Commission, as well as the rights, obligations and treatment of its members, are to be provided in common instructions of the General Prosecutor, Minister of Public Order, Minister of Justice and Minister of Finance.

CHAPTER III

Special Measures of Witness Protection and Justice Collaborators

Article 8

The general conditions for applying special measures for the protection of witnesses

1. When the implementation of the ordinary measures of protection of the witness is not sufficient and suitable, special measures of protection according to this law are implemented, if the witness accepts and willingly collaborates with the prosecution office and court, and through his complete testimony made without conditions and reserves, gives firmly grounded information which:

a) constitute fundamental evidence related to a criminal proceeding for serious crimes;

b) help preventing serious crimes or reducing their effects;

c) help in repairing losses and damages caused by committing a serious crime.

2. The implementation of the special measures on witness protection is decided only if the witness is in a real, concrete and serious situation, suitable to be included in these measures, and provided that he/she accepts and participates actively in their implementation with free will.

3. Depending upon concrete circumstances, the Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators can apply the special measures of protection also to persons close to the witness or related to him/her.

4. The rules and detailed criteria on the issues provided in points 1, 2 and 3 of this article are to be provided in common instructions of the General Prosecutor, Minister of Public Order and Minister of Justice.

Article 9

General conditions for applying special measures of protection for justice collaborators

1. When the implementation of the ordinary protection measures for the collaborator of justice is not sufficient and suitable, special protection and treatment measures are applied according to this law, when the person accepts and collaborates with the Prosecution Office and Court, and when through firmly grounded information and declarations:

a) gives light to facts and important circumstances during the criminal process, which serve as fundamental and irreplaceable evidence in detecting, investigation and judgement of serious crimes;

b) assists or testifies for the prevention of serious crimes and for recovering of losses and damages caused by the commitment of these crimes.

2. The implementation of special protection measures is decided only if the collaborator of justice is in a real, concrete and serious dangerous situation, is suitable to be included in these measures and with the condition that during the session, he/she makes complete declarations without conditions

and reserves, accepts the implementation of the special measures, and actively participates in their implementation with his/her free.

3. Depending on concrete circumstances, the special protection measures are set by the Commission of Evaluation of Special Measures of Witness Protection and Justice Collaborators, and applied also for the persons closed to or related with the collaborator of justice.

4. The rules and detailed criteria on the issues provided in points 1, 2 and 3 of this article are to be determined by joint guidelines of the General Prosecutor, Minister of Public Order and Minister of Justice.

Article 10

Special measures of protection

1. The special protection measures for the witnesses, justice collaborators and their relatives or closely related persons are as follows:

a) change of identity;

b) change of residence;

c) temporary protection of the identity, information and documents of the protected person;

d) declarations of the witness under another identity and their administration with special means for voice deformation, non-appearance and other forms defined by law;

e) special physical and technical measures of protection, in the place where the protected person resides, as well during transportation, including also situations where such protection is needed for the fulfillment of the obligations towards the justice authorities;

f) protection and special treatment in cases when the justice collaborator has been placed in prison as a pre-trial security measure or sentenced by imprisonment;

g) social rehabilitation;

h) maintenance, change of the work place and temporary employment;

i) financial aid for the period of time between two employments;

j) professional re-qualification;

k) giving of the advice and specialized legal assistance;

l) other ways as defined by law.

2. The special protection measures are not to be implemented to such an extent and certain way, which would consequently lead to the improvement of the economical condition of the protected person as a result of their implementation.

3. The special protection measures, as a rule, are set for an indefinite time limit and can be applied to all phases of the criminal proceeding, as well as after its termination.

4. The duration of the special protection measures depends on the level of danger, suitability of the protected person in relation to the special protection measure, as well as from his/her correctness in the fulfillment of the legal obligations and conditions provided in the agreement of protection.

5. The rules and detailed criteria for the content, meaning, suitability, manner and procedures of the issuance and upgrading of the implementation of the special protection measures are to be defined by joint guidelines of the General Prosecutor, Minister of Public Order and Minister of Justice.

Responsibilities for implementing the special protection measures

1. The Directorate of Witness Protection and Collaborators of Justice is responsible for the preparation, coordination and pursuance of the implementation of the special protection measures.

2. Ministries and other central institutions, based on the responsibilities and tasks provided by law, organize the work and are responsible for pursuing and implementing common and special protection measures for the protected people.

3. The bodies, mentioned in point 2 of this article, coordinate their work with the Directorate of Witness Protection and Collaborators of Justice, reply to the requests of this Directorate and those to the prosecutors, as well as inform on issues and circumstances that have to do with the preparation of proposals, implementation of special protection measures and relevant agreements made for this reason with the protected persons.

4. The detailed rules related to the tasks, responsibilities, forms, coordinating and informing procedures between the institutions, are to be defined by joint instructions of the Minister of Public Order, Minister of Justice and General Prosecutor.

