

CHALLENGES AND BARRIERS ON GRANTING FINANCIAL COMPENSATION

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Legal framework and procedures for granting financial compensation to third country nationals - victims of human trafficking

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GRANTING FINANCIAL COMPENSATION OVER THE PAST

- Compensation is one of the most important rights of victims of crime. This has been recognised in international and European instruments. • The victim's right to access compensation was first recognised by the international community in 1985 when the United Nations General Assembly adopted the **Declaration of Basic Principles of Justice for victims of Crimes and Abuse of Power**.
- As a pioneer, the Council of Europe adopted the **European Convention on the Compensation of Victims of Violent Crimes in 1983** . Under the Convention, State parties have the obligation to compensate victims of intentional and violent offences resulting in bodily injury or death.

- Subsequently, Directive [2004/80/EC](#) on compensation to crime victims was adopted to allow individuals who have fallen victim to crime to apply for financial compensation regardless of where in the European Union the crime was committed
- **2001 Anti-trafficking Directive**-Directive [2011/36/UE](#) of the European Parliament and of the Council of 5 April 2011- on preventing and combating trafficking in human beings and protecting its victims. The Directive sets out minimum standards to be applied throughout the European Union in preventing and combating trafficking in human beings and protecting victims. It is based on the human rights approach and gender perspective.
- In 2012 the EU took another important step towards ensuring the rights of victims of crime by adopting the Directive [2012/29/EU](#) establishing minimum standards on the rights, support and protection of victims of crime, which replaced the 2001 Council Framework Decision
- In 2017, the Commission issued its Communication [-\(COM\(2017\)728\)-](#) identifying further actions to address trafficking in human beings .

- The [report on “Strengthening victims’ rights: from compensation to reparation”](#) from 2019 of Joëlle Milquet Special Adviser for compensation to victims of crime
- The report proposes 41 recommendations on how to improve the protection of these rights, as well as victims' access to justice and compensation. The report shows that victims often have difficulty accessing justice and receiving compensation due to a lack of information, insufficient support, overly-restrictive eligibility criteria or procedural hurdles. For persons who become victims of crime when travelling to another EU country, it can be even more difficult to receive compensation in a trans-border scheme.

CHALLENGES AND ISSUES IN ROMANIA RELATED TO GRANTING COMPENSATION

- **Support and Compensation – Lessons from Victims of Human trafficking Crime**
 - Limited funding and lengthy claims processes can delay urgently needed support
 - Victims are often unable to navigate the system of support and the service providers
 - Scant resources reduce the ease of service provision in regional and remote areas.

CHALLENGES AND ISSUES IN ROMANIA RELATED TO GRANTING COMPENSATION

- **Information on compensation** for victims is not available Under the Victims Rights' Directive information should be provided in different formats- corroborating with scientific studies, victims' testimonies and practical expertise highlighting that information for victims needs to be offered in different forms and a number of locations to actually reach victims . In Romania, information for victims is only available in limited format or in very limited number of locations, and when it comes to cross-border compensation, the information is often not available in other languages other than the official language of the country

- The ENVR Comparative Data Collection on Compensation Schemes (European
- Network of Victims' Rights) also shows that there is a great diversity in the amount paid by different EU Member States. It varies from a couple of thousands of euros paid to dozens of million euros in other Member States. (<https://envr.eu/resources/members-and-partners-documentation/>) Regarding the amount of payment, in Romania it is determined on a case by case basis and compared to other countries, it is very low

WHAT DO WE COMPENSATE

- Restrictive eligibility criteria for state compensation Eligibility criteria for state compensation define what and who is compensated and the types of damages for which state compensation is paid in Member States vary depending on the country . Several Member States compensate medical costs and loss of earning during the medical treatment. Some Member States also compensate psychological damage , that often covers , long term individual needs such as long-term psychotherapy or, adaptation of housing.

PROCEDURAL OBSTACLES IN CLAIMING COMPENSATION

- In order to seek offender compensation a victim may have to submit legal forms or make an application to the court depending on the jurisdiction involved. The victims' situation can be also complicated if no one is found guilty or the case is thrown out on a legal technicality. There is provision in some jurisdictions for state compensation to be awarded where the offender is not identified or has not been apprehended . If victims do not report crimes, they are not entitled to seek compensation. These are often the most vulnerable victims, such as children, undocumented migrants– all trafficked victims to name a few. They are arguably the most in need of emergency compensation.

