



Financed by the Justice Programme of the European Union

Training lawyers, prosecutors, judges to ensure better rights protection for migrants and refugees' victims of human trafficking
(TRAIN-PRO-RIGHTS)

850950 — TRAIN-PRO-RIGHTS — JUST-AG-2018/JUST-JTRA-EJTR-AG-2018

TRANSNATIONAL TRAINING

Rights of unaccompanied children victims of human trafficking

15-17 October 2020

Procedural rights for unaccompanied minors victims of human trafficking. Legal framework in the Romanian context.

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The Romanian legislation does not specifically provide for certain procedural rights applicable only to unaccompanied minors, victims of trafficking in human beings, but it regulates the issue of procedural rights of victims of trafficking in human beings in a unitary way, in the sense that all victims of trafficking in human beings mainly benefit of the same procedural rights, following that, depending on the particularities of a certain victim, for example, adult/minor, Romanian/foreign citizen, etc., the special procedural provisions shall be applied to the extent that they are expressly provided by law.

The main normative act that regulates the rights of victims of trafficking in human beings in criminal proceedings is the Criminal Procedure Code, which is supplemented by the provisions of Law No. 678/2001 on preventing and combating trafficking in human beings, the latter law regulating the situation of foreign national victims, without distinguishing between adults and minors, accompanied minors and unaccompanied minors, etc.

Moreover, Law No. 678/2001 expressly provides that the national regulations on victims of trafficking in Romanian citizens also apply to victims of trafficking in citizens of a Member State of the European Union or the European Economic Area (Art. 38¹).

However, in addition, as concerns victims of trafficking in foreign nationals, the Romanian law recognises their right **to remain on the Romanian territory** for a maximum 90-day period of recovery and reflection in order to recover, to escape the influence of the perpetrators, and to make an informed decision regarding their cooperation with the competent authorities; in this

regard, the prosecutor/judge shall request the Romanian Immigration Office to tolerate their remaining on the Romanian territory (Art. 39¹ paragraph 1 of Law No. 678/2001).

However, during or at the expiration of the reflection period, the foreign victims of trafficking in human beings may be granted, upon request, a temporary residence permit (Art. 39¹ paragraph 2 of Law No. 678/2001), and have the right to receive, in the language they understand, information on the applicable judicial and administrative procedures (Art. 43 of Law No. 678/2001).

As most of the procedural rights of victims of trafficking in human beings are regulated by the Criminal Procedure Code, in the following we will provide an analysis thereof, and for those situations where a procedural right is regulated more broadly in special legislation, we will make reference to them, as well.

Thus, the Criminal Procedure Code recognises to the victim of trafficking in human beings a broad framework of procedural rights, which operates according to the quality in which the victim intends to participate in the criminal proceedings, respectively either as injured party, civil party, or witness.

As regards the quality of *injured party*, the victim of the crime of trafficking in human beings acquires this quality ex officio, but he/she may waive his/her right to participate as an injured party in the criminal proceedings, provided that such waiver is express and the prosecutor/judge be notified.

As regards the quality of *civil party*, the victim of trafficking in human beings does not acquire this quality ex officio, but only if he/she expressly requests to bring civil action in the criminal proceedings, through which the victim seeks to obtain compensation for material/non-material damage suffered/caused by the traffickers.

If the victim of trafficking in human beings does not wish to exercise his/her right to be an injured party or a civil party in the criminal proceedings, then he/she participates in the criminal proceedings as a *witness*.

I. If the victim of trafficking in human beings chooses to participate in the criminal proceedings as an injured party, his/her rights guaranteed by the Criminal Procedure Code are:

- *to be informed about his/her rights*; this information shall be made at the first contact of the injured party with the prosecutor/judge;

- *to propose the assessment of evidence by the judicial bodies, to raise exceptions and to draw conclusions*, as a guarantee of the injured party's equality of arms in relation to the defendant before the prosecutor/judge;

- *to submit any other requests related to the settlement of the criminal side of the case*, as a right which expressly recognises the injured party the possibility to request and obtain reparation for the damage caused by the crime, not only in terms of the civil side of the case, but also in terms of the criminal side thereof;

- *to be informed within a reasonable time, about the state of the criminal investigation, at his/her express request, provided that he/she indicates an address on the territory of Romania, an e-mail address or an electronic mail, to which this information can be transmitted*; this right aims to create the premises of transparent criminal proceedings to which the injured party should always have access regarding its stage;

- *to consult the file, in accordance with the law*; this right guarantees the injured party an effective defense during the criminal proceedings;

- *to be heard*, as a guarantee of the injured party that his/her statement will be considered by the prosecutor or judge, becoming a means of proof in the criminal proceedings;

- *to ask questions to the defendant, witnesses and experts*, which ensures a balance between the procedural rights of the defendant on the one hand, and the procedural rights of the injured party, on the other hand;

- *to benefit free of charge of an interpreter when he/she does not understand, does not express himself/herself well or cannot communicate in Romanian*; it is a right which guarantees the injured party that he/she is understood before the prosecutor or judge;

- *to be assisted by a lawyer or to be represented*; this right ensures the injured party an effective defense before the prosecutor or the judge;

2. Another right which the injured party (victim) enjoys during the criminal proceedings, together with those shown above, is *his/her right to be informed, without delay, about the release of the defendant*. In this regard, the Criminal Procedure Code stipulates that the injured party shall be informed at the first hearing whether the defendant is deprived of liberty or sentenced to imprisonment; he/she may be informed on the defendant's release in any way.

