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FINANCIAL COMPENSATION FOR VICTIMS IN BULGARIA

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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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Compensations in the criminal proceedings

- ▶ The injured person can participate in the criminal proceedings in several qualities:
 - As a witness when he/she was injured by the crime;
 - As a civil claimant, when bringing civil action against the accused / defendants to compensate for the damages suffered - material and non-material damages;
 - As a private prosecutor,
 - When the victim due to minority or physical or mental deficiencies can not defend his/her rights and legitimate interests, the prosecutor may bring a civil claim in his/her favor.

Measures to secure the civil claim



- ▶ The Penal Procedure Code provides **measures to secure the civil claim /Art.73/**

The court and pre-trial authorities are required to explain to the victim that he/she has the right to bring a civil claim in the court proceedings for the damages caused by the crime.

At the request of the victim or his/her heirs, the prosecutor or the court shall take measures to secure a future claim under the Civil Procedure Code.

- ▶ Art. 74 of Penal Procedure Code - Person who shall have the quality of an Injured
- ▶ Injured shall be the person, who has suffered property or personal damages from the crime. In case of death of the person this right shall transit to his/her heirs.

Art. 76 of Penal Procedure Code - Private Prosecutor

- ▶ The victim, who has suffered property or personal damages from a crime, which is subject to prosecution under the general order, shall have the right to participate in the penal procedure as a private prosecutor. After the death of the person this right shall transit to his/her heirs.
- ▶ The private prosecutor shall maintain the indictment at the same time with the prosecutor.
- ▶ The private prosecutor may also maintain the indictment after the prosecutor declares that he/she does not maintain it.
- ▶ **Rights of the private prosecutor - Art.79.**
- ▶ The private prosecutor shall have the following rights: to become acquainted with the case and to make the necessary extracts; to submit evidence; to participate in the Court procedure; to make requests, notes and objections and to appeal the acts of the Court, where his/her rights and legitimate interests are harmed.

Civil Claimant

- ▶ The victim and his/her heirs, as well as the legal persons who suffered damages from the crime, may file a civil claim for compensation of the damages and to establish themselves as civil claimants in the Court procedure. /Art. 84/
- ▶ The civil claim cannot be filed in the Court procedure, if it is filed under the procedure of the Civil Procedure Code.
- ▶ When a civil action is brought in the criminal proceedings, no state fee is paid.
- ▶ The application for civil claim shall state: the full names of the sender and of the person against whom the claim is filed; The criminal case in which it is filed; The offense of which the damage was caused and the nature and amount of the damage for which compensation is sought. The request may be oral or written. /Art. 85/
- ▶ The civil claim shall be brought at the latest before the commencement of the judicial investigation before the court of first instance.
- ▶ The civil claim in the Court procedure may be filed as against the defendant, as well as against other persons, who shall bear civil liability for the damages caused by the crime. /Art. 86/

Rights of the civil claimant

- ▶ Art. 87. The civil claimant shall have the following rights: to participate in the Court procedure; to require securitizing of the civil claim; to become acquainted with the case and to make the needed extracts; to submit evidence; to participate in the Court procedure; to make requests, notes and objections and to appeal the acts of the Court, where his/her rights and legitimate interests are harmed.
- ▶ Art. 88. The civil claim in the court proceedings shall be examined under the rules of the Criminal Procedure Code and, insofar as there are no relevant rules, the Civil Procedure Code shall apply.
- ▶ When the court proceedings are discontinued, the civil claim is not examined, but may be brought before a civil court under the Civil Procedure Code, for which no state fee is payable.

CIVIL CLAIM IN THE CIVIL PROCEDURE

- ▶ In case the injured person has not filed a civil claim in the criminal proceedings, he can file a civil case under the Civil Procedure Code, in which case the injured party also does not pay a state fee for civil proceedings.
- ▶ The verdict of a criminal court which is in force is binding on the civil court, which examines the civil consequences of the act, whether the offense, its unlawfulness and the guiltiness of the perpetrator have been committed, in accordance with the provisions of Art. 300 of the Civil Procedure Code.



