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## **27th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE**

*Yerevan (12-13 October 2006)*

**VICTIMS:  
PLACE, RIGHTS AND ASSISTANCE**

*Report presented by the Ministry of Justice of*

**ROMANIA**

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# THE PROTECTION OF CRIME VICTIMS IN ROMANIA

## Introduction

The recent years have seen a growing concern of European organisations and European countries for the protection of crime victims, particularly for victims of violent crimes. This concern is natural and it is based on reasons of equity and social solidarity.

At the level of the Council of Europe, this concern has materialised with the adoption of the European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 24 November 1983, and of the Recommendation No. R (85)11 on the position of the victim in the framework of criminal law and procedure.

- The European Convention on the Compensation of Victims of Violent Crimes was signed on behalf of Romania by Ms. Monica MACOVEI, Minister of Justice, on the occasion of the 26th Conference of European Ministers of Justice, held in Helsinki, on 7-8 April 2005
- This Convention has been ratified by Romania through Law No. 304/2005, published in the O.J. of Romania, Part I, No. 960/2005.

At the European Union level, the concern to provide protection to victims in a common area of freedom, security and justice is reflected in the Communication of the European Commission “Victims of crime in the European Union – reflections on standards and action” (14 July 1999), in the Framework Decision of the European Council on the standing of victims in criminal proceedings (15 March 2001), in the Green Paper on Compensation to Crime Victims by the European Commission (28 September 2001), as well as in the European Council Directive 2004/80/EC of 20 April 2004 relating to compensation to crime victims.

## The Experience in Romania

Like in the other European countries, within the past few years, Romania has made efforts to align the national legislation with the international standards concerning victim’s protection, as well as to create specialised institutions that make sure of the correct implementation of the normative acts that rule this matter.

Thus was created both a general framework for the protection of crime victims through the adoption of Law No. 211/2004 *on certain measures to protect victims of crime*, and also of particular regulations for the categories of victims that are considered as having a high degree of vulnerability: children – *Law No. 272/2004 to promote and protect the rights of children*, victims of trafficking in persons – *Law No. 678/2001 on trafficking in persons*, victims of domestic violence – *Law No. 217/2003 to prevent and fight domestic violence*.

Also, within the recent years, two specialised agencies have been set up: *the National Agency for Family Protection* and *the National Agency for Preventing Trafficking in Persons and for monitoring the Assistance Granted to Victims of Trafficking in Persons*.

### **a. The Existing Legislative Framework**

In Romania, victims of crime enjoy the following protection measures:

- Information about their rights,

- Psychological counselling or other forms of assistance,
- Free legal aid,
- Financial compensation.

### ***Information for Victims***

Since correct and complete information given to victims is the first condition for respecting their rights and improving their situation, this begins from the first contact with the judicial authority that receive the penal complain.

The information provided to victims of crime concerns: the services and organisations that provide psychological counselling or any other forms of assistance for victims, depending on their needs; the body of criminal prosecution to apply; the right to legal aid and where to address in order to exercise this right; the conditions and procedure for granting of free legal aid; the procedural rights of injured persons, of injured parties and of civil parties, the procedure for obtaining financial compensation from the State, as well the modality to benefit of the provisions of Law No.682/2002 on witness protection.

All this information is meant to give the victim a complete view of his or her rights and of the concrete means to realise these rights, both in and outside judicial proceedings.

### ***Psychological Counselling or Other Forms of Assistance to Victims of Certain Crimes***

Psychological counselling is provided to victims of crimes which, having been committed with violence or having infringed upon the sexual freedom of a person, caused not only physical trauma, but also psychological trauma. These offences are: attempted offences of homicide, severe murder and particularly serious murder, hitting or other acts of violence and bodily harm committed against family members, serious bodily harm and deliberate offences resulting in grievous bodily harm to the victim, offences of rape, sexual intercourse with a minor, sexual perversion committed upon a minor or committed with use of violence, sexual corruption and ill treatment applied to a minor.

