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Witness Protection Act

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Amended by the following acts

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08.12.2011	RT I, 22.12.2011, 3	23.12.2011 Repealed[RT I, 29.06.2012, 2]
08.12.2011	RT I, 29.12.2011, 1	01.01.2012
06.06.2012	RT I, 29.06.2012, 2	09.07.2012, partially 01.01.2013

Chapter 1 GENERAL PROVISIONS

§ 1. Scope of Act

(1) This Act provides for:

- 1) the procedure for witness protection, the legal bases for witness protection authorities and their activities and for the application of protection measures;
- 2) the procedure for the performance of the international obligations of the Republic of Estonia related to protection of participants in criminal proceedings.

(2) The provisions of the Administrative Procedure Act apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

§ 2. Principles of witness protection

In applying the measures of witness protection, the severity of a criminal offence proceeded, the significance of the evidence given by the person in the criminal case and the extent of the risk to the protected person are taken into account. Witness protection measures can be applied to a person only with the consent of the person or his or her legal representative or guardianship authority.

§ 3. Definition of unlawful influence

For the purposes of this Act, unlawful influence are acts of persons belonging to criminal organisations or person suspected of a criminal offence, accused or convicted offenders or persons acting in their interest with the intent to psychologically or physically affect a person giving evidence in criminal proceedings with the aim of forcing the person to withdraw the evidence or change his or her earlier statements, and acts which pose a danger to the health or property of the persons specified in § 5 of this Act.

§ 4. Witness protection authority

(1) Witness protection is carried out by the Police and Border Guard Board. Other state and local government bodies and authorities and legal persons in public law are required to assist in witness protection within the limits of their competence.

[RT I 2009, 62, 405 - entry into force 01.01.2010]

(2) Supervision over witness protection activities shall be exercised by the Office of the Prosecutor General.

(3) The Police and Border Guard Board organises international co-operation in witness protection with competent foreign authorities and international organisations pursuant to international agreements.

[RT I 2009, 62, 405 - entry into force 01.01.2010]

§ 5. Persons placed under witness protection

(1) The following persons are placed under witness protection:

- 1) protected persons;
- 2) family members and close relatives of protected persons;
- 3) persons with respect to whom an agreement is entered into between the witness protection authority of the Republic of Estonia and a foreign competent authority or an international organisation for the application of witness protection pursuant to international agreements.

(2) For the purposes of this Act, protected persons are the following:

- 1) persons who may know facts relating to a subject of proof in a criminal case and who are under actual risk of falling subject to unlawful influence;
- 2) officials of investigative bodies, prosecutor's offices and courts (hereinafter *persons conducting proceedings*) who are under actual risk of falling subject to unlawful influence aimed at forcing the person conducting the proceedings to act in a partial manner or waive exercising the rights or obligations arising from the person's office, and to avenge the person conducting the proceedings for his or her acts performed in official duties.

3) a person who is a victim in criminal proceedings and who is under actual risk of falling subject to unlawful influence or the suspect or accused person may continue to commit offences against him or her.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

Chapter 2 CONDITIONS FOR APPLICATION OF WITNESS PROTECTION

§ 6. Conditions for application of witness protection

Witness protection is applied if:

- 1) a person who may know facts relating to a subject of proof in a criminal case is under actual risk of falling subject to unlawful influence and the person consents to co-operate with the witness protection authority;
- 2) a person conducting the proceedings is under actual risk of falling subject to unlawful influence described in clause 5 (2) 2) of this Act and the person conducting the proceedings consents to co-operate with the witness protection authority;
- 3) the victim is under actual risk of falling subject to unlawful influence or the suspect or accused person may continue to commit offences against him or her and if the victim consents to co-operate with the witness protection authority.

(2) Witness protection is applied on the basis of a witness protection agreement provided for in § 14 of this Act with a written consent of the person placed under witness protection.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

§ 7. Protection measures in cases of urgency

(1) If there is an actual risk that a person specified in § 5 of this Act may fall subject to unlawful influence before the protection agreement is entered into and any delay in taking the person under protection would endanger the truth from being ascertained in criminal proceedings, the investigative body conducting the criminal proceedings shall, with the consent of the protected person, request immediate application of protection measures provided for in clauses 18 (1) 1) and 6) of this Act by the witness protection authority for the physical protection of the person's health or property.