Execution of decisions of foreign courts of Member States of EU in the part of the civil claims by the order of the Civil Procedure Code

▶ **Art.622. Recognition according to Judicial Procedure**

- ▶ The interested party may request recognition of the decision under Art. 623 by the district court on the permanent address of the counterparty or its registered office and if it has no permanent address or registered office in the territory of the Republic of Bulgaria - at its permanent address or registered office. Where the interested party has no permanent address or registered address in the territory of the Republic of Bulgaria, the claim shall be filed before the Sofia City Court.
- ▶ The interested party may request that the court refuse to recognize the decision or find that there are no grounds for refusing to recognize it on the basis of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction , Recognition and Enforcement of Judgments in Civil and Commercial Matters (OJ L 351/1 of 20 December 2012), hereinafter referred to as "Regulation (EU) No 1215/2012", by the order of para. 1.
- ▶ The court decides on the basis of a copy of the judgment given in another Member State of the European Union certified by the court which has ruled it and a certificate where an act of the European Union so requires. The documents are accompanied by a translation into Bulgarian.
- ▶ The court decides by an order which has the meaning of a decision given in a claim

Art.622a. Direct execution by order of Regulation (EU) No 1215/2012

- ▶ A judgment given in another Member State of the European Union is enforceable without the need for a writ of execution.
- ▶ The enforcement agent proceeds to enforcement at the request of the party concerned on the basis of a copy of the judgment given in another Member State of the European Union certified by the court having jurisdiction and a certificate issued under Art. 53 of Regulation (EU) No 1215/2012.
- ▶ Where a bailiff establishes that the measure or order can not be executed under the terms and conditions of this Code, it shall prescribe a replacement.
- ▶ When performing enforcement, the enforcement agent shall deliver a copy of the certificate under para. 2, in which the debtor invites the debtor for voluntary performance. A copy of the judgment given in another Member State of the European Union shall be attached to the certificate if it has not been served on the debtor.
- ▶ The debtor may file a request for refusal of performance within one month of service. Where a translation of the judgment is necessary, the time limit shall run until the debtor submits it.

Art.623. Admission to Enforcement

- ▶ An application for enforcement of a judgment or other act enforced in another Member State of the European Union shall be filed with the district court at the debtor's permanent address, at his seat or place of performance.
- ▶ A copy of the debtor's application for service is not submitted.
- ▶ The court shall examine the application in private and decide on a copy of the foreign judgment certified by the court which has ruled it and a certificate where an act of the European Union so requires.
- ▶ The documents are accompanied by a translation into Bulgarian.
- ▶ The order of admission has the meaning of a decision given in a lawsuit.
- ▶ The order is subject to appeal before the Sofia Appellate Court.
- ▶ The decision of the Sofia Appellate Court is subject to a cassation.

Our practice

- ▶ An important shortcomings of the system are that pain and suffering are still not compensated and free legal aid to claim compensation by the State is not permissible. 15.2. Case Study In Sofia City Court on the grounds of Art.622 and 623 of CCP are formed three cases for recognition of a foreign judgment authorizing enforcement in connection with trafficking cases, considered and decided by the District for criminal cases of Vienna, Austria, and the issuance of writs of execution for the amounts awarded.
- ▶ By judgment of 21.03.2012 of the District Court for criminal cases of Vienna, Austria, in a criminal case № 142 Hv8-12 f, entered into force on 21.03.2012, it is recognized that five Bulgarian women have suffered from trafficking from criminal group, and were forced to engage in prostitution on them as was physical violence.

The awarded financial compensations

- ▶ As civil plaintiffs in criminal proceedings, these women victims were awarded different amounts of compensation that should be paid by the defendants in the following amounts:
 - ▶ - B. P. - the amount of 1000 Euros;
 - ▶ - G. Y. - the amount of 10 000 Euros;
 - ▶ - K.G. - the amount of 10 000 Euros;
 - ▶ - M.A. - the amount of 5 000 Euros;
 - ▶ - T. T. - the amount of 10 000 Euros.
- ▶ Only three of the injured women have applied to the Sofia City Court for recognition of the foreign judgment and allow its implementation as follows:
 - ▶ - At the request of B. P. was instituted case № 14893/2015 of the SCC;
 - ▶ - At the request of M. A. was instituted case № 14894/2015 of the SCC;
 - ▶ - At the request of G.was Y.instituted case № 14895/2015 of the SCC.

Different development of the cases

- ▶ Cases are developing differently due to different circumstances for each of the victims, as well as due consideration by different judges.
- ▶ Case № 14895/2015 of the SCC - has already issued the order of 12.17.2015 recognizing the foreign judgment and admitting the execution of the verdict in the criminal case in so far as the defendants were ordered to pay G.Y. the amount of 10 000 Euros. This order is subject to appeal before the Sofia Appellate Court within two weeks of receiving notice of its preparation, so now we are awaiting the response of the defendants - will appeal the order or not, in order to follow its entry into force and then issuing writ and taking enforcement actions to obtain the amount awarded.
- ▶ Case № 14894/2015 of the SCC - formed on the application of M. A. - we are expecting the decision of the Court.

