**INSTRUCTION CONCERNING THE RIGHTS AND DUTIES OF A WITNESS IN PENAL PROCEEDINGS**

Source: Regulation of the Minister of Justice of 14 September 2020 (item 1620)

As a witness in penal proceedings, you have the following rights and duties:

1. Summoning and manner of questioning the witness

* If you are summoned as a witness, you are required to appear and give evidence (Art. 177 § 1)11[[1]](#footnote-1)
* In exceptional situations (e.g. when you are concerned that the presence of the accused could have an adverse effect on you), you may be questioned by means of a videoconference (Art. 177 § 1a and Art. 390 § 3).­
* If you are unable to appear due to illness, disability or other insurmountable obstacles, you may be questioned at your place of residence (Art. 177 § 2).­
* Prior to the commencement of the questioning, you will be instructed of the penal liability for perjury or for concealment of the truth. In preliminary proceedings, you confirm the fact of receiving the instruction by signing the relevant statement (Art. 190). ­
* In court proceedings, before the commencement of submission of your testimony, you are obliged to take an oath, unless the court, in the absence of objections from the present parties, waives this obligation. If you are a dumb or deaf person, you take the oath by signing the text thereof (Art. 187 and Art. 188 § 3).­
  1. Justifying absences

If you are summoned to appear as a witness, justification of your absence due to sickness (if you are not detained) shall be allowed only upon presentation of a certificate issued by a court doctor. Another certificate or sick leave shall not be sufficient (Art. 117 § 2a). ­Your unjustified failure to appear may result in a fine, detention, and compulsory appearance or arrest (Arts. 285-287).

* 1. Reimbursement of costs

Upon your request submitted orally for the record or in writing within 3 days of the date of completion of the activities with your participation, you shall be entitled to reimbursement of costs incurred in connection with your appearance at the summons (Arts. 618a-618e and Art. 618k).

* 1. Hearing with the participation of an expert and examination
* If there is any doubt regarding your mental state, mental development, your ability of perception or reconstruction of perceptions, you may be questioned without your consent with the participation of an expert doctor or a psychologist, unless you refuse to testify or have been exempted from testifying because of your relationship with the accused (Art. 192 § 2 and 3).
* If you grant your consent, you may undergo a body examination and a medical or psychological examination (Art. 192 § 4).­
* If there is a need to limit the group of suspects or to establish the evidence value of the identified traces, fingerprints, cheek mucosa smear, hair, saliva, handwriting, odour samples may be taken from you without your consent. You may also be photographed and your voice may be recorded. For the same purpose, but only subject to your consent, the expert may apply technical measures to you to monitor your unconscious reactions, i.e. the so-called “lie detector” (Art. 192a § 1 and 2).­

1. Hearing with regard to confidential information

* If the questioning is to concern secret or top secret information in your possession, you may give evidence only after the authorized superior has released you from the obligation to maintain confidentiality thereof (Art. 179 § 1).
* If the questioning is to concern your proprietary or confidential information or information covered by professional secrecy, you may refuse to testify, unless the court or the prosecutor relieves you of the obligation to keep confidentiality (Art. 180 § 1).­
* If the questioning is to concern information which is in your possession and which is covered by notary’s, attorney-at-law’s, legal counsel’s, tax advisor’s, medical, journalist, statistical secret or a secret of the General Counsel to the Republic of Poland, you may be questioned only if this is required in the interest of justice, and the circumstances may not be established based on any other evidence. The decision to admit the questioning shall be made by the court (Art. 180 § 2).­
* If you are a journalist, relieving you from a duty of maintaining secrecy may not extend to identification of the author of a press material, a letter to the editor or persons who reserved their data, unless the case concerns crimes which are subject to the obligation of denunciation (Art. 180 § 3 and 4).
* If you are a person who has been released from the obligation to maintain confidentiality, the court will question you at a closed hearing, unless the release relates to a medical secret and is granted at the consent of the patient or another authorized entity (Art. 181).
* You may not be questioned if you are:

1. a defence counsel or an attorney-at-law or a legal counsel providing legal advice to the detained person - with regard to the facts which come to your knowledge providing legal advice (Art. 178 point 1);
2. a clergyman - with regard to the facts which come to your knowledge during confession (Art. 178 point 2);
3. a mediator - with regard to the facts which come to your knowledge from the accused or the aggrieved party while conducting mediation proceedings, with the exception of information about crimes covered by an obligation of denunciation (Art. 178a).
   1. Refusal to testify or answer a question

* You may refuse to testify if you are the closest relative to the accused (e.g. a spouse, parent, child, cohabiting person or a person in an adoption relation with the accused). You shall also have this right after termination of marriage or adoption (Art. 182 § 1 and 2).
* You may also refuse to testify when, in another case, you are accused of complicity in the offence under investigation (Art. 182 § 3).
* You may refuse to answer a question if the answer could expose you or your closest relative to liability for an offence or a fiscal offence (Art. 183 § 1).­
* You may demand the hearing to be closed, if the contents of your testimony could expose you or your closest relative to dishonour (Art. 183 § 2).­
* If you have the right to refuse to testify, you may exercise such right until the commencement of the first testimony in court proceedings; then the testimony previously submitted by you may not then serve as evidence or be replayed. However, reports on the examination of your body drawn-up in penal proceedings shall be disclosed (Art. 186 § 1 and 2).
* The fact of having the right to refuse to testify shall not release you from the obligation to appear when summoned by the person conducting the proceedings (Art. 177 § 1).­
  1. Exemption from giving testimony or answering a question
* You may be exempted from testifying or from answering questions if you are in particularly close relationship with the accused (Art. 185).
* You may submit an application for exemption from giving a testimony until the commencement of the first testimony in court proceedings; the testimony you have previously submitted may not be used as evidence or be replayed (Art. 186 § 1).­­
  1. Questioning of a witness who is under 15 years of age
* If you are under 15 and you are a victim in a case of a crime committed with violence or an unlawful threat or a crime against freedom, a crime against sexual freedom and decency, or a crime against family and guardianship, you may be questioned as a witness, but only once, and only by the court, in a properly-adapted, friendly room. The questioning shall be recorded. An adult of your choice may take part in the questioning, provided that this does not restrict your freedom of expression. You may be questioned again only in exceptional cases (Art. 185a, § 1-3 and Art. 185d).
* If you are under 15 and you are in possession of important information about a case of a crime committed with violence or an unlawful threat or a crime against sexual freedom and decency, or a crime against family and guardianship, you may be questioned, but only once, and only by the court, in a properly-adapted, friendly room. The questioning shall be recorded. An adult of your choice may take part in the questioning, provided that this does not restrict your freedom of expression. You may be questioned again only in exceptional cases. This method of questioning shall not apply if you have acted as an accomplice in the commitment of the crime covered by the pending penal proceedings, or if the act you have committed is related to the crime covered by the pending penal proceedings (Art. 185b § 1 and 3 and Art. 185d).
  1. Questioning of a witness aggrieved as a result of rape

If you are a victim in a case of rape or sexual abuse, you may be questioned as a witness, but only once and only by the court, in an appropriately-adapted, friendly room. The questioning shall be recorded. An adult of your choice may take part in the questioning, provided that this does not restrict your freedom of expression. If there is a need for another questioning, which may only occur in exceptional cases, the questioning shall be conducted by means of videoconference at your request. At your request, the court will also ensure that an expert psychologist participating in the questioning is a person of the same gender as you, unless this may obstruct the proceedings (Art. 185c and Art. 185d).

