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Pro Victims Justice through an Enhanced Rights Protection and Stakeholders Cooperation

THE VICTIMS RIGHTS AND ASSISTANCE MECHANISM IN ROMANIA

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Legislative Framework

- ▶ **Law no. 211 of 27 May 2004 on certain measures to ensure the protection of crime victims.**
- ▶ **Law no. 678 of 21 November 2001 for the prevention and combating of human trafficking.**
- ▶ **Decision no. 299 of 13 March 2003 for the approval of the Regulation for the enforcement of the Law no. 678 of 21 November 2001**
- ▶ **Law no. 217 of 2003 on the prevention and combating of family violence. The law is republished under the provisions of Art. 248 of Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code.**
- ▶ **Criminal Code and Criminal Procedural Code**

General aspects of the rights of victims in the criminal proceedings

- ▶ **The victims' right to receive information from the first judicial body they present to.**
- ▶ **Filing the complaint.** The complaint is the notification made by a natural or legal person regarding an injury caused by an offense.
- ▶ **The status of injured person.** The person who has suffered an injury as result of an offence has the status of *injured person* in the criminal proceeding, having a series of procedural rights.
- ▶ **Cases where the prosecution is set in motion at the prior complaint of the injured party.**
- ▶ **The right to consult a mediator, in cases permitted by law** (Mediation is a way of settling the conflict amicably, with the help of a third party mediator. This can only be done with the consent of the parties involved. In the criminal side of the trial, mediation can only take place for offenses for which, according to the law, the withdrawal of the preliminary complaint or the reconciliation of the parties removes the criminal liability).

General aspects of the rights of victims in the criminal proceedings

- ▶ **The injured party has the following rights:**
- ▶ the right to bring a civil action (as part of the criminal trial) in order to recover the damage from the perpetrator (*if the injured party did not become civil party in the criminal trial, she/he may address the civil court for the damages*). The civil action may be exercised by the injured party or by his/her successors.
- ▶ the right for compensation from the perpetrator.
- ▶ the right of access to the file, under the law provisions.
- ▶ the right to be informed of the stage of the criminal prosecution.
- ▶ the right to be heard; the right to ask questions to the defendant, witnesses and experts.

General aspects of the rights of victims in the criminal proceedings

- ▶ **The injured party has the following rights:**
- ▶ the right to legal assistance and representation throughout the criminal proceedings.
- ▶ the right to free legal assistance in certain cases.
- ▶ the right to propose evidence, to raise exceptions and to draw conclusions, as well as to make any other requests related to solving the criminal aspect of the case.
- ▶ the right to benefit free of charge from an interpreter when she/he does not understand, does not express himself/herself well or cannot communicate in Romanian language.
- ▶ the right to complain against the acts of the prosecution authorities if they have harmed his/her legitimate interests.

Law no. 211/2004 on certain measures for the protection of victims of crime

- ▶ Psychological counselling is granted free of charge upon request to the victims of the following offence categories (victims of attempts to the offences of murder and serious murder; victims of domestic violence offenses, victims of intentional offences that resulted in grievous bodily harm to the victim; victims of rape, sexual assault, sexual intercourse with a minor and sexual abuse of minors, victims of human trafficking). *Free psychological counselling shall be granted on a period of 3 months (adults) and in cases of minors on a period of up to 6 months.*
- ▶ State financial compensation received by the victim and may also be obtained by the spouse, children and dependents of the deceased person for the above offenses (*compensation may be requested by a Romanian citizen; a foreign citizen or a stateless person legally residing in Romania, a citizen of a Member State of the European Union, legally present on the territory of Romania at the time the offense was committed; a foreign citizen or a stateless person residing on the territory of a Member State of the European Union, legally present on the territory of Romania at the time the offense was committed*) Compensation shall be granted to the victim if she/he notifies the criminal investigation bodies within 60 days of the date when the offense was committed or, if it was unable to notify the authorities, within 60 days from the date when the state of impossibility ceased.

