

THE RIGHTS OF THE VICTIMS OF TRAFFIKING DURING THE CRIMINAL PROCESS

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INTRODUCTION

Human trafficking is a current phenomenon of the XXI century involving multiple dimensions: it is one of the most serious crimes in the world, a violation of human rights, an economic and social phenomenon, a criminal matter in which traffickers are the criminals not the victims.

In many cases there is a direct approach of the victim, which is persuaded to accept an offer, apparently profitable (the promise of a job abroad, treatment, scholarship, etc.). Human trafficking is an extremely profitable business for the organized crime, being the third source of illegal profits, after drugs and arms trafficking.

This brochure is for people who have been victims of trafficking, the aim being to inform them in a simple manner about their rights in criminal proceedings.

The importance lies in giving basic legal education to victims and encourage them to access services they are entitled to receive.

1. THE RIGHT TO LEGAL ASSISTANCE

The victim is entitled to legal assistance in criminal cases against traffickers. She has the possibility to be accompanied and assisted by the lawyer during all the phases of the criminal trial.

2.THE RIGHT TO MAKE A COMPLAINT AGAINST THE TRAFFIKER

The victim has the right to lodge a complaint against the person who trafficked her and to be informed about the solution.

Under article 222 Criminal Procedure Code, a complaint can be made by a person if a damage occurred as a result of the infraction.

The complaint must contain: name, surname, address of the petitioner, describing the act that is the subject of the complaint, indicating the perpetrator if he is known and the proofs. If it is made orally shall be mentioned in the minute of the body that receives it.

According to article 275 Criminal Procedure Code any person may submit a complaint against the measures and acts taken during the legal procedure if they bring harm to the interests of that person.

According to article 278 paragraph 3 Criminal Procedure Code the complaint against the resolution/edict given by the prosecutor of not starting the legal procedure against the trafficker has to be made within 20 days after receiving the copy of the resolution /edict.

The competence to resolve it belongs to the superior prosecutor.

If the complaint was rejected by the superior prosecutor, the person may lodge a complaint within 20 days after the notification of the solution, which will be analysed by the judge from the court that has according to the law the competence to resolve the case in first instance.

3.THE RIGHT TO BE INFORMED

The victim has the right to be informed by the competent authorities about the rights and obligations and to receive copies of all decisions taken concerning her situation.

4.THE RIGHT TO PSYCHICAL PROTECTION

The victim has the right to physical protection during the criminal proceedings, given by the police if her life, freedom is in danger.

5.THE RIGHT TO COMPENSATION FOR THE MATERIAL AND MORAL DAMAGE, ACCORDING TO THE LAW

The victims of trafficking are entitled to ask during the criminal trial, compensation for the material and moral damages suffered as a result of trafficking and exploitation.

According to Criminal Procedure Code the purpose of a civil action is to ask compensation from the defendant for the material and moral damages. The civil action is exempt from stamp duty.

The victim can be injured party and also civil party during the same criminal trial.

6. THE RIGHT TO PROTECT THE IDENTITY AND THE PRIVATE LIFE OF THE VICTIM

All persons involved in preventing and combating trafficking, in assistance given to victims have the obligation to maintain confidentiality with regard to their identity.

7. THE VICTIM WILL NOT BE SUBJECT OF ANY CRIMINAL CHARGES

The victims of human trafficking will be absolved of any criminal, administrative or civil responsibility for illegal actions (eg. prostitution) that have been committed in connection with her status as a victim of human trafficking.

Main international legal instruments on human rights and trafficking in persons adopted by Romania

- UN Convention against transnational organized crime adopted on November 15, 2000, in New York, ratified by Law 565/2002 On 14 December 2000, in Palermo, Romania signed the UN Convention against transnational organized crime and its two protocols adopted on November 15 2000, in New York:
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention on Transnational Organized Crime;
- UN Protocol on Smuggling of Migrants on Land, Air and Sea, supplementing the UN Convention against Transnational Organized Crime.
- Council of Europe Convention on Action against Trafficking in Human Beings, signed by Member States of the Council of Europe on May 16 2005, in Warsaw, ratified by Law 300/2006.
- EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, published in the EU Official Journal of 9.12.2005.

International legal instruments concerning the rights of the child, trafficking in children and fight against any form of child exploitation

- Convention on the Rights of the Children adopted on 20.11.1989 by the UN General Assembly, entry into force 1990, ratified by Romanian Law 18/1990.
- International Labor Organization Convention no. 182/1999 on Worst Forms of Child Labor adopted by the General Conference of the International Labor Organization at its eighty-seventh session in Geneva, 1999, ratified by Law 203/2000 and the Optional --- Protocol to the Convention on the rights of the child, sale of the child and child

prostitution and pornography (2001), published in the Official Journal 601/27.09.2001, part I.

