**Letter of Rights and Obligations**

**of the Witness**

You have received this Letter because you are a witness.

As a witness, you have the right to know what your rights and obligations are.

Read this Letter carefully.

You are required to sign a statement acknowledging that you have received this Letter.

In addition to the information provided here, you will find the legal provisions from which these rights and obligations arise.

Unless stated otherwise, these are provisions of the Code of Criminal Procedure [*Kodeks Postępowania Karnego*] (Act of 6 June 1997 – Code of Criminal Procedure).

**Your rights and obligations as a witness in criminal proceedings**

1. **Obligation to appear**

If you are summoned as a witness, you must appear and give your testimony. **This is your obligation as a witness** (Article 177 § 1).

# Obligation to excuse your absence

If you have been summoned to appear and cannot attend due to illness, you must provide an excuse for your absence. To do so, you must go to see a court doctor, as only a court doctor can issue a certificate that is recognised as a medical excuse note. No other certificate or document will be recognised as a medical excuse note. You will find a list of court doctors on the court's website (Article 117 § 2a).

|  |
| --- |
| If you neither appear, nor excuse your absence, you may face consequences such as:1. a fine;
2. detention and forced appearance;
3. being arrested (Articles 285-287).
 |

1. **The right to reimbursement**

You are entitled to reimbursement of the costs you incurred in relation to appearing after being summoned (e.g. travel expenses, lost earnings).

If you wish to be reimbursed, you must submit a reimbursement request:

1. during the act itself, you can state that you are requesting reimbursement, which will be recorded in the minutes, or
2. you can submit a written request for reimbursement.

The time limit for filing a request for reimbursement is 3 days from the day the proceeding you attended was concluded (Articles 618a–618e and 618k).

**4. The right to legal aid**

If you feel it is in your best interest, you may appoint a legal representative – an advocate or an attorney at law. The legal representative will represent you in the ongoing criminal proceedings.

If you cannot afford legal representation, the court may appoint a legal representative at your request. However, you must demonstrate that you cannot afford to pay the legal representative’s fees yourself (Article 87 § 2 and Article 88 § 1).

The court, and in the course of pre-trial proceedings, the public prosecutor, may refuse consent to the participation of your legal representative in the proceedings.

This may happen if the public prosecutor or the court considers it not necessary for the defence of your interests (Article 87 § 3).

# 5. The right to the protection of personal data of a witness

Your home address, work address, telephone number, fax number, and email address are not included in the case file. These are included in a separate annex which can be accessed by the authority conducting the proceedings.

The court or the authority conducting the pre-trial proceedings may disclose this data only in exceptional circumstances (Articles 148a and 156a).

Questions put to you during the questioning must not be aimed at revealing your place of residence or place of work. This is only permitted if it is relevant to the outcome of the case (Article 191 § 1b).

If there is a danger to your life, health, freedom or property of significant size, or that of those close to you, circumstances that allow your identity to be revealed may also be kept secret.

You have the right to request that your data be kept confidential. In such an event, your name will only be known to the authority conducting the proceedings, but not, for example, to the defendant. The decision to classify your personal data may be revoked upon your own request. You may file such a request until the conclusion of the trial before the court of first instance (i.e. until the court is satisfied that all the evidence has been taken, and will declare it) (Article 184 – the so-called secret, or anonymous, witness).

# 6. Questioning adapted to the situation of the witness

You may be interviewed or heard by means of a **video conference call.** This is a form of questioning using technical equipment that allows this act to be performed remotely, with simultaneous direct transmission of images and sound (Article 177 § 1a).

**If you are unable to go to the location indicated in the summons due to illness, disability, or any another insurmountable obstacle, you can be interviewed or heard in the place where you are staying, e.g. at home, in hospital (Article 177 § 2).**

If you are a Polish citizen staying **abroad,** and provided you give your consent**,** you may be interviewed or heard by a **consul** (Article 26(1)(2) and (2) of the Act of 25 June 2015 – The Consular Law [*Prawo Konsularne*]).

In such circumstances:

1. there is no statutory obligation to appear;
2. you face no consequences if you fail to appear;
3. you must not be interviewed or heard by means of a video conference call;
4. you do not have the right to the protections afforded to a witness;
5. no other persons, such as a medical expert or psychologist, will be present.

When the hearing takes place in a courtroom and there is a concern that the presence of the defendant in the courtroom might make you feel uncomfortable while testifying, the presiding judge may order **the defendant to leave the courtroom** for the duration of your testimony (Article 390 § 2).

There is also another way to address this issue: in such a situation, you can be heard by means of a **video conference call** (Article 390 § 3).

**7. Instructions and actions preceding the questioning**

Pre-trial proceedings

Before the interview begins, you will be informed about your criminal liability for providing false information or concealing the truth (Article 190 § 1).

