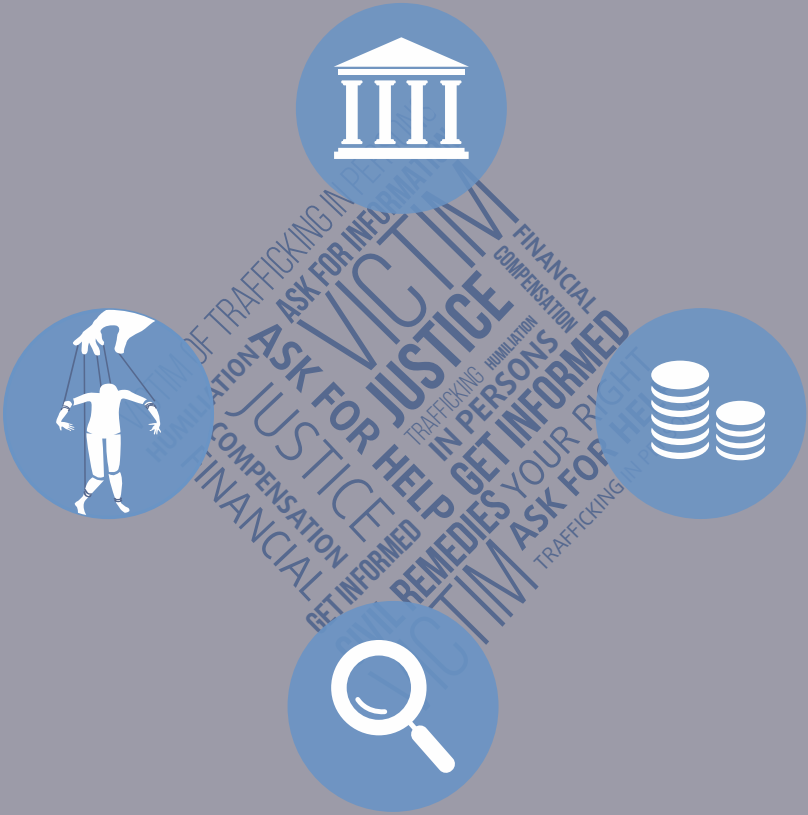


# COMPENSATION

## FOR VICTIMS OF HUMAN TRAFFICKING IN ROMANIA

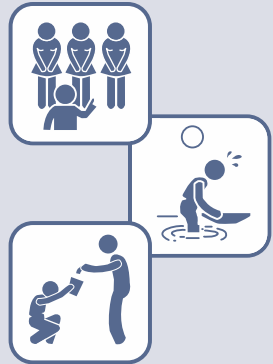


# Why a brochure about financial compensation granted to **VICTIMS OF HUMAN TRAFFICKING**

Romania is origin country of human trafficking with

HUNDREDS OF VICTIMS  
ANNUALLY IDENTIFIED

- Sexually exploited
- Exploited through labour
- Forced to commit offences
- Forced to beg



CHILDREN AND ADULTS,  
WOMEN AND MEN  
Victims of a serious crime which caused  
them deep trauma

- Physical pain and mental suffering
- They were deceived, threatened, beaten, humiliated
- Forced to make things they did not want, sometimes illegal things
- Forced to work many hours, without rest
- They have not been paid or the amount they received was insignificant
- They got ill and needed medical treatment
- Their relations with the family, friends, people around them deteriorated
- They lost their self-confidence and the confidence in other people
- They have feelings of shame and fear

And even if you see they can still laugh, often, the louder they laugh, the bigger their trauma is and the need to receive help

- They have the right to receive assistance for recovery and social reintegration
- They have the right to receive information about the way they can be helped
- They need support for understanding their rights and accessing them
- They have the right to financial compensation for suffered

The financial compensation cannot remove suffered trauma but it can increase the recovery chances and can prevent re-victimization

# International framework on the right to financial compensation

## ANTI-TRAFFICKING LEGISLATION

**Art. 6.6.** *Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.*

(Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000, signed by Romania on 14 December in Palermo and ratified by Law no. 565/2002).

**Art. 15.3** *Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.*

**Art. 15.4** *Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims.*

(Council of Europe Convention on Action against Trafficking in Human Beings, signed by Romania on 16 May in Warsaw and ratified by Law no. 300/2006).

**Art. 12.2** Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

**Art. 17** Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

(Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA).

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# National framework on the right to financial compensation

## CIVIL ACTION IN THE CRIMINAL TRIAL

The victims of human trafficking have the right to bring a civil action in the criminal proceedings and request civil remedies for material and/or moral damages suffered.

After the delivery of the final conviction and award of civil remedy, **the victim can file a request at the court in the jurisdiction of which it has its domicile for receiving the amount necessary for the court order enforcement by which civil remedies was awarded!!!** (according to art. 19 from Law no. 211/2004 on some measures for ensuring the protection of crime victims).