Main national legal instruments on trafficking in persons

- Law 678/2001 on preventing and combating trafficking in human beings, subsequently amended and supplemented;
- Government Decision 299/2003 to approve Standard Rules for Application of Law 678/2001 on 2001 on preventing and combating trafficking in human beings ;
- Government Decision 1654/2006 to approve the National Strategy against trafficking in persons 2006-2010;
- Government Decision 1720/2006 to approve the National Action Plan 2006 - 2007 for the implementation of the National Strategy against Trafficking in Persons 2006 - 2010;
- Government Decision 1238/2007 to approve the specific National Standards for Specialized Assistance Services provided to trafficking victims;
- Government Decision 982/2008 to approve the National Action Plan 2008-2010 for the implementation of the National Strategy against Trafficking in Persons 2006 - 2010;
- Joint Order by competent ministers and agency presidents - Ministry of Interior and Administration Reform, Ministry of Education, Research and Youth, Ministry of Public Health, Ministry of Labor, Family and Equal Opportunities, National Authority for the Protection of Child Right, National Agency for Gender Equality, National Agency for Employment, National Agency for Roma - to set up, organize and bring into operation the Thematic Working Group to nationally co-ordinate activities for the protection of and assistance to victims of trafficking. The document was published in the Official Journal 799/23.11.2007;
- Joint Order by relevant ministers - Ministry of Interior and Administration Reform, Ministry of Education, Research and Youth, Ministry of Public Health, Ministry of Labor, Family and Equal Opportunities, Ministry of Foreign Affaires, Ministry of Justice-president of the National Authority for the Protection of Child Right and the Prosecutor

General, to approve the National Victim Identification and Referral Mechanism, published in the Romanian Official Journal 849/17.12.2008, part I;

- ANITP President Decision 4/2007, published in the Official Journal 837/6.12.2007, to approve assessment and authorization indicators of trafficking in persons preventive projects;
- ANITP President Decision 1/2007, published in the Official Journal 749/5.11.2007, to approve the National Interest Program to improve protection of and assistance to victims and the Methodology to grant funds for the development of specific projects within the National Interest Program;
- ANITP President Decision 2/2008, published in the Official Journal 132/20.02.2008, to approve the National Interest Program to improve protection of and assistance to victims and the Methodology to grant funds for the development of specific projects within the National Interest Program.

Legal national instruments and special provisions with reference to trafficking in children, rights of the child and fight against any form of child exploitation

- Law 272/2004 on the protection and promotion of the rights of the child;
- Government Decision 1443/2004 with regard to the methodology for repatriation of unaccompanied Romanian children outside the country and measures to ensure their special protection;
- Joint Order 123-429/2004 of the National Authority for Child Protection and Adoption and Ministry of Administration and Interior, (Official Journal, 6 December 2004);
- Government Decision 1295/2004 to approve the National Action Plan on preventing and combating trafficking in children;
- Government Decision 1769/2004 on the approval of the National Plan of Action to eliminate child labor exploitation;
- Government Decision 1504/2004 on the approval of the National Action Plan to prevent and combat sexual abuse and commercial sexual exploitation of children

The EU Acquis Communautaire with reference to trafficking in human beings includes the following instruments

- Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography. OJ L 13, 20.1.2004, page. 44.
- Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings. OJ L 203, 1.8.2002, p. 1-4;
- Council Decision 2001/87/EC of 8 December 2000 on the signing, on behalf of the European Community, of the United Nations Convention against transnational crime and its Protocols on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea. OJ L 030, 01/02/2001, P 44; 09/06/2000. 32000D0375.Council Decision of 29 May 2000 to combat child pornography on the Internet. OJ L 138, 09/06/2000 page 1-4;
- Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. Pursuant to Title VI of the Treaty on European Union, the Decision provides the victims of criminal acts the right to claim compensation by the offender in the course of criminal proceedings;
- Council Directive 2004/80/EC of 29 April 2004 relating to compensation of victims of crime;
- European Convention on the compensation of victims of violent crimes (Strasbourg, 24.XI.1983;
- Recommendation N° R (85) 11 on the position of the victim in the framework of criminal law and procedure;
- EC Communication - "Victims of crime in EU- Reflections on standards and actions" (14 July 1999)
- EU Green Paper on compensation to crime victims, 28.09.2001.