3. Furthermore, the Criminal Procedure Code provides for *the right of the injured party (victim) to request the prosecutor to have his/her hearing recorded by technical audio or audio-video means*, when recording is possible.

As concerns the hearing of *minor victims under the age of 14*, Law No. 678/2001 provides special regulations, in the sense that he/she will be heard in the presence of at least one of the parents or another legal representative, being also mandatory the appointment of a psychologist, respectively a representative of the General Directorate of Social Assistance and Child Protection.

In addition to these internal provisions, there are the regulations adopted by the European Union which provide for additional procedural rights for minor victims, as follows: the hearings of the child victim shall take place without undue delay; the hearings of the child victim shall take place, when necessary, in locations specially designed or adapted for this purpose; the hearings of the child victim should be carried out, when necessary, by and with the help of specialists who have received professional training for this purpose; as far as possible and where appropriate, all hearings of the child victim shall be conducted by the same persons; the number of hearings should be as low as possible and they should take place only when they are strictly necessary for the conduct of criminal investigations and proceedings;

4. A special place within the rights enjoyed by victims of trafficking in human beings is their right *to be assisted by a lawyer*.

We return to this right because the victim of trafficking in human beings, unlike other victims of crime, benefits from additional legal provisions which grants him/her a much wider right to defense, than that the one recognised to other categories of victims of crime, namely *free and mandatory legal assistance*.

Therefore, Law No. 678/2001 on preventing and combating trafficking in human beings provides that victims of crimes of trafficking in human beings are provided with *mandatory legal assistance* in order to be able to exercise their rights in criminal proceedings provided by law, *at all stages of criminal proceedings*, and to support civil claims against those who have committed the offenses provided by this law, in which they are involved.

These special provisions provide greater protection to victims of trafficking in human beings than to other categories of victims of crime, in the sense that they receive *mandatory legal assistance* not only when they lack or have limited legal competence, but *also in the case of adults*.

Moreover, if the victim of trafficking in human beings does not wish to participate in the criminal proceedings as an injured party or as a civil party, and the prosecutor considers that it is necessary to hear him/her as a *witness*, *the victim does not lose his/her right to be assisted by a lawyer.*

5. As regards *the victim's right to consult his/her lawyer*, the Criminal Procedure Code provides that the injured party, both before and during the hearing may consult his/her lawyer, whether he/she is an appointed lawyer or a duty lawyer, and may use his/her own notes.

6. Another procedural right of the victim exercised through his/her appointed lawyer or duty lawyer is that *his/her lawyer has the right to assist in the performance of any act of criminal prosecution under the law, and has the right to benefit from the time and facilitation necessary for the preparation and realisation of an effective defense.*

7. Another procedural right recognised to the injured party (victim) is *his/her right to privacy and security*, through which the victim can defend himself/herself against intimidation or re-victimisation from the traffickers.

In this respect, the Criminal Procedure Code stipulates that, when the conditions provided by law regarding the status of threatened or vulnerable witness or for the protection of privacy or dignity are met, protection measures may be ordered against the injured party or the civil party.

At the same time, through the provisions of the special law, respectively Law No. 678/2001, it is provided that if the victims of trafficking in human beings provided the criminal investigation bodies or the court with data and information of a decisive nature for the identification and prosecution of perpetrators, they may be included in the Program for the protection of witnesses, according to the law. *Under this law, the privacy and identity of victims of trafficking in human beings are protected.*

Specifically, the protection of privacy and the security of the victim of trafficking in human beings is achieved through the *protection measures* taken by the prosecutor/judge meant to protect the victim, which may be:

- supervising and guarding his/her home or providing temporary housing;
- accompanying and ensuring his/her protection or the protection of his/her family members during travel;
- protection of identity data, by granting a pseudonym under which he/she will sign his/her statement;
- his/her hearing without being present, by means of audio-video means of transmission, with distorted voice and image, when the other measures are not sufficient, etc.

8. Last but not least, is also recognised the injured party's *right to prevent his/her re-victimisation*; the exercise of this right is achieved by avoiding as much as possible the repeated hearing of the victim, eye contact between victims and traffickers, confrontations between victim and trafficker, testifying in public or questions about the victim's privacy.

II. If the victim of trafficking in human beings **chooses to participate in the criminal proceedings as a civil party**, in addition to the above stated rights, the victim also has the right to compensation for material, physical and non-material damages suffered because of the crime.

