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# **INFORMATION PACKAGE**

**ROMANIA  
2019**

# Acknowledgements

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The structure has been slightly adapted as per the national context in Romania, and a short series of statements from the initial document were also included as such or adapted.

# Contents

I. Introduction	4
I.1 What is a crime?	4
I.2 Categories of crimes	4
I.2.1 Crimes against the person	5
I.2.2 Crimes against property (patrimony)	5
I.2.3 Crimes against the family	5
I.3 The situation of hate crimes	6
II. You too can be a victim!	7
II.1 The status of victim of crime	7
III. The authorities' response to crimes. Notifying criminal bodies regarding the occurrence of a crime. Right or obligation?	9
III.1 Criminal complaint	9
III.2 Report	11
III.3 Ex officio notification	12
III.4 Is crime reporting a right or an obligation?	12
IV. Criminal prosecution	13
IV.1 General information. How the case is solved by the judicial bodies	13
IV.2 Your rights during the criminal prosecution	17
IV.2.1 The right to be informed about your rights	17
IV.2.2 The right to be assisted/ represented by a lawyer and, in the cases of compulsory legal aid, the right to appoint a public defender	17
IV.2.3 The right to have an interpreter free of charge when you do not understand, cannot express yourself or communicate in Romanian	18
IV.2.4 The right to be informed about the status of the criminal prosecution file	19
IV.2.5 The right to appeal the duration of criminal proceedings	19
IV.2.6 The right to be informed about the release of the perpetrator	20
IV.2.7 The right to benefit from special protection measures, as a result of being conferred the status of a threatened or vulnerable person	20
IV.2.8 The right to file a complaint against the measures and acts of criminal prosecution	21
IV.2.9 The right to bring suit for civil damages/ become a "civil party" in the trial	22
V. Procedures before the courts	24
V.1 Preliminary chamber procedure	26
V.2 The trial in the court of first instance	26
V.3 The trial on appeal	30
V.4 Extraordinary legal remedies	31
VI. Other rights derived from being a victim of crime	32
VI.1 The right to free legal assistance (legal aid)	32
VI.2 The right of victims of crime to financial compensations from the state	34
VII. Legislative acts adopted by the Parliament on the protection of victims of crime	38

# I. Introduction



## I.1 What is a crime?

In essence, a crime is an act, committed intentionally and sometimes involuntarily, which seriously infringes or harms the rights of another person (e.g.: the person's right to life, liberty, protection of patrimony).

According to the criminal law, an act will be considered a crime and will attract the criminal liability (punishment) of the perpetrator/ offender when:

- it is stipulated in the criminal law (the Criminal Code or other special criminal laws, which describe acts that constitute crimes);
- the perpetrator is guilty of committing the act, either with intent or involuntarily/ by negligence;
- it is not justified (for example, it is not committed in self-defence), and
- it can be imputed to the person who committed it (for example, it is not the result of a physical constraint exerted on the perpetrator).

The criminal law protects social values such as the right to *life*, *the right to physical and mental integrity*, *the right to sexual freedom and integrity*, *the protection of heritage*, *religious freedom* and so on, by incriminating the acts that affect them and by bringing criminal accountability to those who commit them.

## I.2 Categories of crimes

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According to the social value protected through the legal norm of incrimination, crimes are classified by the Criminal Code in crimes against the person, crimes against the patrimony, crimes that affect relations regarding social coexistence, crimes of forgery, etc. In the following, we will only exemplify a small part of the categories of crimes listed above:



## 1.2.1 Crimes against the person

By criminally sanctioning these acts, the law protects social values such as: *life, bodily integrity and health, freedom of the person, protection of vulnerable persons, sexual freedom, residence rights and private life.*

This category includes crimes under the Criminal Code such as: "murder", "battery and other acts of violence", "bodily injury", "ill treatment of minors", "family violence", "deprivation of liberty", "harassment", "trafficking in human beings", "pandering",

"exploitation of begging", "rape", "sexual assault", "trespassing" or "violation of privacy".

Crimes in this category are noted and stand out from other criminal acts due to their gravity, given the importance of the social values they affect. Therefore, the penalties established by the law for committing these acts are, usually, more severe.

## 1.2.2 Crimes against property (patrimony)



The social values protected by the law by sanctioning these acts refer to the protection of property and personal assets.

This category includes crimes such as: "theft", "robbery", "fraud", "patrimony exploitation of a vulnerable person" or "property damage".



## 1.2.3 Crimes against the family

The criminal law protects the social values related to family relationships, by criminally incriminating certain acts, such as "family abandonment" or "preventing the access to compulsory education".

## I.3 The situation of hate crimes



Hate crimes do not constitute a distinct category of crimes, similar to those listed by way of example above.

“Hate crime” is an umbrella term that takes into account all those crimes committed by the offender on the basis of a discriminatory motivation. Two criteria must be met in order for a crime to be considered a hate crime: to be an act incriminated by the criminal law, and to be committed on the basis of the perpetrator’s prejudices against the victim.

Thus, committing murder, rape or robbery for reasons related to race, nationality, ethnic origin, religion, sexual orientation, wealth, disability, etc. constitutes an aggravating circumstance, which imposes a serious gravity on the criminal act and increases the punishment applied to the perpetrator.

This perspective of the legislator is explained by the fact that hate crimes are violent manifestations of intolerance, which have a profound impact not only on the victim, but also on the group with whom the victim identifies<sup>1</sup>.

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<sup>1</sup> See: Oficiul pentru Instituții Democratice și Drepturile Omului din cadrul O.S.C.E [OSCE Office for Democratic Institutions and Human Rights], Legi privind infracțiunile motivate de ură: Ghid Practic [Laws regarding hate crimes: Practical guide], 2009. [Online] at <https://www.osce.org/ro/odihr/36428?download=true>.

## II. You too can be a victim!



The victim of the crime (or the passive subject) is any person holding the social value injured or damaged by the act stipulated by the criminal law, committed by another person - the perpetrator.

In other words, you can be the victim of a crime when your life, health, freedom, patrimony, etc. are harmed by acts that, according to the criminal law, constitute crimes.

As a victim of a crime, it is important to know what your rights and obligations are, as well as the procedures to be followed and performed by the authorities.

### II.1 The status of victim of crime

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Any person injured or harmed by a crime has the right to be recognised as a victim of crime, from the moment of his/ her identification, to be treated with respect, professionalism, to receive protection and support, to obtain financial compensation, as well as to the restoration of the rights affected by the crime. The members of the victim's family are entitled to the same rights.

The first judicial organs with whom you will come into contact after the crime was committed are obliged to inform you about the following:

- the possibility to contact the Support Service for Victims of Crimes<sup>2</sup>;

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<sup>2</sup> According to art. 31 of Law no. 211/2004, as amended through Government Emergency Ordinance (GEO) no. 24 of April 3rd, 2019, at the level of each territorial administrative unit (respectively, within the General Directorates of Social Assistance and Child Protection - Direcția Generală de Asistență Socială și Protecția Copilului), a Support Service for Victims of Crimes may be set up, if the number of requests (from victims) justifies the creation of this service. If, at the level of the territorial administrative unit where you live, this service has not been set up, you can request support from public social assistance services from the municipality, city or commune level.

- the type of support you can receive and from whom, including any kind of medical or psychological support and alternative accommodation<sup>3</sup>;
- the criminal prosecution body where you can file a complaint;
- the right to legal aid, the institution that provides it, as well as the procedure to be followed for granting free legal assistance (legal aid);
- the rights of the injured person (the victim of the crime) and of the civil party;
- the conditions and the procedure to be followed in order to benefit from special protection measures such as: home surveillance or providing a temporary home, being accompanied and ensuring your protection and that of your family, protecting your personal data by granting an alias, etc.;
- the conditions and procedure for receiving financial compensation from the state;
- the right to be informed, if the offender is deprived of liberty, receives a prison sentence or is released;
- the right to a mediator, in the situations stipulated by the law;
- the judicial body to be addressed in order for you to obtain information about the state of the criminal proceedings, if you file a criminal complaint;
- if you have a permanent residence on the territory of another EU Member State, information on the possibility of filing a criminal complaint or requesting financial compensation from the state on the territory of that state, as well as the possibility of being heard by the Romanian judicial authorities, without having to be present in Romania.