Law no. 211/2004 on certain measures for the protection of victims of crime

► State Compensation

- If the perpetrator is known, financial compensation may be granted if the following conditions are met: the victim filed the application for financial compensation within one year from the moment when the criminal court decision remained final, the victim was a civil party in the criminal proceedings, the perpetrator is insolvent or missing, the victim has not been fully compensated for the damage suffered by an insurance company.
- If the perpetrator is unknown, the victim may file the application for financial compensation within 3 years from the date when the offense was committed.
- *If the victim is a juvenile/minor and his legal representative has not filed the application for financial compensation within the prescribed time limits, these deadlines begin to run from the date the victim reaches the age of 18.*

Law no. 211/2004 on certain measures for the protection of victims of crime

► State Compensation

- Financial compensation is granted for the following categories of prejudice suffered by him / her for the offense:
- hospitalization expenses and other categories of medical expenses incurred by the victim.
- material damage resulting from the destruction, degradation or inaction of the victim's property or from dispossession as result of the offenses.
- the winnings of which the victim is deprived of the offense.
- funeral expenses.
- the maintenance of which the victim is deprived of the crime.
- *the limit of an amount equivalent to 10 gross national minimum wages set for the year in which the victim made the request for financial compensation.*
- Amounts of money paid by the offender as civil damages and the victim's indemnity from an insurance company for the damage caused by the offense is deducted from the amount of the financial compensation granted by the State to the victim.

Law no. 211/2004 on certain measures for the protection of victims of crime

- ▶ **Free legal assistance** is granted upon request *to victims of offenses* (victims of attempts to the offences of murder and serious murder; victims of domestic violence offenses, victims of intentional offences that resulted in grievous bodily harm to the victim; victims of rape, sexual assault, sexual intercourse with a minor and sexual abuse of minors, victims of human trafficking) *if the criminal offence was committed in Romania or if the criminal offence was committed abroad but the victim has residence in Romania and the trial takes place in Romania.*
- ▶ Free legal aid can be granted upon request also to victims of other crimes, if the monthly income per victim's family member is at most equal to the country's gross minimum basic salary for the year in which the victim filed the request for free legal aid.
- ▶ The application for free legal assistance shall be submitted *to the court* .
- ▶ In addition to the provisions of Law no. 211/2004, the Criminal Procedure Code provides, as a general rule, that whenever the judiciary considers that for some reason the injured person cannot defend himself/herself, if she/he has not chosen a lawyer, *orders the designation an ex officio lawyer.*

Law no. 211/2004 on certain measures for the protection of victims of crime and Decision 180/17 December 2016 of the National Association of the Romanian Bars

► Legal assistance

► Local Bars - Judicial Assistance Service (S.A.J) – Bars provide legal assistance in the following forms:

a) compulsory legal assistance.

b) extrajudicial assistance. (*filing of petitions, complaints, as well as in representation in front of public authorities or institutions other than the judicial bodies*). The lawyer who provided extrajudicial assistance becomes incompatible with providing legal assistance for the same case in front of judicial bodies.

c) free legal assistance.

Providing legal assistance in the cases mentioned by the Law is done only following a written request from the judicial body or from the public administration body, addressed to the bar and settled by S.A.J.

Judicial assistance is granted in cases where the suspect, defendant, the injured person, the civil party or the civilly responsible party in a criminal case do not have the means to pay the lawyer fees and they must be assisted by a lawyer.

Special measures of protection that can be taken regarding the injured person, in the criminal proceedings when the conditions provided by the law are met

- ▶ Surveillance of his/her dwelling or provision of temporary housing.
- ▶ Accompany and ensure the protection of the injured person or his/her family members.
- ▶ Protection of identity data.
- ▶ Hearing/listening without being present, through the audiovisual means of transmission with distorted voice and image when the other measures are not sufficient.
- ▶ Non-public hearing in court.