Psychological counselling is granted also to victims of the offences provided in Law No.678/2001 to prevent and combat trafficking in persons. The institutional mechanism through which psychological counselling is provided to the victims is represented by the probation services attached to tribunals. Within these services, psychological counselling is provided free of charge for up to 3 months, and for victims under the age of 18, for up to 6 months.

Also, victims of crime may receive other forms of assistance, such as referral to other bodies within the local community that are able to provide appropriate response to their needs.

The psychological counselling or other forms of assistance may be provided also by non-governmental organisations, either independently or in partnership with the authorities of the public administration.

### ***Free Legal Aid***

According to the current legal framework, free legal aid is provided, on application, to several categories of victims, taking into account, both the seriousness of the offence committed and the material status of the victim.

Firstly, free legal aid is provided to direct victims of serious violent crimes (offences of homicide, murder and particularly serious murder, serious bodily harm and deliberate offences resulting in serious bodily harm to the victim) or of serious offences relating to sexual life (offences of rape, sexual intercourse with a minor child and sexual perversion committed upon a minor child or committed with use of violence). Free legal aid is granted also to indirect victims of serious offences (the spouse, children and dependants of victims deceased on account of the offences).

Secondly, free legal aid is granted to victims of offences other than those mentioned, regardless of the nature of the offence, if the monthly income per family member in the victim's family is less than or equal to the minimum gross basic national salary determined for the year when the victim applied for free legal aid.

In both cases, free legal aid is granted if the offence was committed on the Romanian territory or, for offences committed outside Romanian territory, if the victim is a Romanian citizen or a foreign national living in Romania legally and the criminal proceedings are taking place in Romania.

In order for a victim to be able to receive free legal aid, the current legislation provides for a special procedure to be followed.

### ***Financial compensation***

The system of financial compensation from the State to victims of violent crimes is based on the principle of equity and social solidarity and on the fact that, before this special law existed, any time that the perpetrator remained unknown, was insolvent or missing, the "costs" of the offence were incurred by the victim alone, which obviously led to re-victimisation.

Currently, financial compensation is granted, on application, to direct victims of serious violent crimes (attempted homicide, murder and particularly serious murder, serious bodily harm and deliberate offences resulting in serious bodily harm to the victim) or of serious crimes relating to sexual life (offences of rape, sexual intercourse with a minor and sexual perversion committed upon a minor or committed with use of violence) and to indirect victims of offences of homicide and of deliberate offences resulting in the person's death (spouse, children and dependants). This compensation is granted on certain conditions and according to a procedure determined by the law.

According to Law 211/2004, a special fund was established to support the financial compensation for the victims mentioned above.

### **b. The Authorities in Charge of Victim Protection**

Taking into consideration the European standards in this matter, Romania has set up specialised authorities to meet the complex needs of victims of crime: the National Agency for Family Protection, the National Agency for Preventing Trafficking in Persons and for Monitoring the Assistance Granted to Victims of Trafficking in Persons, Transit Centres for Victims of Trafficking in Persons, probation services. Certain non-governmental organisations are also active in this area.

#### ***The National Agency for Family Protection***

The setting up of the **National Agency for Family Protection** is a major step in finding the best solutions to prevent domestic violence, and to support persons who are subject to domestic violence

(setting up shelters for victims of domestic violence, recuperation centres for victims of violence and assistance centres for aggressors, etc.);

The Agency elaborates best practice textbooks in this field, instruments for monitoring and assessment, and develops also an overall system of recording and monitoring cases of domestic violence at the local and central level.

The statistics drawn up by the National Agency for Family Protection show that in the year 2005, in Romanian counties and in Bucharest City, there has been a growth by 1433 in the number of victims of domestic violence, when compared to the year 2004, from 8104 cases in 2004 to 9537 in 2005. This growth is a result of activities developed on raising awareness among the population about this type of violence and of the encouragement of reporting such acts to the law enforcement bodies.

***The National Agency for Preventing Trafficking in Persons and for monitoring the Assistance Granted to Victims of Trafficking in Persons***

This Agency was set up by the Government, as a specialised structure of the central public administration, subordinated to the Ministry of Administration and the Interior.