The judicial bodies have the obligation to present the above information in a language you understand, using a simple and accessible language. If you belong to a national minority, the above information may be presented in your native language.

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<sup>3</sup> According to art. 7(4) of Law no. 211/2004, as amended through Government Emergency Ordinance (GEO) no. 24 of April 3rd, 2019: "The support and protection services provided to victims of crime, as well as to their family members may include: a) information on the rights of the victim; b) psychological counselling, counselling on the risks of secondary and repeated victimization or intimidation and revenge; c) counselling regarding the financial and practical aspects subsequent to the crime; d) social insertion/ reintegration services; e) emotional and social support for the purpose of social reintegration; f) information and advice on the role of the victim in criminal proceedings, including preparation for participation in the trial. These counselling services and information do not include the free legal aid provided to victims of the crimes described by art. 14-20 or the legal assistance of the injured person stipulated by Law no. 135/2010 on the Criminal Procedure Code, with subsequent amendments and completions; g) referring the victim to other specialised services, when appropriate: social services, medical services, employment services, education services or other services of general interest granted under the conditions of the law."

# III. The authorities' response to crimes. Notifying criminal bodies regarding the occurrence of a crime. Right or obligation?

Committing a crime entails the response of the authorities, who are obliged to protect social values that are intrinsic to any democratic society, such as: the right to life, the right to physical and mental integrity, the right to sexual freedom and integrity, the protection of patrimony, religious freedom, etc., by discovering the offenses and by holding those who commit them accountable.

The first stage of this process is called *Criminal prosecution* and its purpose is to gather the necessary evidence regarding the existence of the crime, to identify the persons who have committed it, and to establish their criminal responsibility, in order to ascertain whether an arraignment is necessary.

Criminal prosecution is carried out by the criminal prosecution bodies, which are:

- Prosecutors (grouped in Prosecutor's Offices associated to trial courts);
- Criminal investigation bodies of the judicial police;
- Special criminal investigation bodies.

The actual commencement of the criminal prosecution takes place by notifying the criminal prosecution bodies through a *complaint, report, documents concluded by other judicial bodies* or through an *ex officio notification*.

## III.1 Criminal complaint<sup>4</sup>

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A criminal complaint is the notification made by a person - a victim - regarding an injury or harm caused to him/ her by a crime.

When you have been the victim of a crime, you can notify the competent criminal investigation bodies, the prosecutor or the police, through a criminal complaint, which will include:

- all your identification information (first name, last name, personal numeric code - CNP, victim status, and address);
- description of the offence which is the object of the complaint;
- indications about the perpetrator of the act, as well as the evidence that may lead to the identification of the perpetrator and of the act, if they are known to you.

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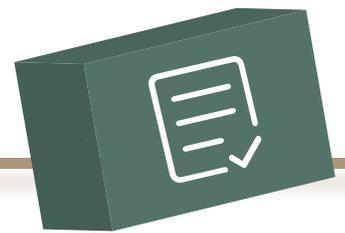
4 In Romanian, *plângere penală*.

It follows from the law that the indication of the perpetrator and any evidence in the complaint is not mandatory, but as far as they are known to you, it is recommended that you provide this information, in order to facilitate the criminal prosecution.

The criminal complaint can be made in writing, either personally or through a representative (e.g.: lawyer), in which case it must be signed either by the victim or by the representative. The complaint can also be made orally, in which case the criminal prosecution body is obliged to record it in a written report.

If the victim of the crime is your spouse or child, the law allows you to file a complaint on their behalf.

## Prior criminal complaint<sup>5</sup>



The prior criminal complaint is also a way in which a person – a victim – may inform the criminal investigation bodies about an injury or harm caused to him/ her by a crime, which makes it similar to a criminal complaint (see point III.1).

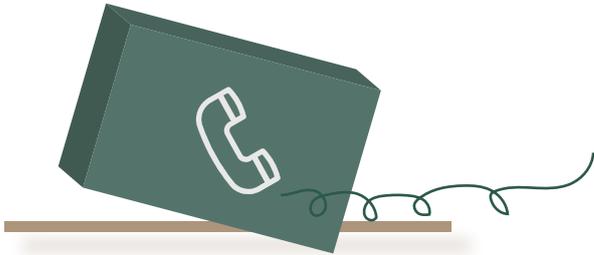
However, unlike the criminal complaint, the prior criminal complaint is also a condition for the punishment of the perpetrator of the criminal act. This means that the perpetrator may only be prosecuted if you file a prior criminal complaint, as an injured person.

Formulating the prior criminal complaint is only necessary in the case of certain offences, specifically stipulated by the law, such as: “battery and other acts of violence”, “bodily injury”, “threat”, “harassment”, “rape” (under certain conditions), “sexual assault” (under certain conditions), “sexual harassment”, “trespassing”, “theft” (under certain conditions), “abuse of trust”, “property damage”, etc.

**Example.** If you have been the victim of a crime of “battery and other acts of violence”, your aggressor will not be criminally liable if you do not file a prior criminal complaint, because the law stipulates that, for this offence, the prosecution and punishment of the perpetrator may be carried out only if the victim files a prior complaint. If you have been the victim of the crime of “illegal deprivation of liberty”, for which the law does not stipulate the obligation to file a prior criminal complaint, the perpetrator will be brought to criminal liability without you having to file the prior complaint. Your only obligation will be to notify the criminal prosecution bodies through a regular criminal complaint.

5 In Romanian, *plângere penală prealabilă*.

**Note.** The law stipulates that the prior criminal complaint may be filed within 3 months from the date when the victim became aware of the criminal offense. The date of the victim's becoming aware of the crime is often confused with the date when the crime occurred. The consequence of not complying with this term is the impossibility of the perpetrator to be subject to criminal liability.



## III.2 Report<sup>6</sup>

A report is a notification made by a person - who is not the victim of the crime - about the occurrence of a crime.

The difference between a complaint (including a prior complaint) and a report is that the complaint is made only by the victim of the crime, while the report is made by other persons who are aware of the crime.

**Example.** If you witness a person unknown to you being assaulted on the street, you will file a report, whereas if you are the victim of the crime, you will file a complaint (or a prior complaint, depending on the case).

The report must contain the same information as the criminal complaint.

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<sup>6</sup> In Romanian, denunț.

### III.3 Ex officio notification

The law obliges the criminal investigation bodies to be notified ex officio if they find, by any means other than those already presented, information about the occurrence of a crime.

