

THE PROTECTION OF VICTIMS BASED ON LAW NR. 211/2004

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In our country, at least in the past century, the legislator has not given enough attention to protect the offence's victim, both in the case of the penal solution for the action and for mend of the moral or material prejudice suffered through the perpetration of crime by the civil part (victim), but also through the victim's information and counseling. Starting with this decade, the Romanian legislator has orientated his legislative activity towards the problems had by the victim. Penal justice and justice in general have as its main addressee the one who has suffered the consequences of the offence. Of course that, the particular interest of the offence's victim is integrated in the general one, because the sheltering activity is one which exceeds the individual's need and use.

1. Preliminary considerations

As long as in the society serious antisocial acts will be committed, criminal law is necessary, because it is the only solution that offers adequate means to prevent and struggle against criminality. So, as long as in the society offences are committed, there will be injured person. The criminality contains the totality of offences made in a certain period of time in a determined territory.¹ Criminality is a social phenomenon that, at least at the present level of society's evolution, can not be precisely determined, but only approximated, because not all the deeds that constitute offences are known. In theory is made the delimitation between various forms or types of criminality, that is: legal criminality², relevant criminality, real criminality, the black number of criminality³.

The interest in studying the offence's victim is an obvious one because certain relevant data can not be offered but from the victim's part. With all this informative potential, the offence's victim is not sufficiently tackled in the criminological studies, at least in our country, this being the reason for the detachment, more clear, of criminal victimization and criminology.

Criminal victimization has as target the complex research of the causes and the remedies for criminality from the offence victim's perspective, but taking into account the existing links between him/her and the one who commits the offence-the delinquent.

If regarding the delinquent, the modern and contemporary law had him usually as the subject of their regulations; the offence's victim was relatively ignored by the legislator until

¹ In the criminological sense, criminality is identified by "social deviation", that is behavior forbidden by the criminal law, indifferently if it can be considered an offence or just "deed mentioned by the penal law". So, from the criminological point of view, criminality represents the sum of deeds mentioned by the penal law, committed in a certain period of time on a determined territory.

² The notion of legal criminality appears to be inappropriate, if we take into account the regular meaning of "legal". In our case, to designate this type of criminality, we consider the expression "judgment criminality" to be more appropriate.

³ T.AMZA, „*Theoretical criminology*”, Lumina&Lex Publishing, Bucharest 2000, p 44-48. We mention that the notion of crime, used in the area of criminology, has a wider meaning than that from the penal law area (where it is identified with the offence or with a type of offence). To see also V.CIOCLEI, „*Etiological criminology*”, Actami Publishing, Bucharest, 1996, p11-15.

the last decades of the past century⁴ regarding its protection. Regarding the doctrine, the first specialized papers, which deal mainly with the offence's victim, appear starting with 1940.⁵ In these papers, like in the other that followed, the victim is examined mainly from the perspective of its role inside the criminal deed. It must be made the specification that its position in the criminal deed was tackled in some papers from the 19th century.

These kind of demarches appear in the papers of the positivists (Lombroso, Ferri, Garofalo⁶), as well as in other works from the ending of the 19th century and the beginning of the 20th century⁷. On the 29th March 1947, in a conference organized at Bucharest by the Romanian Psychiatric Society, during his speech on "the victim's science", Mendelsohn defined it as "victimology". B. Mendelsohn and Hans von Henting are the first ones who introduce some concepts (existing today) in the field of criminal victimization. In his way, B. Mendelsohn (considered by some authors to be the victimology's father) introduced the concept of "*victim potential of receptivity*"⁸ and many other terms and many other terms and expressions ("criminal couple", "victimization index", "victim candidate", "provocateur victim", "voluntary victim", "victim-aggressor"). Von Henting dealt with the *victimization of the criminal and active victim*⁹. **The potential victim's reception** means the level of vulnerability of one person to be a victim. The level of victim vulnerability is also tight to some factors among them the age, education, sex, social origin, some psycho-behavioral characteristic and so on. **Active victim** is a notion by which is established the victim's role in the determination of latent mechanism of the criminals. **Victimization of the criminal** is a concept which established the fact that from some points of view the delinquent is a victim either of the society or the injured person's.