(2) The witness protection authority shall initiate the application of protection measures specified in subsection (1) of this section without the consent of the person in need of the protection if the person, due to his or her temporary physical or mental status or whereabouts, is not able to consent or if it is impossible to ask for the consent of the legal representative or guardianship authority of a person with restricted active legal capacity for the application of the protection measures.

(3) The witness protection authority is required to obtain the consent of the person specified in subsection (2) of this section at the earliest opportunity. If no consent is obtained, the application of the protection measures shall be terminated.

(4) In the cases provided for in this section, the witness protection authority shall also initiate the witness protection procedure pursuant to subsection 9 (1) and § 10 of this Act.

§ 8. Duration of witness protection

(1) Witness protection is applied:

- 1) during pre-trial proceedings;
- 2) during judicial proceedings;
- 3) after judicial proceedings.

(2) The duration of application of witness protection depends on the following:

- 1) the degree of risk to the protected person;
- 2) the conditions of the protection agreement and compliance with the conditions by the protected person.

Chapter 3

WITNESS PROTECTION PROCEDURE

§ 9. Initiation of witness protection procedure in respect of person

(1) The witness protection procedure in respect of a person is initiated by a written order of the head of the witness protection authority or an official appointed by him or her based on the following:

[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

1) a reasoned written request of an investigative body, a prosecutor's office or a court together with the written consent of the protected person;

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

2) a reasoned request of the person conducting the proceedings or an official exercising supervisory control over such official in the case the circumstances specified in clause 5 (2) 2) of this Act occur.

(2) In the case the protected person or his or her family member or close relative is a person with restricted active legal capacity, the written consent of the legal representative or guardianship authority of such person is required for the initiation of the witness protection procedure. If possible, the person with restricted active legal capacity is asked for his or her opinion, taking into account the ability of the person with restricted active legal capacity to comprehend.

§ 10. Processing of applications for witness protection

(1) In the course of the processing of an application for witness protection, the following shall be established and assessed:

- 1) whether the evidence to be given by the protected person is necessary for the criminal proceedings and whether the evidence can be replaced with other evidence;
- 2) whether the protected person has given true statements and whether he or she is ready to give true statements until the termination of the criminal proceedings;
- 3) the criminal record of the protected person, the obligations and restrictions imposed on the person under criminal or civil law;
- 4) the state of health of the protected person;
- 5) unlawful influence to which the protected person may fall subject to;
- 6) whether protection measures should be also used to protect the health and property of the family members or close relatives of the protected person;
- 7) which protection measures and during which time period should be applied and whether necessary resources are available for the application of such measures;
- 8) whether the rights or legitimate interests of another person may be at risk when the protection measures are applied.

(2) In order to ascertain the circumstances specified in subsection (1) of this section, the officials of the witness protection authority have the right to:

- 1) examine the existing surveillance and investigation materials;
- 2) question the persons conducting the proceedings concerned;
- 3) question the protected persons;
- 4) use the assistance of general practitioners, medical specialists and psychologists in order to assess the suitability of the protection measures to be applied and the personal characteristics of the protected person;
- 5) make inquiries to authorities maintaining databases and registries.

(6) [repealed - RT I, 29.06.2012, 2 - entry into force 01.01.2013]

(3) Verification and analysis of the circumstances specified in subsection (1) of this section shall be made within 30 days as of the initiation of the witness protection procedure.

§ 11. Summary of suitability for protection

(1) On the basis of the results of the verification and analysis made in the course of processing the application for witness protection, an official of the witness protection authority shall make a summary of suitability for protection which sets out the information on the results of the verification and the opinion whether the person is eligible for protection.

(2) The head of the protection authority or an official authorised by him or her shall submit the summary of suitability for protection and a draft protection agreement to the Office of the Prosecutor General.