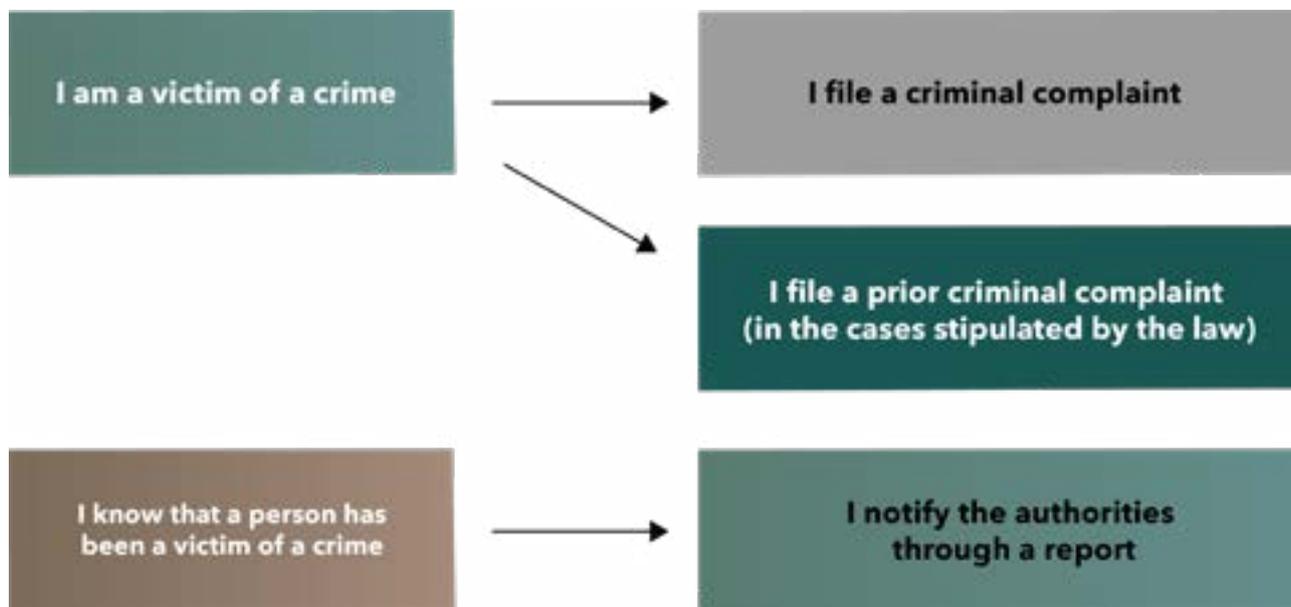


Figure 1

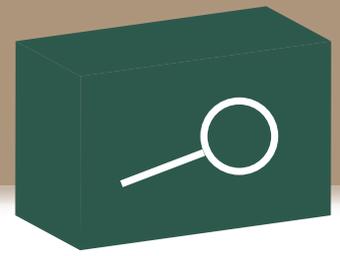
### III.4 Is crime reporting a right or an obligation?

It is important to know that under certain conditions not reporting a crime constitutes a crime in itself and is punishable by imprisonment.

For instance, the act of the person who is aware that a crime against life occurred or that it resulted in the victim's death and who does not immediately notify the authorities is punished with imprisonment. Beyond this, one needs to be aware that notifying the authorities of a crime also has a moral character and is a proof of normality, as the discovery of crimes and the punishment of those who commit them ultimately lead to a reduction of crimes, so that the chance of other people falling victim to crime decreases.

**Example.** A person was the victim of a robbery, but for various reasons decided not to notify the criminal investigation bodies, so that the perpetrator is still at large. Shortly after the first act, the perpetrator commits a new robbery, and as a result of the aggressions directed to the victim, the victim dies. If the first victim had notified the competent bodies, they would have taken appropriate measures, including restricting the freedom of the perpetrator, so that there would not have been a second victim.

# IV. Criminal prosecution



## IV.1 General information.

### How the case is solved by the judicial bodies

The criminal prosecution begins after the authorities have been notified about a crime, by one of the modalities presented above, and once a criminal prosecution file has been opened.

Once the criminal prosecution has begun, the victim of the crime becomes the injured person, while the perpetrator becomes the suspect and, subsequently, the defendant. The criminal investigation activities are carried out (usually) by the criminal investigation bodies of the judicial police, under the coordination of a case prosecutor and consist, essentially, in the following:

- Collecting the evidence necessary to prove the existence of the crimes and the circumstances in which they were committed.

Evidence may result from the following evidence means and procedures:

- Statements of the perpetrator;
- Statements of the victim of the crime;
- Statements of the witnesses, that is, those persons who are aware and can provide details regarding the crime which is the subject of the investigation;
- Inscriptions, photographs, recordings;
- Expert reports, including forensic or medical ones;
- On-site research;
- Home, body or computer searches;
- Collecting objects, etc.

- Collecting the necessary evidence in order to identify the perpetrator of the crime (as well as possibly the co-perpetrators, accomplices, instigators);

- After all the necessary evidence has been analysed, the prosecutor settles the case by pronouncing one of the following solutions:

- a) The prosecution of the perpetrator, if it is clear from the administered evidence that the criminal act exists, has been committed by him/ her, and all the conditions for criminal liability are met.

The act by which the person who committed a crime is sent to court after the completion of the criminal prosecution is called an indictment, and includes the description of the crime, its legal classification, the evidence that was administered to prove the crime and to identify the offender, etc.

The indictment decision, together with the criminal prosecution file shall be communicated to the competent court.

b) A decision not to prosecute by a dismissal of the criminal file or by renouncing prosecution occurs when the evidence shows that: the act does not exist or is not stipulated by the criminal law, was not committed with guilt, there is not enough evidence, the victim of the crime has not filed a prior complaint, there is no public interest in the criminal prosecution of the defendant (in cases of crimes of extremely low seriousness).

The dismissal or the renunciation of the criminal prosecution is ordered by the prosecutor through an act called ordinance, which is also communicated to the injured person (the victim of the crime).

## The right to file a complaint against the decision not to prosecute

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If the case prosecutor issues a decision not to prosecute, which you consider to be wrong, it is important to know that the law allows you to file a complaint against this decision, following the procedure below:

■ The complaint must be made in writing and must include the reasons why you believe that the decision not to prosecute the perpetrator of the act is illegal or unjustified. The complaint is addressed and will be settled by the first prosecutor of the prosecutor's office of the prosecutor who issued the decision not to prosecute.

The legal deadline for filing the complaint is **20 days** from the date of the communication of the ordinance containing the decision not to prosecute.

**Note.** Failure to comply with the deadline for filing a complaint will result in its rejection, on the grounds of its belated submission.

■ Upon receiving the complaint, the first prosecutor has the obligation to settle it within a maximum of 20 days, communicating the solution to the petitioner. The first prosecutor can pronounce a solution of: (a) admitting the complaint, with the consequence of sending the file to the case prosecutor in order to continue/ complete the criminal prosecution (by collecting new evidence, for example), (b) a solution of rejecting the complaint as belated, if the deadline of 20 days for filing it is not respected, or (c) a solution of rejection of the complaint as unfounded, when he/ she considers that the prosecutor's decision not to prosecute is legal and justified.

■ If the first prosecutor rejects the initial complaint, the law allows you to file a new complaint against the decision not to prosecute and the first prosecutor's decision, which will be analysed by a judge from the competent court.

■ The complaint shall be made in writing and shall include the first name, last name, personal numeric code - CNP, the victim status and residence of the petitioner, the date of the order or indictment that is being contested, the file number and the name of the prosecutor's office, the reasons for the complaint. The complaint is submitted either to the competent court or to the prosecutor's office of the case prosecutor (in this case, the prosecutor's office will submit the complaint and the criminal prosecution file to the court).

■ The deadline for filing the complaint is 20 days and starts from the communication of the order of the first prosecutor through which the initial complaint was rejected. If the first prosecutor does not solve the initial complaint within the legal period of 20 days, the complaint can be filed at any time after the deadline has been fulfilled, but no later than 20 days from the date of the communication of the order.

■ The judge receiving the complaint sets the deadline and subpoenas the interested parties, while also notifying the prosecutor.

■ The judge can issue one of the following rulings:

- a) Rejection of the complaint as belated, unfounded or inadmissible;
- b) Admitting the complaint, cancelling the contested solution, and sending the case to the prosecutor in order to complete the criminal prosecution;
- c) Admitting the complaint, dismissing the contested solution, and starting the trial, when he/ she considers that the evidence already administered during the criminal prosecution is sufficient to start the trial, etc.

Therefore, the act by which the case prosecutor issues a decision not to prosecute, which is favourable to the suspect or the defendant, can be verified under the aspect of legality and soundness, both by the prim-prosecutor and a judge, so that any possible mistake in the assessment done by the criminal prosecution bodies may be remedied. All you have to do is follow the procedure described above.