The Agency coordinates the strategic programming of activities that prevent **trafficking in persons**, prevention activities and monitors the assistance provided to victims of trafficking in persons, establishes standards, collects data, conducts research, utters propositions for amending and supplementing the legislation in this field, also supporting the activity of providing information to victims of trafficking about their rights.

Currently, this institution is being reorganised, to include 15 subordinated regional centres against trafficking in persons.

The Agency has a free telephone line where persons who wish to make a decision about going to work abroad can obtain information. Also, this line helps persons who are kept in confinement or are in difficulty and need assistance, and persons who wish to file a complaint about one of their relatives or friends is a victim of trafficking.

The statistical data from the National Agency for Preventing Trafficking in Persons and for Monitoring the Assistance Granted to Victims of Trafficking in Persons show the following situation :

During the year **2005** : the Romanian Police General Directorate for Combating Organised Crime have identified 2250 victims of trafficking in persons, the Border Police General Inspectorate have identified 301, and 1141 persons were involved as victims/witnesses in the inquiries conducted by the Public Ministry.

During the first 4 months of the year **2006**: 865 victims were identified by the Romanian Police General Directorate for Combating Organised Crime, 229 victims were identified by the Border Police General Inspectorate, and 538 victims were involved in the inquiries conducted by the prosecutors of the Public Ministry (victims or witnesses).

Both in 2005 and during the months analysed in the year 2006 it has been found that more than 50% of the victims identified were female aged 18 to 25, and the most frequent form of exploitation was sexual exploitation, and also forced labour and beggary.



### *Transit Centres for Victims of Trafficking in Persons*

The need for protected places where victims of trafficking should be able to find temporary shelter and special assistance to help them overcome the trauma caused by the offence, has led to the creation of Transit Centres, subordinated to the County Councils, local administration (General Directorate of Social Assistance and Child Protection).

These Centres are organised in 7 locations in Romania and their main purpose is prevention, as well as providing protection and assistance to victims of the offence of trafficking in persons. The Centres provide temporary lodging, upon request, to victims of trafficking in persons, for a period of 10 days, however this period may be extended up to 6 months.

While the number of victims of trafficking identified in 2005 was in the thousands, 175 of them applied for assistance with specialised centres (either government or non-governmental centres). In 2006 over one thousand victims were identified and 132 received various forms of assistance within the community, within assistance centres or at their domicile.

### *Probation Services*

In addition to their work with persons who have committed offences, probation services have competences also with regard to the protection of victims of offences, as they provide assistance and psychological counselling.

These are provided to victims of offences that, having been committed with violence or having infringed upon the sexual freedom of a person, cause not only physical, but also psychological trauma. These offences are provided and punished by the Criminal Code, namely: attempted homicide, murder and particularly serious murder, hitting or other violent acts and bodily harm committed upon family members, serious bodily harm and deliberate offences resulting in serious bodily harm to the victim, rape, sexual intercourse with a minor, sexual perversion committed upon a minor or with the use of violence, sexual corruption, ill treatment applied to minors, and to victims of trafficking in persons and of domestic violence.

Bearing in mind that 2005 was the first year when Law No. 211/2004 on Certain Measures to Protect Victims of Offences was implemented, the probation services have provided psychological counselling and other forms of assistance to 95 victims. Most of these were victims of offences of rape, battery or other violent acts and of trafficking in persons. During the first 6 months of 2006, 57 victims were registered with the probation services.

The main difficulty in providing these services was to specialise probation counsellors in the field of assistance to victims. To this end, several training sessions were held for the personnel, within the framework of a Phare 2003 program, and a new Phare 2005 program has been initiated which includes, among others, specialisation of 82 probation counsellors in the field of providing assistance to victims.

### *Non-governmental Organisations*

They collaborate regularly with public institutions to run programmes concerning victims of domestic violence or victims of trafficking in persons. The **National Coalition of NGO-s Involved in Programmes on Violence against Women** runs extended campaigns for awareness raising and

information about the phenomenon of domestic violence. Also, they lobby for and provide advocacy to promoting appropriate legislation and legislative practice. In addition, they provide support to victims of domestic violence through direct services of psychological counselling, legal advice, welfare, intermediation for jobs and educational programmes.