As one can see from these short references to the specific doctrine, although it was given more attention to the crime's victim study, the researches were centered more on the victim's predisposition to become a victim. More, through the introduction of victimization of the criminal concept, the research was reoriented to the criminal person. What they ignored, totally or partially, the authors who made attempts in the victimology domain is the problem of finding some measures to protect the victims from offences. Instead of enjoying the

⁴ T. AMZA, "Theoretical criminology", Lumina Lex Publishing, Bucharest, 2000, p 51; B. TAYLOR, *Changes in criminal victimization, 1994-1995*, U.S. Department of Justice, Bureau of Justice Statistics; M. R. RAND, P. LYUNCH & D. CANTOR, *Criminal Victimization 1973-1995*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

⁵ Among the first scientists who had dealt with the victim's study are Mendelsohn and von Henting. For further data, see N. MITROFAN, V. ZDRENGHEA, T. BUTOI, *Judicial psychology*, Bucharest, 1994, p69-71.

⁶ Garofalo shows that, according to the theory of the positivist school, in the case of numerous offences, especially the easy offences against the personality, it would be useful to replace some days in prison or arrest with a more efficient measure-victim's satisfaction (compensation).

⁷ The problem of the existence of a certain responsibility from the victim's part dates practically from the Antiquity. For example, art.206 of the Hammurabi Code (1792-1750 b.c.), mentioned that "if a person hits in a fight another person and he will prove that it was not intentionally, he will not be punished, but he will have to pay medical expenses". Manu Laws, The law of the XII Tablets, The Digests and other antic sources deal with the victim's protection. But the birth of the scientific criminal victimization is related to 1941 when was published the work of Hans von Henting *observations on the interaction between the delinquent and victim*. After this paper, there were other valuable ones like those of Benjamin Mendelsohn (1947, 1956), Fredrick Wertham (1949) and Henri Ellenberger (1954). It can be said that, starting with this period, the victim's problem has become a very serious one.

⁸ B. MENDELSON *La vicimologie et les besoins de la societe actuelle*, in *Revue Sociological abstracts*, supplement 38. He was born in Bucharest in 1900 and died in 1998.

⁹ In the work *Criminal and the victim*, New Haven, 1948. One of von Henting first works was "*Observations on the interaction between the delinquent and victim*". Von Henting shows that "the relations between the delinquent and the victim are probable, the relations between animal of prey and herbivore animals. The difference between the prey animals and the herbivore ones from the animal world and the rapport between the delinquent and the victim, consists in the fact that the prey animals have do get by themselves the prey, while the offence's victim in many cases, it seems, tempts the delinquent..."

increased attention to the criminal or, at least, to be equal with him, delinquency victim was for long time in the criminal's shadow, who has taken the spotlight of judicial affairs.

Only starting from the seventies, one can speak about a consistent concern about the protection of the offence's victim, when in some western state programs have been derulated and led towards this. In 1984 in the US, Reagan Administration created a national fund for the victims of delinquency, having as target to help them and non profit organizations were financed and build shelters for the aggressed women, crises centres for rape victims and centres for the defending of children's rights. The fund is supplied with money from federal penalty, penalties and confiscated assets of those who are penal convicted.¹⁰ Only till 1997 had been collected 2 billion \$. With this money the federal states can help the offence's victims with medical care, covering the costs determined by income loss, transportation and funeral expenses. At the European level in 1983 was adopted at Strasbourg on the 24th November, The European Council's Convention regarding the indemnification of the violent offence's victims. By law nr. 304/2004 was rectified this Convention and came into operation on the 31st October 2005.

