

THE RIGHTS OF THE VICTIMS OF HUMAN TRAFFICKING IN THE CRIMINAL TRIAL COURT PHASE

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STRENGTHENING LAWYERS LEGAL KNOWLEDGE AND COOPERATION WITH
PROSECUTORS AND JUDGES, TO PROTECT VICTIMS OF HUMAN TRAFFICKING
RIGHTS IN THE JUDICIAL PROCEEDINGS



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RIGHTS OF THE VICTIMS OF HUMAN TRAFFICKING IN THE CRIMINAL TRIAL COURT PHASE

- The right to information
- The right to legal assistance and representation
- The right not to cooperate with law enforcement bodies
- The right to privacy and safety
- The right to witness protection and the right to be treated with respect and dignity
- The right to the protection of physical integrity

RIGHTS OF THE VICTIMS OF HUMAN TRAFFICKING IN THE CRIMINAL TRIAL COURT PHASE

Right to information

- * ***Right to receive, in the language he/she understand, information on judicial and administrative procedures applicable*** (art. 43 from Law no. 678/2001).
- * Art. 4 from Law 211/2004 on measures to ensure the protection of victims of crime
- * Art. 81 C.p.p. – the injured party has the right to be informed on her rights
- * National legislation corresponds with the European exigencies established by art. 6 (right to receive information on the case) and art. 7 (right to interpretation and translation) from Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

RIGHTS OF THE VICTIMS OF HUMAN TRAFFICKING IN THE CRIMINAL TRIAL COURT PHASE

Right to legal assistance and representation

- * ***Right to assistance and support, including legal assistance to sustain petitions and civil demands against the persons who committed the offence of human trafficking (art. 43, art. 44 from Law no. 678/2001).***
- * Art. 12 paragraph (2) from Directive 2011/36/UE
- * Art. 13 from Directive 2012/29/UE
- * mandatory legal assistance in order to be able to exercise her rights in criminal proceedings provided for by law at **all stages** of the criminal proceedings;
- * **Legal assistance mandatory and free legal assistance (chapter IV fro law no 211/2004); extrajudicial legal assistance – Hot. UNBR 419/2008**
 - Minor injured party
 - Existence of contrary interests

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Right not to cooperate with law enforcement bodies

- * *By victim of human trafficking it is understood an individual passive subject of the acts mentioned at art. 210, 211, 264 și 374 from Criminal Code and of the attempt to commit these acts, from Criminal Code, **irrespective of whether or not he/she participates in the criminal proceedings as an injured person** (art. 2 lit. c from Law no. 678/2001).*
- * Art. 81 paragraph. 2 C.p.p. A person who suffered physical, material or moral harm through a criminal act for which the criminal action moves ex officio may not participate in the criminal proceeding, being necessary to notify the judicial body which, if deemed necessary, will be able to hearing her / him as a **witness**.
- * The consequences of the refusal to cooperate

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The right to privacy and safety

Preventing secondary victimization

- * Chapter 4 from Law no. 678/2001:
- * art. 24 – **court sessions** in cases of trafficking of minors (art. 211 C.pen.) and of child pornography (art. 374 C.pen.) **are not-public**
- * art. 25 – in the trial of offences of human trafficking (art. 210 C.pen.) and facilitation of illegal stay in Romania (art. 264 C.pen.) at the demand of the injured party , **the court can declare the session not-public.**
- * Art. 352 C.p.p.
- * Art. 12 paragraph 4 from Directive 36/2011/EU victims benefit from a special treatment, in order to avoid secondary victimization. Directive 2012/29/EU contain similar dispositions (art. 18-20 and art. 23)
- * ***The right to the protection of personal data***

RIGHTS OF THE VICTIMS OF HUMAN TRAFFICKING IN THE CRIMINAL TRIAL COURT PHASE

Right to witness protection and right to be treated with respect and dignity

- * **Preventing secondary victimization**
- * Art. 12 (4) from Directive 36/2011/UE – example of measures:
- * unnecessary repetition of interrogations during the investigation, prosecution and trial;
- * visual contact between victims and accused persons, including during testimony, such as during hearings and confrontations, by appropriate means, including through the use of appropriate communication technologies;
- * testifying in public session;
- * addressing unnecessary questions about privacy

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* **Right to witness protection and right to be treated with respect and dignity**

Art. 27 (1) from Law no. 678/2001; art. 113 C.p.p.

Witness threatened – art. 125 C.p.p.

Vulnerable witness – art. 130 C.p.p.

Minor witness or hearing the child victim (Directive 2011/36/EU; art. 124 C.p.p.)

Protection measures disposed by court (art. 127 C.p.p.):

Supervising and guarding the witness's home or providing temporary housing;

Granting and ensuring the protection of witnesses or family members during their journeys;

Non-publicity of the court session during the hearing of the witness;

Listening to the witness without being present in the courtroom, through broadcast media, distortion of voice and image, when the other measures are not sufficient;

Protecting the identity data of the witness and giving a pseudonym under which he/she will testify.

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****The right to the protection of physical integrity***

- * Medical assistance for victims of human trafficking (Art. 27 indice 1 from Law no. 678/2001);
- * Forensic examination (in the course of criminal prosecution phase)
- * Forensic expertize (art. 172 C.p.p.), new expertize and the expertize supliment;
- * Access to medical acts from the file – data regarding health are considered “sensible data” and benefit from an increased protection;

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- * Right of the victim not being accused– art. 118 C.p.p. and art. 8 from Directive 2011/36/EU
- * Victims of human trafficking are **not punished** for acts of fraudulent border crossing or donation of organs, tissues or cells of human origin - art. 20 paragraph. 1 from Law no. 678/2001

Thank You for Attention!

QUESTIONS?



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