Article 12

Administration of the acts, documents and information

1. The acts, documents and information related to the proposal, approval and implementation of the special protection measures are considered as classified information and are preserved and administered by the Directorate of Witness Protection and Collaborators of Justice.

2. The criteria and procedures on the protection, administration and classification of the information concerning witness protection and collaborators of justice, are set by joint instructions of the Minister of Public Order, Minister of Justice and General Prosecutor.

3. The acts, documents, data as well as every information on special protection measures that the ministers and other central institutions possess, are considered as classified information. The heads of the institutions approve the relevant instructions for the depositing, maintenance and administration of these documents, after they have received the opinion of the Minister of Public Order, Minister of Justice and General Prosecutor.

CHAPTER IV

THE PROCEDURES ON THE APPROVAL AND IMPLEMENTATION OF SPECIAL PROTECTION MEASURES

Article 13

Presentation of the proposal

1. The prosecutor assigned for the investigation of a criminal case, or the prosecutor of a higher ranking assigned for the investigation of that case or the General Prosecutor, have the right to propose the implementation of special protection measures.
2. In cases when the prosecutor argues and there are reasons that justify the implementation of special protection measures, the prosecutor proposes to the Commission on the Evaluation of the Special Protection Measures for Witnesses to review and approve the special protection measures.
3. The proposal for the approval of special protection measures, together with the basic information according to this law, are to be deposited with the Directorate for the Protection of Witnesses and Justice Collaborators, which also carries the functions of technical secretariat unit. This Directorate prepares the documentation for examination by the Commission for the Evaluation of Special Protection Measures for Witnesses and Justice Collaborators.
4. When it is the case, together with the proposal, the prosecutor may present a reasoned request to the Directorate for the Protection of Witnesses and Justice Collaborators for implementing temporary and appropriate protection measures in compliance with the concrete circumstances.

5. The regulations and the procedures foreseen in this article are also applied in cases of the proposal for changing, or revoking the special protection measures.

Article 14

Temporary protection measures

1. In specific and urgent cases, the Directorate for the Protection of the Witnesses and the Collaborators of Justice, upon the prosecutor request and after taking the written approval of the protected person, decides on the immediate implementation of the temporary protection measures. The decision of the Directorate is implemented after the Head of the Commission for the evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators and the General Prosecutor or any prosecutor authorised by him, give their approval.

2. The temporary protection measures are established in accordance with the level of danger and in such forms that they can guarantee, temporarily and preliminarily, the minimal necessary protection level.

3. The detailed regulations regarding the cases, procedures and methods of the temporary protection, are to be provided by common instructions of the Minister of the Public Order, Minister of Justice and the General Prosecutor.

Article 15

Content of the proposal for the application of special protection measures and the accompanying documents

1. The proposal of the prosecutor for the application of special protection measures, contains necessarily the following data:

a) personal data of the person who has been proposed for protection;

b) information on the development of the criminal case and evaluation of the collected evidence;

c) explanations on the importance of the statements made or that can be obtained from the witness or the justice collaborator, and reasons why free testimony or statements cannot be obtained in any other manner;

ç) the circumstances in which or due to which the witness or the justice collaborator has become aware of the data and statements given by him or that can be obtained from him;

d) information and other explanations that serve to motivate and support the evaluation of the danger that the person proposed to be protected faces or is expected to face;

dh) information on the financial status of the witness;

e) other information as evaluated by the prosecutor.

2. The prosecutor can request to the Directorate for the Protection of Witnesses and Justice Collaborators to elaborate and prepare more detailed or additional information on the motives and effects of the implementation of the special protection measures.

Article 16

The Agreement with the protected person

1. In the shortest time possible and at any case not later than 15 days from the approval of the special protection measures, the Directorate for the Protection of Witness and the Justice Collaborators prepares the agreement for the application of the special protection measures and takes the measures for discussing and signing it by the witness, the justice collaborator and other protected persons.

2. In any case the prosecutor is informed and gives his approval before the agreement is signed.

3. The rights, responsibilities and effects of the protection measures start at the time and manner provided in the agreement.

4. In case of a minor, the approval and signing of the agreement is done by the parent or legal custodian appointed by law, by taking into consideration the highest interest of the child and also the limited legal capacity as provided by law,

5. In case of an adult that is mentally ill and consequently has limited legal capacity, the approval and signing of the agreement is done by the legal custodian appointed by law.