The rights of victims of certain types of crime

- ▶ **Victims of human trafficking** - *Law no. 678/2001 on preventing and combating trafficking in human beings* (the protection of privacy and identity; the right to their physical, psychological and social rehabilitation; the protection and special assistance of minor victims according to their age; free legal assistance).
- ▶ **Victims of domestic violence** - *Law no. 217/2003 on the prevention and combating of domestic violence* (the right to special protection, according to their situation and needs; the right to counselling, rehabilitation, social reintegration, as well as free medical care).

Chapter IV of Law no. 217 of 22 May 2003, amended and supplemented by Law no. 25 of 9 March 2012, **the protection order** (can be requested by victims of domestic violence).

Victims support, assistance in Romania

▶ The country does not have a generic victim support organization.

▶ **Public coordination of the victims support services**

-Law no. 211 of 2004 on certain measures for the protection of victims of crime stipulate that victims have the right to legal, psychological, social assistance as well as other types - **Probation Services** of each tribunal, whose activity is coordinated by the **National Probation Directorate**, a structure with legal personality within the **Ministry of Justice**.

- Social & Psychological counselling and assistance to victims of crime is currently carried out mainly by non-governmental organizations and the General Directorates for Social Assistance and Child Protection (DGASPC) that exist in each county of Romania. Victims of crime can be assisted by the DGASPC, considering the social context of these persons, and can be referred to other institutions according to the issue of the case.

Victims support, assistance in Romania

- ▶ **The National Agency against Trafficking in Persons** specialized structure, subordinated to the Ministry of Home Affairs, endowed with coordinating, evaluating and monitoring, at national level, the implementation of policies in the field of trafficking in human beings through the public institutions as well as in the field of protection and assistance to the victims. <http://www.anitp.mai.gov.ro/>
- ▶ 15 Regional Centers
- ▶ implementation of the **victim-witness coordination program in the criminal trial**, aims to increase the participation of victims of human trafficking in the criminal proceedings and, at the same time, to respect the rights guaranteed by law to these persons.
- ▶ The Agency implements the *Informative System of Evidence and Monitoring of Victims of Human Trafficking (SIMEV)*, relevant instrument both for assessing the needs of victims and their immediate referral to specialized assistance services, as soon as they are identified, and to monitor victim assistance and social reintegration progress.

Victims support, assistance in Romania

THE NATIONAL MECHANISM FOR IDENTIFYING AND REFERING VICTIMS OF HUMAN TRAFFICKING

(approved by Order no. 335 of 29 October 2007 of the Ministry of Interior and Administrative Reform / **Ministry of Internal Affairs**)

- ▶ -Definition of trafficking in human beings
- ▶ -Ways to identify victims
- ▶ -Indicators for victim identification
- ▶ Reference Procedures:
 - Victim is identified by the judicial bodies (specialized police structures)
 - Victim is referred to and repatriated by IOM
 - The victim is identified by a non-governmental organization (NGO)
 - The victim (Romanian citizen) is identified through the diplomatic mission or consular offices of Romania

Institutions responsible to ensure the protection of victims' rights, provision of legal assistance and of other type of support services (social, health)

- ▶ Ministry of Justice
- ▶ Public Ministry (it includes: the Prosecutor's Office attached to the High Court of Cassation and Justice, the Prosecutor's Offices attached to the Courts of Appeal, the Prosecutor's Offices attached to the local Courts, the Prosecutor's Offices attached to the Specialized Courts for Minors and Family, the Prosecutor's Offices attached to the Courts of First Instance and Military Courts.)
- ▶ Romanian Courts (The High Court of Cassation and Justice, Appeal Courts, tribunals, local courts "*judecătorii*")
- ▶ The Romanian Bars -The Judicial Support Services of the Romanian Bars (S.A.J)
- ▶ The General Inspectorate of Romanian Police (GIRP) central and local units
- ▶ General Directorates of Social Assistance and Child Protection.
- ▶ National Agency against Trafficking in Persons