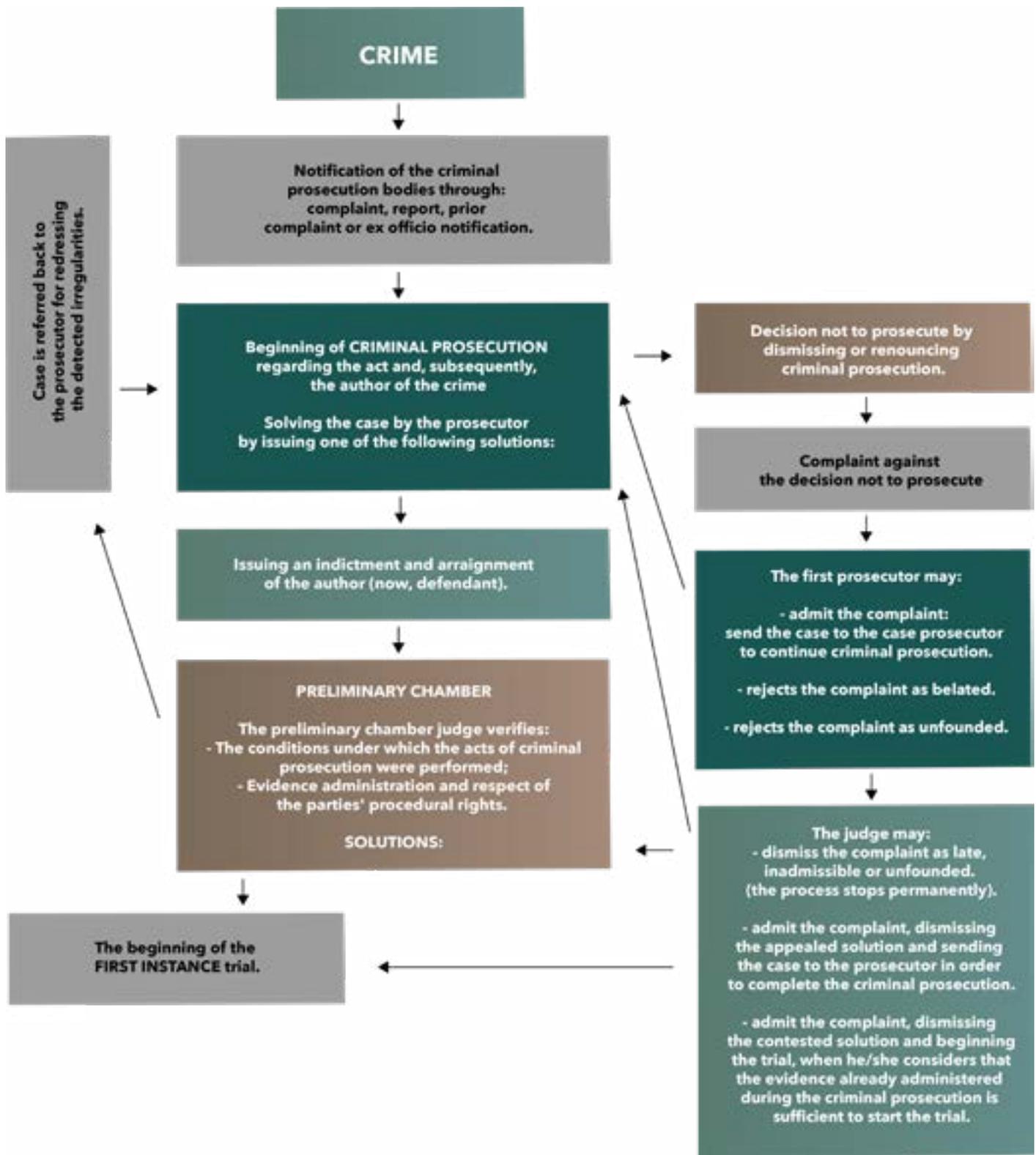


Figure 2

## IV.2 Your rights during the criminal prosecution



In addition to the rights presented in section II.1, which are granted to any victim of crime (regardless of whether or not he/ she has filed a complaint and regardless of the existence of a criminal case), the Code of Criminal Procedure grants the injured person a number of rights specific to the criminal case.

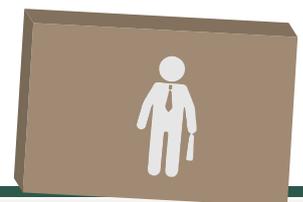
**Of these we mention the following:**



### IV.2.1 The right to be informed about your rights

The full exercise of the rights conferred to you by the law implies, first and foremost, that they are brought to your attention, which is why the judicial bodies *are obliged* to inform you of these rights, in an accessible language, and in a language that you understand.

### IV.2.2 The right to be assisted/ represented by a lawyer and, in the cases of compulsory legal aid, the right to appoint a public defender



Throughout the course of criminal prosecution and trial you have the right to be assisted and represented by an elected lawyer, member of a Bar within the National Union of Bars in Romania.

Criminal court proceedings are complex and difficult, so that, in order for you to be able to fully exercise your rights, it is at least useful to choose a lawyer to assist you in the course of the criminal prosecution and trial before the court. In order to protect your interests, the lawyer is granted by the law a series of rights, including:

- The right to be informed and to assist in the carrying out of any act of criminal prosecution (e.g.: the hearing of a witness, of the defendant);

- The right to consult and obtain photocopies from the records of the criminal file;
- The right to file applications and reports.
- The right to benefit from the time and facilities needed to prepare an effective defence;
- The right to file a complaint against the acts/ measures of criminal prosecution or against the decision not to prosecute.

Except in cases where the law requires your personal presence before the judicial bodies, such as, for example, when you have to give a statement, the lawyer will appear before the judicial bodies without your presence being required.

As a general rule, the assistance of the injured person in the criminal case is not compulsory (although it is recommended!). Nevertheless, there are certain cases, called compulsory legal assistance, in which, if you have not hired a lawyer, the judicial bodies will take action for the appointment of a public defender (an ex officio lawyer), whom you do not have to pay.

Legal assistance is mandatory when:

- The injured person lacks legal competence or has limited legal competence;
- The judiciary considers that for some reason the injured person cannot defend himself or herself. These reasons may concern: the age of the injured person, lack of education, etc.

### **IV.2.3 The right to have an interpreter free of charge when you do not understand, cannot express yourself or communicate in Romanian**



The right to interpretation (and to the translation of procedural documents) aims to ensure the effective participation of the injured person (the victim) in the judicial proceedings, as well as the possibility of exercising his/ her rights fully.

The right to an interpreter ensures you the possibility to understand the components of your file (ordinances, minutes, judgments, witness statements, etc.), to speak (including to give statements), and to present conclusions before the judicial bodies.

The official language in criminal proceedings is Romanian, but nevertheless, if you belong to a national minority, if you are a foreigner or if you do not understand, cannot express yourself well or cannot communicate in Romanian, you have the right to an interpreter, who will be made available to you by the judicial bodies.

It is important to note that the right to benefit from the services of an interpreter *is free of charge*.

## IV.2.4 The right to be informed about the status of the criminal prosecution file

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The law grants you the right to request and obtain information from the judicial bodies regarding the status of the criminal prosecution file, the acts performed, or the evidence administered in order to prove the crime and to identify the perpetrator.

In order for this data and information to be communicated to you, it is necessary to indicate a correspondence address on the territory of Romania, an e-mail address or electronic mail, where communication will take place.



## IV.2.5 The right to appeal the duration of criminal proceedings

When the criminal prosecution activities (but also the trial before the court!) are not carried out within a reasonable time, the law gives you the right to file an appeal requesting the acceleration of the proceedings.

If a year has passed from the time of the commencement of the criminal investigation without the file being finalised, you have the opportunity to file an appeal regarding the unreasonable duration of the procedure.

The appeal is formulated in writing and will include: your first name, last name and the rest of your personal information, including your residence or correspondence address, your status in the criminal file (injured person), the name of the prosecutor's office where the prosecutor is employed, the criminal file number, the factual and legal grounds on which you base your appeal, and your signature.

The appeal is submitted to the court that would have jurisdiction to judge the act.