* 1. Questioning of a witness who is over 15 years of age
* If you are a minor, but you are over 15 and you are a victim in a case of a crime committed with violence or an unlawful threat or a crime against freedom, a crime against sexual freedom and decency, or a crime against family and guardianship, you may be questioned as a witness, but only once, and only by the court, in a properly-adapted, friendly room, if there is a concern that questioning you in other conditions may have an adverse effect on your mental state.­ The questioning shall be recorded. An adult of your choice may take part in the questioning, provided that this does not restrict your freedom of expression. You may be questioned again only in exceptional cases (Art. 185a, § 4 and Art. 185d).
* If you are a minor, but you are over 15 and you have information regarding the case of a violent crime or an unlawful threat, or a crime against sexual freedom and decency or against family and guardianship, and there is a concern that direct presence of the accused during questioning might have an adverse effect on your testimony, you shall be questioned by means of videoconference. This method of questioning shall not apply if you have acted as an accomplice in the commitment of the crime covered by the pending penal proceedings, or if the act you have committed is related to the crime covered by the pending penal proceedings (Art. 185b § 2 and 3).­­
  1. Personal data of the witness
* Your data concerning your place of domicile and place of work, as well as your telephone number, fax number or e-mail address, shall not be disclosed in the files of the case. They may be disclosed only for the information of the authority conducting the proceedings and only in exceptional circumstances (Art. 148a).
* If there is a danger to your or your closest relatives’ life, health, freedom or property of significant value, the circumstances which might contribute to the determination of your identity may also be kept secret. Until the trial is closed before the court of first instance, you may apply to the court for revocation of this decision (Art. 184 - the so-called anonymous witness).
* Questions asked to you during the questioning may not be aimed at revealing your place of domicile or place of work, unless this is relevant for the resolution of the case (Art. 191 § 1b).
  1. Protection and assistance for the witness
* In the event of a threat to your or your closest relatives’ life or health, you may be granted Police protection for the duration of the procedural activity, and if the degree of threat is high, you may be granted personal protection or assistance with regard to a change of your place of domicile.­ A request for protection should be addressed to the Head of the Provincial Police Force through the authority conducting the proceedings or through the court (Arts. 1-17 of the Act of 28 November 2014 on Protection and Assistance for an Aggrieved Party and a Witness (Journal­ of Laws of 2015, item 21)).
* You and your closest relatives may obtain free legal and psychological assistance from the Network of Assistance for Victims of Crimes (Art. 43 § 8 point 2a of the Act of 6 June 1997 - Executive Penal Code (Journal­ of Laws of 2020, items 523 and 568)) shall not apply. Detailed information can be obtained on the website https://www.funduszsprawiedliwosci.gov.pl or by calling: +48 222 309 900.
  1. Attorney
* If this is required by your interests in the pending proceedings, you may appoint an attorney who may be an attorney-at-law or a legal counsel. If you prove that you may not afford an attorney, the court may, upon your request, appoint an attorney at its own initiative (Art. 87 § 2 and Art. 88 § 1).­
* The court, and in the case of preliminary proceedings - the prosecutor, may refuse the attorney appointed by you to participate in the proceedings, if it decides that this is not required for the defence of your interests (Art. 87 § 3).
  1. Questioning by the consul

If you reside abroad, you may be questioned by a consul. The questioning may only take place if you give your consent thereto. In this case, the provisions regarding the obligation to appear and the related consequences thereof or the provisions admitting a hearing by means of a videoconference, provisions on the protection of the witness, provisions on participation in the hearing of other persons, such as an expert doctor or a psychologist (Art. 26 section 1 point 2 of the Act of 25 June 2015 - the Consular Law (Journal of Laws of 2020, items 195 and 1086)) shall not apply.

Remember that if the presented instruction seems unclear or incomplete to you, you may request the person conducting the proceedings to provide you with additional, detailed information about your rights and obligations.­

You shall be required to submit a statement confirming the receipt of this instruction to the files of the case.

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|  | I confirm the receipt of the instruction |
|  | ........................................................................ |
|  | (date, signature) |

1. Unless another legal basis has been indicated, the provisions specified in brackets mean the relevant Articles of the Act of 6 June 1997 - the Code of Penal Procedure (Journal of Laws of 2020, items 30, 413, 568, 1086 and 1458). [↑](#footnote-ref-1)