



Funded by the Justice Programme of the European Union

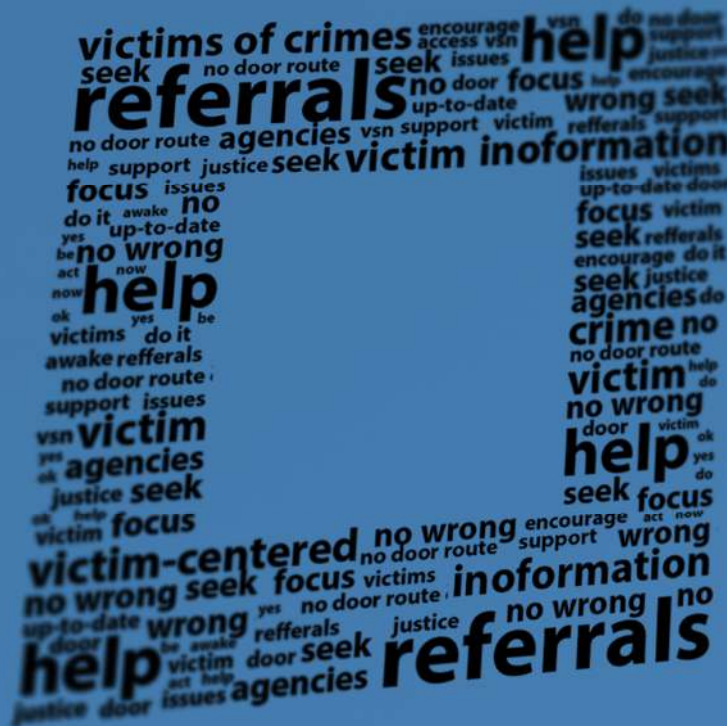


Asociatia  
PRO REFUGIU.org



SCANDINAVIAN  
HUMAN RIGHTS  
LAWYERS

# THE REFERRAL MECHANISM TO ASSIST VICTIMS OF CRIMES IN DOMESTIC AND CROSS-BORDER CASES



June 2018

# AUTHORS

**Silvia Berbec,**

President Association Pro Refugiu, Lawyer in the Bucharest Bar, Romania (Chapters I, III, IV, VI)

**Elena Lazar,**

Lawyer in the Bucharest Bar, Romania (Chapters I, II, IV and V)

**Miriana Ilcheva,**

Senior Analyst, Center for the Study of Democracy, Bulgaria (Chapters I and VI)

**Desislava Viktorova,**

Inspector, National Homicide Unit, Directorate General of National Police, Bulgaria (Chapter II)

**Penka Stoyanova,**

Inspector, National coordinator on Domestic Violence, Directorate General of National Police, Bulgaria (Chapter III)

**Blagorodna Makeva Dr.,**

Senior Commissioner, Deputy Director, Directorate General of National Police, Bulgaria (Chapters IV and V)

**Dagmar Freudenberg,**

Public prosecutor retd., consultant for crime victim protection (retd.) of Crime Prevention Council of Lower Saxony, Expert in German and European crime victim protection, research assistant of Association ZOOM - Gesellschaft für prospektive Entwicklungen, e.V. Göttingen, Germany (Chapter I, II, IV, V and VI).

**Ruth Nordström,**

Senior Legal Counsellor, Scandinavian Human Rights Lawyers Sweden (Chapter I, II, IV, V and VI).

**Frederic J. Strandh,**

Scandinavian Human Rights Lawyers Sweden (Chapter I, II, IV, V and VI).

This publication was elaborated in the project Pro Victims Justice through an Enhanced Rights Protection and Stakeholders Cooperation.

This publication has been produced with the financial support of the Justice Programme of the European Union. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Commission.

# ABBREVIATIONS

|                 |   |
|-----------------|---|
| <b>CCPI</b>     | Police Cooperation Centre   |
| <b>DIICOT</b>   | Directorate for Investigating Organized Crime and Terrorism   |
| <b>GEO</b>      | Government Emergency Ordinance  |
| <b>NCPC</b>     | New Criminal Procedure Code   |
| <b>CVAFCA</b>   | Crime Victim Assistance and Financial Compensation Act  |
| <b>NLAB</b>     | National Legal Aid Bureau   |
| <b>AHPV</b>     | Act on Harmonizing Protection of Vulnerable Victims   |
| <b>BAMF</b>     | Federal Office for Migration and Refugees   |
| <b>CC</b>       | Criminal Code   |
| <b>CP</b>       | Civil Procedure   |
| <b>CPC</b>      | Criminal Procedural Code  |
| <b>CPFMA</b>    | Act on Court Procedure in Family Matters and Non-litigious Matters  |
| <b>CVCA</b>     | Crime Victims Compensation Act  |
| <b>EC</b>       | European Council  |
| <b>ECPAT</b>    | End Child Prostitution, Pornography and Trafficking of Children for Sexual Purposes, international and national nongovernmental organization against exploitation of children |
| <b>EHRC</b>     | European Convention on Human Rights   |
| <b>EMN</b>      | European Migration Network  |
| <b>EU</b>       | European Union  |
| <b>EUROJUST</b> | European Union's Judicial Cooperation Unit  |
| <b>EUROPOL</b>  | European Union's law enforcement agency   |
| <b>KOK</b>      | National Coordination Group against Human Trafficking   |
| <b>PCS</b>      | Police Crime Statistics   |
| <b>PSWA</b>     | Act on Protection of Sex Workers  |

# CONTENTS

|  |    |
|--|----|
| <b>Chapter I.</b> European and national legal framework .....  | 1  |
| <b>Chapter II.</b> Legal procedures for identifying victims of crimes.....   | 6  |
| 1. Victims' identification in Romania, Bulgaria, Germany, Sweden.....  | 6  |
| 2. A general model of the judicial procedures.....   | 17 |
| <b>Chapter III.</b> Indicators for the identification of victims of crimes.....  | 18 |
| <b>Chapter IV.</b> The legal assistance referral process.....  | 21 |
| 1. The legal assistance referral process in Romania, Bulgaria, Germany,<br>Sweden.....                                 | 21 |
| 2. A general model for the legal assistance referral .....   | 29 |
| 3. Avoiding re-victimization in the criminal procedures.....   | 29 |
| <b>Chapter V.</b> Criminal procedures in domestic and cross-border cases in<br>Romania, Bulgaria, Germany, Sweden..... | 31 |
| <b>Chapter VI.</b> Stakeholders with attributions in ensuring the protection of<br>victims' rights.....                | 49 |

# CHAPTER I

## EUROPEAN AND NATIONAL LEGAL FRAMEWORK

### EUROPEAN LEGAL FRAMEWORK

**Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.**

The directive considerably strengthens the rights of victims and their family members to information, support and protection. It further strengthens the victims' procedural rights in criminal proceedings. The Victims' Rights Directive lays down a set of binding rights for victims and clear obligations on EU Member States to ensure these rights in practice.

**Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.** The directive requires that all EU countries have a state compensation scheme which provides fair and appropriate compensation to victims of intentional violent crime.

**Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.** It encourages EU countries to set up mechanisms for recovering compensation payments from the offender.

**Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order.** It sets up a mechanism allowing persons who benefit from a protection order in criminal matters issued in one EU country to request a European Protection Order.

## NATIONAL LEGAL FRAMEWORK

### ROMANIA

The main legislation governing the relevant provisions on the rights of the victims of crimes is represented by

- Law no. 678/2001 on preventing and combating trafficking in human beings.
- Government Emergency Ordinance (GEO) no. 194/2002 regarding foreigners in Romania.
- Law 122/2006 on asylum in Romania.
- Law no. 217 of 2003 on the prevention and combating of domestic violence, republished under the provisions of art. 248 of Law no. 187/2012 for the implementation of Law no. 286/2009 on the New Criminal Code and of course the New Criminal Procedure Code - Law no. 135/2010.

The New Criminal Procedure Code (NCPC) does not use the notion of victim of an offence, but uses the notion of person injured by an offense, a person who in the criminal proceeding acts and during the trial may act as an injured party or a civil party. A distinction is thus made between the *injured person*, who is a person who has suffered any harm through the offense and the injured party, who is the person who has decided to participate as such in the forms prescribed by law as part of the trial. The NCPC grants to the injured person participating in the criminal proceedings, as well as to the person bringing a civil action in the criminal trial, numerous rights and obligations depending on the quality in which she / he participates in the criminal proceedings.

If a victim chooses to participate in the criminal trial as injured party, the rights NCPC guarantees are provided in art. 81. The victim as injured party has the right: to be informed of his/her rights; to propose production of evidence by the judicial bodies, to raise objections and to make submissions; to file any other applications related to the settlement of the criminal part of the case; to be informed, within a reasonable term, on the status of the criminal investigation, upon explicit request, provided that they indicate an address on the territory of Romania, an e-mail address or an electronic messaging address, to which such information can be communicated; to consult the case file, under the law; to be heard; to address questions to the defendant, witnesses and experts; to receive an interpreter, free of charge, when they cannot understand, cannot express themselves properly or cannot communicate in the Romanian language, and to be informed about the non-indictment decision in a language which she/he understands; to be assisted or represented by a lawyer; to use a mediator, in cases permitted by law.

## **BULGARIA**

Bulgaria protects the rights of victims of various crimes via a number of codes and laws:

- The Criminal Procedure Code<sup>1</sup> contains victims' main procedural rights and statuses they can have in the proceedings, such as victim, witness, civil claimant, private accuser, etc. It is the main instrument to regulate pre-trial and trial proceedings in domestic and cross border cases.
- The Assistance and Financial Compensation of Victims of Crime Act<sup>2</sup> and the Regulation for its implementation<sup>3</sup> contain the main protection and assistance framework for victims, as well as the conditions and order for their financial compensation. The state support for service providers is also regulated.
- The Countering Human Trafficking Act<sup>4</sup> contains specific regulation on treating, assisting and supporting victims of trafficking and regulates the institutional infrastructure for countering this criminal phenomenon.

The Protection against Domestic Violence Act<sup>5</sup> regulates a civil procedure for offering protection to victims of domestic violence. Ratification of the Istanbul Convention is currently postponed and criminalization of a number of acts of domestic and gender-based violence is still awaited.

## **GERMANY**

German Criminal Code<sup>6</sup> concerning the definition of main crimes as there are (physical) injuries, crimes against life, freedom, personal rights and human trafficking. Domestic violence is not included in the German Criminal Law as a special definition. That's why Art. 3b of the Istanbul-Convention is current law for the definition of domestic violence in Germany.

German Criminal Procedural Code<sup>7</sup> concerning the whole law of the criminal proceedings, including all rights of victims in the criminal proceedings as well as the fundamental principles of Art. 6 EMRK.

Act on Compensation to victims of violent crime<sup>8</sup> (Crime Victims Compensation Act – OEG) concerning the right of compensation which should be entitled for a personal injury as result of willful, unlawful physical assault against himself or any other person or as a result of the lawful defense against such an assault upon

---

<sup>1</sup> Available in Bulgarian at <https://www.lex.bg/en/laws/ldoc/2135512224>

<sup>2</sup> Available in Bulgarian at <https://www.lex.bg/laws/ldoc/2135540550>

<sup>3</sup> Available in Bulgarian at <https://www.lex.bg/bg/laws/ldoc/2136974859>

<sup>4</sup> Available in Bulgarian at <https://www.lex.bg/laws/ldoc/2135467374>

<sup>5</sup> Available in Bulgarian at <https://www.lex.bg/laws/ldoc/2135501151>

<sup>6</sup> Available in German at <https://www.gesetze-im-internet.de/stgb/StGB.pdf> - Strafgesetzbuch

<sup>7</sup> Available in German at <https://www.gesetze-im-internet.de/stpo/> - Strafprozessordnung

<sup>8</sup> Available in German at <http://www.gesetze-im-internet.de/oeg/index.html> - Opferentschädigungsgesetz

application. Foreign nationals shall be entitled to compensation, if they are nationals of a member state of the European Union.

Act on harmonization for the protection of victims' life<sup>9</sup> concerning measures like change of identity if appropriate.

Act on protection of sex workers<sup>10</sup> concerning measures to ensure the monitoring and protection of sex workers who were working as prostitutes.

Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory, Residence Act<sup>11</sup> concerning measures inter alia on the right of residence also under international law or on humanitarian or political grounds and residence for family reasons.

Guideline for the criminal proceedings and the fine proceedings<sup>12</sup> concerning all measures in the criminal proceedings to be observed by police and prosecution, including measures to handle child-victims and victims with special needs.

Identification of victims of human trafficking in international protection and forced return procedures<sup>13</sup>, a focused study of the German National Contact Point for the European Migration Network (EMN) under the responsibility of the Federal Office for Migration and Refugees.

## SWEDEN

In Sweden, the rights of victims of crimes are protected through various laws and regulations.

- The Code of Civil and Criminal Procedures (Rättegångsbalken 1942:740) contains information about the procedural rights for victim, witness etc. The law regulates the pre-trial and trial proceedings.
- The Code of Compensation to Victims of Crime (Brottskadslag 2014:322) regulates the conditions for financial compensation for victims.
- According to the Code on Victim Counsel (Lag (1988:609) om målsägandebiträde), a legal counsel will be appointed to the victim of crime in certain cases, such as described in Chapter 4 and 6 of the Penal Code (Brottsbalk 1967: 700). For example victims trafficked for sexual and non-

---

<sup>9</sup> Available in German at <http://www.gesetze-im-internet.de/zshg/BJNR351010001.html> - Gesetz zur Harmonisierung des Schutzes gefährdeter Zeugen – Zeugenschutzharmonisierungsgesetz – ZSHG

<sup>10</sup> Available in German at <https://www.gesetze-im-internet.de/protschg/index.html>

<sup>11</sup> Available in German at [https://www.gesetze-im-internet.de/aufenthg\\_2004/index.html](https://www.gesetze-im-internet.de/aufenthg_2004/index.html)

<sup>12</sup> Available in German at <https://www.jurion.de/gesetze/ristbv/> - Richtlinien für das Strafverfahren und das Bußgeldverfahren

<sup>13</sup> Available in German at [http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/EMN/Studien/wp56-emn-menschenhandel.pdf;jsessionid=458A1CED5E1618E7FBDD798E4052A633.2\\_cid368?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/EMN/Studien/wp56-emn-menschenhandel.pdf;jsessionid=458A1CED5E1618E7FBDD798E4052A633.2_cid368?__blob=publicationFile) Die Identifizierung von Opfern von Menschenhandel im Asylverfahren und im Fall der erzwungenen Rückkehr, Fokus-Studie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN), verantwortlich: Bundesamt für Migration und Flüchtlinge



sexual purposes, victims of sexual violence and victims of domestic violence. The victims will have a state appointed legal counsel (lawyer) once a preliminary investigation has been initiated. The state pays for the appointed counsellor within the legal proceedings.