**Example.** If the act of “qualified theft” was committed in the city of Cluj-Napoca, and the criminal investigation is carried out by the investigative bodies under the coordination of a prosecutor within the Prosecutor’s Office attached to the Cluj-Napoca Court, you will file the appeal with the Cluj-Napoca Court (Judecătorie).

The appeal is settled by summoning all interested persons, including you - the injured person and author of the appeal.

In the situation in which the appeal is admitted, the court will set a reasonable time within which the prosecutor must settle the case.

## IV.2.6 The right to be informed about the release of the perpetrator

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In the event that the perpetrator of the criminal act committed against you is/ will be subjected to a measure of restrictive liberty (e.g.: pre-trial detention) or sentenced to imprisonment, you have the right to be informed about his/ her release in any way.

This right will be brought to your attention by the criminal investigation bodies on the occasion of your first hearing in the criminal trial.

## IV.2.7 The right to benefit from special protection measures, as a result of being conferred the status of a threatened or vulnerable person



If, *ex officio* or at your request, the court finds that there is a reasonable suspicion that your life, bodily integrity, liberty, property or professional activity or that those of your family members could be endangered due to the information or statements you provide, you may be granted the status of **threatened person**. In this case, you will be provided with one or more of the following measures:

- a) Surveillance and guarding of your home or securing a temporary home;
- b) Accompanying and ensuring your protection or that of your family members while traveling;
- c) Protection of your identification data by granting you an alias;
- d) Hearing you without you being present, through audio-video means of transmission, with distorted image and voice;

- e) Non-publicity of the trial during your hearing (in case the protective measures are ordered during the trial).

During the criminal prosecution, the protection measures listed above are issued by the prosecutor, and, during the criminal trial, by the court.

The prosecutor or the court may also grant you the status of a **vulnerable person** when:

- You have suffered a trauma as a result of the crime or the subsequent behaviour of the perpetrator;
- You are a minor.

In the situation in which the status of vulnerable person is ascertained, the prosecutor or the court may issue one or more of the protection measures mentioned above at points b) to e).



## IV.2.8 The right to file a complaint against the measures and acts of criminal prosecution

This right of special importance allows you to appeal against any act or measure ordered during the criminal prosecution by the criminal prosecution bodies, which you consider illegal or unreasonable.

For example, as an injured person in a criminal case of “battery and other acts of violence”, you are aware of the fact that there is a witness who was present when you were assaulted, and you ask the criminal prosecution body to administer the testimonial evidence of that witness. However, the prosecution body unjustifiably refuses to subpoena the person for a hearing, meaning that they issue an order rejecting your request to bring witnesses.

Through the procedure of the *complaint against the acts or measures of criminal prosecution* you have the possibility to counter the illegal ordinance and administer the evidence that you consider useful in this case.

In another example, as a result of the crime, you suffered a trauma and the prosecutor refuses to grant you the status of vulnerable person and to offer you special protection measures. By means of the complaint against the acts or measures of criminal prosecution you will be able to ask the higher-ranking prosecutor (the first prosecutor of the prosecutor’s office) to annul the disposition of the case prosecutor and to grant you the status of vulnerable person.

In order to use this procedure, you must keep in mind the following aspects:

- If the illegal act or measure is issued/ ordered by the criminal investigation body (police), the complaint is settled by the case prosecutor (who coordinates the corresponding criminal prosecution), and if the act or measure is issued/ ordered by the case prosecutor, the complaint is settled by the first prosecutor of the prosecutor's office where the case prosecutor is employed.
- The complaint can be made at any time during the prosecution.
- The case prosecutor, respectively, the first prosecutor of the prosecutor's office, is obliged to settle the complaint within a maximum period of 20 days, by a definitive order.

## IV.2.9 The right to bring suit for civil damages/ become a "civil party" in the trial

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We have already seen that crimes produce socially dangerous consequences that seriously harm or injure the rights of the victim (e.g.: the person's right to life, liberty, the protection of patrimony, etc.), and for which the judicial authorities exercise criminal action with the purpose of punishing the perpetrator by applying a penalty.

However, in addition to these consequences, it is possible that the crime also causes *moral or material damages* to the victim of the crime.

In order to repair these damages, you have the right to exercise civil action in the criminal proceedings. By ordering the perpetrator of the harmful act to pay some amounts of money, you may repair the civil damages resulting from the crime.

For a better understanding, take the following example:

You were the victim of a crime of "bodily injury" and, for your physical recovery, you needed 120 days of hospitalization, a period during which you were unable to work.

You have filed a criminal complaint, notifying the judicial authorities about the act that was committed against you, and they have begun the criminal investigation of the perpetrator, who will be indicted, prosecuted, and finally receive a sentence for having committed the crime of "bodily injury".

In addition to notifying the authorities about the crime in order to punish the perpetrator, you also want to recover the damages that were caused to you, respectively:

- **The material damage** caused by the crime: the equivalent of 120 days-worth of income, which you could not receive due to the fact that you were hospitalised;
- **The moral damage** caused by the crime: a sum of money to compensate for the trauma that was produced by the crime.

The procedural way by which you can obtain these damages is called civil action and is practiced in the same file in which the authorities investigate the perpetrator for the crime.

The civil action can be exercised by *the victim of the crime or by the heirs of the victim of the crime*, in case the victim himself/ herself dies as a result of the crime.

For example, if a person is the victim of a crime of "murder", the civil action may be exercised by his/ her children, by the surviving wife/ husband, and so on, these persons having the status of heirs.

Establishing the victim/ heirs of the victim as a civil party in the criminal case must be done, according to the law, the latest by the beginning of the judicial investigation (i.e. after the completion of the criminal prosecution). Failure to comply with this term will lead to the impossibility of repairing the damages resulting from the crime in this way, which is not desirable.

After becoming a civil party in the criminal case, you will not only have the status of an injured person, but also that of a *civil party*. Thus, you will benefit from both the rights recognised to the injured person and those of the civil party.

The judicial bodies are obliged to inform you of the right to become a civil party on the occasion of the first hearing in the criminal prosecution.

The claim to be treated as a civil party may be done in writing or orally. In the latter case, the judicial bodies in front of whom you indicate that you want to become a civil party will record it in a written report.

The constitution of civil party will necessarily include:

- the nature of the damages (moral or material);
- their extent (the amounts requested must be explicitly indicated);
- the reasons for the request (why are the respective amounts requested?);

- the evidence on which the application is based. This requirement must be treated with care because in the civil action the evidence must be brought by the victim (and not the authorities). In the absence of evidence, the application cannot be admitted, and you will not be able to obtain the recovery of the damages suffered.

## How can I prove the material and moral damages suffered as a result of the crime?



The proof of material and moral damages is made, most often, by means of evidence such as: witness statements, documents (including medical documents), photographs or specialised expertise.

For example, if you are the victim of a crime of “bodily injury”, which forced your hospitalization, you can prove:

- the hospitalization costs you incurred → through documents/ invoices issued by the hospitalization unit where you were admitted for treatment and recovery;
- the income that you did not receive while being hospitalised → through documents: certificates from your workplace which indicate your regular income, as opposed to the one you did not receive while in the hospital.

If you are the victim of a crime that has caused you significant trauma, such as “sexual harassment”, you will be able to prove:

### ■ **moral damages**

- through documents: medical documents (issued by specialist: psychiatrists or psychologists) that attest that the criminal act has produced significant emotional consequences on you;
- through witnesses: persons in your environment who have noticed a behavioural change, after you experience the crime;

If you are the victim of a crime of “property damage”, such as, for instance, having your vehicle burned down, you can prove:

### ■ **material damages** consisting of the value of the destroyed car:

- through expert appraisals or
- through documents: e.g. purchase invoice, etc.