## FINANCIAL COMPENSATION GRANTED BY THE STATE

If they do not obtain from the trafficker the civil remedy decided by the criminal court because he/she does not have income or assets, the victims of human trafficking have the right to request financial compensation from the state, only for certain categories of damages.

## **The award by the state of financial compensation to victims of offences –**

*Chapter V from Law no. 211/2004 on some measures for ensuring the protection of crime victims*

Financial compensation is granted to victims if the offence was committed on the Romanian territory.

### **CONDITIONS AND TERMS**

- 1.** The victim informed the criminal prosecution bodies
  - within 60 days from the date of the committed crime
  - within 60 days from the date on which the state of impossibility ceased
- 2.** The victim brought a civil action in the criminal proceedings
- 3.** The perpetrator is insolvent or disappeared

**!!! This condition can be proved by presenting the resolution drawn up by the baillif in case of lack of traceable assets or the impossibility to capitalize such assets !!!**

**!!! There were cases in which the Commission for awarding financial compensation considered as being fulfilled this condition based on certificates issued by local authorities (e.g. City Hall) which certified that the perpetrator is not registered in the fiscal records with movable and immovable assets !!!**

- 4.** The victim did not obtain the full recovery of suffered damage from an insurance company

**5. To file a financial compensation request**

- at the court in the jurisdiction of which it has its domicile
- within one year from the date on which the decision, through which the criminal court delivered the conviction and granted civil remedy, remained final

***!!! If the victim is a minor and his legal representative did not file the financial compensation request within the established term, this term becomes effective from the date on which the victim turned 18 years!!!***

**CATEGORIES OF DAMAGES**

- Hospitalization expenses and other medical expenses borne by the victim
- Material damages resulted from destruction, deterioration or bringing to a disuse state of victim goods or its dispossession following the offence committed – The financial compensation for these damages is granted within the limit of an amount equivalent with 10 gross national minimum wages established for the year in which the victim filed the financial compensation request
- Gains of which the victim was deprived following the offence committed

***!!! The financial compensation is granted for suffered damages to the extent in which they fall within mentioned categories and can be proved !!!***



### SETTLEMENT OF REQUEST

- The requests are settled by two judges from the Commission for awarding financial compensation to victims of crime established within each court.
- The request is settled in the council room, with the victim summoning and the mandatory participation of the prosecutor.
- The Commission can hear persons, request documents and produce other evidence considered useful for request settlement.

### PAYMENT OF FINANCIAL COMPENSATION

The payment of financial compensation is made by the financial departments of courts through the budget of the Ministry of Justice, within 15 days from the date on which the decision for awarding financial compensation remained final.

***!!! If the victim is in a poor financial situation, it can request an advance payment from the financial compensation !!!***

- The request for advance payment can be filed anytime after informing the criminal prosecution bodies and within maximum 30 days from the date of filing the compensation request.
- The advance payment can be also requested through the financial compensation request.
- The advance payment requested shall fall within the amount equivalent with 10 gross national minimum wages established for the year in which the victim requests the advance payment.
- The request is settled within 30 days from the request date by two judges from the Commission for awarding financial compensation.

***!!! The victim who benefited from an advance payment from the financial compensation shall have the obligation to reimburse it if he/she does not file the financial compensation request within the legal term !!!***

***!!! If the financial compensation request is rejected, the victim shall have the obligation to reimburse the advance payment, except the case in which the request was rejected only because the perpetrator is not insolvent or disappeared !!!***

## **VERY IMPORTANT**

### ***!!! Proving the damages***

- The victims need guidance and support for identifying all moral and material damages suffered and especially for proving them.
- Even since the first hearings, it is recommended to identify and document, depending on the case, the aspects that allow the quantification of moral and material damages.
- Possible evidence: reports of psychological assessment, medical certificates, receipts for expenses borne both in the trafficking stages (e.g.: recruitment/transport/accommodation/exploitation) and in stages following the trafficking (e.g.: return to country, medical recovery, social reintegration), employment contracts, witnesses and ..... the list continues .....

### **!!! Legal assistance**

- The victims of human trafficking have the right to free of charge and mandatory legal assistance (Chapter IV from Law no. 211/2004 on some measures for providing the protection of offence victims and art. 44 from Law no. 678/2001 on the prevention and fight against human trafficking).
- The professional opinion of jurists (prosecutors, judges, attorneys) based on their practical experience emphasized the importance of legal assistance provided by the same attorney during the entire criminal proceedings.
- The specialization of persons involved in the legal assistance of victims in matters of human trafficking is equally important.

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NATIONAL AGENCY  
AGAINST TRAFFICKING IN PERSONS

Address: Str. Ion Câmpineanu nr. 20, etaj 5, sector 1,  
Bucuresti, România

Telephone: +40213118982

Fax: +40213190183

E-mail: [anitp@mai.gov.ro](mailto:anitp@mai.gov.ro)

**HELPLINE**

**0 800 800 678** - toll free from Romania

**+40213133100** - from abroad

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[www.norwegian.mai.gov.ro](http://www.norwegian.mai.gov.ro)