Case № 14893/2015

- ▶ Case № 14893/2015 of the SCC - formed on the request of B. P., by Order of 01.12.2015, the court asked to justify legal interest in the application, in accordance with the provisions of the new Art.622a of the CCP adopted with changes in the CCP / SG 50 / 03.07.2015 / under which changes to a judgment given in another Member State of the European Union shall be enforceable without the need to issue an executive sheet, the bailiff proceeded at the request of an interested party on the basis of a copy of the judgment certified by a court ruled it and the certificate issued in accordance with Art.53 of Regulation / EU / № 1215/2012, which repealed Regulation / EU / № 44/2001, ie - alleviates the procedure, without the need to ask Bulgarian court recognition and enforcement of foreign judgment.
- ▶ In this regard, we filed a request with which the reasoned legal interest by submitting this request for recognition of a foreign judgment and allow the implementation of the provision of § 16 of the Transitional and Final Provisions of the Amendment of the Code of Civil Procedure - SG 50 / 03.07.2015, under which judgments given in proceedings instituted before January 10, 2015, included in the scope of Regulation / EU / № 1215/2012, to be recognized and enforced by the previous order, namely under the repealed Regulation / EU / № 44 / 2001.

Case № 14893/2015

- ▶ In this sense, the provision of Art.66, paragraph 1 of the Regulation / EU / № 1215/2012, published in Bulgarian in the Official Journal of the European Union of 20.12.2012, the section "Legislation" - L 351 according to which this Regulation applies only to legal proceedings instituted after January 10, 2015 Paragraph 2 of Art.66 of Regulation / EU / № 1215/2012 also provides that notwithstanding Art.80, Regulation / EC / № 44/2001 shall continue to apply to judgments within the legal proceedings instituted before January 10th, 2015, included in the scope of the Regulation.
- ▶ Therefore, applications are referred to the Regulation / EC / № 44/2001 and we present a certificate under Art.54 of this Regulation in Bulgarian translation, we believe that our request should be considered under Regulation / EC / № 44/2001.

Case № 14893/2015

- ▶ By Order of 22.12.2015, the court ruled that actually the provisions of Regulation / EC / № 44/2001 should apply, giving us a final opportunity to present a certificate under Art.54 of this Regulation.
- ▶ In the present certificate under Art.54 of Regulation 44/2001. B.P. was recorded wrongly as E.P., as she was recorder iduring the handling of the case, where on page 5 of the original sentence presented / but in the Bulgarian translation is p.4 / t.3.f recorded as E.P. Under this same name she was taken by pimps-accused and operating in Vienna, which is why that name appears in the verdict of the court.
- ▶ The difference in names B.P., who made the request for recognition of a foreign judgment and E.P., who is the victim, according to the sentence may appear obstacle for issuance of a writ of execution, as there is no identity.
- ▶ We have explained this fact to the court with a request from 01.08.2016, and currently expect the court's decision.

THE LAW ON ASSISTANCE AND FINANCIAL COMPENSATION TO VICTIM OF CRIME

Entered in force from 01.01.2007. It was adopted on the basis of Directive 2004/80 / EC of 29 April 2004 and applies to crimes committed after 30.06.2005.

- ▶ The law has been amended twice - in 2010, SG. Issue 32 of April 27, 2010, and in 2016 supplemented. SG. 51 of 5 July 2016, in force as of 06.10.2016.
- ▶ The amendment of 2016 provides that assistance may be granted to victims who have suffered material and non-pecuniary damage from general offenses and financial compensation - victims who have suffered material damage from the offenses referred to in paragraph 3.
- ▶ Where the victim has died as a result of the offense, the right to assistance and financial compensation passes on his or her survivors or the person with whom he or she has been in a de facto cohabitation.
- ▶ The law also does not provide for full reparations of all damages occurred to the victim.
- ▶ Financial compensation under this Act may be granted to Bulgarian nationals or nationals of Member States of the European Union as well as to foreign nationals in the cases provided for in an international treaty when the offenses are committed on the territory of Bulgaria or outside its territory but the injured person is a Bulgarian citizen .

Damages from what crimes

- ▶ The amendments to the law of July 2016 has expanded the scope of violent intentional crimes for which LAFCVC provides compensation.
- ▶ Art. 3 provides that financial compensation may be awarded to victims of the following offenses:
 1. terrorism; murder; attempt to kill; Intentional grievous bodily injury; Fornication; Rape; Trafficking in human beings;
 2. crimes committed on the commission or in pursuance of a decision of an organized criminal group;
 3. other serious intentional crimes that have resulted in death or serious bodily injury as a consequential consequence.

Forms of assistance

- ▶ The forms of assistance to victims of crime are:
 1. emergency medical assistance under the Health Act;
 2. Psychological counseling and assistance;
 3. free legal assistance under the Law on Legal Aid;
 4. practical help.If necessary, free psychological counseling and assistance under para. 1, item 2 shall also be granted after the decision under Art. 24.
- ▶ Free psychological counseling and assistance is provided by psychologists - psychologists from victim support organizations according to the needs of the victim and his / her psychological condition - the activity is funded by the Ministry of Justice.