You will be given a statement to sign that you have been instructed as above (Article 190 § 2).

Court proceedings

You may request that the hearing be held in camera if the testimony could expose you or a person close to you to dishonour (Article 183 § 2).

Before you testify, you will be informed about your criminal liability for providing false information or concealing the truth (Article 190 § 1)͘.

You are required to be sworn in before giving your testimony. However, the court may decide not to require the oath if none of the parties present object to it.

If you are a mute person or a deaf person, you will be sworn in by signing the text of the oath (Articles 187 and 188 § 3).

|  |
| --- |
| No oath is required: 1. from persons under the age of 17;
2. when there is a reasonable suspicion that the witness, due to a mental disorder, does not understand the meaning of the oath;
3. when the witness is a person suspected of committing an offence which is the subject of the proceedings, or which has a close connection with the act which is the subject of the proceedings, or when the witness has been convicted of that offence;
4. when the witness had been validly convicted of perjury or false accusation (Article 189).
 |

**8. The right to refuse to testify**

You may refuse to make statements or testify:

1) if you are a person close to the defendant (e.g. spouse, parent, child, person in an adoption relationship, cohabiting person). You retain this right even after the marriage or adoption has ended (Article 182 § 1 and 2);

2) if you have been charged in another case with being an accessory to the offence under investigation (Article 182 § 3).

If you have the right to refuse to testify, you may exercise this right until you start giving your first testimony in the court proceedings.

If you have given a witness statement in the pre-trial proceedings, but refuse to testify at the trial, your first statement may no longer be used. It cannot be treated as evidence or reproduced. The statement will be treated as if it had not been given (Article 186 § 1)͘.

Despite your refusal to testify, the inspection reports of your body prepared during the criminal proceedings may be disclosed (Article 186 § 2).

**9. The right to refuse to answer a specific question**

You may refuse to answer a question if answering could expose you or a person close to you to liability for a criminal or fiscal offence (Article 183 § 1).

**10. Testimonial privileges – exemption from testifying or answering questions**

You may be exempted from making statements or testifying, or answering questions, if you are in a particularly close personal relationship with the defendant (Article 185).

You can apply for a testimonial privilege—an exemption from testifying—up until you start giving your first testimony in the court proceedings. In this case, if you have given a statement in pre-trial proceedings, it can no longer be used. It cannot be treated as evidence or reproduced (Article 186 § 1).

Despite your exemption from giving evidence, the inspection reports of your body prepared during the criminal proceedings may be disclosed (Article 186 § 2).

**11. Questioning a witness in the presence of an expert, and medical examinations**

If there are any doubts about your mental state, your mental development, your ability to perceive or reproduce your impressions, you may be questioned in the presence of a medical or psychological expert.

The presence of a medical or psychological expert during your questioning does not require your consent.

However, this is not possible when you have refused to testify or have been exempted from testifying due to your relationship with the defendant (Article 192 § 2 and 3).

If you give your consent, an inspection of your body may be carried out. You may also be examined by a doctor or psychologist (Article 192 § 4).

The presence of a medical or psychological expert is not the same as an examination by a medical or psychological expert.

If, during the course of the proceedings, it will be necessary to determine whether:

1. certain individuals should be excluded from the group of suspects;
2. traces revealed have evidential value:

- your fingerprints, buccal (cheek) mucosa swab, hair, saliva, handwriting samples, smell may be collected. Your consent is not required for this;

- you may also be photographed and your voice may be recorded;

- an expert may administer a so-called lie detector test with your consent, which uses technical measures to monitor the unconscious responses of your body (Article 192a § 1 and 2).

**12. Questioning a witness with special needs (Article 185e)**

If you have a mental disorder, developmental disorder, distorted ability to perceive or reproduce your impressions, and there is a reasonable concern that questioning under normal conditions would adversely affect your mental state or would be significantly hindered, you may be questioned:

1. only if your testimony could be of significant importance to the outcome of the case;
2. only once. **There is an exception to the rule of being questioned only once:** when significant circumstances come to light, the clarification of which requires you to be questioned again, or in the case of granting a motion for evidence filed by a defendant who did not have a defence counsel at the time when you were first questioned. The decision whether you should be questioned again will be made by the court.

The witness is heard by the court with the participation of an expert psychologist in a suitably adapted, comfortable room, or other place adapted to your needs. Your legal guardian, the person under whose permanent custody you remain, the person under whose custody you are currently, or an adult designated by you may be present during your questioning. The psychological expert taking part in the hearing should be a person of the gender you have indicated. This rule does not apply if it could impede the proceedings. The witness hearing shall be recorded (with both video and audio).

