

Law n° 682/2002

on Witness Protection*

The Parliament of Romania adopts the following law.

Chapter I

General provisions

Art.1. - The present law includes provisions related to the assurance of protection and assistance of witnesses, whose lives, physical integrity or freedom is threatened as a consequence of them being in possession of certain information or data regarding the perpetration of certain serious offences, which they provided or agreed to provide to judicial bodies and which are crucial in the disclosing of perpetrators and solving of certain cases.

Art.2. - For the purpose of the present law, the terms and expressions below have the following meaning:

a) witness means the person who is in one of the following situations:

i) Is, according to the Code of Penal Procedure, a witness and, through his / her depositions, discloses information and data crucial for finding the truth regarding serious offences or which contribute to preventing extreme damage to be caused by committing such offences or to recuperation thereof;

ii) The person who, without being in a procedural position, contributes, through the crucial information and data he / she possesses to uncovering the truth in cases of serious offences or to preventing major damage to be caused by committing such offences or to recuperation thereof. This category includes a person who is considered as a perpetrator in another case.

iii) The person who is executing an imprisonment sentence and through the crucial information and data he / she possesses to uncovering the truth in cases of serious offences or to preventing major damage to be caused by committing such offences or to recuperation thereof.

b) state of jeopardy means the situation of the witness in the sense provided at letter a), his / her family members or close persons whose lives, physical integrity or freedom are threatened, following the information and data provided or which he/she agreed to provide to judicial bodies or to the depositions made;

* Source : www.legislationline.org

c) protected witness means the witness, his / her family members or close persons, who have been included in the Witness Protection Program, according to the present law;

d) family members of the protected witness means his / her spouse, parents and children;

e) person close to the protected witness means the person to whom the witness is connected through strong affective feelings;

f) Witness Protection Program, hereinafter referred to as the Program, means the specific activities developed by the National Office for Witness Protection, provided in art.3, with the support of the central and local public administration, for the purpose of protecting the lives, physical integrity and health of the persons who have acquired the position of protected witness within the conditions provided by the present law;

g) urgent measures means the temporary specific activities which can be developed by the Police unit investigating the cause or, as the case may be, by the body administrating the detainment location, as soon as it records that the witness is in a state of jeopardy;

h) serious offence means one of the following offences: offences against peace and mankind; offences against state safety or against national security, terrorism, slaughter, qualified murder, murder in the first degree, offences related to drug trafficking and trafficking in human beings, money laundering, coin or other values falsification, offences related to non-compliance with the regulations for fire guns and ammunition, offences related to non-compliance with the regulations for nuclear substances or other radioactive materials, corruption offences, offences against the patrimony with extremely serious consequences, as well as any other offence for which the law provides imprisonment with a special minimum of over 10 years;

i) protection protocol means the confidential agreement between the National Office for Witness Protection and the protected witness regarding the protection and assistance to be provided to the protected witness, their obligations, and the situations where protection and assistance do not apply;

j) the support plan includes the protection and assistance measures enforced in relation to each protected witness;

k) major damage is the damage, resulting from an offence, beyond the equivalent in LEI of the amount of €50,000;

l) group or criminal organisation represents the structured group formed by 3 or more persons who functioned for a period of time and action by agreement , with the purpose of committing of one or several serious offences for obtaining directly or indirectly a material benefit or any other kind of advantage.

Chapter II

Witness Protection Program

Art.3. - (1) The National Office for Witness Protection, hereinafter referred to as the ONPM, will be set up within the Ministry of Interior, under the authority of the General Inspectorate of the Romanian Police.

(2) The ONPM has the following attributions:

a) receives the requests for inclusion within the Witness Protection Program; and the ordinance, respectively the closure for inclusion provided in article 8.

b) Takes all necessary measures for the inclusion in the Program and supervises its achievement in the best conditions possible;

c) designates a contact person between the protected witness and the ONPM, and another person nominated in the Protocol, to ensure this connection in critical situations;

d) concludes the Protection Protocol with each protected witness, draws up and implements its support plan<

e) organises a specific database in which it includes, stores and analyses proposals for inclusion in the Program;

f) assures the confidentiality of the data and information managed;

g) manages, with the approval of the Minister of Interior, the budget necessary for the implementation of the Program, budget coming form the state funds, and from external programs.

(3) The necessary budget for the implementation of the Program will be included into a special chapter of the budget of the Ministry of Interior, with the title "Funds for the Witness Protection Program".

Art.4 - (1) Inclusion of one person in the Program is possible only provided the following conditions are cumulatively met:

a) the person is a witness in the sense provided by art.2 letter. a), d) or e);

b) the person is in a state of jeopardy in the sense provide by art.2 letter b);

c) there is a motivated proposal from the competent bodies.

(2) There can be included in the Program a person who, in a different case, is in the position of:

- a) organizer or leader of a criminal group or criminal organization;
- b) instigator or author of the offences of murder, qualified murder or murder in the first degree.