# V. Procedures before the courts



After the case is settled by the prosecutor, as described in section IV.1, the criminal case is sent to the court, following the steps presented below:

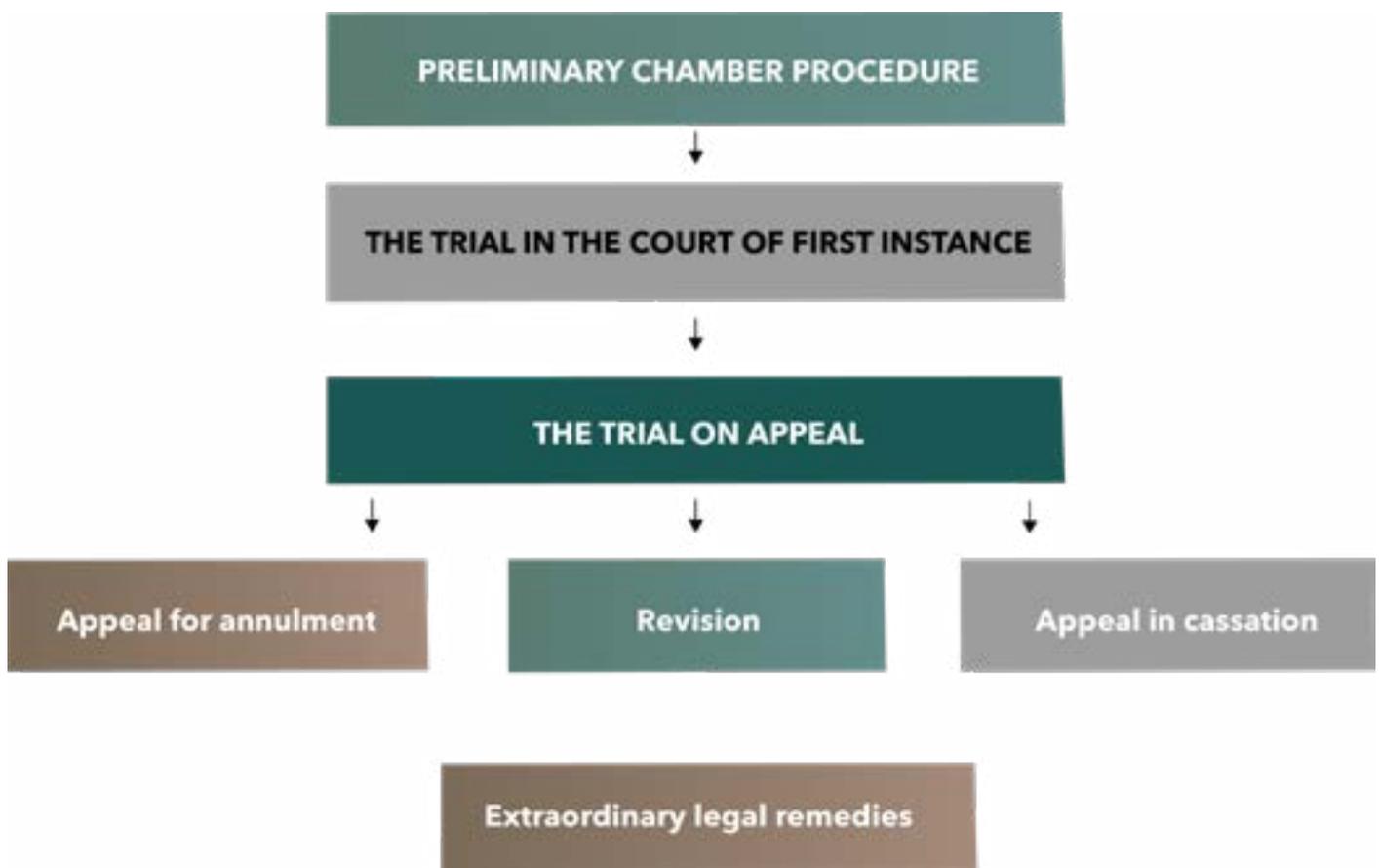


Figure 3

## V.1 Preliminary chamber procedure

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The procedure of the preliminary chamber is carried out prior to the actual trial of the case and consists in the verification of the conditions in which the criminal prosecution and the rest of the criminal proceedings were carried out, how the evidence was administered, if the procedural rights were observed, etc.

Depending on the result of these verifications, the judge may order either the start of the trial or the restitution of the case to the prosecutor for the correction of the irregularities found.

It is important to note that not only the judge, *ex officio*, can report problems related to the illegality of the criminal prosecution, but also the interested parties, including the injured person, who are informed of the initiation of the preliminary chamber procedure and the right to notify any matters regarding the illegality of the procedures carried out in the criminal prosecution.

## V.2 The trial in the court of first instance



Once the judge in the preliminary commences the trial, the criminal case reaches the first instance.

In this phase, the judge solves the case based on the evidence administered during the criminal prosecution, as well as the evidence to be administered before the court, either *ex officio* or at the request of the procedural subjects, in order to find out the truth about the criminal act, the author and all the circumstances of the case.

The court hearings take place at the court premises and are usually public (anyone can attend), with the following exceptions:

- when the law indicates that the meeting is held in the council chamber (the meeting is non-public). In this case, only the following people are allowed access in the courtroom: the defendant, the parties, the injured person, their lawyers, and the prosecutor.
- the court hearing may be declared non-public by the court, when it finds, *ex officio* or at the request of the prosecutor or the parties, that a public hearing could damage state interests, ethical aspects, dignity or intimate life of a persons, the interests of minors or of justice.

Minors under the age of 18 cannot attend court sessions, unless they have the status of parties or witnesses.

## Subpoena to appear at trial

An important aspect to remember in relation to this stage of the criminal trial concerns the subpoena to appear in court.

A subpoena is a *notification sent to the injured person and to the other parties involved regarding the trial, the place, date and time of the hearing*. According to the law, the trial can only take place if these persons are legally summoned and have knowledge of the trial, so that they can exercise their rights recognised by the law.

The trial may still take place even if the abovementioned persons do not attend the court sessions, as the law indicates that the involved parties are only obliged to be informed about the trial, and not to attend it (in most cases, at least).

If you have the status of an injured person, the court will notify you in the subpoena of the place of the hearing, the date, and time. At the same time, the subpoena will include information about your right to become a civil party in the case, under the conditions described in section IV.2.9, if you have not already exercised this right during the criminal prosecution.

## Your rights at the trial stage

In a similar way as the stage of criminal prosecution, the law grants a series of rights at the trial stage to the injured person (and, implicitly, to the civil party, if you decide to bring suit for civil damages). Therefore, we will not provide details about each particular right, but merely give an overview of the victim's rights at the trial stage.

The right to be informed about your rights

The right to be assisted/represented by a lawyer, and, in the cases of compulsory assistance, the right to be appointed a public defender (an ex officio lawyer);

The right to become a "civil party"/ to exercise civil action in the trial;

The right to benefit from special protection measures, as a result of being conferred the status of threatened or vulnerable person;

The right to be informed about the release of the perpetrator;

The right to make claims, raise exceptions, and draw conclusions, personally or through a lawyer, on the criminal side of the case and on the civil side, to the extent that you understand that you are a civil party in the criminal case.

The right an interpreter, who will be provided free of charge to you, when you do not understand, cannot express yourself or communicate in Romanian;

The right to file an appeal regarding the duration of the trial (keeping in mind that, compared to the criminal prosecution, the appeal is not solved by the court that has jurisdiction to judge the case at first instance but by the court immediately above it);

## The right to obtain reimbursement of the legal expenses incurred

The law gives you the possibility to recover all the expenses that you have incurred in connection with the criminal trial (regarding both the criminal, and the civil side), such as: lawyer's fees, expenses with your travels or the transportation of your lawyer, the fees of the experts named in case, and so on.

The defendant will be ordered by the court to pay civil damages to the injured person/civil party if it orders a conviction of the defendant or even a decision of discharge or postponement of a defendant's serving of a sentence - which, although not convictions per se and not conducive to the application of a sentence, imply that the court has found the defendant guilty of a crime, i.e. the act exists, it is a crime and it was committed by the defendant.