**13. Questioning a witness who is a victim of offences under Articles 197-199 of the Criminal Code** (the Act of 6 June 1997 – Criminal Code) **(Article 185c)**

If you are a victim of an offence of rape or sexual abuse, you can be questioned as a witness:

1. only if your testimony is likely to be of significant importance to the outcome of the case;
2. only once. **There is an exception to the rule of being questioned only once:** when significant circumstances come to light, the clarification of which requires you to be questioned again, or in the case of granting a motion for evidence filed by a defendant who did not have a defence counsel at the time when you were first questioned. The decision whether you should be questioned again will be made by the court.

The witness is heard by the court with the participation of an expert psychologist in a suitably adapted, comfortable room. You may file a request that expert psychologist taking part in your hearing should be a person of the gender you indicate in your application. This rule does not apply if it could impede the proceedings. The witness hearing shall be recorded (with video and audio)͘.

**14. Rights and obligations during interviewing and hearing involving confidential information**

If you are to be questioned in relation to information in your possession that is classified as secret or top secret, you may only give a statement and testify once you have been relieved of the obligation of secrecy by your superior – a person who has the authority to do so (Article 179 § 1).

If you are to be questioned in relation to information in your possession that is proprietary, confidential, or protected by professional secrecy, you may refuse to give a statement and testify unless the court or the public prosecutor releases you from the obligation of secrecy (Article 180 § 1).

If you are to be questioned in relation to information in your possession which is protected by notarial, legal, tax adviser, medical, journalistic, statistical or General Counsel to the Republic of Poland [*Prokuratoria Generalna RP*] secrecy, or attorney-client privilege, you may be questioned if:

1) it is necessary for the interest of the administration of justice, and

2) your statement is the only evidence from which circumstances important to the case can be established.

The decision to allow you to be questioned is made by the court (Article 180 § 2).

If you are a journalist, you cannot be exempted from the obligation of secrecy concerning data that would lead to the disclosure of the author of press material, a letter to the editor or other similar material, or the identification of persons who have requested that their data remain confidential. This rule does not apply when it comes to offences that you are obligated to report (Article 180 § 3 and 4). These offences are listed in Article 240 § 1 of the Criminal Code (e.g. murder, unlawful imprisonment, terrorist offences).

If you are a person who has been exempted from secrecy, you will be heard by the court at a hearing conducted in camera. This rule does not apply to a person who is exempted from medical secrecy or doctor’s confidentiality—with the consent of the patient or other authorised subject (Article 181). In this case, the hearing is public.

**15. Prohibition of questioning**

You cannot be questioned if you are:

1. the defence counsel for the suspect (the defendant) or a lawyer who provided legal advice to the detainee. The prohibition of questioning applies to facts of which you became aware while giving legal advice or conducting a case (Article 178(1));
2. a member of clergy. The prohibition of questioning applies to facts of which you have become aware in confession (Article 178(2));
3. a mediator. The prohibition of questioning applies to facts about which you have learnt from the defendant or the victim while conducting the mediation proceedings. The prohibition of questioning does not apply to information about offences that you are obligated to report (Article 178a). These offences are listed in Article 240 § 1 of the Criminal Code (e.g. murder, unlawful imprisonment, terrorist offences).

**16. The right to obtain protection**

If there is a threat to your life or health, or that of persons close to you, you can obtain protection of the Police for the duration of the procedural act to which you have been summoned.

If the threat level is high, you and your loved ones may obtain personal protection or relocation assistance.

|  |
| --- |
| In order to obtain protection, an application must be addressed to the Provincial Commander [*Komendant Wojewódzki*] (or Capital City Commander [*Komendant Stołeczny*]) of the Police.NOTE: The application must be submitted through the authority conducting the proceedings, or the court (Article 1–17 of the Act of 28 November 2014 on Protection and Assistance to Victims and Witnesses).This means that you must indicate two addressees in your application (letter): 1. the authority conducting the pre-trial proceedings, or the court, and
2. the Provincial Commander (or Capital City Commander) of the Police.

**Provincial (or Capital City) Commander of the Police** through**the authority conducting the****proceedings** You submit the request to the authority conducting the pre-trial proceedings or to the court. The authority that has received the request will forward this requestto the relevant Commander. |

**17. The right to obtain assistance**

You and your loved ones can obtain free psychological assistance from the Network for Assistance for Victims of Crimes [*Sieć Pomocy dla Osób Pokrzywdzonych Przestępstwem*] (Article 43 § 8 item 2a of the Act of 6 June 1997 Executive Criminal Code [*Kodeks Karny Wykonawczy*]).

**For detailed information on this assistance, please visit:** [**https://www.gov.pl/web/sprawiedliwosc/fundusz-sprawiedliwosci**](https://www.gov.pl/web/sprawiedliwosc/fundusz-sprawiedliwosci) or call **+48 222 309 900**.

**If anything is unclear to you or you need more details, you can always ask the person conducting the proceedings in your case. The person conducting the proceedings must provide you with a full and clear explanation of your rights and obligations.**