

## LAW

### On certain measures to ensure the protection of victims of crime

No. 211 on 27<sup>th</sup> May of 2004

OJ. No. 505 on 4<sup>th</sup> June of 2004

(excerpts)

The Parliament of Romania adopts this law.

#### Chapter I

##### General provisions

**Art.1** – To ensure the protection of victims of crime, this law regulates certain measures for informing the victims of crime with regard to their rights, as well as for providing the victims of crime with psychological counselling, free legal assistance and financial compensation from the State.

**Art.2** – The Ministry of Justice, through the National Institute for Magistrates and through the Ministry of Administration and the Interior, shall ensure the specialisation of personnel that, in the exercise of prerogatives provided in the law, establishes direct contact with the victims of crime.

**Art.3** – The public authorities having prerogatives in the field of protecting the victims of crime shall, in co-operation with non-governmental organisations, organise campaigns of public appraisal in this field.

#### Chapter II

##### Informing the victims of crime

**Art.4** – (1) Judges, in the case of offences for which prior complaint must be lodged with a law court, or public prosecutors, police officers/agents shall provide the victims of crime with the following information:

- a) the services and organisations that provide psychological counselling or any other forms of assistance to victims, according to their needs;
- b) the body of criminal prosecution with which complaints may be lodged;
- c) their right to receive legal assistance and the institution that can be addressed for exercising this right;
- d) the conditions and procedure for obtaining legal assistance free of charge;
- e) the procesual rights of injured persons, of injured parties and of civil parties;
- f) the conditions and procedure for enjoying the provisions of Art.86<sup>1</sup>, Art.86<sup>2</sup>, Art.86<sup>4</sup> and Art.86<sup>5</sup> of the Criminal Procedure Code, as well as the provisions of Law No.682/2002 on witness protection;
- g) the conditions and procedure for receiving the financial compensation from the State.

(2) The information in para.(1) shall be made known to the victim by the judge, public prosecutor, police officer/agent before whom the victim appears.

(3) The information in para.(1) shall be made known to the victim either in writing or verbally, in a language that he understands.

(4) The fulfilment of the obligations in para.(1)-(3) shall be recorded in minutes, which shall be registered with the institution to which the judge, public prosecutor or police officer/agent before whom the victim appeared belongs.

**Art.5** – (1) The Ministry of Justice and the Ministry of Administration and the Interior shall, with the support of the Ministry of Communications and Information Technology, ensure the operation of a telephone line available permanently for the information of victims of crime. The telephone line shall ensure the communication of the information provided in Art.4 para.(1).

(2) Access to the telephone line in para.(1) shall be ensured, free of charge, by calling a unique national telephone number.

(3) The personnel that ensure the communication of the information through the telephone line in para.(1) shall notify the police units, if the telephone conversation shows that the victim is in danger.

(4) The authorities of the local public administration and the non-governmental organisations may create local telephone lines for informing the victims of crime.

**Art.6** – (1) The information in Art.4 para.(1) shall be published on the web pages of the Ministry of Justice and of the Ministry of Administration and the Interior.

(2) Law courts, public prosecutor's offices attached to law courts and police departments may publish on their web pages the information provided in Art.4 para.(1).

(...)

## Chapter V

### Financial compensation from the State for the victims of certain offences

**Art.21** – (1) Financial compensation shall be granted, upon request, according to this Chapter, to the following categories of victims:

a) persons against whom was committed an attempt to the offence of murder, first degree murder or particularly serious murder as provided in Art.174-176 of the Criminal Code, an offence of serious bodily harm as provided in Art.182 of the Criminal Code, an intentional offence that resulted in serious bodily harm to the victim, an offence of rape, sexual intercourse with a minor and sexual perversion as provided in Art.197, Art.198 and Art.201 para.(2)-(5) of the Criminal Code;

b) the spouse, children and dependants of persons deceased following the commission of offences of murder, first degree murder and particularly serious murder as provided in Art.174-176 of the Criminal Code, as well as of intentional offences that resulted in the person's death.

(2) Financial compensation shall be granted to the victims in para.(1), if the offence was committed in Romanian territory and the victim is a Romanian or foreign citizen who legally inhabits Romania.

(3) Financial compensation shall be granted to the victims in para.(1) based on international conventions to which Romania is a party, if the offence was committed in Romanian territory and the victim is a foreigner who does not inhabit Romania.

**Art.22** – (1) No financial compensation shall be granted if:

a) it is established that the act does not exist or is not provided in the criminal law or that the act was committed in legitimate self-defence against the victim's attack according to Art.44 of the Criminal Code;

b) the victim receives a final sentence for participation in an organised criminal group;

c) the victim receives a final sentence for one of the offences in Art.21 para.(1);

d) the court notes in favour of the perpetrator the mitigating circumstance of exceeding the limits of legitimate defence against the victim's attack as provided in Art.73 a) of the Criminal Code or the mitigating circumstance of provocation as provided in Art.73 b) of the Criminal Code.