THE LEGAL PROVISIONS ON CROSS BORDER COMPENSATION ISSUES

- The provisions of Directive 2004/80/CE on compensation of crime victims in crossborder situations were transposed into the national law in Chapter 51 of Law no. 211/2004, but also in the Order no. 1319/C/2008 of the Minister of Justice for the implementation of the procedure for provision of financial compensation to victims of violent intentional crimes committed in the cross-border situations provided for by Law no. 211/2004 instating certain measures for the protection of victims of crime. These regulations provide the right of a victim subjected to crime in another Member State than that of his/her residence to claim compensation from an authority or entity of the Member State in question. A special procedure is instated for the filing and submission of financial compensation claims when the victim is subject to a crime committed in an EU Member State and the access of Romanian citizens to financial compensation from the EU Member State where the crime was committed is facilitated

THE PROCEDURE TO APPLY FOR COMPENSATION

- Victims may ask an authority in the country in which they live (i.e. assisting authority) for information on how to apply for compensation.
- The assisting authority transmits the application directly to the national authority of the EU Member State in which the crime was committed (i.e. deciding authority), which is responsible for assessing the application and paying out the compensation.
- All communication concerning the application for compensation must be carried out in the language of the deciding country. In order to facilitate this, the European Commission has drawn up standard forms for the transmission of applications and decisions relating to compensation to victims.
- A system of central contact points in each EU country, created by the Directive, facilitates cooperation in cross-border situations.

- In Romania, Financial compensation can be granted on request to the following categories of victims according to article 21 of the 211/2004 Law
- Victims of attempted murder, or first degree murder, victims of bodily harm, victims of a crime committed with intent that resulted in bodily harm of the victim, rape, sexual intercourse with a juvenile and sexual assault, victims of human trafficking, victims of terrorism and victims of other deliberate offenses committed with violence as stipulated in the Criminal Code.
- Spouse, children and dependants of persons deceased as a result of the crimes mentioned above.
- The financial compensation is granted to these victims if the offense was committed on the territory of Romania and the victim is: Romanian citizen; foreign citizen or, 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; or a foreign citizen or a stateless person residing in the territory of a Member State of the European Union, legally present on the territory of Romania at the time the offense was committed. In the case of the victims who do not fall into the categories of persons mentioned, financial compensation shall be granted on the basis of the international conventions to which Romania is a party.

- The 211 /2004 law has been in addition modified in 2007 through a GEO in order to address the situation of transborder crimes.
- Thus, according to article 34* of the Chapter V*, the Romanian citizen, stateless person or foreigner legally residing in Romania, victim of an intentional crime committed with violence on the territory of another member state of the European Union, apart from the one he resides may submit to the Ministry of Justice a request for obtaining financial compensation from the state on whose territory, the crime was committed, accompanied by the necessary supporting documents.

- Within a maximum of 5 working days from receipt, the Ministry of Justice shall transmit the requests and supporting documents submitted to the decision-making authority of the state on whose territory the crime was committed, designated according to Council Directive 2004/80 / EC.
- The Ministry of Justice shall provide the necessary support if the decision-making authority of the State granting compensation requests the direct hearing by videoconference or telephone of the victim, witness, expert or any other person on the territory of Romania who can provide relevant information.

- In application of Council Directive 2004/80 / EC, the decision-making authority regarding the claims for financial compensation of the persons provided in art. 21 para. (2) lit. c) and d) for the crimes committed on the Romanian territory is the Commission for granting financial compensations to the victims of the crimes constituted within the Bucharest Tribunal.
- The Commission for granting financial compensations to the victims of crimes within the Bucharest Tribunal is composed of at least 3 judges appointed under the conditions of the present law.

- The Commission for granting financial compensations within the Bucharest Tribunal receives the requests for financial compensation directly from the applicant or through the assistance authority of the state on whose territory the applicant resides.
- The Commission will send to the authority responsible of assistance in the requesting state, as well as to the applicant, a confirmation of receipt of the request within 5 working days, the name of the contact person within the Commission, and an approximate deadline for resolving the quest for financial compensation, when possible.

- The decision resolving the request for financial compensation shall be communicated to the applicant and to the assistance authority of the requesting State, in the form established by European Commission Decision 2006/337 / EC of 19 April 2006 establishing the standard forms of applications and decisions under Council Directive 2004/80 / EC and provided in annex no. 3 which is an integral part of this law.