§ 12. Proceedings in Office of Prosecutor General

(1) The Prosecutor General or a prosecutor appointed by him or her grants the permission for entry into a protection agreement within five days as of the submission of the summary of suitability for witness protection and the draft witness protection agreement.

(2) In deciding on granting consent for entry into a protection agreement, the Prosecutor General or a prosecutor appointed by him or her has the right to examine the protection file and other information collected on the basis of § 10 of this Act, to interview the protected person and the person conducting the proceedings who submitted the application, and their family members and close relatives. Where possible, the opinion of the relevant prosecutor responsible for the legality and efficiency of the pre-trial criminal proceedings is asked with respect to entry of a protection agreement.

(3) In deciding on the authorisation of entry into a protection agreement, *inter alia* the following shall be taken into account:

- 1) whether there is actual risk for the protected person to fall subject to unlawful influence in connection with his or her participation in the criminal proceedings;
 - 2) whether there are other possibilities requiring less resources or other protection measures to ensure the security of the protected person;
 - 3) whether the evidence provided by the protected person is necessary for the criminal proceedings and whether the importance of the evidence is proportionate with the amount of resources to be used for the application of the protection measures;
 - 4) whether this involves a significant state secret or classified foreign information protection risk.
- [RT I 2007, 16, 77 - entry into force 01.01.2008]

(4) The Prosecutor General or a prosecutor appointed by him or her has the right to make amendments to a draft protection agreement and to assign the collection of additional information to the witness protection authority within a set term.

§ 13. Termination of processing of applications for witness protection

The witness protection authority shall terminate the processing of an application for witness protection:

- 1) with respect to a person specified in subsection 7 (2) of this Act if the person refuses to give his or her consent for the protection;
- 2) the protected person withdraws his or her earlier consent;
- 3) the Prosecutor General or a prosecutor appointed by him or her refuses to grant permission for entry into a protection agreement;
- 4) upon entry into a protection agreement with the protected person;
- 5) upon the death of the protected person.

§ 14. Protection agreement

(1) By entering into a protection agreement, the protected person undertakes to be subjected to the restrictions arising from the protection measures and the witness protection authority undertakes to ensure the security of the protected person, his or her family members or close relatives against unlawful influence.

(2) A protection agreement is entered into between the protected person or his or her legal representative or guardianship authority and the head of the witness protection authority or an official appointed by him or her.

(3) A protection agreement enters into force as of the signing thereof by the parties.

(4) A protection agreement shall set out the following:

- 1) the protection measures to be applied and the duties of the protected person or his or her family members or close relatives related to the application of the protection measures;
- 2) the obligations of the witness protection authority in solving problems related to the everyday life of the protected person and to exercising his or her rights and performing his or her obligations;
- 3) the duty of the protected person to co-operate with law enforcement bodies until the termination of the criminal proceedings;
- 4) the duty of the protected person to maintain the secrecy of all the facts related to the application of protection which are known or may become known to the protected person, until respective permission to disclose the facts is obtained from the other party to the witness protection agreement;

- 5) the right of the protected person to receive information to a reasonable extent regarding the protection measures applied to him or her;
- 6) the right of the protected person to file reasoned complaints to the supervision authority against the acts of the officials of the witness protection authority;
- 7) the right of the witness protection authority to terminate the protection agreement due to material breach of the conditions of the agreement by the protected person;
- 8) the conditions for the amendment and termination of the agreement;
- 9) the procedure for the termination of the application of the protection measures.

(5) A written consent for the application of protection measures has to be obtained from the family members of close relatives of the protected person who are subject to the conditions of a protection agreement, and such consent shall be annexed to the protection agreement.

(6) The format of protection agreements shall be established by a regulation of the Minister of the Interior.

§ 15. Amendment of protection agreements

The Prosecutor General or a prosecutor appointed by him or her grants a permission for the amendment of the conditions of a protection agreement in the following cases:

- 1) in the case the protection measure applied to the protected person or his or her family members or close relatives are changed;
- 2) in the case of termination of application of protection measures to the protected person or his or her family member or close relatives.