The NGOs involvement in victims support and assistance services in Romania

- ▶ Breaking the Silence on Sexual Violence” Non-Governmental Network
- ▶ The Network for the Prevention and Combating of Violence against Women .
- ▶ ARTEMIS Association of Women against Violence, Cluj Napoca city (women and children sexually exploited)
- ▶ Sensiblu Foundation, Bucharest city (women and children victims of domestic violence)
- ▶ Association for Freedom and Gender Equality - A.L.E.G. Sibiu city (persons affected by gender violence, domestic violence)

The NGOs involvement in victims support and assistance services in Romania

- ▶ Women's Association of Sibiu city (victims of domestic violence)
- ▶ ANAIS Association, Bucharest city (victims of domestic violence, women and children, but also elderly people)
- ▶ The East European Institute for Reproductive Health, Târgu Mureş city (victims of domestic violence, victims of human trafficking)
- ▶ Young Generation Association, Timisoara city (victims of human trafficking)
- ▶ People to People Foundation, Oradea city (victims of human trafficking)
- ▶ Betania Association, Bacau city (victims of human trafficking)
- ▶ ADPARE Association, Bucharest city (victims of human trafficking)
- ▶ Pro Refugiu Association, Bucharest city (victims of human trafficking)

The cooperation of NGOs with institutions in providing assistance to victims of crimes during their access to the justice system

- ▶ **The National Agency against Trafficking in Persons (ANITP)** ensures the coordination of the cooperation activities performed by the public institutions with the non-governmental organisations, in order to achieve the objectives of the National Strategy against the Trafficking in Persons.
- ▶ **The Directorate for the Investigation of Organised Crime and Terrorism (DIICOT)** In the field of investigating and combating trafficking in human beings DIICOT collaborates with institutions (The National Agency against Trafficking in Persons, The General Inspectorate of Border Police, The General Inspectorate of Romanian Police, The National Agency for Employment, The General Directorates for Social Assistance and Child Protection) and with some non-governmental organisations.
- ▶ **The National Agency for Equal Opportunities for Women and Men (ANES)**, (<http://anes.gov.ro/>) is the central public authority with competence in the field of preventing and combating domestic violence.

The Victims' Helplines in Romania

- ▶ Help-Line Telephone, free of charge (victims of human trafficking)
- ▶ National telephone line, free of charge (victims of domestic violence, trafficking in human beings, gender or multiple discrimination).
- ▶ Association for Freedom and Gender Equality - A.L.E.G. (victims of gender violence).
- ▶ Child's Phone (abused children)

Cross-border support for victims of crimes

- ▶ The National Agency against Trafficking in Persons collaborates with other entities and organisations in EU member states in order to facilitate victims' access to the rights provided by the law in the transnational referral programme, as well as to coordinate the participation of victims of human trafficking in criminal proceedings from abroad.
- ▶ Limited number of NGOs which cooperated with organisations from other countries. (Pro Refugiu Association, ADPARE Association, East European Reproductive Health Institute, People to People Foundation , Women's Association of Sibiu, Association for Freedom and Gender Equality, Young Generation/Generație Tânără Association).

Cross-border support for victims of crimes

- ▶ The Police Cooperation Centre (CCPI) - a subordinate of the General Inspectorate of the Romanian Police - is the central national authority in the field of international police cooperation, being specialised in the exchange of operative information in the field of combating crime at international, cross-border level. CCPI brings together the following international police cooperation channels: INTERPOL, Europol, the Schengen/SIRENE Information System, as well as domestic affairs attachés and Romanian liaison officers accredited abroad as well as foreigners accredited in Romania.
- ▶ Directorate for Investigating Organized Crime and Terrorism (DIICOT) represents the Romanian authority that participates in the implementation of international judicial cooperation - criminal investigations concerning organised crime, terrorism, human trafficking, drug trafficking, cybercrime.