

Witness Protection Act

Passed 15 June 2005

(RT¹ I 2005, 39, 307),

entered into force 21 July 2005.

Chapter 1

General Provisions

§ 1. Scope of application 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 gravity of a criminal offence in question, the significance of the evidence given by the person in the criminal matter and the extent of the risk to the protected person are taken into account. Witness protection measures may 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 means such acts of persons belonging to criminal organisations person suspected of a criminal offence accused convicted offenders or persons acting in their interest with the intent to psychologically or physically affect a person giving evidence in criminal proceedings aimed at forcing the person to withdraw the evidence or change his or her earlier statements, also acts which pose a danger to the health or property of a person specified in § 5 of this Act.

§ 4. Witness protection authority

- (1) The Central Criminal Police organises witness protection. Other state and local government bodies and agencies and legal persons in public law are required to assist in witness protection within the limits of their competence.
- (2) Supervision over witness protection shall be exercised by the Public Prosecutor's Office.
- (3) The Central Criminal Police organises international co-operation in witness protection with competent foreign agencies and international organisations pursuant to international agreements.

§ 5. Persons placed under witness protection

- (1) The following persons are to be 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 in 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, the following are protected persons:
 - 1) persons who may know facts relating to a subject of proof in a criminal matter 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 an impartial manner or waive exercising the rights or obligations arising from the person's office, but also to avenge the person conducting the proceedings for his or her acts performed in official duties.

Chapter 2

Conditions for application of witness protection

§ 6. Conditions for application of witness protection

- (1) Witness protection is applied if:
 - 1) a person who may know facts relating to a subject of proof in a criminal matter is under actual risk of falling subject to unlawful influence and the person consents to co-operate with the witness protection authority;
 - 2) an person conducting the proceedings is under actual risk of falling subject to unlawful influence specified in clause 5 (2) 2) of this Act and the person 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 the written consent of the person placed under witness protection.

§ 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 witness protection agreement is entered into and any delay in taking the person under protection would hinder 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 specified 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 for the protection if the person, due to his or her temporary physical or mental status or whereabouts, is not able to give consent or if it is not possible 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 consent is not obtained, the application of the protection measures shall be terminated.

(4) In the cases listed 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 the pre-trial proceedings;
- 2) during the judicial proceedings;
- 3) after the judicial proceedings.

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

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

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:

- 1) a reasoned written request of the person conducting proceedings in the corresponding criminal matter together with the written consent of the protected person;
 - 2) a reasoned request of the person conducting the proceedings or an official exercising supervisory control over such official in case any of the circumstances specified in clause 5 (2) 2) of this Act occur.
- (2) In 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 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 are 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 also be used to protect the health and property of the family members or close relatives of the protected person;
- 7) which protection measures 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 if 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) have access to the existing surveillance and investigation material;
 - 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 agencies maintaining databases and registries;
 - 6) conduct surveillance activities in order to ascertain circumstances relating to the application of witness protection pursuant to the Surveillance Act.
- (3) The verification and analysis of the circumstances specified in subsection (1) of this section shall be made within thirty days as of the initiation of the witness protection procedure.

§ 11. Summary of suitability for witness protection

- (1) On the basis of the results of the verification and analysis made in the course of the processing of the application for witness protection, an official of the witness protection authority shall make a summary of suitability for witness protection which sets out the information on the results of the verification and the opinion whether the person is eligible for witness protection.
- (2) The head of the witness protection authority or an official appointed by him or her shall submit the summary of suitability for witness protection to the Public Prosecutor's Office.

§ 12. Proceedings in Public Prosecutor's Office

- (1) The Chief Public Prosecutor or a public prosecutor appointed by him or her grants the permission for entry into the witness 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 witness protection agreement, the Chief Public Prosecutor or a public 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 public prosecutor responsible for the legality and efficiency of the pre-trial criminal proceedings is asked with respect to the entry of the witness protection agreement.