§ 16. Termination of protection agreement

- (1) A protection agreement shall be terminated:
- 1) if the actual risk of unlawful influence ceases to exist;
 - 2) on the basis of the protected person's free will;
 - 3) at the written request of the legal representative of the protected person or the guardianship authority, if the protection agreement was entered into in the cases provided for in subsection 9 (2) of this Act and the protected person has restricted active legal capacity at the time of termination of the protection agreement;
 - 4) if the protected person materially breaches the conditions of the protection agreement;
 - 5) upon the death of the protected person.

(2) A protection agreement is terminated with the permission of the Office of the Prosecutor General, except in the cases specified in clauses (1) 2), 3) and 5) of this section.

(3) Upon termination of a protection agreement on the basis of the provisions of clause (1) 3) of this section, the opinion of the person with restricted active legal capacity is asked, taking into account the ability of the person with restricted active legal capacity to comprehend. The decision on whether or not to terminate the agreement is made by the Prosecutor General or a public prosecutor appointed by him or her.

(4) It is not permitted to terminate a protection agreement on the basis of the provisions of clauses (1) 1) and 4) of this section earlier than when five twenty-four hour periods have passed from the forwarding of a written notice to the protected person.

§ 17. Application of witness protection at request of foreign competent authority or international organisation

(1) The witness protection authority shall initiate witness protection procedures at the request of a foreign competent authority or an international organisation pursuant to international agreements entered into. In order to apply witness protection in the territory of the Republic of Estonia to a person protected by a foreign state or an international organisation, a separate agreement shall be entered into by the competent authorities with respect to each person protected by a foreign state or an international organisation.

(2) An agreement entered into with respect to the application of witness protection to a person protected by a foreign state or an international organisation shall be submitted to the head of the witness protection authority or an official authorised by him or her who shall, within five working days as of the receipt of the respective request, decide on the grant of or refusal to grant a consent for entry into the agreement.

[RT I, 08.12.2011, 1 - entry into force 01.01.2012]

(3) An agreement entered into with a competent authority of a foreign state or an international organisation shall set out at least the following:

- 1) the rights, obligations and liabilities of the parties;
- 2) the protection measures to be applied;
- 3) the rights, obligations and liabilities of the protected person;

- 4) the permitted amount of expenses to be made on the protected person and the procedure for compensation of the expenses to the witness protection authority;
- 5) the procedure for compensation for non-contractual damage;
- 6) the matters related to the resettlement of the protected person from one state to another;
- 7) the term of the agreement;
- 8) the bases and conditions for the amendment and termination of the agreement;
- 9) the written confirmation of the protected person to the fact that the person is aware of his or her rights and obligations and other clauses of the agreement concerning the person, as well as of the consequences of breach of the agreement.

(4) A copy of an agreement entered into with a competent agency of a foreign state or an international organisation shall be forwarded to the Public Prosecutor's Office.

(5) No summary of suitability for protection is prepared in the case of a person protected by a foreign state or an international organisation and a no protection agreement is entered into between a person protected by a foreign state or an international organisation and the witness protection authority of the Republic of Estonia.

§ 17¹. Provision of assistance at request of foreign competent authority or international organisation

(1) At a written request of a competent authority of a foreign state or an international organisation, the witness protection authority may provide one-time assistance upon protection of a person placed under witness protection by the applicant without entry into an agreement with respect to the person protected by a foreign state or an international organisation.

(2) An application of the competent authority of a foreign state or an international organisation to provide assistance shall be submitted to the head of the witness protection authority or an official authorized by him or her, who shall examine it and grant consent for provision of assistance or refuse to provide assistance within five working days as of the receipt of the application.