- The Police Act (1984:387) regulates the duties of the police authority regarding particular personal safety in the case of a threatened victim or a witness of crime.

According to the Social Services Act (Socialtjänstlagen 2001: 453), each municipality has a duty to provide assistance and support to victims of crime within their districts, especially victims of violence or other abuses committed by family members, and children who have witnessed violence or other abuses by or against related adults. Municipalities are expected to provide victims with basic needs from shelter, financial aid to any psychosocial support they may need.

# CHAPTER II

## LEGAL PROCEDURES FOR IDENTIFYING VICTIMS OF CRIMES

### 1. VICTIMS IDENTIFICATION IN ROMANIA, BULGARIA, GERMANY, SWEDEN

#### ROMANIA

According to the NCPP<sup>14</sup>, art. 288 the criminal investigative body can be notified with the commission of an offense in the following ways: *by complaint or denunciation, by the acts concluded by other observing bodies provided by the law, or can notified of its own motion.*

In the situations when, according to the law, the criminal proceedings can be initiated only upon the prior complaint of the injured person, at the request made by the person stipulated by the law or with the authorization of the body stipulated by the law, the criminal action cannot be initiated in their absence.

However, certain offenses such as human trafficking present certain peculiarities. In addition, if self-reporting of victims is the norm for most of the crimes, where victims call for help and assistance soon after the crime is committed and the offender is far enough for the victim not to be afraid of direct and immediate reprisals, in the case of human trafficking, self-identification is not possible (as explained before, only competent authorities can declare that a person is a victim of human trafficking).

There are several reasons for the low level of self-reporting: victims may not see themselves as such – even if they feel exploited, they may believe that they were simply unlucky in falling into the hands of recruiters and even feel ashamed. Victims may not be aware that there are laws to protect them and that they can call for help, support and assistance. Foreign victims may not speak the local language and thus feel unable to communicate appropriately with the relevant authorities. Victims may not trust or may even fear law enforcement and the possibility of being held themselves responsible and not know whom to call for help. Victims may fear the direct negative consequences impacting their situation, such as losing money or being deported. Finally, victims may fear reprisal from traffickers against them or their family, in the place of work or in their place of origin.

There are thus situations when the identification of a victim is not the result of a prior complaint, but the result of investigations initiated by specialized officers at the request of the prosecutor. Also, the victim's identification may also be the result of a denunciation coming from someone other than the victim, or tangentially following another ongoing investigation with another offense as an object.

According to art. 290 of the NCPP the denunciation represents the notification by a natural or legal person regarding the commission of an offense. The criminal

---

<sup>14</sup> Law no. 135/2010 on the New Code of Criminal Procedure, published in the Official Gazette no. 486 of 15 July 2010, in force since 1 February 2014.

investigative body shall initiate a proprio motu investigation if it finds out that a crime has been committed in any way other than those provided under art. 289-291 of the NCPP and concludes a record of findings in this respect. Denunciation is a more frequent way for identifying victims of such crimes, bearing in mind, like stated before that they usually do not report the commission of such crimes.

The prior complaint according to article 295 of the NCPP represents a condition for bringing the criminal action in the case of certain offenses expressly stipulated. It is addressed to the prosecutor or to the criminal investigation bodies and can be drafted only by the injured person and not by other persons. Of course, it will also be possible to introduce the prior complaint by the trustee of the victim through a special proxy, which will be attached to the file.

The offenses for which the commencement of criminal proceedings is conditional on the introduction of a preliminary complaint, according to the NCP, are: art. 193. – Common assault, art. 196 - Bodily injuries, art. 206 – Threat, art. 208 – Harassment, art. 218 - Rape (art. 218, paragraphs 1, 2 and 5), art. 219 - Sexual assault (art. 219, paragraphs 1 and 5) art. 223 - sexual harassment. In the case of offenses under Chapter VII of the NCP on Trafficking and Exploitation of Vulnerable Persons, there is no need for prior complaint to initiate criminal proceedings, given the severity of these types of crimes.

The preliminary complaint includes: the name, PIC (personal identification code), legal quality, the petitioner's domicile (if the petitioner is a legal person: registered office, name, SRN, TIN, bank account, registration number in the legal persons register and the legal representative of the legal entity), the accurate description of the deed, the indication of the perpetrator if known by the petitioner, indication of the means of proof if known.

The preliminary complaint can be drafted in writing, and it may be signed by the trustee or the injured person, so signature of both parties is not obligatory. It can also be formulated orally, in which case it will be recorded in a minutes. For the person lacking in the exercise capacity, the complaint is formulated by his / her legal representative, and if he / she has the capacity to exercise but is restricted, the person injured can do so personally, but with the consent of the representative. The prior complaint cannot be introduced by a husband for the other spouse or by the majeure child for the parent.

The NCPP extended the deadline for the preliminary complaint to be introduced, from 2 months to 3 months<sup>15</sup>. In addition, another aspect of novelty is the moment when this term begins to run. In the old Criminal Code, the term was running from the date when the injured party experienced the act, in the new code, this term runs from the date when the injured person knew the act was committed. In those situations in which the prior complaint is filed by the legal representative of the person lacking the exercise capacity, the term of 3 months shall run from the date on which the representative witnessed the commission of the offense. If the perpetrator is the representative, the term will run from the date of appointment of a new representative.

---

<sup>15</sup> New Criminal Procedural Code, art.296

In the case of flagrant criminal offenses, the criminal investigation body is obliged to acknowledge the fact that the offense has been committed. After this step, he will summon the injured person and ask if he/she wants to make a prior complaint. If the answer is negative, it will hand over the papers together with a proposal to file away the prosecutor. If the answer is yes, criminal proceedings will be initiated.

If the prior complaint has been wrongly directed, it will still be considered valid, if it was filed within that 3 month period. It will be sent to the competent body to receive it through the administration. If the preliminary complaint is not filed within 3 months, it will be noted the delay and the forfeiture of the term and thus from the right to hold the perpetrator responsible<sup>16</sup>. All the documents concluded and the file away proposal will be sent to the prosecutor. If criminal prosecution has been carried out and subsequently it is discovered that a prior complaint is necessary, the injured person will be summoned to ask if he / she wishes to make a prior complaint. The proceedings will continue if they make a prior complaint, but if they refuse, the research body will communicate all the papers together with a proposal for file away to the prosecutor.

Withdrawal of the prior complaint in respect of offenses for which the bringing of criminal proceedings to the prior complaint of the injured person is also a cause that removes criminal liability. Withdrawal is done either orally or in writing before the criminal investigating authorities or before the court, to be recorded in a minutes or in the conclusion. The unilateral manifestation of will of the injured person must be unconditional and achieved until the final case is judged. If the preliminary complaint has been withdrawn, the solutions that can be pronounced are: ranking, if the process is in the tracking phase; and termination of the criminal proceedings if the trial is in the trial phase. The suspect or defendant, if he wishes to prove his innocence, may request further prosecution or trial.

Where the injured person is deficient in the exercise of his capacity, the prior complaint may be withdrawn only by his / her legal representative. In the case of an injured person with limited exercise capacity, the withdrawal is made with the consent of the persons provided by the civil law, in which case the manifestation of will in this sense may be ineffective, since the criminal action can be exerted ex officio.

The victim of such crimes and the perpetrator have also the possibility to use mediation. According to art. 69 par. 2 of the Law no. 192/2006 regarding the mediation and organization of the profession of mediator, the term stipulated by the law for the introduction of the preliminary complaint shall be suspended during the mediation. If the parties to the conflict have not entered into a settlement, the injured party may file the prior complaint within the same time-limit, which will resume the course from the date of drawing up the minutes of closing the mediation procedure, also counting the time elapsed before the suspension. We must state here that this procedure is not really used in these kind of crimes due to the fact that the victim might be afraid to see/meet again the perpetrator who abused him/her.

---

<sup>16</sup> New Criminal Procedural Code, art 297

## **BULGARIA**

Early identification is crucial to promptly assist, support and protect victims and enables police and prosecution authorities to better investigate crimes and punish perpetrators.

Victims possibly suffer from various psychological problems as they may have experienced multi-traumatic incidents in their lives. Therefore, it is very important to acknowledge the impact of trauma upon persons and recognize its symptoms.

Practices for identification of victims described below are divided by entity leading the process, while specifics about victims in cross border cases and children victims, as well as other vulnerable groups, are pointed at the end of the chapter.

Commonly, in Bulgaria there are no formal identification procedures, guidelines, or checklists for identification of victims, except in specific cases, e.g. trafficking of human beings.

**Police** usually has the leading role in victim identification. When responding to calls on the European emergency phone number 112 police officers often identify victims by appearing on the scene, where a crime or an act of domestic violence was committed.

Both **Police** and **Prosecutor's Office** identify victims in two main ways:

- by meeting them face to face when victims come to submit a complaint or via meeting and interviewing witnesses as part of an investigation;
- by receiving (on the registration desk, via post or via email) written victim complaints.

As domestic violence is still in process of being criminalized in Bulgaria, victims of domestic violence are also identified, when police receives a copy of their (civil) protection order by court. Other victims share domestic violence incidents throughout the course of other proceedings for crimes they fall victims to.

Victims are involved in the identification procedure by relating as much information as possible. The confidence and the mutual trust between victim and police officer or prosecutor are weighty for every investigation. In some cases it is obvious that a female officer is better suited to work with a female victim. When the victim is a child, professionals with special education has to be present at the time of the interviews.

**The centers for prevention of violence and crime** with the Ministry of Interior identify all types of violence victims - women, as well as elderly people beaten by their younger relatives.

Citizens go to the **forensic medicine clinics** for certification of bodily injuries, sustained through domestic and other violence for the purposes of criminal and other proceedings. Victims are identified when they come for a medical examination - upon their own request or upon motion of the bodies of pre-trial proceedings, alone or accompanied by relatives. Some victims just certify their injuries and never complain to authorities due to fear, shame, etc.

**Social authorities** identify victims of violence during social work by specific social services, like the centers for social support, but also by their other units, even in the departments which allocate social benefits, although they have not been specifically trained to do so. Signals about violence towards children and adults can come from the municipal administration, the State Agency for the Protection of Children, school authorities and principals, medical personnel, hospital, etc.

Identification is done via observing the victim and interviewing him/her, often with the participation of forensic doctors and NGOs. The place of identification can either be the place, where the violence took place - e.g. the victim's home - the local police department or the local child protection unit.

Adult victims can be identified during visits by social workers to their homes to identify social needs, but they rather turn to Ministry of the Interior, as social authorities can only place them in crisis centers.

**Victim support organizations** identify victims and send them to police or prosecution to submit a complaint. Many of the victims arrive at the **NGOs** already identified by authorities or self-identify as such. Nevertheless, identification in a broader sense is still a part of the consultation process.

Another point where victims are identified has turned out to be the **National Council for Assistance and Compensation of Victims of Crime** with the Ministry of Justice. It has reception hours, where every person, considering himself/herself victim of crime can visit, state his/her complaint and receive information about his/her entitlements.

**Social authorities** work together with **State Agency for Child Protection** and the **State Agency for Refugees** when it comes to foreign victims - children and adults.

Victims can self-identify themselves as victim. In many cases when a victim looks for some help, advice or a consultation, he/she already declared his/her status of victim. In some situation victims use the **mass media** to state their self-identification.

Victim identification in cases of child abuse has a methodology that has emerged in recent decades out of a clear need to act upon **child abuse material** found circulating online and seized by the police from computers and other storage devices. Victim identification by specialized investigators aims to alleviate the suffering of the child by identifying and locating him or her, and to bring that child's abuser to justice.

In cases of **victims with disabilities** police co-operate with the social services. Of course, victims with hearing or speaking disorders should get sign interpreters.

In practice **elderly victims** (over 65 years of age) are often physically or financially abused by their relatives and they rarely complain and often withdraw their

complaints for fear of exposing their families. Understanding and patience are important in every contact with the victims.

**Victims of trafficking** can identify as such themselves, as well as through border police services or competent NGOs.

## **GERMANY**

The identification of victims of crimes is determined by the principles of criminal proceedings, in particular the principle of legality that applies fundamentally in Germany. If the prosecuting authority have indications on the existence of a criminal offence, it must officially start the investigation of the facts, § 160 CCP. The prosecution authority is in principle the public prosecutor's office, which is supported in the investigation of the facts by the police officers, § 161 Paragraph 1 Sentence 2 CCP. The principle of legality applies to the authorities and civil servants of the police, as well as to the public prosecutor's office, § 163 Abs. 1 CCP. Therefore, the police is to initiate an investigation ex officio if it finds evidence of a criminal offence. It does not matter how the law enforcement authorities become aware of such evidence. The investigations are to be carried out by the law enforcement authorities, following the principle of office investigation and serve to investigate the truth. They must include the circumstances serving as burden and discharge the accused and the circumstances that are of significance for the legal consequences of the offence, § 160 Paragraph 2 CCP. The aim of the investigation is to find out who is a suspected and who is a victim of the crime. This happens as the result of the judgment of the court. However, the investigations generally provide reliable early indications of the identification of the (presumed) victim.

In identifying the victim of a crime, the content of the victim's testimony as a witness is crucial. There are various aspects that can contribute to the identification: a key indication is the filing of a criminal complaint or the submission of a criminal complaint to the police or to the public prosecutor's office by the victim herself. But also other persons, for example eyewitnesses of the crime or witnesses of hearsay, statements from friends, neighbors or colleagues lead to the initiation of investigations by the prosecution authorities and to the identification of the victim because of the legality principle.

The identification of different groups of victims depends on different factors.

### *Victims of domestic violence and sexual offences*

In the last 20 years, a broad-based paradigm shifted in the German society according to the motto "domestic violence is not a private matter" and had led to the establishment of local, regional and statewide networks among victims of domestic violence, which promote cooperation between different professions that get into contact with domestic violence victims. These networks are supported by a federal-state working group on "domestic violence", headed by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, and their further development is supported by various measures, including legal policy measures. There is no



criminal offence of domestic violence in the German Penal Code. Rather, since the ratification of the Istanbul Convention, in Germany, the definition in Article 3b of the Istanbul Convention is directly regarded as a working definition. Criminal offences in this area include violent crimes, sexual offences, offences against a person's freedom and offences that violate the person's personal rights and free economic self-determination.