Art.5. - The criminal investigation body, at the stage of criminal prosecution and the prosecutor, at the stage of judgment, are entitled to, based on a motivated proposal, require to the prosecutor, respectively to the court, to include in the Program a witness, one of his / her family members or a close person, as the case may be.

Art.6. - (1) The proposal of inclusion in the Program must include:

- a) information related to the respective criminal case;
- b) personal data of the witness;
- c) the data and information provided by the witness, as well as their crucial character in the pursuit for truth;
- d) the circumstances in which the witness acquired the data and information provided or which he is going to provide;
- e) any elements which may prove the witness' state of jeopardy;
- f) estimation of the possibilities to prevent or, as the case may be, recuperate the prejudice caused by the offence;
- g) the persons who are aware about the data and information possessed by the witness and about the fact that he / she has provided them or is going to provide them to the judicial bodies;
- h) a psychological evaluation of the witness and of other persons proposed to be included in the program.
- i) the risk which the witness and the other persons for whom inclusion in the Program is requested carry for the community where they will relocate
- j) data related to the financial situation of the witness;
- k) any other relevant information for the evaluation of the witness' situation and for its inclusion in the Program.

(2) The proposal of inclusion in the Program must be supported by the written agreement of the person for which inclusion in the Program is requested and by an evaluation made by ONPM regarding the possibility of the inclusion of the person in that Program.

Art.7. - The prosecutor or, as the case may be, the court will decide on the proposal of inclusion in the Program, through ordinance, respectively closure, within the shortest time possible, but not later than 5 days from the moment when the proposal was received.

Art.8. - (1) Provided that the prosecutor or the court agrees with the proposal, they will communicate to the ONPM the ordinance, respectively the closure for inclusion in the Program of the respective person, and the ONPM will take all necessary measures to elaborate and implement the support plan.

(2) If, during the investigation or during the trial, there are new elements to those included in the initial proposal, a new proposal for the inclusion in the Program can be made.

Art.9. - (1) Within 7 days from issuance of the ordinance or of the closure for inclusion in the Program, the ONPM will conclude a written Protection Protocol with each witness, family member or person close to the witness for whom inclusion in the Program has been ordered.

(2) The persons provided in paragraph (1) acquire the position of protected witness at the moment of signature of the Protection Protocol.

(3) In case the persons referred to in para.1 are minors, the Protection Protocol will be signed, by their legal representatives. If the signature of the Protection Protocol cannot be done by the legal representative or if this signature interfere with the interests of the minor or if the legal representative refuses to sign despite the fact that the prosecutor/instance believes that the minor must be introduced in the Program, the Protection Protocol will be signed by the minor himself, with the approval of the prosecutor/instance.

(4) ONPM will communicate to the prosecutor/court the beginning of the inclusion in the Program within 3 days from the date of the conclusion of the protection protocol.

Art.10. - The Protection Protocol includes:

- a) the obligations of the protected witness;
- b) the obligations of the ONPM;
- c) the designated contact persons and the conditions in which they develop their activities;
- d) the situations where protection and assistance cease.

Art.11. - The protected witness will have the following obligations:

- a) to provide the information and data crucial in the pursuit of truth in the case;

- b) to observe the measures established by the Support Plan;
- c) to refrain from any activity which might endanger or compromise the Program enforcement;
- d) not to contact any known person or persons from criminal environments, in case of measures taken based on art.12 para.2 let.e)-h) and of assistance measures provided at art.12(3);
- e) to immediately inform the ONPM in relation to any change that occurred in his / her personal life and in the activities he / she develops along the duration of Program enforcement, as well as in the situation of accidental encounters with persons provided at letter d).

Art.12. - (1) The ONPM is under obligation to put up a support plan for each protected witness, to include protection and assistance measures, as well as to implement them.

(2) The protection measures which may be provided in the support plan, solely or cumulated, are:

- a) protection of the identification data of the protected witness;
- b) protection of his / her deposition;
- c) hearing of the protected witness, by the judicial bodies, under a different identity than the real one, or through special modalities of image and voice distortion;
- d) protection of detained witness, provisional arrest or arrest with a view to serving an imprisonment sentence, in collaboration with the bodies administrating the detainment locations;
- e) increased measures for safety of residence, and for protection of witness transportation towards and from the judicial bodies;
- f) modification of residence,
- g) change of identity;
- h) change of look.

(3) The assistance measures that may be provided in the Support Plan are, as the case may be:

re-insertion in a different social environment;

- a) re-insertion in another social environment

- b) professional re-qualification;
- c) change or provision of the workplace;
- d) provision of an income until a workplace is found.

Art.13. - (1) The protected witness keeps contact with the ONPM through a contact person designated by the latter, according to the conditions stipulated in the Protocol.