(3) A copy of the request of the competent authority of a foreign state or an international organisation and information concerning the satisfaction of the application or refusal to grant assistance shall be forwarded to the Public Prosecutor's Office.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

§ 18. Witness protection measures

(1) The following protection measures are applied in witness protection:

- 1) physical protection of the protected person and his or her property;
- 2) provision of self-defence equipment for the protected person;
- 3) provision of new telecommunications or telecommunication numbers for the protected person;
- 4) provision of new registration marks for the means of transportation of the protected person;
- 5) provision of new place of residence, workplace or place of studies for the protected person;
- 6) secret relocation of the protected person to a safe area or locality;
- 7) changing the appearances of the protected person through plastic surgery;
- 8) creation of new identity for the protected person;
- 9) other protection measures.

(2) The protection measures provided for in subsection (1) of this section may be applied either separately or in combination.

(3) [Repealed - RT I, 29.06.2012, 2 - entry into force 01.01.2013]

(4) The documents necessary for the application of the protection measure specified in a protection agreement or a request for assistance submitted by the competent authority of a foreign state or an international organisation are issued and the necessary amendments in databases and registries are made, at a reasoned request of the head of the witness protection authority or an official authorised by him or her, by an administrative authority or a legal person into whose competence the issue of the documents of the respective type or making of such amendments in the databases falls.

[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

(5) Upon covert transfer of a protected person who is a prisoner, a person held in detention or custody to a new prison or jail, the basis for placement or relocation are the relevant provisions of the protection agreement entered into between the witness protection authority and the person protected or the witness protection authority and an international organisation or a foreign state.

[RT I, 29.12.2011, 1 - entry into force 01.01.2012]

§ 18¹. Surveillance Activities and Inquiries to Communications Undertakings in Witness Protection Activities

(1) Upon processing witness protection applications and application of protective measures, the witness protection authority is entitled to conduct the surveillance activities specified in subsection (1) and clauses

126³(2) 1) and 2) of the Code of Criminal Procedure, and the enquiries for obtaining the information prescribed in subsections 111¹(2) and (3) of the Electronic Communications Act.

(2) Permission for the surveillance activities specified in subsection 126³(1) of the Code of Criminal Procedure and inquiry of the data prescribed in § 111¹ of the Electronic Communications Act is granted by the head of the witness protection authority or an official authorised by him or her.

(3) Permission for surveillance activities specified in clauses 126³(2) 1) and 2) of this Act is granted by the Chairman of Harju County Court or a judge designated by him or her at a reasoned written request of the Prosecutor General or a prosecutor appointed by him or her.

(4) A judge shall promptly review a submitted request and, by a ruling, grant a permission or refuse to grant a permission for a justified reasons.

(5) A court may grant a permission for the conduct of surveillance activities specified in subsection (3) of this section for a term of up to two months and this term may be extended by two months at a time at the request of the Prosecutor General or a public prosecutor appointed by him or her.

(6) In the cases of urgency, the surveillance activities specified in subsection (3) of this subsection may be conducted with the permission of a court issued in a format which can be reproduced. A written permission shall be formalised within 24 hours as of the commencement of surveillance activities.

(7) The person with regard to whom the surveillance activities were conducted shall not be informed thereof.
[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

§ 18². Ensuring conspiracy

For ensuring conspiracy, the witness protection authority has the right, pursuant to the procedure provided by the Police and Border Guard Act:

- 1) to use covert measures which allow to conceal the persons who are engaged in the application of witness protection and the purpose of the activities and the ownership of the rooms and means of transport used;
- 2) to pretend a private legal person, a structural entity or a body thereof or a branch of a foreign company;
- 3) to use undercover agents and persons involved in secret co-operation.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

§ 19. Information related to witness protection

(1) The witness protection authority has the right, in order to perform the duties assigned to it by law, to process personal data and set up databases.

(2) The information collected in the course of making a decision on placing a person under witness protection or in the application of witness protection and other material related to the application of witness protection shall be stored in a protection file. A separate protection file shall be opened for each protected person. The procedure for keeping and storing protection files shall be established by a regulation of the Minister of the Interior.

(3) The information related to witness protection which is not a state secret for the purposes of the State Secrets and Classified Information of Foreign States Act is the information intended for internal use for the purposes of the Public Information Act.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

Chapter 4 IMPLEMENTING PROVISIONS

§ 20.–§ 22.[Omitted from this text.]