(3) In deciding on the grant of entry into a witness protection agreement, the following, among other, 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) The Chief Public Prosecutor or a public prosecutor appointed by him or her has the right to make amendments to the draft witness protection agreement, also 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 persons 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 Chief Public Prosecutor or a public prosecutor appointed by him or her refuses to grant permission for entry into the witness protection agreement;
- 4) upon entry into witness protection agreement with the protected person;
- 5) upon the death of the protected person.

§ 14. Witness protection agreement

- (1) By entering into a witness 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) The witness 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 witness protection agreement enters into force as of its signing by the parties.
- (4) A witness 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 facts related to the application of witness protection which known or may become known to the protected person, until 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 complains to the witness protection authority against the acts of the officials of the witness protection authority;
 - 7) the right of the witness protection authority to terminate the witness 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 must be obtained from the family members of close relatives of the protected person who are subject to the conditions of the witness protection agreement, and such consent shall be annexed to the agreement.
- (6) The format of witness witness protection agreements shall be established by a regulation of the Minister of Internal Affairs.

§ 15. Amendment of witness witness protection agreements

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

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

§ 16. Termination of witness protection agreement

- (1) A witness protection agreement shall be terminated in the following cases:

- 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 witness protection agreement was entered into in a case specified in subsection 9 (2) of this Act and the protected person has restricted active legal capacity at the time of the termination of the witness protection agreement;
 - 4) if the protected person is in material breach of the conditions of the witness protection agreement;
 - 5) upon the death of the protected person.
- (2) A witness protection agreement is terminated with the permission of the Public Prosecutor's Office, except in cases specified in clauses (1) 2), 3) and 5) of this section.
- (3) Upon termination of a witness 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, taking into account the ability of the person with restricted active legal capacity to comprehend. The decision to whether or not to terminate a witness protection agreement is made by the Chief Public Prosecutor or a public prosecutor appointed by him or her.
- (4) It is not permitted to terminate a witness protection agreement on the basis of the provisions of clauses (1) 1) and 4) of this section earlier than after five twenty-four hour periods have passed from the forwarding of the corresponding 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 procedure at the request of a foreign competent authority or an international organisation pursuant to international agreements. 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 between the competent authorities with respect to each person protected by a foreign state or an international organisation.
- (2) A witness protection agreement to be 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 who shall, within five working days as of the receipt of corresponding request, decide on the grant of the consent for entry into the agreement.
- (3) An agreement entered into with a competent agency 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 the compensation of the expenses to the witness protection authority;
 - 5) procedure for compensation for non-contractual damage;
 - 6) 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 conditions 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) Summary of suitability for witness protection need not be prepared in the case of a person protected by a foreign state or an international organisation and a witness protection agreement need not be entered into between a person protected by a foreign state or an international organisation and the witness protection authority of the Republic of Estonia.

§ 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 listed in subsection (1) of this section may be applied either separately or in combination.

(3) In applying witness protection measures, the witness protection authority has the right to conduct surveillance activities pursuant to the Surveillance Act.

(4) The documents necessary for the application of a witness protection measure specified in a witness protection agreement are issued and the necessary amendments in databases and registries are made, at a reasoned request of the head of the witness protection authority, by an administrative authority or a legal person into whose competence the issue of corresponding documents or making of such amendments falls.

§ 19. Information related to witness protection

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 maintained in protection files. A separate protection file shall be opened for each individual protected person. The procedure for keeping and maintaining protection files shall be established by a regulation of the Minister of Internal Affairs.