Article 17

Content of the agreement

1. In the protection agreement the following issues are to be obligatory:

a) the rights and obligations of the protected persons;

b) the rights and obligations of the Directorate for the Protection of the Witnesses and the Collaborators of Justice in order to offer to the protected person the proper protection according to the level and circumstances of danger;

c) the cases and circumstances of the amendment and removal of special measures of protection;

d) the predicted duration, in advance, for the implementation of the special measures of protection;

2. Also, the protection agreement predicts for a more detailed regulation of the fulfilment of conditions and obligations from the witness or the collaborator of justice as follows:

a) to give full information and without a reserve or condition concerning all the facts, events and circumstances that regard the criminal offence and about which he is aware of;

b) to accept and respect the conditions mentioned in the special measures of program;

c) to be aware of the nature of classified information and under any circumstance, not to make known any data on the special measures of protection and other data related to those;

d) to avoid every action or inaction that can put in danger the implementation of the special measures of protection or that might bring as a result another situation of danger for the protected person;

e) to inform at once the Directorate on issues that are valuable for and asked from it, or for events or changes of the life circumstances or its personal activity, and also about the contacts and relations to the third parties that can endanger the implementation and guaranties offered by the special measures of protection;

3. Apart the issues provided in points 1 and 2 of this article, the collaborator of justice has to inform in details the Directorate on the kind and the quantity of the properties (wealth) owned by him or his relatives or special persons related to him.

4. The Directorate for the Protection of the Witnesses and the Collaborators of Justice, informs the Commission of the Assessment of the Special Measures of Protection on the ongoing, deadline of the implementation of the protection program, at the time and manner indicated by it related to the protection program, respecting the conditions of the protection agreement, and in case by case for the problems and circumstances not foreseen in these documents.

5. Detailed rules related to the procedures of expressing the will, talks and signature, content and form of the protection agreement, and for following the implementation of the conditions of the agreement are to be regulated by a common instruction of the Minister of Public Order, Minister of Justice and General Prosecutor.

Extraordinary protective measures

1. The State Police, pre-detention or prison institutions, in accordance with the level of risk involved for the protected person, can order and implement extraordinary protective measures, amongst those provided by this law or by other provisions that regulate their activity. These measures, not later than 24 hours from the time being issued, are communicated immediately to the Directorate of Justice Collaborators and Witness Protection and to the case prosecutor.

2. The extraordinary measures, with the consent of the Directorate and of the case's prosecutor, can be extended for a determined period of time, until the danger motivating these measures is avoided or until the Commission of Evaluation of the Special Measures of Protection has taken the appropriate decision.

Article 19

Amending and revoking the special protection measures

1. The special protection measures could be amended or revoked in the following cases:

a) when it is evidenced that there is no dangerous situation that motivates the implementation of special protection measures;

b) if during the investigation and trial of the criminal offence, is evidenced that the witness or the justice collaborator are giving false testimony or information;

c) if the protected person willingly commits a criminal offence;

d) if after the beginning of the implementation of special protection measures there are reasonable and firmly grounded data on the involvement of the protected person in criminal activity;

Article 18

e) if the witness, the collaborator of justice or other protected persons do not respect the obligations mentioned in the protection agreement or refuse, neglect or provide false information;

f) if the protected person refuses the employment opportunity provided by the Directorate of Witness Protection and Justice Collaborators or gives up the performance of activities that provide income without a supported motif;

g) if an authority of another state requires termination of the special protection measure of the change of residence in the territory of that state.

Article 20

Cases of termination of special protection measures

1. The special protection measures are ceased in the following cases:

- a) with the termination of the time limit of the protection agreement;
- b) if the protected person is dead;
- c) with a written request of the protected person or his/her tutor;
- d) due to the depriving of the implementation of special protection measures and the agreement.

Article 21

1. The Directorate of Justice Collaborator and Witness Protection informs immediately, in writing, the prosecutor on the circumstances mentioned in article 19 and 20 of this law.

2. In the case of request for ceasing the special protection measures or when the protected person is dead, the special protection measures are immediately ceased for the person requiring or for the

dead person, but continues in accordance with the case for the witness or any other person included in those special measures.

FINAL PROVISIONS

Article 22

International cooperation

The international cooperation is achieved, in compliance with the right and obligations that derive from international agreements where the Republic of Albania is a member.

The international agreements can foresee the mutual implementation of special protection measures, including the change of residence and the stay of the protected persons in the respective territories of the parties.

Article 23

Sublegal acts

The Council of Ministers, the ministries and other central institutions, within 6 months from the entry into force of this law, shall issue sublegal acts for its application.

The ministries and other central institutions assigned according to this law, shall take measures for the creation of the Directorate for Witness Protection and Justice Collaborators as well as the Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators, not later than 60 days from the entry into force of this law.

Article 24

The effects of the law

The protection of witnesses and justice Collaborators, according to this law, shall commence the first day after the end of the 6-monthly deadline, as provided in article 23 of this law.

Article 25

Transitory provisions

Until the date established in article 24 of this law, in extraordinary cases and in compliance with the criteria and procedures of this law as much as possible, the Prosecutor General and the Minister of Public order, after having obtained the approval of the Minister of Justice, may decide and apply one or more special protection measures.

For the continuity, the change or the revocation of special protection measures, applied in accordance with point 1 of this article, the Commission for the Evaluation of Special Measures for the Protection of Witnesses and Justice Collaborators, issues its decision not later than 30 days from its creation.

Article 26

The entry into force of the law

This law enters into force 15 days after its publication on the "Official Journal".

THE SPEAKER

SERVET PĚLLUMBI