The judicial expenses (court costs and suit fees) will be included in the same ruling that settles the criminal case.

Therefore, the first condition for the recovery of the judicial expenses is the conviction of the defendant, or the issuing of one of the rulings mentioned above.

Also necessary are:

- Formulating a *request obliging the defendant to pay these expenses*. The request can be made by the person or by a lawyer, in writing or orally before the court.
- *Proof of court costs*, by submitting supporting documents (invoices, receipts, payment orders) to the case file.

**Example.** You have the quality of an injured person, but you are also a civil party in a criminal file whose object is "robbery" and whose trial is taking place in another city. For proper defence, you hire a lawyer to assist you in court.

As such, you will spend money both on hiring the lawyer and on covering the trips you need to make.

If the defendant is convicted and you request the court to order him/ her to pay the judicial expense and, at the same time, you provide the evidence that these costs were borne by you (receipts, the invoice issued by the lawyer, gas receipts, bus tickets, etc.), you will be able to recover the amounts spent from the defendant.

## Simplified procedure, in case of recognition of the accusation

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We have already shown that the trial stage in the first instance involves administering evidence, settling requests or exceptions invoked by the parties, the prosecutor or by the court ex officio, so that this procedural stage can extend over a relatively long period of time.

However, the law gives the defendant the possibility to opt for a simplified procedure. If he/ she fully admits to the accusations brought by the indictment and requests a trial only on the basis of the evidence administered during the criminal prosecution

(so without the administration of other evidence during the trial), he/ she can opt to settle the case in the simplified procedure, in which case the limits of the sentence for the crime for which he/ she is charged are reduced by one third in the case of the prison sentence, and by one fourth in the case of the fine.

This leads to a speedier settlement of the case, which takes around 1-2 months. The defendant's choice for a trial in the simplified procedure does not affect your rights, which we presented above.



## Judgments of the first court

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Regardless of whether the court follows the ordinary procedure (statutory law) or the simplified procedure, it issues one of the following sentences:

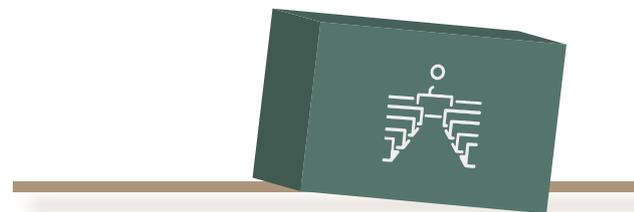
- **Conviction.** When the court finds, beyond any reasonable doubt, that the act exists, constitutes a crime and was committed by the defendant. The punishment can be: life imprisonment, imprisonment or criminal fine.
- **Discharge.** When the court finds, beyond any reasonable doubt, that the act exists, constitutes a crime and was committed by the defendant, but it has a low gravity; that, before the crime was committed, the defendant had a good attitude/behaviour and made efforts to remove or diminish the consequences of the crime.
- **Suspended sentence (Postponement).** When the court finds, beyond any reasonable doubt, that the act exists, constitutes a crime and was committed by the defendant, but before the crime was committed, the defendant had a good attitude/behaviour, made efforts to remove or diminish the consequences of the crime, and the defendant agreed to provide unpaid work which is beneficial to the community. In this case, the court establishes a punishment for the defendant, but it defers its application over a certain period of time. If within this period the

defendant fulfils his/ her obligations established by the court and does not commit new crimes, the punishment will no longer be applied to him/ her.

- **Acquittal.** When the court finds that: the act for which the defendant is accused does not exist, is not enshrined in the criminal law, has not been committed, there is no evidence to show that the defendant committed the act or there is a justifying cause (e.g.: the defendant committed the crime in self-defence) or there is non-accountability (e.g.: the defendant committed the act as a result of a physical constraint exerted on him/ her).
- **Termination of criminal proceedings.** When the court finds that the injured person did not file a prior complaint, or he/ she has withdrawn it, the defendant received amnesty or a pardon, the defendant died, etc.

The judgment of the first court is not final, and can be appealed against.

## V.3 The trial on appeal



The objective of the appeal is to verify the legality and soundness of the judgment in the first instance trial, by a higher court. Thus, the party dissatisfied with the judgment given by the first instance court has the possibility to appeal and request the court of appeal to vacate the first judgment and to issue a new legal and sound judgment.

**Example.** The first instance court ordered the acquittal of the defendant, considering that the act does not exist and also rejected the civil action that you have filed to recover the damages resulting from the crime. Since you are unhappy with the judgment of the first instance court, you have the opportunity to appeal and ask the higher court to vacate the first judgment and to issue a new decision ordering the conviction of the defendant to a sentence, as well as admitting the civil action, i.e. obliging the defendant to pay damages to you, the injured/ civil party.

The appeal may be exercised by the prosecutor, the defendant, the injured person, the civil party, etc.

The deadline for appealing is 10 days and runs from the date of communication of the minute (the decision in brief).

The appeal shall be filed with the court whose judgment is appealed and the appellate brief (i.e. the request for appeal) shall include:

- The file number;
- The number and date of the judgment you are appealing;
- Your identification data and signature;
- Grounds for appeal (the reasons why you think the judgment you are attacking is not legal or well-founded).

The appeal sets off a new trial, which means that the evidence administered before the first instance court will be revised, that new evidence can be administered, and new defences may be brought to court, that requests or exceptions may be formulated and so on.

Following the appeal judgment, the court issues one of the following rulings:

- *Rejection of the appeal and affirmation of the appealed judgment* in the following circumstance: the appeal is filed late (made after the 10-day deadline), inadmissible (for example, it does not concern a judgment of the first court), or unfounded.
- *Admission of the appeal, vacation of the appealed judgment and issuing of a new legal and sound ruling.*

## V.4 Extraordinary legal remedies

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The ruling of the court of appeal is final, which means that it cannot be challenged by other means of appeal.

The only times when this rule does not hold true are the exceptional situations in which the ruling of the court of appeal may be subject to extraordinary legal remedies.

The extraordinary legal remedies are:

- **Appeal for annulment.** It can be filed when, for example, a party was not subpoenaed to testify or was not assisted by a lawyer, when legal assistance was required by law.
- **Appeal in cassation.** It can be filed when, for example, the defendant was convicted of a crime which does not constitute a crime.
- **Revision.** It can be filed when, for example, new circumstances were discovered that were not known at the time the contested decision was issued; when the decision was based on the statement of a witness who was subsequently convicted of perjury, etc.

# VI. Other rights derived from being a victim of crime

The status of a victim of crime grants you a series of other rights provided by special laws, whose aim is to establish special measures to protect the victims of crime. We only mention the most important of these rights.



## VI.1 The right to free legal assistance (legal aid)

As we have already shown, the criminal proceedings which stem from a situation in which you have been the victim of a crime are complex and take a long time, so that the easiest way to go through them and to exercise your rights as provided by the law is with the legal assistance of a lawyer.

However, specialised legal assistance involves costs, sometimes significant, so you may be tempted to give up on the idea of hiring a lawyer, to try to represent yourself in front of the authorities or not to bring the criminal act to the attention of the authorities.

It is important to know that, in some cases, you can use the services of a lawyer free of charge, under the following conditions, in other words, free legal assistance is granted to the following categories of victims:

- **The victims of the following crimes:** "attempted murder" or "qualified murder", "bodily injury", an intentional crime that resulted in bodily harm to the victim, "rape", "sexual assault", "sexual act with a minor", "sexual corruption of minors".
- **The spouse/ children/ persons in the care of the deceased person** whose death was the result of the crimes of "murder", "qualified murder" or other crimes committed with intent that resulted in the death of the victim.

In order for the victim to be eligible to receive free legal assistance, the crime (from the ones mentioned above) must have been committed:

- on the territory of Romania;
- if it occurred abroad, the victim must be a Romanian citizen and the criminal trial must take place in Romania.

The law stipulates that the monthly income per family member of the victim should be at most equal to the gross minimum wage in the country, calculated for the year in which the request for free legal assistance was made.