(2) A victim who has received financial compensation or a payment in advance from the financial compensation shall be obliged to return the sums if the existence of one of the cases in para.(1) is established.

**Art.23** – (1) Financial compensation shall be granted to victims only if they notified the bodies of criminal prosecution within 60 days from the date of commission of the offence.

(2) For the victims in Art.21 para.(1) b), the term of 60 days shall be calculated from the date when the victim learnt of the commission of the offence.

(3) If the victim was unable, either physically or mentally, to notify the bodies of criminal prosecution, the term of 60 days shall be calculated from the date when the inability ceased.

(4) Victims under the age of 18 and incapacitated persons shall not be obliged to notify the bodies of criminal prosecution with regard to the commission of the offence. The legal representative of a minor or of an incapacitated person may notify the bodies of criminal prosecution with regard to the commission of the offence.

**Art.24 –** (1) In cases where the perpetrator is known, financial compensation may be granted to the victim if the following conditions are met:

a) the victim has lodged an application for financial compensation within one year, according to case:

1. from the date when the decision of conviction or acquittal handed down by a criminal court remained final in the cases provided in Art.10 para.1 d) and e) of the Criminal Procedure Code and granted civil damages or handed down acquittal in the cases in Art.10 para.1 c) of the Criminal Procedure Code or cessation of the criminal trial in the cases provided in Art.10 para.1 g) and i<sup>1</sup>) of the Criminal Procedure Code;

2. from the date when the public prosecutor ordained removal from under criminal prosecution in the cases provided in Art.10 para.1 c), d) and e) of the Criminal Procedure Code or ordained cessation of criminal prosecution in the case provided in Art.10 para.1 g) of the Criminal Procedure Code;

3. from the date when non-initiation of criminal prosecution was ordained in the cases provided in Art.10 para.1 c), d), e) and g) of the Criminal Procedure Code;

b) the victim is a civil party in the criminal trial, except for the case in para.(1) a) indent 3;

c) the perpetrator is in a state of insolvency or has disappeared;

d) the victim has not obtained, from an insurance company, full reparation of the prejudice suffered.

(2) If the victim was unable to lodge an application for financial compensation, the term of one year provided in para.(1) a) shall be calculated from the date when the inability ceased.

(3) If the court has ordained disjunction of the civil action, the term of one year provided in para.(1) a) shall run from the date when the decision that allowed the civil action remained irrevocable.

(4) Victims under the age of 18 and those incapacitated shall be exempt of the obligation in para.(1) b).

**Art.25 –** If the perpetrator is unknown, the victim may lodge an application for financial compensation within 3 years from the date of commission of the offence, if the condition in Art.24 para.(1) d) is met.

**Art.26 –** If the victim is a minor and his legal representative has not lodged the application for financial compensation within the terms provided, according to case, either in Art.24 or Art.25, these terms shall begin from the date when the victim reaches the age of 18 years.

**Art.27 –** (1) Financial compensation shall be granted to victims for the following categories of prejudice suffered following the commission of the offence:

a) for the victims in Art.21 para.(1) a):

1. hospitalisation costs and other categories of medical expenses incurred by the victim;

2. material prejudice resulting from the dispossession, destruction, damaging or rendering unfit for use of the victim's assets by commission of the offence;

3. earnings that the victim is deprived of by the commission of the offence;

b) for the victims in Art.21 para.(1) b):

1. expenses for the funeral;
2. the support of which the victim is deprived by the commission of the offence.

(2) Financial compensation for the material prejudice in para.(1) a) indent 2 shall be granted while not exceeding the equivalent of 10 national minimum basic gross salaries established for the year in which the victim lodged the application for financial compensation..

(3) The amount of money paid by the perpetrator as civil damages and the indemnity received by the victim from an insurance company for the prejudice caused by commission of the offence shall be deducted from the amount of financial compensation granted to the victim by the State.

**Art.28 –** (1) Applications for financial compensation shall be lodged with the tribunal that has jurisdiction over the victim's domicile and shall be solved by 2 judges from the Crime Victims Financial Compensation Board, created in each tribunal.

(2) The Crime Victims Financial Compensation Board shall comprise at least two judges, designated for 3 years by the general assembly of the tribunal's judges.

(3) The general assembly of the tribunal's judges shall designate, for 3 years, also an equal number of judges who act as replacements for the judges who make up the Crime Victims Financial Compensation Board.

(4) The replacement judges in para.(3) shall partake in the resolution of applications for financial compensation if one or both the judges who make up the Crime Victims Financial Compensation Board is/are unable to attend.