According to the results of prevalence studies on one hand, and police crime statistics (PKS) on the other hand, the pressing of charges by victims of domestic violence, which is so important for identifying them, does not correspond to the actual extent of these crimes. Rather, the willingness to file complaints and thus to disclose the victimhood of adult victims of domestic violence is considerably limited, in particular by the victims' shame and (own) feelings of guilt. The aim of the work of victim support institutions in the networks of domestic violence is therefore to directly and indirectly support and strengthen victims in the disclosure of criminal offences and thus to improve their identification in order to achieve the prosecution of perpetrators and the elimination of domestic violence in society at the same time. Since victims of domestic violence turn to doctors and therapists more frequently in everyday life, it also makes sense to raise the awareness of the medical profession in order to strengthen victims and make them public. However, doctors and therapists are generally bound by medical secrecy. Nevertheless, they are not bound to this duty of confidentiality if serious crimes are involved, in particular against the physical integrity or danger to the lives of the victims, a so-called justifiable state of emergency, § 34 CC. In such cases, doctors and therapists may, contrary to their duty of confidentiality, report the offences to the prosecution authorities themselves.

The victims of domestic violence are not only those directly affected by these crimes, but also those who witness them, especially children. Various studies have shown that children are considerably disturbed in their development by the experience of various forms of domestic violence. Since children regularly are outside their families through schools and childcare facilities and their (co-)involvement in domestic violence is easier to recognize, staff in schools and daycare facilities for children (kindergartens and daycare centers) are sensitized to the phenomenon and the correct handling of identification via networks. In this way, children can be identified as victims and negative influences on their development can be limited. In addition, the cycle of domestic violence can be influenced and ideally interrupted by the intervention of third parties (youth welfare office, family court, counseling center for couples). These institutions can also contact the law enforcement authorities, but are not obliged to do so. If the welfare of the child is endangered by the domestic violence in accordance with § 8a of the Social Code VIII (Child and Youth Welfare Act), the Youth Welfare Office should always check whether the risk of the child's welfare can be reduced, by calling in the police, by filing a complaint. The family court, which is established at every district court, can suspend pending proceedings, e.g. violent protection proceedings in accordance with § 21 paragraph 1 FamFG with regard to a public prosecutor's investigation or criminal court proceedings, or forward the files in accordance with § 149 ZPO to the public prosecutor's office. If there are sufficient indications that a crime has been



committed, the public prosecutor's office must then initiate preliminary proceedings and investigate the facts of the case.

*Victims of human trafficking, for the purposes of: sexual exploitation, labor, begging and committing crimes.*

The identification of victims of human trafficking for the purpose of sexual exploitation is made more difficult not only by the problems of shame and feelings of guilt of the victims, which are also pronounced here, but also by the fact that considerable pressure is exerted on the victims through threats with the use of physical, psychological violence, economic violence (debt) or through the removal of papers by the perpetrators. Offenders often put pressure on victims by threatening to report them to the police or to the public prosecutor's office. The public prosecutor's office may refrain from bringing charges in cases of victims who in turn have committed crimes such as for example offences against the right of residence or other acts of lower wrongfulness, §§ 154ff CCP. In almost half (44%) of the investigations carried out in 2015, victims of human trafficking for the purpose of sexual exploitation have contacted the police themselves or accompanied by counselors from special counseling centers or by third parties such as other prostitutes or clients. More than half (56%) of the proceedings were led back to the work of police. Human trafficking as an offence of control is dependent on milieu-oriented police work. In cases of trafficking for the purpose of sexual exploitation, the persons who have access to the victims, i.e. the clients, play an important role in identifying victims. The implementation of Directive 2011/36/EU in Germany introduced the criminal liability of clients who engage in sexual acts with victims of human trafficking for remuneration, taking advantage of their personal or economic predicament or their helplessness caused by their stay in a foreign country, § 232a Para. 6 CC. Anyone who voluntarily reports such an offence to the competent authority or voluntarily initiates such a report shall not be punished as a client. To what extent this new regulation will affect the detection of human trafficking for sexual exploitation is not yet foreseeable. Statistics for 2017 are not yet available. In connection with the implementation of Directive 2011/36/EU, the Prostitution Trade Regulation Act and the Prostitution Protection Act (Prostituiertenschutzgesetz, ProstSchG), which came into force on 1 July 2017, was also introduced in Germany in 2016. This law regulates a registration obligation for prostitutes before taking up prostitution, § 3 ProstSchG, an obligation of the authorities, § 7 ProstSchG, the obligation to provide health advice for prostitutes, § 10 ProstSchG, as well as an authorized obligation to operate a prostitution business, §§ 12 ff ProstSchG. These regulations have considerably extended the possibilities of control and adapted them to the fact that the voluntary exercise of prostitution in Germany is generally permitted.

The police, which is subordinated to the respective state government, had concluded agreements in the form of decrees with the judiciary and the victim support specialized institutions, which stipulate cooperation between these actors in combating and preventing human trafficking for the purpose of sexual exploitation.

Specialized support institutions for victims of human trafficking are members of the “KOK - Bundesweiter Koordinierungskreis gegen Menschenhandel e.V.” (National Coordination Group against Human Trafficking). Counselors in these institutions support victims of human trafficking in all matters and accompany them in the criminal proceedings. In April 2018, the Federal Police and the judiciary carried out an extensive raid on suspicions of commercial smuggling of foreigners, commercial and gang forced prostitution and the withholding and embezzlement of pay in Germany. For victims of forced prostitution, the German residence law provides for a so-called reflection and recovery period of three months, § 59 (7) of the Residence Act, which is intended to enable those affected to recover and escape from the influence of the traffickers and to decide whether they wish to cooperate with the prosecution authority.

The same legal bases apply to the identification of victims of human trafficking for the purpose of labor exploitation. Through the implementation of Directive 2011/36/EU in 2016, all forms of human trafficking were enshrined as a criminal offence in §§ 232 CC. As an association of specialized support institutions, the KOK also covers the counseling, support and assistance of these victims or arranges them for support at other institutions. A list of indicators is available for identifying victims of human trafficking for labor exploitation.

To the extent that minors become victims of criminal offences, particularly in cases of human trafficking for sexual exploitation, begging and the commission of criminal offences, additional risks and difficulties arise in the identification of minors, since in the case of begging and the commission of criminal offences, minors are first encountered by the police as perpetrators of a criminal offence. For minors, a guardian must be appointed if their family or already existing guardians cannot be reached. In some cases, existing guardians are also among the perpetrators themselves. Even if this is not the case, in these cases the perpetrators of trafficking are often present in close proximity and offer themselves as guardians, so that the minors cannot escape "their" perpetrators. Indicators to identify child trafficking have been developed by KOK and ECPAT.

A list of indicators used to identify victims of human trafficking in asylum procedures was developed in a study by the Federal Office for Migration and Refugees.

#### *Victims of cross-border crimes*

In addition to human trafficking, cross-border crimes also include other cases of organized crimes, hate crime and terrorism. All these offences are characterized by international links between perpetrators, the use of the Internet and the need for international police and judicial cooperation. In an international context, the Federal Criminal Police Office is responsible for identifying victims. In some areas, it carries out investigations or supports investigations by other police services via bilateral and multilateral cooperation, including EUROPOL. At the level of justice, cooperation is organized by the Federal Office of Justice and at the European level by Eurojust. Both institutions can be involved in the identification of victims by the respective authorities at national level.

## SWEDEN

The police authority has the leading role in identifying victims of crime and is the first judicial body to which the victim is supposed to report the crime.

If the crime is reported to police, a process will be initiated, that involves several different authorities:

- Report to the police authority
- Preliminary investigation by the police / prosecutor authority
- Reports to insurance company
- Hearing at a court
- Compensation for damages, through the courts and the Swedish Enforcement Agency
- Victim compensation through the Swedish Crime Victim Compensation & Support Authority

A victim of severe crimes, may be identified by or referred to a shelter for victims, and the police must inform the social service in the relevant municipality about the potential victim. The housing facility is in most cases entitled to financial compensation from social services for having provided the housing.

If the victim of a crime has been identified by social services, they must transfer him /her to the shelter and inform the police. In this case, the initial conversation with the police will usually take place in the premises of the shelter. When a foreign person without identity papers is involved, the competent governmental authority must contact the embassy or consulate to verify the identity and the citizenship of the person who is receiving support.

Safehouse for children (Barnahus) is a special place where children that are suspected of being subjected to violence or sexual assault are received. At the safe house, the children meet with representatives from the police authority, prosecutor's office, doctors, social services and child psychiatry, at a safe, child friendly place.

Victim support centres provide help to victims of all kinds of crimes, such as assault, burglary, bag-snatching, molestation, personal theft and unlawful threat. When a crime is reported to the police, the victim should be informed that there are victim support centres and other support services available. The police will also ask the victim whether he or she would like to be contacted by a support centre. The victim support centres can offer help in the form of a support person, and many also run a witness support service. The national organization for these centres is called the Swedish Association for Victims Support.

The Swedish Association for Victim Support is a voluntary organization that provides free support for victims of crimes and witnesses, and that works for better

conditions and more knowledgeable treatment of victims<sup>17</sup>. The Association has more than 8000 members. There are more than one hundred local victim support centres around the country. Here anyone who has been affected by a crime can get concrete help and support by talking to a “support person”. At the district courts there are also people called “the witness supporters” who help both injured parties and witnesses at trials. All the help is free and available to everyone, whether or not the crime has been reported and regardless of when it happened. Everyone who works for the association has given a pledge of confidentiality. All support persons and witness supporters have training and are bound by confidentiality. The activities of each local centre are coordinated by an employed victim administrator or a volunteer victim coordinator. The local centres can link up with the Association’s national helpline when they are not able to take calls themselves. The national helpline relays the contact back to the local victim support centres. This means that victims of crimes are always able to speak to someone and can get answers to urgent questions. The victim support centres are intended to complement the action of the public authorities. The Association cooperates with police, social services and other public actors.

The Swedish Crime Victim Compensation and Support Authority is constantly working to make visible and to raise awareness about victims of crime. The overall aim of the authority is to look after the rights of all crime victims and to draw public attention to their needs and interests. A forum for active cooperation is the Collaborative Group for Crime Victim Work, where authorities and non-profit organizations meet. The group consists of representatives of:

- Barnafriid - National Knowledge Center regarding children victims of crime
- Children's right in society (Barnens rätt i samhället)
- Victim Support Sweden (Brottsofferjouren Sverige)
- The Swedish Courts (Domstolsverket)
- Swedish Enforcement Authority (Kronofogden)
- The National Centre for Knowledge on Men’s Violence Against Women (NCK)
- The Police Authority
- The National Organisation for Women’s Shelters and Young Women's Shelters in Sweden
- Save the Children (Rädda Barnen)
- Support Center for Young Crime Victims / Support Center for Criminals
- The Swedish Bar Association (Advokatsamfundet)
- Stockholm South General Hospital’s antiviolence group (Södersjukhusets Antivåldsgrupp)
- The Foundation Safer and Secure Sweden (Stiftelsen Tryggare Sverige)
- Unizon
- The Prosecution Authority (Åklagarmyndigheten)

---

<sup>17</sup>[http://www.brottsofferjouren.se/uploads/userfiles/files/Folder-We-care-about-victims-of-crime\\_new.pdf](http://www.brottsofferjouren.se/uploads/userfiles/files/Folder-We-care-about-victims-of-crime_new.pdf)

## 2. A GENERAL MODEL OF THE JUDICIAL PROCEDURES

| Measure (M) | Action           |
|-------------|------------------|
| 1           | Report to Police |



| Measure (M) | Action   |
|-------------|--|
| 2           | Preliminary Investigations / Prosecution Phase |



| Measure (M) | Action  |
|-------------|---|
| 3           | Court Procedures<br>→Criminal Court (criminal proceedings + action to request financial compensation)<br>→Civil Court (action to request compensation for the material / moral damages suffered as result of the offense) |

# CHAPTER III

## INDICATORS FOR THE IDENTIFICATION OF VICTIMS OF CRIMES

The main objective of this chapter is to provide a set of indicators that can be used by various stakeholders that come into contact with victims of crimes. The indicators are structured on different categories of victims (victims of human trafficking, victims of domestic violence, victims of sexual violence, victims' of hate crimes).

### *Indicators - victims of human trafficking*

**Sex** -trafficking for sexual exploitation purpose is considered to be the most widespread form of human trafficking, which mainly affects women, adults and children. The evaluation of age and gender indicators must be carried out together or in interdependence to better identify the victims of human trafficking or the type of exploitation to which they have been subjected.

**Age** - the older the person is, the less likely it is to be a human trafficking case for sexual exploitation, which is still the main form of exploitation. The same rule also applies to labor exploitation or slavery, because an older victim is less productive.

**Social Characteristics** - traffickers are based on manipulating the following factors: poverty, discrimination and lack of employment or education opportunities, social marginalization, family neglect and abuse, inadequate knowledge of migration rights, obligations and regulations and access to free movement.

**Documents** – the lack of personal identity documents or their presence among the assets of the persons suspected of committing the human trafficking offense can constitute an indication in identifying a presumed victim of human trafficking.

**Place where the victim was found / identified** – certain areas, either from the outskirts or from the city, known as places where sexual services can be purchased, where nightclubs or hotels exist, border crossing places; the person can be disoriented about the location.

**Signs that may indicate the presence of a form of abuse**- signs of physical or mental trauma may be an indication that there is a human trafficking case. The person might have different bruises, plagues that might be the sign of a possible physical abuse. The person might be apathetic, absent, give the impression that he / she does not understand very clearly what is being asked or what is explained to him / her, to cry, to have difficulty in remembering exactly what happened.

Each of these indicators, if considered separately or evaluated independently of each other, could lead to the identification of other categories of victims or situations. Therefore, when considering a possible case of human trafficking, it is important to follow all the indicators at the time of the assessment.

### *Indicators – victims of domestic violence*

**Physical** - bruising, fractures, chronic pain (neck, back), fresh scars or minor cuts, terminations of pregnancy.

**Psychological**- depression, anxiety, self-harming behavior, eating disorders, phobias, somatic disorders, sleep problems, impaired concentration, harmful alcohol use, licit and illicit drug use, physical exhaustion, suicide attempts.

**Emotional** – fear, shame, anger, feelings of worthlessness and hopelessness, feeling disassociated and emotionally numb, alienation, irritability and fear when somebody takes interest in their family life, extremely conservative attire, situations where children treat their mother with contempt, using the father/abuser as a model.