Finally, in order to be able to formulate the request for free legal assistance it is necessary to notify the authorities, by means of one of the modalities mentioned in section III, at the latest **60 days** after the date of the crime, or after the date when you became aware of the crime.

You must submit the application for free legal assistance to the court (*tribunal*) located in the county where you legally reside. The application is then settled by two judges with the Commission for Granting Financial Compensation to Victims of Crime, at the latest 15 days after you filed the request, and with your summons.

The application is filed in writing and must contain:

- your first name, last name, nationality, date and place of birth, domicile or residence;
- the date and place of the crime;
- date of notification of the authorities regarding the crime (in the situation in which you have already reported the crime);
- your status, in case you are filing the application as a spouse/ child/ person in the care of the deceased person;
- if applicable, the monthly income per family member;
- the first name, last name and form of the profession of the elected lawyer (individual attorney/ law firm, etc.) or the indication that you have not chosen a lawyer;

The request will be accompanied by copies of all the supporting documents which you consider important for your application (e.g.: documents attesting your monthly income, the criminal complaint filed regarding the crime, etc.).

The decision which settles your application will be communicated to you.

If the application is rejected, you have the right to file a *re-examination request* within 15 days from the date of notification of the adverse solution. The application is submitted to the court (tribunal) located in the county where you legally reside.

## VI.2 The right of victims of crime to financial compensations from the state



The financial compensation from the state is granted to the following categories of victims of crime:

- a) **The victims of the following crimes:** “attempted murder” or “qualified murder”, “bodily injury”, an intentional crime that resulted in bodily harm to the victim, “rape”, “sexual assault”, “sexual act with a minor”, “trafficking in human beings”, “trafficking in minors”, “terrorism”, as well as any other crime committed with intent and violence.
- b) **The spouse/ children/ persons in the care of the deceased person** whose death was the result of the crimes of “murder”, “qualified murder” or other crimes committed with intent that resulted in the death of the victim.

### Conditions for granting financial compensation.

Compensation is granted to the categories of victims of the crimes mentioned above if:

- The crime was committed on the territory of Romania and you are:
  - a Romanian citizen,
  - a foreign citizen/ stateless person legally residing in Romania,
  - a citizen of a Member State of the European Union present legally on the territory of Romania at the time the crime occurred.
- You have notified the authorities about the crime within 60 days from the date of the crime, or from the date you became aware of the crime, if you make the request as the spouse/ child/ person in the care of the victim.

If you were physically or mentally unable to notify the criminal prosecution bodies (e.g.: during the hospitalization period), the term of 60 days is calculated beginning with the date when your state of physical or mental inability ceased.

## Compensation is not granted if:

- It is established that the act does not exist, it stipulated in the criminal law or it was committed in self-defence – either as protection against you being attacked or as a result of you, the victim, being provoked;
- You have received a final conviction for the crime of participating in an organised criminal group or for one of the crimes mentioned in section VI.2.a (previous page);

If one of the above situations is proven to be true and you have received the financial compensation (or an advance payment), you will be obliged to refund the amounts received.

The conditions for granting compensation differ depending on whether the perpetrator is known or not. Therefore:

### If the perpetrator is known:

- the deadline for the formulation of the application is 1 year and begins from the date when the court issues the final decision to convict the defendant or, in certain cases, the final decision of acquittal or termination of the criminal proceedings (when the court granted civil damages) or from the date when the prosecutor issued a dismissal of the criminal investigation (under certain conditions);
- you have become a civil party in the criminal case, as described in section IV.2.9;
- the perpetrator is insolvent (he/ she does not own goods on his name and, thus, you cannot obtain damages from him/ her) or has disappeared;
- you have not obtained the full compensation for the damage suffered from an insurance company.

If you were unable to file the application within 1 year, as mentioned above, the deadline is calculated from the date when the state of physical/ mental inability ceased.

### If the perpetrator is unknown:

- the deadline for filing the application is 3 years and begins from the date of the crime;
- you have not obtained the full compensation of the damage suffered by an insurance company.

It is important to note that, if you were a minor at the time of the crime and your legal representative (parent, guardian) did not make the request for compensation within the above terms (1 year or 3 years), you will be able to personally file the request in a term of 1 year (known author) or 3 years (unknown author) that will run from the date you turned 18 years old.

The financial compensation granted by the state to victims of the crime is intended to cover the following categories of damages:

- hospitalization expenses and other categories of medical expenses incurred by you;
- material damages resulting from the destruction, degradation or dispossession of your goods (e.g.: as a result of theft), equal to, at most, a sum equivalent to 10 gross monthly minimum wages in the country, calculated in the year in which you made the request for financial compensation;
- the earnings that you were deprived of as a result of the crime (e.g.: unrealised work income, as a result of the period when you were hospitalised);
- funeral expenses;
- expenses representing the maintenance (alimony) that you were deprived of because of the crime, if, for example, the victim of the crime of "murder" was the person who provided the maintenance (parent);

The damages you obtain from the perpetrator or from an insurance company are deducted from the amount of the financial compensation granted by the state.

## Settlement procedure



The application for financial compensation is submitted to the court (tribunal) located in the county where you legally reside and is settled by two judges with the Commission for Granting Financial Compensation to Victims of Crime.

The application will include the following elements:

- your first name, last name, nationality, date and place of birth, domicile or residence;
- the date, place, and circumstances of the crime;

- the categories of damages suffered as a result of the crime (e.g.: hospitalisation expenses, funerals, etc.)
- the criminal prosecution body or the court which were notified of the crime and the date of their notification, if any;
- the number and date of the court decision/ act of the criminal prosecution body (by which the case was settled), if any;
- your status, in case you make the request as a spouse/ child/ person in the care of the deceased person;
- your criminal history;
- the amount paid by way of compensation by the offender or by an insurance company, if any;
- the amount you claim.

The request will be accompanied by copies of all the supporting documents which you consider important for your application (e.g.: documents attesting your monthly income, the criminal complaint filed regarding the crime, etc.).

If your financial situation is precarious, you can ask the Commission for Granting Financial Compensation to Victims of Crime for an advance payment of the financial compensation, which may be up to an amount equivalent to 10 gross monthly minimum wages in the country.

The request for the advance payment can be made both in the application for financial compensation and in a separate application, which can be formulated after the authorities have been notified about the crime and no later than 30 days from the date you submitted the application for financial compensation. The application for the advance payment shall be settled within 30 days from the date of its submission.

The application for financial compensation or for the advance payment is settled with your summons and with the participation of the prosecutor.

In order to settle the application, the two judges may hear witnesses or administer any evidence they deem useful.

The application may be settled by giving one of the following solutions:

- **Admission of the application** and establishing the amount of the compensation to be awarded or the advance payment from the compensation;
- **Rejection of the application** if the conditions stipulated by the law for granting the compensation or the advance payment from the compensation are not fulfilled.

The decision regarding your application will be communicated to you and, if your application was admitted, the payment of compensation will be made within 15 days from the final decision.

It is important to note that the request for financial compensation or for an advance payment from the financial compensation can be made on your behalf by non-governmental organisations (NGOs) that work in the field of victim protection, provided the application is signed by you.

## VII. Legislative acts adopted by the Parliament on the protection of victims of crime

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The main legislative acts where you can find useful information if you were a victim of crime are the following:

- Law no. 211 of May 27, 2004 regarding certain measures to ensure the information, support and protection of victims of crime, published in the Official Gazette of Romania no. 505 of June 4, 2004.
- Law no. 217 of May 22, 2003 (rep.) for the prevention and combatting of domestic violence, republished in the Official Gazette of Romania no. 205 of March 24, 2014.
- Law no. 678 of November 21, 2001 (updated) on the prevention and combating of human trafficking, published in the Official Gazette of Romania no. 783 of December 11, 2001.
- Law no. 135 of July 1, 2010 on the Code of Criminal Procedure, published in the Official Gazette of Romania no. 486 of July 15, 2010.