(2) Where the protected witness notices the possibility that his / her residence or identity may be disclosed as a result of non-carriage or miscarriage of the attributions of the contact person, he / she may contact other person nominated in the Protection Protocol for the situations provided in art.3 para.2 letter c).

Art.14. - (1) Protection and assistance granted to the witness, which is in a state of jeopardy and to the protected witness, will be assured, according to the present law, by the Police units, or, as the case may be, by the ONPM.

(2) The protection and assistance of the witness being in jeopardy and of the protected witness, if they are executing a deprivation of liberty punishment, are assured, according to this law, by the bodies who administrate the detainment locations, or as the case may be, by the ONPM.

Art.15. - (1) The Police unit or, as the case may be, the body administrating the detainment location may enforce urgent measures for the witness in a state of jeopardy and who needs immediate protection measures, which are to be communicated to the Prosecutor within 24 hours.

(2) The urgent measures may be enforced for a determined period, until imminent danger ceases or until witness is included in the Program.

Art.16. - (1) The documents related to the witness' inclusion in the Program will be kept by the ONPM in conditions of maximum security.

(2) The documents containing data about the witness' real identity can be introduced in the criminal file only subsequent to disappearance of the jeopardy which determined the witness' inclusion in the Program.

Art.17. - (1) The Program will cease in one of the following situations:

- a) following the request of the protected witness, presented in writing and sent to the ONPM;
- b) provided that the protected witness testifies a false deposition during the criminal trial;
- c) provided the protected witness intentionally commits an offence;

d) provided there is strong evidence or indications that, subsequent to inclusion in the Program the protected witness has joined a criminal group or organisation;

e) provided the protected witness does not obey the obligations established through the Protection protocol or he/she communicates false information related to any aspect of its situation;

f) provided the life, physical integrity or freedom of the protected witness are no longer threatened;

g) provided the protected witness dies.

(2) Ceasing of the Program will be ordered by the Prosecutor, through ordinances, or by the court, by closure.

Art.18. - (1) The ONPM will inform in writing the Prosecutor or, as the as the case may be, the court in relation to the existence of any of the situations provided in art.17.

(2) The prosecutor, respectively the court will analyze the situation within the shortest time possible and will communicate to the ONPM the ordinance or the closure ordering ceasing or continuation of the Program.

(3) In the situation provided in art.17 letter g) Program will cease ex officio, at the moment when the Prosecutor or the court receives the ONPM communication, and the application of the Program will continue for the family member or the person close to the witness, included in the Program.

Chapter III

Final provisions

Art.19. - The person who is a witness according with art.2 let.a) pct.1 and 2, who committed a serious offence and, before or during the criminal investigations of during the trial denounces or facilitates the identification and the punishment of other persons who have committed such offences, will be punished with a half of the penalty provided by law.

Art.20. - (1) Intentional disclosure of the real identity o, the home or residence of the protected witness, as well as of any other information leading to his / her identification, provided that the witness' life, physical integrity or health is endangered, will be punished by 1 to 5 years imprisonment.

(2) Punishment will be 5 to 10 years imprisonment provided that:

a) the offence was committed by a person who was aware of this data during the exercise of his work attributions;

b) the witness' physical integrity or health have been seriously damaged;

(3) Provided that the offence resulted in the victim's death or suicide, punishment will be 15 to 25 years imprisonment.

(4) Provided that the offence regulated in para.2 let.a) is committed by negligence, the punishment will be 2 to 5 years imprisonment.

Art.21. If the protected witness mentioned in art.2 let.a) misleads the judicial body or the judge by false data and information, the punishment will be 5 to 10 years imprisonment

Art.22. The Government will present to the Parliament annual reports related to the way in which the Program has been achieved.

Art.23. - The funds necessary for the implementation of the Program and of the urgent measures will be provided from the amounts allocated for this purpose from the state budget through the annual budgets of the Ministry of Interior or allocated from external programs.

Art.24. - (1) For the application of this law, the Ministry of Interior, the Ministry of Justice and the Public Ministry will collaborate with the institutions of the national security system where the latter are involved in witness protection actions.

(2) The public institutions mentioned in paragraph (1) will be authorised to cooperate directly with the similar structures in other countries, as well as with other international bodies with attributions in this field, provided that the international conventions to which Romania is a party are observed.

Art.25. - (1) The present law will enter into force 30 days from its publishing in the Official Journal of Romania, Part I.

(2) The Ministry of Interior and the Ministry of Justice will, within 60 days from the date of entering into force of the present law, draw up its Enforcement Regulation, to be approved by Government decision.

This law has been adopted by the deputy Chamber and by the senate at their common session of 9.12.2002, in line with the provisions of article 74 al.1 and art.76 al. 2 of the Constitution of Romania.

President of the Deputy Chamber

Valer Dorneanu

President of the senate

Nicolae Vacaroiu

Bucharest, 19.12.2002.

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