**Social /financial** –homelessness, unemployment, financial debt, no friends or family support, isolation, parenting difficulties.

**Demeanour** – unconvincing explanations of any injuries; describe a partner as controlling or prone to anger; be accompanied by their partner, who does most of the talking; anxiety in the presence of a partner; recent separation or divorce; reluctance to follow advice; frequent phone calls in the form of ‘reporting’ to the abuser, attempts to answer his calls right away, immediately going home after being called

The indicators of domestic violence are not always obvious. Specialists must not jump to hasty conclusions, because some of the indicators may be also attributable to other causes. However if there is a pattern or history of these indicators, there may be a history of abuse.

#### ***Indicators –victims of sexual violence***

There are many reactions that survivors of rape and sexual assault can experience. For traumatic events in general, it is important to realize that there is not one “standard” pattern of reaction to the extreme stress of traumatic experiences. Some people respond immediately, while others have delayed reactions—sometimes months or even years later. Some have adverse effects for a long period of time, while others recover rather quickly. Reactions can change over time.

**Physical indicators of the sexual assault** - unless excessive physical force is used, most victims will not have physical injuries from the sexual assault. Coercion, intimidation and the threat of force all can be contributing factors to why excessive force is not used in many assaults. The absence of physical evidence in no way correlates with the level of fear and terror that victims may have experienced during the assault. Physical signs of a sexual assault are most likely to include bruising (on the inner thighs or on the arms where the offender restrained the victim) and trauma to the genital area. Other physical indicators, such as pregnancy or a sexually transmitted disease, may be detected days or even weeks after the assault.

**Behavioral indicators of sexual assault** - each victim is unique and her response to the trauma is unique. Potential behavioral indicators of sexual victimization, might be the following: self-harming behaviors (increasing drug and alcohol use; self-mutilation, suicide attempt), changes in social interactions/behaviors (withdrawal, sexual promiscuity, aggressive or disruptive behavior, excessive attachment, avoiding of certain individuals etc.).

#### ***Indicators –hate crimes***

**The conduct of the offender** -perpetrators of hate crimes frequently make their prejudices clear before, during or after the act. The crucial evidence in most hate crimes consists of the words or symbols used by the perpetrators themselves. Those who commit hate crimes generally want to send a message to their victims and to others and these messages, from shouted epithets to graffiti, are powerful evidence of motivation.

**The characteristics of the victim and of the perpetrator** – the religion, ethnicity/national origin, disability status, gender, or sexual orientation of the victim differs from that of the offender. The victim is a member of a group that is



overwhelmingly outnumbered by members of another group in the area where the incident occurred. The victim is a member of a community that is concentrated within particular areas and was attacked upon leaving that area. The incident occurred during an incursion by members of a majority group into an area that is predominately populated by members of minorities. The victim is identifiable as “different” from the attackers and, often, from the majority community, by such factors as appearance, dress, language or religion. The victim is a prominent figure, such as a religious leader, rights activist or public spokesperson, in a community that has faced ongoing discrimination.

**When and where did the incident happen** - the incident was at or near a place commonly associated with members of a particular minority group. The incident was at or near a house of worship, religious cemetery, or home or establishment of a group considered a minority or “outsider” in a given neighborhood. The incident occurred on a date of special significance to the community targeted (e.g., religious holidays or days commemorating significant historical events etc.).

**Previous hate crimes or other incident** - previous similar incidents have occurred in the same area in which members of the same group were targeted. The victim or victims had received previous harassing or threatening mail or telephone calls based on membership in their group. A previous incident or crime was reported that may have sparked a retaliatory hate crime against members of the group presumed responsible.

**The nature of the violence** - whether the crime takes the form of a physical assault or damage to property, when the perpetrators commit a hate crime they often intend to leave a message. Indicators of this include: The incident involved extreme or unusual violence, or expressly degrading and humiliating treatment, including sexual abuse of victims in homophobic crimes. The violence was carried out in a public place or in a form intended to make a public impact, such as through video recording by perpetrators. The violence involved mutilation in which racist symbols were cut or burned onto victim’s bodies, or the damage to property included an express “message”.

**Other indicators / elderly victims of crimes:** live very poorly despite having a monthly pension. The person may stay at home and not wish to leave at any circumstances; he/she may often hold the head down and be very silent.

**Other indicators / children victims of crimes:** alienation, closing in, or, on the contrary, acts of aggression at school or in the street. Children victims may also suffer drastic weight loss, loss of interest in their schooling and dropping grades. They may also start using vulgar or inappropriate language.



# CHAPTER IV

## THE LEGAL ASSISTANCE REFERRAL PROCESS

### 1. THE LEGAL ASSISTANCE REFERRAL PROCESS IN ROMANIA, BULGARIA, GERMANY, SWEDEN

#### ROMANIA

According with the Romanian national legislation, victims of crimes have the right to be assisted, to be represented by a lawyer throughout the entire criminal proceedings. In practice, a victim of crime can benefit from the legal services of a chosen lawyer (paying an honorarium) or of a state/ex officio lawyer (if the victim do not have financial resources to contract a certain lawyer).

Judges, in the case of offenses for which the preliminary complaint is addressed to the court, prosecutors, police officers, have the obligation to notify the victims, including on the right to legal assistance and the institution where they can address themselves to exercise this right, on the conditions and procedures for receiving free legal aid.

In **Law 211/2004 on certain measures to ensure the protection of victims of crime**, it is stipulated that **free legal aid** is granted upon request to persons who have been victims of the following categories of crimes: attempted murder; intentional offense which resulted in the victim's serious bodily injury; rape, sexual intercourse with a minor and sexual perversion, as stipulated in the Penal Code. Free legal aid is granted to these victims, if the offense has been committed on the territory of Romania or, if the offense has been committed outside Romania and the victim is a Romanian citizen or a foreign national legally residing in Romania and the criminal trial is conducted in Romania. It should be noted that according to Law 211/2004, free legal aid can be granted upon request also to victims of other types of crimes as long as the monthly income per victim's family member is at most equal to the gross minimum basic salary per country as established for the year in which the victim made the request for free legal.

In **Law no. 678/2001 on preventing and combating trafficking in human beings**, it is stipulated that victims of trafficking are entitled to **mandatory legal assistance** in all the criminal proceedings.

A distinction must be made between *mandatory legal aid* and *free legal aid*. *Mandatory legal assistance* is ordered ex officio by the court, upon receipt of the file, by sending an address to the local bar for the appointment of an ex officio lawyer. To benefit from *free legal aid* the following conditions must be met:

- If the victim noticed the prosecution or the court within 60 days from the offense. If the victim was unable physically or mentally to notify the prosecution authorities, the 60-day term is calculated from the date of termination of the inability condition; under-aged victims and those under

- interdiction are not required to notify the prosecution authorities or the court on the offense.
- The application may be submitted personally by the victim, the legal representative of the minor or by the person under interdiction, by non-governmental organizations operating in the field of victim protection, if it is signed by the victim.
  - The application for free legal counseling is exempt from stamp duty; it shall be filed at the court in whose jurisdiction the victim lives and shall be solved by two judges from the Commission for Granting Financial Compensation to Victims of Crimes through conclusion, within 15 days of the submission date. The application shall include the identification details of the victim, the monthly income per victim's family member, the documents supporting the information contained in the application and any other documents held by the victim which are useful for the settlement of the claim. The application for free legal counseling is settled by the council chamber by summoning the victim and, if rejected, the victim has the right to appeal within 15 days of notification.
  - If the victim has not chosen a lawyer, the conclusion through which it was granted the application for legal counseling should include the appointment of a duty lawyer under the Law no. 51/1995 on the organization and practice of the lawyer's profession, republished, as amended and supplemented, and the Lawyer's Statute.

By Decree 180/2016 of the National Association of the Romanian Bars, it was approved – The regulation framework for the functioning of the judicial assistance services of the Romanian Bars. According with this document, the judicial and extra-judicial assistance is provided by the bars lawyers who made a choice in this respect being enrolled in the Registry of Judicial Assistance.

In practice there are public authorities with responsibilities in the field of the protection of victims of crime that cooperate with non-governmental organizations that are providers of legal assistance services. In Romania, there is a small number of organizations providing legal counseling to victims, entities that cooperate with certain lawyers specialized in victims' assistance. Such lawyers, who cooperate with NGOs, can pro-bono assist or can be paid by these organizations to advise / assist victims of crime - for example, victims of human trafficking being referred to NGOs by police, by the National Agency Against Trafficking in Persons.

At national level there is no annual assessment of the quality of the legal services provided by the ex officio lawyers to victims of crimes. In the case of free legal aid / mandatory legal aid, the victim can ask the judicial body (the court) to change the lawyer. The victim, theoretically, has the right to request the change the appointed ex officio lawyer, but in practice it rarely happens. On the other hand, it is the court's duty to ensure the fairness of the proceedings and to determine whether the ex officio lawyer is ensuring an effective assistance in the victim's case.

## BULGARIA

The order and conditions for providing legal aid on penal, civil and administrative cases before all judicial institutions are regulated in the Legal Aid Act from 2006.<sup>18</sup> Legal aid is provided only to natural persons who meet the requirements envisaged by the law. Legal aid is not provided to sole proprietors, legal entities - trade companies, cooperative societies, etc.

Legal aid is provided for all types of penal cases.

The purpose of the Act is to guarantee equal access to justice by ensuring and providing effective legal aid carried out by attorneys and funded by the State.

Legal aid is organized by the National Legal Aid Bureau (NLAB) and the Bar Councils. NLAB is an independent state body - legal entity funded - second officer to the Minister of Justice, based in Sofia. NLAB has its own budget, which is established, implemented, completed and reported by it. Revenue and expenditure of the budget NLAB is drawn on the classification of revenues and expenditures of the state budget.

Organization of the work of NLAB, structure, composition and functions of various departments in its administration are determined by regulations adopted by the Council of Ministers.

A National Legal Aid hotline is functioning on the following number: 0700 18 250.

### *Types of Legal Aid*

- consultation in view of achieving an agreement before initiation of court proceedings or filing a case;
- preparation of documents for filing a case;
- litigation when the case is already filed in court;
- litigation in case of detention under Art. 63, Para 1 under the Ministry of Interior Act.

The legal aid is organized by NLAB and the bar councils. NLAB maintains a National Register of the attorneys, nominated to provide legal services in accordance with the court regions of the respective district courts. This Register is public. It is constituted on paper and electronic devices and is publicized on the Internet.

Legal services, being consultation or preparation of documents for filing a case are provided to the following persons:

- to persons meeting the conditions for receiving social support under the Regulation of Application of the Act on Social Support;

---

<sup>18</sup> Legal Aid Act, entered into force on 1 January 2006 ( prom.State Gazette, issue 79 of 4 October 2005)

- to persons lodged in specialized institutions of providing social support
- houses for elderly people, centers for rehabilitation and social integration of disabled people, centers for temporary lodging of homeless people;
  - to adopting families or to families, relatives or close persons, where a child is lodged under the order of the Child Protection Act;
  - to children placed with foster families or with immediate or extended family members according to the procedure established by the Child Protection Act;
  - to children at risk within the meaning given by the Child Protection Act;
  - to persons under Art. 143 and 144 of the Family Code and persons under the age of 21 in accordance with Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of judgments and cooperation matters relating to maintenance obligations (OJ L 7/1 of 10 January 2009) and the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (OJ L 192/51 of 22 July 2011)
    - to victims of domestic or sexual violence or of trafficking in human beings, who are unable to pay and wish to avail themselves of the assistance of a lawyer;
    - to seekers of international protection according to the procedure established by the Asylum and Refugees Act, in respect of which the granting of legal aid is not due on another legal basis;
    - to foreigners in respect of whom a coercive administrative measure has been applied and foreigners accommodated at a special facility for temporary accommodation of foreigners according to the procedure established by the Foreigners in the Republic of Bulgaria Act, who are unable to pay and wish to avail themselves of the assistance of a lawyer;
    - to persons who have been refused or revoked the status of a stateless person in the Republic of Bulgaria or the procedure for granting the status of a stateless person has been discontinued pursuant to the Foreigners in the Republic of Bulgaria Act, who do not have the means and wish to use lawyer protection.

The facts and circumstances stipulated above shall be certified by court decisions or by documents issued by the respective competent authorities and by declaration of family and property status of the person in a form approved by NLAB.

For requesting provision of legal services by procedural representation there is no specified obligatory form. This request should be addressed by the respective party to the court where the legal procedure is pendent. The request may be formulated as a free text. The person should specify that he/she cannot afford to pay the expenses for the case as well as to declare his/her income, employment status, property status, family status, possibly his/her health status and any other circumstances, which could ground the request of legal aid. Refusals to grant legal aid shall be appealed under the respective procedural order.

## *Necessary Documents*

When filing a request for legal aid Bulgarian citizens should submit the following documents:<sup>19</sup>

- declaration for family and property status;
- evidences for the amount of received labor remuneration or income from other activity by profession, performed by the applicant and by the members of his/her family;
- documents certifying an illness or disability in case the applicant is afflicted with them;
- other documents certifying the circumstances claimed in the request for legal aid.

The same documents above-mentioned have to be submitted to the Bulgarian Ministry of Justice when citizens of the European Union or legally staying persons in an EU Member State apply for all types of legal aid. The application for providing legal aid as well as the documents evidencing that the applicant meets the requirements for its provision must be translated in Bulgarian or in another official language of the institutions of the European Community, which the Republic of Bulgaria has stated as acceptable before the European Commission. It is not necessary for these documents to be legalized.

In criminal matters, the determination that the accused or the defendant is unable to pay a lawyer's fee shall be made by the authority who directs the procedural steps on the basis of the property status of the person ascertained *ex officio* in the specific matter and of the circumstances referred above. In respect of the private accuser, the civil plaintiff and the private complainant, the determination shall be made according to the procedure established by Art. 23, paragraph 3 of the law, based on factors like the person's income, health and family status, etc.

For requesting provision of legal services by legal consultation or preparation of documents for filing a case, Bulgarian citizens submit also evidence that they are in the cases under Art. 21, items 1 and 2 under the Legal Aid Act, namely:

- an order of the director of Social Support Directorate in residence for granting monthly social support. If the person has not exercised his/her right of receiving monthly social support under the Regulations of Application of the Social Support Act he/she submits to NLAB a document issued by the director of Social Support Directorate certifying he/she fulfils the conditions for granting monthly social support;
- court decision for lodging a child in adopting family or
- a document certifying lodging in specialized institution for providing social support.