(5) The Secretariat of the Crime Victims Financial Compensation Board shall be ensured by one or several court clerks, designated by the tribunal's president.

**Art.29 –** (1) Applications for financial compensation must include:

- a) the victim's name, forename, citizenship, date and place of birth, domicile, residence and address;
- b) the date, place and circumstances of commission of the offence that caused the prejudice;
- c) the categories of prejudice suffered by commission of the offence that is in accordance with Art.27 para.(1);
- d) if the case requires, the date of notification and the body of criminal prosecution notified according to Art.23;
- e) if required, the number and date of the court decision or document of the body of criminal prosecution, as provided in Art.24 para.(1) a);
- f) the capacity of spouse, child or dependant of the deceased person, for the victims in Art.21 para.(1) b);
- g) criminal antecedents;
- h) amounts of money paid by the perpetrator as damages or the indemnity obtained by the victim from an insurance company for the prejudice caused by commission of the offence;
- i) the amount of financial compensation requested.

(2) Copies of the justifying documents for the data included in the application, as well as any other documents held by the victim and which are useful for solving the application, shall be attached to the application.

**Art.30 –** (1) Victims may request the payment by the Crime Victims Financial Compensation Board of an advance payment from the financial compensation, while not exceeding the equivalent of 10 national minimum basic gross salaries established for the year in which the victim requested the advance payment.

(2) Advance payment may be requested through the application for financial compensation or by a separate application that may be lodged at any time after notifying the bodies of criminal prosecution, if the case requires, according to Art.23 and no later than 30 days from the date of lodging of the application for compensation. Art.29 shall apply accordingly if the advance is requested by a separate application, which mentions also the stage of the court proceedings.

(3) The advance payment shall be granted if the victim is in a precarious financial situation.

(4) The victim's application for advance payment from the financial compensation shall be solved within 30 days from the date when it was lodged, by 2 judges from the Crime Victims Financial Compensation Board.

(5) In case of rejection of the application for financial compensation, the victim shall be obliged to return the advance payment, unless the application for financial compensation was rejected for the sole reason that the perpetrator was not in a state of insolvency or had not disappeared.

(6) A victim that received advance payment from the financial compensation shall be obliged to return it if he has not lodged an application for financial compensation within the terms provided, according to case, in Art.24, Art.25 or Art.26.

**Art.31 –** (1) Applications for financial compensation and applications for advance payment from the financial compensation shall be solved in the council chamber, having summoned the victim.

(2) Participation from the public prosecutor is mandatory.

(3) In view of solving the application, the Crime Victims Financial Compensation Board, in a panel of 2 judges, may hear persons, may request documents and may administer any other evidence that it deems useful for solving the application.

(4) In the case of applications for financial compensation or applications for advance payment from financial compensation, the Crime Victims Financial Compensation Board may, in a panel of 2 judges, hand down, in a decision, one of the following solutions:

a) admission of the application and establishment of the amount of financial compensation or, the case being, the amount of the advance payment from the financial compensation;

b) rejection of the application, if the conditions provided in this law are not met for the granting of financial compensation or of the advance payment from the financial compensation.

(5) Decisions solving applications for financial compensation or applications for advance payment from the financial compensation shall be notified to the victim.

(6) Decisions may be subject to appeal in points of law with a court of appeal, within 15 days from notification.

**Art.32 –** The Crime Victims Financial Compensation Board is obliged to inform the body of criminal prosecution or the court that has been given competence to judge the offence or, the case being, the court that has been given competence to solve the civil action, with regard to applications for financial compensation or with regard to applications for advance payment from the financial compensation.

**Art.33 –** (1) The funds needed in order to provide financial compensation and advance payments from the financial compensation shall be supplied by the State budget, through the budget of the Ministry of Justice.

(2) The payment of financial compensation and the advance payment from financial compensation shall be handled by the financial compartments in tribunals, within 15 days from the date when the decision granting the financial compensation or advance payment from financial compensation remained final.

(3) Through the Ministry of Justice, the State shall subrogate in the rights of victims who received financial compensation or advance payment from financial compensation in order to recover the sums paid to the victims.

**Art.34 –** (1) Applications for financial compensation and applications for advance payment from the financial compensation may be lodged by the legal representatives of minors or incapacitated persons.

(2) Applications for financial compensation and applications for advance payment from the financial compensation may be lodged also by non-governmental organisations that operate in the field of victim protection, provided that the applications are signed by the victim, include the data provided in Art.29 para.(1) and have as attachments the documents provided in Art.29 para.(2). If the advance payment is requested by a separate application, the application shall contain a mention of the stage of court proceedings.

(3) Applications for financial compensation and applications for advance payment from the financial compensation shall be exempt of the stamp fee.