Forms of assistance

- ▶ Victims support organizations and all other legal entities who, when carrying out their activities, are in contact with victims of crime, are required to provide practical assistance to them.
- ▶ Practical assistance consists in the prominent placement of relevant information boards and other materials on the rights of victims of crime under this Act, the creation of a relaxed and favorable environment in contact with them, the provision of information on the risks of secondary and re- Victimization, intimidation or revenge, as well as providing advice on how to prevent them.
- ▶ Victim support organizations provide shelter or other appropriate temporary accommodation for victims of crime for which there is an immediate risk of secondary and repeat victimization, intimidation and revenge.

Forms of financial compensation

Victims of crime shall be entitled to one-off financial compensation granted after the entry into force of:

1. the conviction, including where the case has been dealt with in the absence of the defendant;
2. the agreement for resolving the case in the pre-trial proceedings;
3. the prosecutor's office or the judicial act in which the criminal proceedings have been discontinued, except in cases where the termination is based on Art. 24, para. 1, items 1, 7 and 9 of the Criminal Procedure Code;
4. the prosecutor's or the judicial act in which the criminal proceedings have been suspended due to the failure to disclose the perpetrator of the offense.

- ▶ The compensation is determined by the body to the Minister of Justice - namely the National Council for Assistance and Compensation to Victims of Crime. Characteristic of this type of financial compensation is that it is limited in amount. According to Article 13, paragraph 1 of LAFCVC, the maximum amount of financial compensation may not exceed **10 000 Levs**, regardless the actual pecuniary damage as a result of the crime. The financial compensation for pecuniary damages will be paid once.

What includes financial compensation

- ▶ Financial compensation shall cover, jointly or severally, pecuniary damage which is a direct consequence of the offense and shall consist of:
 1. costs of treatment, except for the costs to be covered by the budget of the National Health Insurance Fund;
 2. lost income;
 3. expenses for payment of court and debtor expenses;
 4. omitted means of subsistence;
 5. funeral expenses;
 6. other property damage.

When no financial compensation is granted

Financial compensation shall not be granted when:

1. the injured party has been convicted for a crime under Art. 3, para. 3 during the last 5 years before applying for financial compensation;
2. the act has been committed in a state of severe irritation caused by the victim of an illegal act, from which serious or serious consequences have occurred or occurred to the guilty person or to his / her neighbors;
3. the act was committed when the limits of the inevitable defense were exceeded;
4. the victim has received compensation in another way;
5. the victim has not notified the competent authorities of the offense unless he has been able to do so for good reasons.

Where the victim has contributed to the occurrence of the criminal offense, this leads to a reduction in the financial compensation he would have received.

How to apply for financial compensation and how to receive

The application for financial compensation in accordance with a model shall be provided to the victims of the National Council, the regional governors or the bodies and organizations.

The application for financial compensation shall be submitted to the National Council within one year from the entry into force of the act under Art. 12, para. 2. The application may also be filed through a victim support organization or through the district governor at the victim's current address.

The Minister of Justice shall immediately, upon payment of the financial compensation, bring a recourse against the offender or his heirs for the reimbursement of the amount paid.

Decision of the National Council

- ▶ Applications for financial compensation shall be considered within one month from the date of their receipt. If necessary, this period may be extended to three months. The National Council adopts its decisions by a simple majority of those present. They shall be made in writing on the day of the meeting.

The decision to grant financial compensation includes:

1. the full names, the unified civil number, the citizenship and the permanent and current address of the person to whom financial compensation is granted;
2. the legal qualification, the time and place of the offense from which the person has been injured;
3. the damages for which the financial compensation is granted and the amount thereof.

The decision for refusal to grant the financial compensation shall contain the data under para. 3, items 1 and 2 and is motivated.

Decisions can not be appealed.

A copy of the decision shall be sent immediately to the victim and to the district governor or to the victim support organization when the application for financial compensation has been received through them.

Funds for implementation of the law

- ▶ The funds for the implementation of the law shall be provided under the budget of the Ministry of Justice and shall be planned according to the procedure and within the terms of the procedure for preparation of the state budget for each year

Conclusions

- ▶ According to TIP (2015), no victims received compensation during 2014, whereby opinions were expressed that the procedure continues to be overly bureaucratic and authorities do not always inform victims of their right to apply for compensation and legal aid.
- ▶ The problem of the lack of effective compensation came into focus at the second round of evaluation by GRETA (2016). The Council proposes a possibility for introduction of an earlier payment of financial compensation to victim, even before the criminal process has ended. Another practice that may improve the access to compensation is to regulate the possibility for victims to apply electronically.