---

<sup>19</sup> For further information and downloading documents, please visit the internet site of European Judicial Atlas [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/la\\_fillingforms\\_bg\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/la_fillingforms_bg_en.htm)

In these cases the decision for providing legal aid is made by the President of NLAB within 14-day period after submission of: order for granting the monthly social support, court decision for lodging the child in adopting family or certificate from Social Support Directorate. The request for providing legal aid should be submitted to NLAB. The refusal of providing legal aid is announced to the applicant and it can be subject to appeal under the Administrative Procedure Code.

*How the lawyer is chosen?*

The court decision or the National Legal Aid Bureau (NLAB) President's act of providing legal aid is sent immediately to the respective bar council for nomination of an attorney from the National Register of Legal Aid. If possible the Bar council nominates an attorney, specified by the person to whom legal aid is provided.

*What expenses are borne according to the Legal Aid Act?*

Legal aid includes providing free of charge attorney defense.

If the litigant is out of funds and he/she cannot pay the fees and expenses due in the proceedings, he/she can file an application before the court where the case is pendent for fees and expenses exemption.

In case of fees and expenses exempting, these are covered by the funds envisaged in the court's budget.

## **GERMANY**

In Germany, victims of criminal offences, the so-called "injured", may in principle be supported or represented by a freely chosen lawyer, § 406 f CCP. Who is injured of a criminal offence according to § 395 CCP, may join the accusation, in the criminal procedure also already in the phase of preliminary investigation, as a joint plaintiff, § 406h CCP. The joint plaintiff must be summoned to the main hearing, is entitled to attend the entire main hearing, has the right to reject a judge or an expert, has the right to ask questions to witnesses and experts, has the right to file evidence, has the right to make declarations and has the right to object to orders of the chairman, § 397 CCP. Victims must be informed of these rights as early as possible, in writing and in a language they can understand, § 406i Paragraph 1 No. 2 CCP.

At the request of the joint plaintiff, a lawyer of his choice ("joint plaintiff representative") may be appointed to him. The legal counsel must be appointed free of charge at the request of the plaintiff if is a sexual offence, or human trafficking, or if an attempted or completed homicide exists and close relatives wish to join as plaintiffs, § 397a Paragraph 1 Nos. 1 to 2 CCP. The same applies if the offence involves serious bodily injury, genital mutilation, robbery, persecution, deprivation of liberty, extortion, hostage-taking, robbery, serious robbery, predatory theft, extortion or predatory attack on motorists and the offence is to be classified as a crime and,

moreover, if the offence has led or is expected to lead to serious physical or psychological damages in the case of the injured person, § 397a Paragraph 1 No. 3 CCP. Finally, a lawyer is appointed free of charge as a co-charge representative in the case of sexual offences and mistreatment of protected persons and in all cases as previously mentioned if the injured person was under 18 years of age at the time of the crime, § 397a Paragraph 1 Nos. 4 and 5 CCP.

The lawyer selected by the injured party remains in charge of the entire proceedings, i.e. the investigation and the main proceedings, and is not changed unless the relationship of trust between the injured party and the lawyer is significantly disturbed. Then a reorder can take place on request.

In other cases, a lawyer can be assigned to the injured party upon application if the injured party could apply for legal aid in civil cases, i.e. if he does not have sufficient financial resources, and if he is also unable to defend his interests sufficiently himself or if this cannot be expected of him - especially in the case of offences such as domestic violence - § 397a Para. 2 CCP.

Since lawyers work on a freelance basis, law enforcement authorities may not make specific recommendations on individual lawyers. However, victims of crime may refer to a list of lawyers, which is available through the local Bar Association.

The public prosecutor's office and the police are responsible for informing victims/injured parties of their rights in the preliminary proceedings, and the court in the main court proceedings.

The information of the victim also extends to the right to compensation or reparation of the damage caused by the crime in criminal proceedings against the accused, § 406i Abs. 1 Nr. 3 bis 5 CCP, or in civil proceedings, § 406j Nr. 1 CCP, as well as to assert a pension claim under the OEG, § 406j Nr. 3 CCP.

## **SWEDEN**

According to the Code on Victim Counsel (Lag (1988:609) om målsägandebitråde), a legal counsel will be appointed to the victim of crime in certain cases. The counselor is usually a lawyer that is a member of the Swedish Bar Association. It is not mandatory to receive previous training to deal with certain types of legal matters, but the Swedish Bar Association provide recommended training and education and the courts will most often appoint a lawyer that has passed certain training.

A legal counsel is appointed by the court, by an application from the prosecutor, in the following cases:

In cases regarding crimes according to Chapter 6 of the Criminal Code (sexual crimes) when the preliminary investigation has started.

Crimes according to Chapter 3 (crimes against life or health, such as physical abuse) or Chapter 4 (crimes against freedom and integrity illegal, such as deprivation of liberty) of the Criminal Code if prison can be sentenced for the crime,



or according to Chapter 8, Section 5 or 6 of the Penal Code (severe robbery), if it is assumed that the plaintiff's personal relationship with the suspected or other circumstances is necessary for the plaintiff in need of such counseling.

Other crimes on which prison may be sentenced, if it can be assumed that the plaintiff has a particularly strong need for such assistance in view of the personal circumstances and other circumstances of the plaintiff.

The legal counsel remains throughout the whole legal process, from the start of the investigation until the end of the criminal trial.

- The legal counsel and is free of charge for the victim of crime and the costs are paid by the state.
- A legal counsel may be appointed by a higher court if the prosecutor or the accused has appealed against the judgment in the liability issue.
- The legal counsel shall defend the interest of the case and assist the plaintiff in bringing an action for an individual claim for compensation of damages, unless the prosecutor does so.
- The duties of the legal counsel remain through the whole court procedure, even in the courts of appeal, and remain the same even if the district court's verdict is appealed in respect of individual claims.
- During the investigation, the role of the legal counsel is to inform the victim about the legal process and what will be required by the victim in connection with the main hearing. The counselor must also present the victim's perception of various handling issues.
- The legal counsel assists the victim of crime at the police investigation and during the oral hearing at the courts.
- A legal counsel has an unconditional right to attend all hearings with the victim.
- In cases where victims are placed at sheltered housing, the legal counsel, in cooperation with the person responsible for the case, from, for example, a staff member of the shelter house and interpreter, may provide additional psychological and legal support to minimize the risk of the victim for being exposed to a new trauma due to his / her participation in the main hearing. It is important that the victim feels safe and able to deliver his/her story as clearly as possible.

### **Legal counsels for children**

If a child has been subjected to or exposed to crimes by his or her parents or guardian or if the suspect for the crime is in close relation to the child's guardian, the child has a right to a certain legal counsel, most often a lawyer that is a member of the Swedish Bar Association. The legal counsel will defend the rights of the child during the investigation and trial.

The lawyer is appointed by the court by an application from the prosecutor.

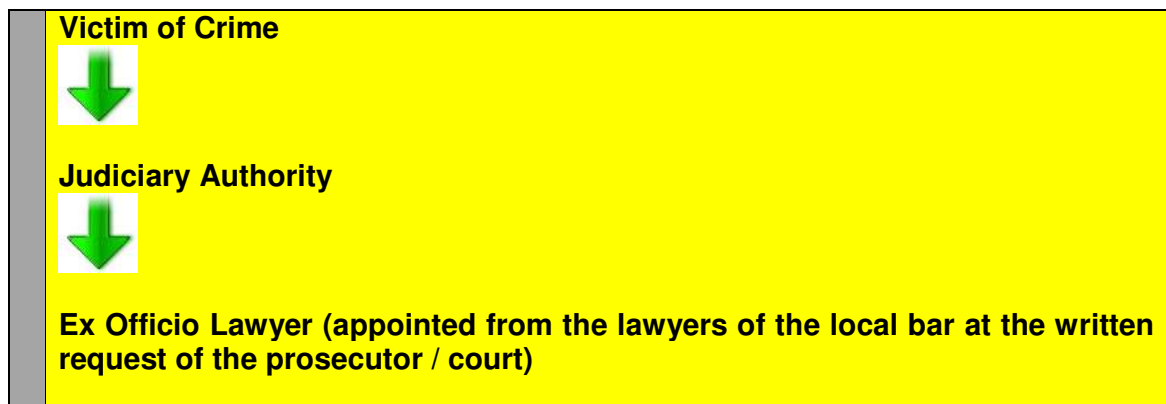
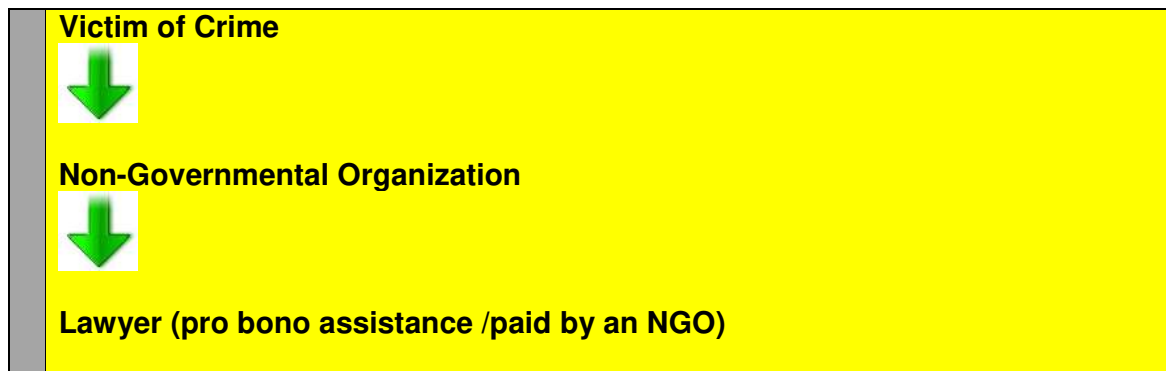
### **Legal aid**

The Swedish Legal Aid Authority is a national authority that handles legal aid under the Legal Aid Act (1996:1619). The Legal Aid Authority is also the collection



authority when a court has decided that there is an obligation, for example, to pay the costs of defense counsel in criminal cases.

## 2. A GENERAL MODEL FOR LEGAL ASSISTANCE REFERRAL



## 3. AVOIDING RE-VICTIMISATION IN THE CRIMINAL PROCEDURES

Law enforcement personnel, judicial authorities have vital roles to play in responding to and supporting victims of crime. Crime victims are key stakeholders in problem-oriented policing since they hold unique perspectives, valuable insights, active interest in the problem, and strong feelings about criminal behavior. Responding effectively and appropriately to all victims is not only the right thing to do for victims, their families and communities, but it is also in law enforcement's best interest.

All too often victims of crime report that enduring the criminal justice system is itself a type of victimization - a secondary re-victimization. There are multiple factors that impact how victims experience the judicial system, how they are treated during the criminal process, and the amount of control and participatory access that they have.

***Certain recommendations for legal professionals (lawyers, police officers, prosecutors, judges) who come into contact with victims of crimes:***

- Introduce yourself and present your role in the criminal proceedings.
- Initiate gradually the conversation with the victim; encourage and appreciate her involvement in the legal procedures.
- Be clear in explaining the legal steps, using simple words and phrases.
- Explain to the victim that the information will remain confidential; emphasize that the victim can speak freely and openly with the lawyer/police officer/prosecutor/judge.
- If the victim do not speak the language of the country where the trial takes place, ensure the victim will have an interpreter which treats the victim with sensitivity, respect.
- Be sensitive to issues of gender. Ask from the beginning if the victim would feel more comfortable to talk with a legal professional that has the same gender.
- Avoid the victim and the accused person to be in the same room. Use technical audio-video means.
- Avoid repeated hearings of the victim.
- Closed sessions, having the public excluded.

# CHAPTER V

## CRIMINAL PROCEDURES IN DOMESTIC AND CROSS-BORDER CASES IN ROMANIA, BULGARIA, GERMANY, SWEDEN

### ROMANIA

The victims of such crimes have the possibility to participate in the criminal proceedings as injured party, as civil party or only as a witness. In addition the New Criminal Procedure Code (NCPC) grants to the injured person participating in the criminal proceedings, as well as to the person bringing a civil action and to the witness in the criminal trial, numerous rights and obligations depending on the quality in which s/he participates in the criminal proceedings.

The criminal proceedings begin with the victim's right to receive information about their options from the first judicial body they present to (it may be the police or the prosecution office). This first body has the following obligations: to inform the victims about the services providing psychological counseling, the criminal investigation body to which they can address and submit a complaint, their possibilities regarding the quality in which they can participate to the criminal proceedings, their right to legal assistance and the conditions and the procedure for being granted free legal assistance, also the conditions and the procedure for being granted financial compensation and to be presented the provisions of the law no. 682/2002 on the protection of witnesses.

The next step in the criminal proceedings is represented by the filing of the complaint or prior complaint, as previously explained in Chapter 2, section 1, step that is followed by the commencement of the inquiry.

Art. 81 paragraph 2 of the NCPC provide about the possibility of the person who suffered a physical injury, a material or moral damage for which the criminal proceedings are initiated ex officio does not want to join the criminal proceedings, then s/he shall inform the judicial body in this respect; if the judicial body considers necessary, it will hear the person as a witness.

Also, like previously shown at the same chapter, victims have the right to consult a mediator, in cases permitted by law. Mediation represents a way of settling the conflict amicably, with the help of a third party mediator. This can only be done with the consent of the parties involved. In the criminal side of the trial, mediation can only take place for offenses for which, according to the law, the withdrawal of the preliminary complaint or the reconciliation of the parties removes the criminal liability. The mediation agreement can also be concluded only in respect of the civil action regarding the compensation issue, in which case the criminal trial will continue.

The inquiry which represents the monopole of the investigative bodies and of the prosecutor is followed, should the prosecutor decide to proceed further with trial and the arraignment of the perpetrator, by the trial phase.

Special measures of protection can be taken in order to provide the safety of the victim in the criminal proceedings, both during inquiry and trial phase, when the

conditions provided by the law are met .The NCPC defines the notion of threatened and vulnerable witness. According to Art. 125 of the NCPC, if there is a reasonable suspicion that the life, physical integrity, freedom, assets or professional activity of a witness or of a member of their family could be jeopardized as a result of the data provided by them to judicial bodies or of their statements, the judicial bodies of competent jurisdiction shall grant them the status of threatened witness and shall order one or more of the protection measures set by Art. 126 (protection measures ordered during the criminal investigation) or Art. 127 (protection measures ordered during the trial), as applicable.