Chapter 4

Implementing Provisions

§ 20. The State Secrets Act (RT I 1999, 16, 271; 2004, 54, 387) shall be amended as follows:

1) clause 5 17) is amended by adding the words "and the witness protection sub-unit of the Central Criminal Police" after the words "the Security Police Board";

2) clause 9¹) is added to § 6 worded as follows:

„9¹) "information collected by the witness protection sub-unit of the Central Criminal Police in the course of surveillance activities. A medium containing such information shall be classified for twenty-five years;"

3) clause 13¹ is added to § 6 worded as follows:

„13¹) the structure of the witness protection sub-unit of the Central Criminal Police, the functions of the subordinate units and the detailed duties of the staff of the subordinate units, the classification of the budget of expenditure and investments. A medium containing such information shall be classified for fifty years;"

4) clause 9) is added to § 7 worded as follows:

„9) the methods and tactics of the application of witness protection, and the application of protection measures and related information. A medium containing such information shall be

classified for seventy five years. Classification shall expire if twenty years have passed since the death of the protected person but not less than fifty years since classification of the medium;"

5) section 25¹ is added to the Act worded as follows:

„§ 25¹. Access of protected persons to state secrets

A person in respect of whom witness protection measures are applied pursuant to the Witness Protection Act has the right to access state secrets concerning his or her protection without an access permit or compliance with the requirement to pass a security check, to an extent which is unavoidably necessary. Such person shall be notified of the obligations provided for in § 14 of this Act."

§ 21. The Surveillance Act (RT I 1994, 16, 290; 2004, 87, 593) shall be amended as follows:

1) the existing text of § 7 is considered subsection (1) and the section is amended by adding subsection (2) worded as follows:

„(2) The documents necessary for exercising the rights of a surveillance authority are issued and the necessary amendments in databases and registries are made, at a reasoned request of the head of the surveillance authority or an official appointed by the him or her, by an administrative authority or a legal person into whose competence the issue of corresponding documents or making of such amendments falls.";

2) clause 7¹) is added to subsection 9 (1) worded as follows:

„7¹) the need to collect information necessary for the application of witness protection;"

3) clause 3¹) is added to subsection 10 (1) worded as follows:

„3¹) an application by the head of the witness protection authority or an official appointed by him or her;"

4) in subsection 10¹ (4), the words "in clauses 9 (1) 1)-3)" are substituted by the words "in clauses 9 (1) 1), 2), 3) and 7¹)";

5) clause 3¹) is added to subsection 11 (2) worded as follows:

„3¹) if the witness protection agreement is terminated;"

6) in subsection 11 (4), the words "in clauses 9 (1) 1)-3)" are substituted by the words "in clauses 9 (1) 1), 2), 3) and 7¹)";

7) subsection (3¹) shall be added to § 12 worded as follows:

„(3¹) In witness protection, the witness protection sub-unit of the Central Criminal Police has the right to conduct the following surveillance activities in addition to the surveillance activities specified in subsection (1) of this section:

1) covert examination of postal or telegraphic items;

2) wire tapping or covert observation or recording of information transmitted through technical communication channels or other information.";

8) section 13² is added to the Act worded as follows:

„§ 13². Permission of court to conduct surveillance activities in witness protection

(1) Permission for surveillance activities specified in subsection 12 (3¹) of this Act is granted by the Chairman of Tallinn City Court or a judge designated by him or her at a reasoned written request of the Chief Public Prosecutor or a public prosecutor appointed by him or her.

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

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

(4) In cases of urgency, the surveillance activities specified in 12 (3¹) of this Act may be conducted on the basis of an order of the head of the Central Criminal Police or an official appointed by him or her, without the permission of the judge. The Chief Public Prosecutor or a public prosecutor appointed by him or her shall promptly notify the judge of the surveillance activity conducted, and the judge shall, by a ruling, decide on the permissibility of the surveillance activity conducted or grant of permission for the continuance of the conduct of the surveillance activity.

9) in subsection 19 (2), the words "in clauses 9 (1) 1)-3)" are substituted by the words "in clauses 9 (1) 1), 2), 3) and 7¹)".

§ 22. Subsection (6) is added to § 67 the Code of Criminal Procedure (RT I 2003, 27, 166; 2004, 56, 403) worded as follows:

„(6) In order to ensure the safety of a witness, the provisions of the Witness Protection Act may be applied to the witness regardless of whether the witness is declared anonymous.”

¹ RT = *Riigi Teataja* = State Gazette