The possibility to settle the civil side in criminal proceedings is a facilitation granted by the legislator to the victim in order to avoid going through two trials, one before the criminal court, and one before the civil court. At the same time, it is aimed the victim's quick recovery of the damage suffered, considering that according to the principle "*the criminal side holds back the civil side*", the victim could not address the civil court unless the criminal action has been resolved.

2. The legislator has set a deadline by which the victim can exercise this right; after this procedural moment the victim *loses the right to become a civil party in the criminal proceedings, but does not lose the right to compensation for the damage caused by the crime*, because he/she can request the civil court to repair the damage caused by the crime.

3. In the event that the victim of trafficking in human beings is a minor or a person lacking or with limited legal competence, the civil action is exercised on his/her behalf by the legal representative or, as the case may be, by the prosecutor; the Romanian law provides in this respect a special protection to these categories of persons, considering their vulnerable status.

4. In order to fully guarantee the victim's right to compensation for the damage caused by the crime, the legislator provided the possibility for the victim *to choose how he/she understands/wishes to exercise this right, either in criminal proceedings, or separately in civil proceedings*.

Therefore, the Romanian law recognises *the right of the victim of human trafficking to choose the court* before which to recognise the damages suffered, and to be granted the due material and non-material compensations.

If the victim of trafficking in human beings chooses to exercise this right in a civil action, this can be done only subject to the conditions that the trial before the civil court is suspended until the final settlement of the criminal case.

Given the special importance of this right of victims of trafficking in human beings and also the legal consequences that may result from its possible non-exercise within the time limit established by law or by persons expressly indicated, the legislator provided that during the criminal investigation, *at the first hearing of the injured party, the prosecutor shall inform the victim on his/her right to bring a civil action in the criminal proceedings*.

III. If the victim of trafficking in human beings **chooses to participate in the criminal proceedings as a witness**, he/she enjoys the following procedural rights, specific to witnesses, as provided for in the Criminal Procedure Code:

1. *the right to be subject to protection measures;*

2. *the right to reimbursement of the expenses incurred by the summons before the judicial bodies, when the conditions provided by law are fulfilled;*

3. *the right not to be charged.*

1. *The right of the victim of trafficking in human beings during the prosecution to be ensured protection measures*

If the victim of trafficking in human beings, as witness in the criminal proceedings, is a *threatened witness*, the *protection measures* that may be ordered are:

- supervising and guarding the witness's home or the provision of temporary housing;
- accompanying and ensuring the protection of the witness or his/her family members during travel;
- protection of identity data, by granting a pseudonym under which the witness will sign his/her statement;
- hearing the witness without being present, through audio-visual means of transmission, with distorted voice and image, when the other measures are not sufficient.

If the victim of trafficking in human beings, as witness during the criminal investigation, is a *protected witness* within the meaning of Article 129 of the Criminal Procedure Code, there is

only one *protection measure* that can be ordered by the prosecutor during the criminal investigation. Namely, the hearing of the protected witness through audio-video means, without being physically present in the same place with the prosecutor.

And, finally, in the situation where the victim of trafficking in human beings, a witness during the criminal investigation, is a *vulnerable witness* within the meaning of Article 130 of the Criminal Procedure Code, *the protection measures* that may be ordered during the criminal proceedings are:

- accompanying and ensuring the protection of the witness or his/her family members during travel;

- hearing the witness without being present, through audio-video means of transmission.

2. *The right of the victim of trafficking in human beings - as witness during the criminal investigation - to obtain reimbursement of the expenses incurred by his/her summons before the prosecutor/judge.*

According to the Criminal Procedure Code, witnesses have the right to reimbursement of the costs of transport, maintenance, housing and other necessary expenses, incurred by their summons before the courts. If the witnesses are employees, they are also entitled to the income obtained from the workplace, of which they are deprived due to their presence before the judicial body. As concerns the witness who is not employed, but receives income from work, he/she is entitled to compensation. These expenses are borne by the state, being granted by the judge to the witness at his/her request, and based on the evidence submitted at the time of case settlement.

As regards foreign citizens, victims of trafficking in human beings, it is ensured the return to their country of origin without any undue delay, and they are ensured the transport in full security to the Romanian state border, unless otherwise provided in the bilateral agreements (Art. 37 of Law No. 678/2001).

3. *The right of the victim of trafficking in human beings - witness during the criminal investigation, not to be charged.* Therefore, according to the Criminal Procedure Code, the witness statement given by a person who, in the same case, prior to the statement had or subsequently acquired the status of suspect or defendant cannot be used against him/her.

At the same time, according to Law No. 678/2001, the person subjected to trafficking in human beings, who has committed, as a result of his/her exploitation, the crimes of illegal border crossing of a state or donation of organs, tissues or cells of human origin shall not be punished for these crimes (Art. 20 of Law No. 678/2001).