During the trial, once that the status of threatened witness was granted, the court shall order the application of one or more of the following measures: a) surveillance and guard of the witness' residence or providing of a temporary dwelling space; b) accompanying and ensuring protection to the witness or to their family members during trips; c) closed court sessions during the hearing of witnesses; d) hearing of witnesses without them being physically present in the court room, through audio-video transmission devices, with their voice and image distorted, when the other measures are not sufficient; e) protection of identity data, by issuing a pseudonym under which the witness shall testify.

The victim may be subject to a forensic examination during the criminal prosecution in order to ascertain the traces and consequences of a crime (Art. 189 of the Criminal Procedure Code), and at the trial stage a forensic expertise may be approved under Art. 172 of the NCPC, a new expertise or an additional expertise, according to Articles 180 and 181 of the NCPC.

Victims of human trafficking benefit from a series of special measures, detailed in *Law no. 678/2001 on preventing and combating trafficking in human beings*, including: the protection of privacy and identity; the right to their physical, psychological and social rehabilitation; the protection and special assistance of minor victims according to their age; the psychological support and assistance required for social integration from the National Agency against Trafficking in Persons. Law 678/2001 contains also several procedural provisions that ensure a more appropriate framework for the fight against trafficking in persons in general and child trafficking in particular and to assure the safety of the injured person : court hearings are not held in public in cases of child trafficking and child pornography<sup>20</sup>, special protection and assistance for the victims of child trafficking, including protecting their private life and identity, physical protection by the police, provision of identity papers by Romanian diplomatic missions, information, provision of counseling and temporary accommodation in special centers upon request (Chapter 5).

Also, in cases involving the offenses under Chapter VII of Title I of the special part of the New Criminal Code and in cases involving offenses of facilitating illegal residence in Romania, provided by Art. 264 of the New Criminal Code, and child pornography, provided by Art. 374 of the NCC, *the hearing of a minor under 14 years* shall be made in the presence of at least one parent or legal representative and is also mandatory the presence of a psychologist or a representative of the General Directorate of Social Assistance and Child Protection.

---

<sup>20</sup> Art 24 (1)

A specificity of the criminal trial for these kind of crimes is listed to the legal assistance issue. For example, victims of human trafficking, are entitled to assistance and support, including legal counseling to support their claims and civil claims against the offenders who committed the crime of trafficking in persons.

A distinction needs to be made between compulsory legal counseling (which is ordered by the court on its own initiative from the moment of receiving the case file, issuing a letter to the local bar association, according to Art. 44 of Law no. 678/2001; for the underage injured parties there are also considered the provisions of Art. 93 paragraph 4 NCPC) and free legal counseling, granted under the provisions of Chapter IV of Law no. 211/2004.

As to the compensation issue, the victims have two options: they can bring civil action before the criminal court and also ask for financial compensation according to the law no 211/2004.

The civil action is undertaken by victims or by their successors, who become a civil party against the defendant and, as applicable, against the party with civil liability and seeks to establish the civil liability in tort of the persons liable under the civil law for damages caused by having committed an act that is the subject matter of criminal action.

The financial compensation is regulated in detail in Chapter 5 of Law no. 211/2014 instating certain measures for the protection of victims of crime. In addition it is granted on request to *the following categories of victims*, as per Article 21 of the law cited above:

a) Victims of attempted murder, or first degree murder, listed under Articles 188 and 189 of the Criminal Code, victims of bodily harm, provided by Article 194 of the Criminal Code, victims of a crime committed with intent that resulted in bodily harm of the victim, rape, sexual intercourse with a juvenile and sexual assault, provided by Articles 218 - 220 of the Criminal Code, *trafficking in human beings and underage persons*, provided by Articles 210 and 211 of the Criminal Code, terrorism, as well as any other crime committed with intent and violence;

b) Spouse, children and dependents of persons deceased as a result of the crimes provided at Paragraph (1) of art 21.

Thus, the financial compensation is only granted to the victim if he/she reported the crime to the criminal investigation bodies within 60 de days from the date of the crime. In the case of the victims referred to in art. 21 par. (1) lit. (b) the 60-day period shall be calculated from the date on which the victim became aware of the offense, and if the victim was physically or mentally incapable of reporting to the criminal investigation authorities, the 60-day period shall be calculated from the date when the state of impossibility ceased.

Where the perpetrator is known, financial compensation may be granted to the victim if the following conditions are met:

a) the victim submitted the claim for financial compensation within one year,

thus:

- from the date of the final judgment of the criminal court sentencing or acquitting the defendant, in the cases provided by art. 16 par. (1) lit. b) -d) of the NCPC and granted civil compensation or termination of the criminal proceedings in the cases provided by art. 16 par. (1) lit. f) and h) of the NCPC
  - from the date when the prosecutor dropped the charges, in the cases provided by art. 16 par. (1) lit. b), c), d), f) and h) of the NCPC;
- b) the victim filed a civil action in the criminal proceedings, except when the charges were dropped on the grounds of Article 315 (1) a) CCP;
- c) the perpetrator is insolvent or absconding;
- d) the victim did not obtain full reparations for the losses from an insurer.

Where the perpetrator is unknown, the victim may make a claim for financial compensation within 3 years from the crime, if the requirements of Article 24 (1) d) are met.

*International cooperation is an important tool in these kind of crimes.* Taking into account the many cases of criminal acts targeting criminal networks operating on the territory of several states, as well as the exclusive competence to conduct criminal investigations into organized crime and terrorism investigations, DIICOT represents the Romanian authority that participates in the implementation of international judicial cooperation in this matter.

The Police Cooperation Centre (CCPI) - a subordinate of the General Inspectorate of the Romanian Police - is the central national authority in the field of international police cooperation, being specialized in the exchange of operative information in the field of combating crime at international, cross-border level. CCPI brings together the following international police cooperation channels: INTERPOL, Europol, the SIRENE Information System, as well as domestic affairs attachés and Romanian liaison officers accredited abroad as well as foreigners accredited in Romania. The National Agency against Trafficking in Persons continuously collaborates with other entities and organizations in EU member states in order to facilitate victims' access to the rights provided by the law in the transnational referral programme, as well as to coordinate the participation of victims of trafficking in criminal proceedings from abroad. By fulfilling the role of Equivalent Mechanism of the National Rapporteur, the Agency also collaborates with EU institutions or similar bodies within the informal network of national rapporteurs.

Also a new mechanism for cooperation in trans-border procedures is represented by the European Investigation Order. It can be issued by the prosecutor or by the judge during court phase (Directive 2014/41/EU on the European Investigation Order that entered into force in May 2017). The Directive covers almost all investigative measures such as interviewing witnesses, obtaining of

information or evidence already in the possession of the executing authority, and (with additional safeguards) interception of telecommunications, and information on and monitoring of bank accounts.

## **BULGARIA**

The Bulgarian criminal process has two stages - pre-trial and trial.

*The pre-trial proceedings* aim to collect, through investigation, evidence to either confirm or deny an assumption that a certain person has committed a certain crime. The investigation is carried out by investigating magistrates, or investigating policemen, under the guidance of a prosecutor. The objective is to prepare and assist the prosecutor in deciding whether to file and justify charges in court against the accused person or to terminate the proceedings.

*The trial* begins with the prosecutor filing charges in court against a person for a crime committed by that person. Court proceedings involve opposing parties and the prosecutor, defendant and defense lawyer have equal procedural rights. The court examines the evidence produced by the prosecutor but it may at the request of the parties, or on the court's own initiative, collect and examine new evidence in the search for truth.

The trial ends with a court judgement, which either convicts and imposes a penalty on the defendant, or declares the defendant not guilty.

### *Investigation (including bringing charges and questioning)*

The investigating authorities seek to collect evidence which will prove or deny an assumption that a crime has been committed. If they collect enough evidence to support the assumption that a specific person has committed the crime, the investigating officer must notify that person in writing. The person must sign the notification. Immediately after that, the officer must advise the perpetrator of his/her rights during the investigation. A document stating that the perpetrator has been informed of his/her rights will be signed. Right after that, the accused person is questioned.

### *Court hearing on detention*

In principle, the prosecutor determines what measure to prevent evasion of prosecution is to be imposed on the defendant. But if the prosecutor decides that the measure to prevent evasion of prosecution should be detention or house arrest, the prosecutor files such a request to the court and ensures that the defendant appears before the court.

### *Preparation of the case by the prosecution*

When the investigation is completed, the investigating officer sends the collected evidence to a prosecutor. The prosecutor examines the evidence and decides whether the assumption that a crime has been committed has been proven beyond a reasonable doubt. Only then can the prosecutor file charges in court. Otherwise, the prosecutor dismisses the case.



### *Interpretation*

The interpreter will be assigned to assist all persons involved in the penal proceedings during the entire investigation and court phase. If the perpetrator or witness/victim does not speak the Bulgarian language an interpreter it will be assigned for free.

### *Information given to the victim*

The bodies of the Ministry of Interior, investigators and victim support organizations shall immediately inform the crime victim about:

- rights to access to medical care, the organizations to which victim can refer for free psychological help and support, as well as about any kind of specialized help a crime victim is entitled to receive;
- right to legal aid, the services to which the crime victim can turn in order to exercise that right, and the terms and procedures for obtaining legal aid free of charge;
- services to which a crime can be reported, the procedures following such a report, and the types of action which a crime victim can take under the applicable terms and procedures;
- bodies to which a signal of infringement of the crime victim's rights by the competent authority acting in the criminal proceedings may be sent;
- crime victims' rights in the criminal process and the options for their participation in it;
- services to which the crime victims can turn to for protection for themselves and their relatives, and the terms and procedures for obtaining such protection;
- services to which the crime victim can turn for financial compensation from the State, and the terms and procedures for obtaining such compensation;
- possible ways of protecting victim's rights and interests if the crime victim is a foreign national and is a victim of crime committed in the Republic of Bulgaria;
- possible ways of protecting the crime victim's rights and interests if he/she is victim of crime in another country, and the services to which she/he can turn in such cases.

The monitoring prosecutor in the course of the pre-trial proceedings shall monitor performance of the duties of investigating authorities for provision of the information of the crime victim's rights.

Upon notification of the crime victim about his/her rights, the competent authorities shall take into account his/her condition and age.

Notification shall be made orally and in writing by means of a standard form in a language that the crime victim understands. A protocol shall be drawn up for the notification, in duplicate, which shall be registered in line with the procedure established by the relevant body or organization. One copy of the protocol and the form shall be served on the crime victim.



## **Victims in pre-trial and trial proceedings**

### *Institution of Pre-trial Procedure and Conduct of Investigation Terms for institution of pre-trial procedure*

Pre-trial procedure shall be instituted where there is a legal reason and sufficient data for a committed offence. The body that institutes pre-trial proceedings will notify the victim immediately if he/she has specified an address for summoning in the country.

In the cases stipulated by the Special Part of the Penal Code preliminary procedure shall be instituted upon complaint of the victim to the prosecutor and may not be terminated pursuant to art. 24, Para. 1, Item 9 from the Penal Procedure Code.

The complaint shall contain information about the complainant and shall be signed by him/her. No fee shall be due when submitting the complaint.

#### *In the pre-trial proceedings, the victim has the following rights:*

- to be informed of his/her rights in criminal proceedings;
- to receive protection for their safety and that of their relatives;
- to be informed of the course of criminal proceedings;
- to participate in the proceedings, as established in the Penal Procedure Code;
- to make requests, remarks and objections;
- to appeals against the acts that lead to the suspension or suspension of the criminal proceedings;
- to have a trustee.

#### *In the court proceedings, the victim has the following rights:*

- to participate as a private prosecutor.
- An application for participation in the proceedings as a private prosecutor may be oral or written. The application must contain details of the person submitting it and of the circumstances on which it is based. The request shall be made at the latest at the commencement of the court investigation before the court of first instance.
- to participate as a private complainant when the offense is prosecuted on a complaint by the victim and not ex officio.

The complaint must be written and contain details of the complainant, the person to whom it is filed, and the circumstances of the offense. A document for a paid state fee must be attached to the complaint. The complaint must be signed by the sender. The complaint must be filed within six months of the date on which the victim became aware of the offense or of the day on which the victim received a notice of termination of the pre-trial proceedings on the ground that the offense is prosecuted on the victim's complaint.

- to participate as a civil claimant and to bring civil action to compensate for the damages from the crime.

The civil claim cannot be brought in the criminal court proceedings when it is brought under the Civil Procedure Code.

*The right to file a signal of violation of the rights by the competent body during the penal proceedings*

In case of violation of the rights of the victim by the competent body during the penal proceedings, the victim may signal as follows:

- the monitoring prosecutor in the course of the pre-trial proceedings;
- a prosecutor from the higher prosecutor's office in the pre-trial proceedings;
- the competent court, in the trial phase of the penal proceedings.

*The right of the victim to obtain protection of himself/herself and relatives, the conditions and the procedure to obtain such protection*

Upon proposal of the prosecutor with the consent of the victim or at the request of the victim the respective first instance court may prohibit the accused:

1. to approach the victim directly;
2. to make contact with the victim in any form, including by telephone, by electronic or ordinary mail and fax;
3. To enter certain localities, regions or sites where the victim resides or visits.

The court notifies the victim of the possibility of issuing a European protection order.

*Protection of the witness/victim*

- the prosecutor, the reporting judge or the Court, on the witness's request or with the latter's consent shall take measures to protect him/her, where there are sufficient reasons to presume that, as a result of testifying, there has arisen or may arise a real danger for the life, health or property of the witness, of his or her ascendants, descendants, brothers, sisters, spouse or of persons that he/she is in particularly close relations with.

The protection of the witness shall be temporary and shall be achieved through providing personal physical guarding by the bodies of the Ministry of Interior and keeping his/her identity secret.

The measure for personal physical guarding of ascendants, descendants, brothers or sisters, spouse or of persons that he/she is in particularly close relations with, shall be taken with their consent or with the consent of their legal representatives.

Within a thirty-day-period from the measure, taken under that procedure, the prosecutor or the Judge-Rapporteur may propose to include persons into the programme of protection under the conditions and following the order the Protection of the Persons Threatened in Connection with Penal Procedure Act.

That procedure is applicable in the case of penal proceedings for serious intentional crimes of a general nature and for all crimes committed on the order or in pursuance of a decision of an organized criminal group.

Special protection under the Protection of the Persons Threatened in Connection with Penal Procedure Act may be obtained from the following persons in

the penal proceedings, very often victims of the crime: witness, private prosecutor, civil claimant and persons directly related to them - ascendants, descendants, brothers, sisters, spouses or persons with whom they are in a particularly close relationship.

Inclusion in the Protection Programme is at the proposal of the District Prosecutor to the Prosecutor General, and in the court proceedings - the Judge-Rapporteur to the Prosecutor General.