The current concern of the above organisations is to rise a joint effort regarding the situation of victims of crime, so that their efforts may all be directed towards preventing re-victimisation, providing immediate assistance to victims of crime, in order for them to overcome the trauma and reintegrate into a community.

### **c. Restorative Justice**

Within criminal legislation, most often, as regards the relation between the offender and the victim, the central figure is the perpetrator of the antisocial act and very little attention is given to the person who suffers the direct effects of the perpetration of the offence, particularly in the case of violent crimes. If at some point the focus used to be laid on re-socialising the delinquent as an object of public solicitude, today the interest is in reducing the consequences of the crime on the victims.

Restorative Justice is based on values that emphasise the importance of the option of a more active involvement into the process of offering support and assistance to victims of crime; increasing the responsibility of offenders towards the persons and communities that they have harmed; coping with the adverse effects of the trauma; compensation of material lose of victims (to the extent possible), offering a wider range of opportunities for dialogue and for solving problems between victims, offenders, families and other persons; offering offenders enhanced possibilities for correct development and re-integration into community life, strengthening public safety through community building.

To this end, an increasing number of European States have implemented elements that are specific of restorative justice, such as mediation as an alternative means of dispute resolution.

The Framework Decision of the Council of the European Union of 15 March 2001 defines mediation in criminal cases as a path for achieving a negotiated solution between the victim and the author of the offence, which may take place either before or during criminal proceedings and is mediated by a competent person.

Mediation in criminal matters is defined as a process between the victim and the offender, which parties have the option of partaking actively in the resolution of the problems emerging from the commission of an offence, also enjoying the assistance of a neutral third party who is either a professional or a member of the community (Recommendation No. 19/1999 of the Council of Europe on mediation in criminal matters).

In Romania too, during 2002 – 2004, certain elements of restorative justice have been experimented with, in criminal cases, in the framework of two pilot centres where several types of activities were conducted: informing the parties to the dispute, mediation, and other complex welfare or legal aid services.

At present, our country has gone beyond the stage of experimenting in this field by adopting Law 192/2006, on mediation and the organisation of the mediators' profession.

According to this law, disputes generated by:

- family relations, commercial relations, tenancy relations, neighbourhood, co-propriety, succession, execution of contractual obligations, etc, may be subject to mediation;
- Violation of consumer protection rights;
- Offences for which, under the law, withdrawal of the prior complaint or reconciliation of the parties removes criminal liability.

Mediation may be performed by mediators who are authorised thereto by the Mediation Council. The members of this Council are elected by the mediators and validated by the Ministry of Justice.

The approval of this law is one of the stages in the process of reducing the workload of courts and hence relieving them of numerous cases. It is meant, on the one hand, to provide a satisfactory solution for the interests of the parties to the dispute, and on the other hand, to help increase the quality of the act of justice.

### **Conclusions**

One may easily notice the progress that Romania has made in recent years both as regards the elaboration of the legislative framework on the protection of victims, and concerning the creation of specialised authorities that will contribute to the implementation of the normative acts specified, in order to provide a coherent response to the problems of victims of crime, particularly those of victims of violent crimes. In the same time we have to take in consideration that all this authorities are new created and have to be developed in order to offer a complete response to the victims needs.

We wish to underline that, however, particularly as regards victims of trafficking in persons, given the nature of this phenomenon, a consensus is necessary between the European States to create common avenues of intervention for protecting this category of victims.

Also, we suggest that minimum training standards be established at a European level for professionals involved in activities with victims of offences, taking account of the fact that, wherever an offence takes place, the specialists intervene for the same purpose: reducing the impact of the offence and supporting the victim in order for him or her to continue their life within the community.

Now that an increasing number of States are concerned with providing a special place for victims of offences within the criminal justice system, it is more than necessary to achieve a common European framework regarding the collaboration of institutions that have competences in this field, in order to articulate the efforts meant to provide victims with actual protection.