The protection proposal shall be made ex officio or at the request of the threatened person, the investigating body or the monitoring prosecutor. Where the proposal does not come from the person in danger, his/her explicit written consent is also required. The order of the Prosecutor General or the Security Council's decision shall be communicated to the proposing authority through the Prosecutor's General Protection Bureau.

Inclusion in the programme is done through the conclusion of a written agreement between the Protection Bureau and the threatened person or guardian if he/she is incapacitated.

### **Rights of victims of crime in cross-border situations**

*Bulgarian citizens who have been victims of crime on the territory of a Member State of the European Union*

The missions (embassies and consular services) of the Republic of Bulgaria in the Member States of the European Union shall inform in writing the Bulgarian nationals present there and who have suffered from crimes on the territory of the receiving State on the competent authorities of that country to which they may be referred for assistance and financial compensation, for the possibility to apply for financial compensation to the competent authority of the respective state, through the National Council for Assistance and Compensation for Victims of Crime at the Ministry of Justice, as well as the terms and procedure for obtaining the respective kind of assistance on the territory of the Republic of Bulgaria.

*Citizens of other countries who have suffered from crimes on the territory of the Republic of Bulgaria*

The National Council for Assistance and Compensation for Victims of Crime at the Ministry of Justice provide assistance to foreign nationals legally residing in the Republic of Bulgaria under the conditions for support and financial compensation to victims of crime. The National Council accepts and decides on applications for financial compensation submitted by foreign nationals residing legally on the territory of Bulgaria.

### **Financial Compensation**

Financial compensation under the Crime Victim Assistance and Financial Compensation Act (CVAFCA) shall be provided for the crimes indicated in Art. 3, Para. 3 of the Act:

1. terrorism; intentional murder; attempted murder; intentional grievous bodily harm; sexual abuse; rape; trafficking in persons;
2. a crime committed by order or under a decision of an organized criminal group;
3. or another serious premeditated crime resulting in death or grievous bodily harm, as consequences of offence defined by statute.

Victims who have suffered property damages may receive financial compensation under the conditions and in accordance with the procedure established by the Crime Victim Assistance and Financial Compensation Act. Where a victim has died as a result of a crime, the victim's rights to financial compensation shall be transferred to the victim's heirs or the person with whom the victim has been in actual cohabitation.

The crime victims shall acquire their right to seek financial compensation under the Crime Victim Assistance and Financial Compensation Act after the completion of the criminal proceedings with an effective instrument of the authorities of the judiciary:

1. a guilty verdict, including in cases tried in the defendant's absence;
2. the agreement on settling the case in pre-trial proceedings;
3. a prosecutorial or court instrument by which criminal proceedings are discontinued, except in cases where proceedings were discontinued because the act did not constitute a crime, or constituted an administrative violation;
4. a prosecutorial or court instrument by which criminal proceedings are dismissed on the grounds of failure to identify the perpetrator of the crime.

**IMPORTANT!** The application for financial compensation shall be submitted to the National Council within one year of the entry into force of the relevant instrument of the authorities of the judiciary. The application may also be submitted through a victim support organization or through the regional governor at the current address of the victim. The application for financial compensation shall be considered within one month of the date of receipt thereof. If necessary, this period may be extended for up to three months.

A model form of the application for financial compensation shall be presented to the victims by the National Council, the Regional Governors, the authorities of the Ministry of Interior, investigators and victim support organizations.

The model form of an application for financial compensation ratified by Order No ПС-04-308/16.04.2007 of the Minister of Justice and a list with the needed documents for the consideration of the application are available in the Documents section of the National Council's web site [www.compensation.bg](http://www.compensation.bg).

The financial compensation shall cover the provision of an amount by the State at the maximum level for all eligible persons not exceeding BGN 10 000. Where the financial compensation is granted for the maintenance of persons under the age of 18, who are the heirs of a deceased person, the amount per person shall not exceed BGN 10 000.

Financial compensation shall cover, jointly or separately, pecuniary damages directly caused by a crime and consisting in:

1. medical expenses, except for expenses covered by the budget of the National Health Insurance Fund;
2. lost income;
3. legal fees and litigation costs;
4. lost support to dependents;
5. funeral expenses;
6. other pecuniary damages.

All the property damages are proven by the victims by means of cost supporting documents!

## **Free psychological consultation and aid**

The crime victims may receive free psychological consultation and aid, which are provided by specialists - psychologists from the organizations for support of crime victims in accordance with the needs of the victim and his/her psychological condition.

The application for provision of free psychological aid shall be filed to the organization for support of victims selected by the victim. The application should contain: the full name of the victim, his/her citizenship, date and place of birth, permanent and present address; date, place and circumstances of the commitment of the crime; the date on which the victim notified the competent authorities about the crime committed and the grounds of the applicant who filed the application for seeking psychological aid. Copies of the documents which certify the data indicated in it shall be attached to the application.

For more information the victim can turn to the Bulgarian Association of the Organizations for Support of Victims under the Contacts section of the National Council's web site [www.compensation.bg](http://www.compensation.bg).

## **GERMANY**

### **Special features of criminal proceedings in cases of domestic violence**

If the specific offence is more recent, the investigation procedure is initiated on the basis of criminal charges brought by the victim, third parties or on the advice of other institutions. In acute cases, investigation proceedings are usually initiated by the victim himself or by witnesses to the police. The police then drive to the scene of the crime, separate the alleged perpetrator from the alleged victim and expel the perpetrator if they believe there is further danger to the victim or other persons. It informs the victim of his / her rights and that a victim support office will be informed of the facts of the case and will proactively contact the victim. On the spot, the police will carry out the necessary securing of evidence and, if necessary, initiate further immediate measures, such as medical assistance. It also informs the victim of the duration and effects of the expulsion and points out that, for the victim's continued safety, the victim may apply to the Family Court for a protective order in accordance with the Protection against Violence Act within the duration of the expulsion by the police. Corresponding information material will be handed over to the victim by the police. As the investigation continues, the victim is summoned by the police as a witness and the nationwide victim fact sheet is handed over to him/her for information about his/her rights. Where necessary, the police shall arrange for a medical examination of the victim. The police then hear further witnesses and secure other evidences. Afterwards the police will send the files to the public prosecutor's office who is solely responsible for the conclusion of the investigation. Since victims of domestic violence are often no longer interested in the accused being punished after some time from the crime moment, the public prosecutor's office is also examining the possibility of terminating the proceedings without charge and sentence. To this end, the Public Prosecutor may obtain a report from the judicial assistance of the accused and a report on the situation of the victim, in particular the effects of the offence on the victim. On this basis, the public prosecutor's office may,

with the consent of the accused and the court, provisionally suspend the proceedings with conditions in cases of lesser fault. Such conditions may include the payment of financial compensation, the implementation of a social training course to take responsibility and change behavior ("perpetrator work") or the implementation of a perpetrator compensation. If the accused fulfils the condition imposed on him within six months (within one year in the case of a social training course), the city administration shall terminate the proceedings definitively. Otherwise, it will file charges in court.

In the main proceedings, the court may also, with the consent of the accused and the public prosecutor's office, close the proceedings in the course of taking evidence. The same options as for the public prosecutor's office can be considered as conditions. If the accused is convicted, the court has the option of suspending the setting of a fine or the execution of a custodial sentence for a certain period of time. In such cases, the court may, within the framework of parole conditions or the instructions of the convicted persons, order the court to make good the damage suffered by the victim in (small) amounts. The accused may also be required to participate in a social training course within the framework of probation.

The implementation of social training courses ("perpetrator work") to assume responsibility and change behavior on the part of the perpetrator has been developed in Germany in the last ten years due to the need of the victims not to give up the existing relationship because of domestic violence, but to ensure that domestic violence on the part of the perpetrator is ended. The implementation of these social training courses is bound to certain standards and is carried out by specialized perpetrators' work facilities.

If, in cases of domestic violence, there is a risk of repeated violent crimes being committed, the victim can apply for a temporary injunction ("protection order") pursuant to §§ 1, 2 of the Protection against Violence Act at the District Court Family Court. This is limited in time by the court and contains the orders requested by the victim against the offender. This may be a ban on contacting the victim, including by means of telecommunications, or a requirement that the offender must not approach the victim at a distance less than that ordered by the court. The interim injunction must be served on the offender by a bailiff at the victim's request in order for it to take effect. Every such protective order also contains a note that the offender is liable to prosecution in accordance with § 4 of the Violence Protection Act if the measures ordered are violated. In such cases, the victim must inform the public prosecutor's office or the police, who will then initiate a new investigation. At the same time, the victim can initiate the civil execution of the protection order at the family court and file an application for a fine or for a detention order.

### **Special features of criminal proceedings in cross-border crimes**

In connection with cross-border crimes, especially in cases of trafficking in human beings, children, genital mutilation and forced marriage, there are various peculiarities with regard to the identification and safety of victims. This applies in particular to the identification of victims. Many procedures are initiated as a result of police investigations. The public prosecutor's office draws the attention to non-



German victims on their opportunities to participate as witnesses in criminal proceedings and on the effects on their right of residence in Germany. Directive 2004/81/EC requires that, in order to apply the information, assistance and support mentioned in this Directive, the victim status of non-German victims must be established. The date of determination of victim status shall be the date on which the competent authorities have legitimate grounds for believing that a person may be a victim. The public prosecutor's office or the criminal court can then, in principle, work with the immigration authorities to ensure that victims of human trafficking are granted a residence permit for the duration of the criminal proceedings for humanitarian reasons if, without the victim's details, it would be more difficult to clarify the facts of the case and if, in addition, the victim has broken off any connection with the accused and declared his/her willingness to testify in the criminal proceedings for the offence, § 25 paragraphs 4a and 4b of the Residence Act. For the decision to testify in criminal proceedings victims who are obliged to leave the country have a period of consideration of at least three months, § 59 paragraph 7 of the Residence Act. This period of reflection must not be made dependent on the victim's willingness to cooperate. During this time, victims are entitled to help and to be protected from deportation. The victims should recover during this time. The police and public prosecutor's office therefore draw their attention to specialized victim support facilities for human trafficking victims. The specialized victim support facilities look after the victims during and outside criminal proceedings.

For particularly vulnerable victims of cross-border crimes, the police have special protective measures available to protect them from danger to life and limb in accordance with the "Zeugenschutz-Harmonisierungsgesetz (ZSHG)" and measures similar to witness protection below the application of this law. Measures such as victim-offender mediation and social training measures are rather out of question for these victims. However, under the Victim Compensation Act (OEG), foreigners who have been victims of an assault are entitled to care if they are nationals of an EU member state. Other foreigners receive benefits under this law if they have resided legally and uninterruptedly in Germany for three years.

## SWEDEN

The criminal procedure in Sweden is divided into two phases, the **investigation phase** with the preliminary investigation and **the trial**, where the indictment is the starting point. This differs from other legal systems in a number of EU member states, where three phases are included, investigation, prosecution and bringing to justice.

According to the Code of Civil and Criminal Procedure, a preliminary investigation shall be opened as soon as there is a reason to believe that a crime susceptible to public prosecution has been committed.



## **Preliminary investigation**

The preliminary investigation consists of various components to provide information on the matter and technical evidence. A very important part of the preliminary investigation is the police hearing of the plaintiff.

The police will start the investigation, for example through questioning, investigation of the crime scene and a technical investigation. The preliminary investigation will be led by a police officer or prosecutor, depending on the crime. The police may collect any information from forensic doctors or technicians in the form of DNA, for example. Skills of different kinds may be needed to investigate a crime and the investigators can get reinforcement from experts at National Operations Department.

The preliminary investigation has two functions, according to the Code of Civil and Criminal Procedure:

1. The investigation shall seek to establish the identity of the person who reasonably can be suspected of the crime, and
2. the investigation shall also determine whether there are sufficient reasons to prosecute the suspect of the crime.

The preliminary investigation shall be prepared in such a way that evidence can be presented in a concentrated manner at the oral hearing at the court.

A preliminary investigation can be terminated if the investigation shows that there is sufficient evidence for the prosecutor to prosecute. If the evidence gathered is not sufficient, the prosecutor may either make a decision not to prosecute or decide to close the preliminary investigation. A preliminary investigation can be reopened if new evidence emerges.

In the Swedish legal system, the suspect of crime is formally charged through an indictment, when the preliminary investigation is terminated.

## **Summary penalty order**

In the case of less serious crimes, the prosecutor may decide on a so-called summary penalty order instead of prosecuting. This means that the prosecutor, without a trial, decides that the suspect should pay fines. A precondition for this is that the person suspected of the offence has confessed to it. Summary penalty orders are common in the case of traffic offences.

## **Court proceedings**

The criminal proceeding enters the trial phase when the prosecutor lodges a written indictment with the court, which will issue the indictment and send it to the accused suspect of crime if the application of the prosecutor is not dismissed.

In most of the cases, the suspect of the crime will be summoned to appear at the main oral hearing at the court.

Before the main hearing the plaintiff will be informed about the legal proceeding and about the position of crime victims in the criminal proceeding. Crime victims who are to be heard by the Court and those who do not understand Swedish are entitled to cost-free interpreting and translation during the trial.

The plaintiff will be provided orally and or in writing with all necessary information to be able to participate in the trial. The plaintiff can visit the court before the trial, in order to acquaint herself or himself with the building and the courtroom. The plaintiff will be informed about where to meet on the day of the trial and on any accompanying procedures. It is even possible that the plaintiff will appear in a court in the homeland and testify in the court in Sweden over a video link. The request will be sent to the competent governmental authority in the country where the victim has a domicile.

Complainant under 15 years of age will be presented in the court in the form of a video recording, based on the police interrogation. The Safe House for Children, Barnahus, is the place where police, social services, pediatricians and psychologists from child and youth psychiatry work together with children who are victims of violence and sexual exploitation. The court can also decide that a trial with a child under 15 years of age shall take place behind closed doors.

### **The victims' rights to compensation**

Anyone who is subjected to a criminal act has in general a right to compensation.

In Sweden, a victim has three main options for compensation.

1. Firstly, the victim can be awarded damages against the perpetrator according to tort law, determined by the court.
2. Secondly, compensation can be paid through various kinds of insurances, mostly private insurances, taken out by the victim with an insurance company.
3. Thirdly, the Swedish state can compensate the victim through the government compensation plan, known as Criminal Injuries Compensation, through the Crime Victim Compensation and Support Authority.

### **Compensation according to tort law**

Initially, the victim is supposed to sue for damages from the perpetrator according to tort law (Skadeståndslagen 1972:207). A claim for damages is a lawsuit in accordance with civil law, but the victim can also bring this civil claim for compensation from the offender during a criminal trial. Usually, the prosecutor will prepare and present the claim for damages jointly with the prosecution in the criminal trial and the victim's claim will be assessed by the court in conjunction with considerations about the offender's guilt or innocence.

Under tort law, the victim can sue a defendant for compensatory damages. The victim can receive compensation for personal injuries, including both physical and psychological injuries. The compensation covers loss of income, feelings of unease and pain, as well as expenses for any psychotherapy needed to recover from trauma. In addition, violation of personal integrity suffered by the victim will be reimbursed. The concept of violation of personal integrity requires that the crime involved a serious violation of someone's person, freedom, peace or honour. The compensation will also cover loss of or damage to property and purely financial losses.

### **Compensation according to private insurance**

Most people in Sweden have private insurance, principally home insurance, which covers losses or injuries resulting from crimes. There are also additional collective or individual accident insurances covering personal injury.

Private insurance is based on an individual contract, which implies that people are covered by the insurance if they are able to be a part of the insurance scheme and pay the fee. The conditions for compensation to victims are fixed in the insurance policy and vary very little among insurance companies. Furthermore, compared to claims for damages according to tort law, the compensation is limited. Some losses are not compensated for and all victims are not included in the scheme. For instance, if the victim is living with the offender, the insurance is not valid.

In private insurances, the victim's own behaviour has an effect on their eligibility for compensation. If the victim was under the influence of alcohol, he or she has no right to compensation. This is also true if the victim has, through self-indulgence, participated in an action that led to injuries resulting from crime.

### **Government Compensation Plan – Criminal Injuries Compensation**

If the perpetrator is unknown or unable to pay the damages, or if the victim is not included in a private insurance scheme, the victim may be entitled to compensation from the government, according to the Criminal Injuries Compensation Act (Brottskadeförordning 2014:322).

Criminal Injuries Compensation is based on principles of public law and the compensation is secondary to damages and insurances. Thus, this compensation is payable to the victim only if he or she has not been compensated from any other system.

### **Public insurance**

As stated, a victim has a right to be compensated for personal injuries from all the systems mentioned above. When a victim receives compensation for personal injuries, loss of income is also covered. Loss of income occurs when the victim is not able to work, mostly as a result of illness. In Sweden, loss of income caused by illness or injury is usually covered by public health insurance, through sickness benefit.

### **Crime Victim Fund**

The purpose of the Swedish Crime Victim Fund is to provide economic support to activities aimed at improving the situation for crime victims, initiated by researchers, NGOs, public bodies, private institutions and others, who in their profession deal with problems concerning crime victims.

The Fund is mainly financed by money from convicted offenders. All offenders convicted for an offence punishable by a prison sentence are liable to pay a lump sum of 500 SEK to the Fund. In addition, money is channelled from prisoners under electronic supervision.

### **The Criminal Injuries Compensation Board**

The Criminal Injuries Compensation Board is the highest decision-making body regarding criminal injuries compensation. It is appointed by the Swedish government and resolves matters of a principal nature or of greater importance. The Board consists of active court lawyers, insurance experts, and members of the Swedish parliament. Normally, the Board meets three to six times a year. The decisions made by the Board cannot be appealed.

### **The Council of the Crime Victim Fund**

The Council of the Crime Victim Fund reviews matters regarding grants from the Crime Victim Fund, administered by the Crime Victim Compensation and Support Authority. This council is made up of the authority's Director-General and seven other members appointed by the Government. The members are persons with research experience and a sound knowledge of crime victims and crime victim activities.

### **Public coordination of the victim support services**

The overall aim of the Crime Victim Compensation and Support Authority is to look after the rights of all crime victims and to draw public attention to their needs and interests. In the Crime Unit, lawyers and administrative staff are working on handling cases of custody compensation. The information activities at the Knowledge Centre is handled mostly by lawyers, but also social welfare centres.

Criminal injuries compensation is primarily paid out due to personal injuries, which can be both psychological and physical injuries arising from the crime. There are also a number of criminal acts which entitle a person to compensation for violation of personal integrity. This kind of compensation applies when the crime is considered to be a serious violation of the victim personal integrity, private life, or human dignity. Almost all cases of sexual assault entitle a person to such compensation. Likewise, this is often the case with assault and violation of the privacy of the home, unlawful threatening, robbery, and a breach of a restraining order.

The chances of receiving criminal injuries compensation for loss of or damage to property, or a pure financial loss, are very limited. Compensation will normally only be paid out if the offender, when he or she committed the crime, was an inmate of a prison. A certain type of institution for the care of young people or substance abusers, or a police arrest cell. Compensation for financial loss or damage to and

loss of property may also be paid out in cases where there are particularly distressing circumstances. There is also a special form of criminal injuries compensation meant for children who have witnessed violence in a close relationship. The government has a responsibility to compensate children who have witnessed serious criminal acts towards persons close to them, even though the child cannot claim damages from the offender.

### **International legal assistance in cross-border cases**

The provisions on international legal assistance in criminal matters are regulated in the International Legal Assistance in Criminal Matters Act (Lag (2000:562) om internationell rättslig hjälp i brottmål). There are supplementary provisions on legal assistance in certain cases in the Act on Joint Investigation Teams for Criminal Investigations (2003:1174).

The aim of international legal assistance in criminal matters is to enable prosecutors and courts in Sweden and abroad to assist one another when investigating crimes. Legal assistance can be requested and provided both during a preliminary investigation and during a trial.

Besides legal assistance in criminal matters, Sweden can also provide assistance in matters as follows<sup>21</sup>:

1. matters being dealt with in the applicant state or in Sweden in an administrative procedure or in another procedure than a penal law procedure,
2. matters relating to damages for incorrect deprivation of liberty, prosecution or judgment,
3. matters being dealt with together with a criminal case,
4. at the stage of execution, for instance, a pardon or respite with enforcement of a sentence.

---

<sup>21</sup> <https://www.government.se/government-of-sweden/ministry-of-justice/international-judicial-co-operation/legal-assistance-in-criminal-matters/>

# CHAPTER VI

## STAKEHOLDERS WITH ATTRIBUTIONS IN ENSURING THE PROTECTION OF VICTIMS RIGHTS

### ROMANIA

**Ministry of Justice** is the specialized body of the central public administration, with legal personality, subordinated to the Government, which contributes to the proper functioning of the judiciary and to ensuring the conditions for the application of justice as a public service, the defense of the rule of law and citizens' rights and freedoms.

**Public Ministry** is part of the judicial authority; it represents the general interests of society and defends the rule of law and the rights and freedoms of citizens; it performs its powers through prosecutors constituted in prosecutor's offices, according to the law. The Public Ministry includes: the Prosecutor's Office attached to the High Court of Cassation and Justice, the Prosecutor's Offices attached to the Courts of Appeal, the Prosecutor's Offices attached to the Courts, the Prosecutor's Offices attached to the Specialized Courts for Minors and Family, the Prosecutor's Offices attached to the Courts of First Instance and Military Courts.

**Directorate for Investigating Organized Crime and Terrorism** a department of the Prosecutor Office Attached to High Court of Cassation and Justice, with competencies in combating organized crime, economic and financial crimes, drug trafficking, human trafficking, terrorist offenses, cybercrime. The institution has a central unit in Bucharest and several other territorial units in different Romanian counties.

**Courts and Tribunals** in the 41 counties of Romania and in Bucharest. **Courts of Appeal** (Alba-Iulia, Bacău, Braşov, Bucharest, Cluj, Constanţa, Craiova, Galaţi, Iaşi, Oradea, Piteşti, Suceava, Timişoara, Târgu-Mureş. **The High Court of Cassation and Justice (ICCJ)**. The Court settles the cause of the judgment by ensuring the observance of the rights of the trial subjects and ensuring the administration of the evidence for the full clarification of the circumstances of the case in order to find out the truth, with full compliance with the law.

**Romanian Bars** in each of the 41 counties of Romania and in Bucharest. The Judicial Assistance Service from each local bar is directly subordinated to the Dean of the Bar and its activity is coordinated by members of the Bar Council. In the cases provided by the law, the bars provide legal assistance in the following forms: mandatory legal assistance, extra-judicial assistance, free legal assistance. In the cases provided by the law, assistance is provided by ex officio lawyers from each local Bar, who can opt to register annually in the Register of Judicial Assistance.

**General Inspectorate of Romanian Police (GIRP)** coordinates and provides guidance for the enforcement measures to maintain public order and safety, citizen safety, to prevent and combat crime and to identify and counteract the actions of elements that affect the life, freedom, health and integrity of individuals, private and public property, as well as other legitimate community interests. GIRP has subordinated a number of central and territorial units in all 41 counties of Romania and in Bucharest.

## BULGARIA

In Bulgaria, the prosecution and trial of criminal acts, the identification of victims of crime, the provision of legal assistance, support and compensation is entrusted with the following institutions:

**Ministry of the Interior** receives, identifies and supports persons victimized by crimes or other violations of public order. It investigates crimes under the supervision of public prosecutors.

**Prosecutor's Office of the Republic of Bulgaria** is responsible for prosecuting offenders and identifying victims of crime. It manages the collection of evidence, bringing of formal charges and sending the case to court for trial. The **National Investigation Service** and the investigation departments with each district prosecutor's office are part of the prosecutor's office and are in charge of investigating cases of particular legal or factual complexity.

**Regional and district courts, appellate courts, Supreme Cassation Court, specialized Criminal Court.** Courts in Bulgaria trial criminal cases in accordance with their territorial and material jurisdiction, as determined by the criminal procedural legislation. The specialized Criminal Court is dealing with cases related to organized crime.

**National Legal Aid Bureau** organizes, together with **bar councils**, the provision of legal aid to persons in need, including victims of crime. It keeps the National Register for Legal Aid, pays for and controls the legal aid rendered.

**National Council for Assistance and Compensation of Victims of Crime** is the state body responsible for the payment of state-provided compensation. It also provides assistance to Bulgarian citizens victimized on the territory of another EU Member State in filling in financial compensation request forms and sends them to the competent authority in the respective Member State, as well as assisting citizens of other Member States legally residing and victimized on the territory of the Republic of Bulgaria who have the right to financial compensation.

**Association of Organizations Supporting Victims of Crime** provides information on the activity of its constitutive organizations in the different regions and is a standing representative in the National Council for Assistance and Compensation of Victims of Crime.

**National Commission for Combatting Trafficking in Human Beings** is an interinstitutional body, which organizes and co-ordinates the co-operation among institutions and organizations in applying anti-trafficking legislation and supporting trafficking victims. It is active in various international co-operation mechanisms for preventing and countering human trafficking, in campaigning especially among risk groups and in training relevant officials. It manages local anti-trafficking commission and shelters and centers for trafficking victims.

**Ministry of Foreign Affairs** supports victims of human trafficking identified outside of the country and take part in their informal identification. The Ministry help



victims return to the country and co-operates with the Ministry of Interior in quickly issuing identification documents to them.

## **GERMANY**

**The public prosecutor's office** is the responsible prosecution authority in the preliminary proceedings, which represents the prosecution in the main trial. The public prosecutor's office decides on the victim status until the final judgment of the court. In the region of every district court there is a public prosecutor's office.

**The police** support the public prosecutor's office in the investigation, file charges, initiate early investigations, secure the evidence and provisionally identify the victim and the accused at the beginning of the proceedings until the public prosecutor's decision.

**The lawyers** can be freely chosen by the victim as legal counsel and accompany the victim during the entire procedure without any change in person. They shall, at the request of the victim, be assigned as representatives of ancillary action at the expense of the State in the case of certain offences, in particular crimes. Lawyers are organized in bar associations.

**The criminal courts** during the main proceedings are solely responsible for the criminal proceedings. They conduct the main hearing with the taking of evidence and finally decide with the (legally binding) judgment whether the injured party is a victim. The decision of the courts in criminal matters is not binding on other courts which, for example, have jurisdiction to settle the consequences of the offence for a decision (social courts, civil courts, administrative courts).

**The administrative courts** finally decide on the granting of a residence permit in Germany, the granting of acquiescence and subsidiary protection. Administrative courts review the decisions of Federal Office for Migration and Refugees (BAMF).

**The Federal Office for Migration and Refugees (BAMF)** is the supreme federal authority for all refugees, asylum seekers and migrants and all questions of residence law. As the administrative authority, it decides on a person's right of residence. The decisions may be reviewed by the administrative courts.

**Social courts** review the decisions of the state authorities on the granting of benefits under the OEG.

**The Bar Association** is divided into districts. As a rule, a regional representation of the Bar Association is also available at the level of the Regional Courts.

**Probation assistance** is part of the General Judiciary Social Service, in which probation officers are responsible for supervising and supporting a convicted person. Probation officers can monitor and support compliance with instructions and conditions issued to the convicted person during probation.

The judicial assistance is also part of the **General Judicial Social Service** and is carried out by social educators and social workers as judicial assistants. The judicial assistance may draw up reports on the social environment of the accused and on the victim, in particular the victim's situation after the crime, on behalf of the public prosecutor's office or the court.

## **SWEDEN**

**Justice Department:** the Ministry of Justice is responsible for judicial authorities, including the police, prosecutor's office, the courts, the prosecution, as well as migration and asylum and emergency preparedness. The Ministry of Justice is responsible for legislation in the areas of state and general administrative law, civil law, procedural law, criminal law and migration and asylum law.

**The Swedish Crime Victim Compensation and Support Authority:** the overall aim of the Crime Victim Compensation and Support Authority is to look after the rights of all victims and to draw public attention on their needs and interests.

**The Swedish Court:** getting a case in an impartial court is a fundamental right. The task of the courts is to handle cases in a legal and effective way. The Swedish Courts are the collective name for the courts' activities. The Swedish Courts include the General Courts, the General Administrative Courts, the Rental and Land Affairs Committees, the Legal Aid Authority, the Legal Aid Board.

**Police Authority:** the goal of the judiciary is to ensure the legal security of the individual.

The police authority, together with other authorities within and outside the judiciary, through its efforts, will contribute to the crime policy objective - to reduce crime and increase people's security.

**Swedish Prosecution Authority:** the prosecutor is an important link in the legal process involving the police, the prosecution service, the court and criminal care. It is the prosecutor who, within the bounds of the law, decides on whether legal proceedings are to be taken, and it is the prosecutor who leads the preliminary investigations and represents the State in court.

**The Swedish Bar Association:** is the member organisation for Sweden's practising lawyers.