In Romania, at least during the past century, the legislator hasn't taken under protection the victim as far as the solution of the criminal action or especially as far as the mend of material or moral prejudice suffered by the civil part when making the offence but also as far as the victim's information and counselling goes. Starting with this decade, the Romanian legislator orientated his legislative activity towards the offence's victim also.¹¹

Moreover, the recent jurisprudence of the Constitutional Court acknowledges a change in favour of the victim. Relevant for this is the Decision nr. 100/2004, which represents a revision of the court's practice of constitutional contentious. Until adopting this decision, the Constitutional Court considered that art. 362 from the Criminal Procedure Code are constitutional¹². For example, through Decision nr. 274/06/2003, the Court holds that art 362 does not go against precognition of art.16 align. (1) from the constitution, dealing with equal rights, because both the civil part and the civilly responsible part have the possibility to exercise the same medium of attack (appeal) that have the prosecutor and the defendant. The limits included in art.362 align 1 letter d); from the Criminal Procedure Code do not constitute "discrimination" but natural specifications by comparison to the legitimal interests of these parts, defended during the penal trial.

"The means of establishing the civil parts' interdiction to attack on a criminal part in the criminal trial are also found in foreign legislation. So, in the case of the Belgian law, the civil part can not try to deny an exoneration other than relatively on its civil interests (art.412 from the Belgian Code of criminal instruction). In the German law, even when the prosecutor does not want to take action, the legitimate interest of the civil part can force the intervention of the prosecutor (the law for the victim's shelter from 1987). In Italy, the civil action can be

¹⁰ R.M.BOHM&K.N.HALEY, *Penal justice-a vision on the American model*, Expert Publishing, Bucharest, 2002, p 81.

¹¹ We shall examine these aspects after the presentation of the introductive aspects.

¹² According to art.362 from the Penal procedure Code " Can make appeal:

- a) the prosecutor regarding the penal and civil side;
- b) the defendant, regarding the penal and civil side. Against the acquittal sentence or the ending of the penal trial, the defendant can appeal also regarding the base of the acquittal or the ending of the penal trial;
- c) *the injured part, in the cases in which the penal action starts at the previous complaint, but only regarding the penal side;*
- d) the civil part and the part civically responsible, regarding civil side;
- e) the witness, the expert, the interpreter and the defendant regarding the judicial expenses they deserve;
- f) any person whose interests were injured by a means or by a court's act.

The appeal can be declared for those mentioned at letters b)-f) also by the legal representative, by the defendant and for the inductee, as well as by its husband."

applied, obviously, only to the civil interest (art. 74 from the Italian code of criminal procedure)¹³.

By the Decision nr.100/2004, the court has come back on the jurisprudence, holding that **“it is unconstitutional the disposal in the cases that refer to the fact that the criminal actions start after the previous complaint, but only when it concerns the criminal side, from art 362 align 1 letter c) from the criminal procedure code, leaving to the injured part to carry out the ordinary attack means of the appeal no matter the way in which the penal procedure starts (ex officio or at a previous complaint)”**¹⁴.

In spite of the legislator’s and the constitutional court magistrates’ efforts must be welcomed, there have not been solutionated the essential aspects referring to the offence’s victim’s protection. So, under the aspect of the civil parts’ solution of the penal cause should be mentioned in legislation firmly measures which could allow the judicial body to intervene promptly at the offence’s victim desire, or ex officio in the cases in which it is in the impossibility to formulate its demands to intervene in order to avoid the delinquent’s circumvention from the execution of the civil obligations. The regulated measures prove to be in many cases inefficient. The judicial practice mentions the perpetration of several crimes which led to important prejudice but the victims have never been indemnified or the prejudice’s mending has been only partial. These cases are possible because many times the professional delinquents hide the treasure from a possible forced pursuit or sign fake judicial acts.

The settlement of efficient insurer measures (sequestration, notation in the publicity records) would be benefic to the prejudiced person and to the general prevention level. Moreover, in the case of violent crimes, when it is impossible to take the measure of preventive arrest, there should be mentioned in the legislation some measures of protecting the victim. One of this measure is the restraining order which should have as its main objective the delinquent’s prohibition of coming near its victim at a reasonable distance (500m for example). We also believe that it important the modification of criminal procedure code by making it to be on the same level as the principles that govern over the rights of the victim. For example, the mentioning of some measures or legal actions referring to the solutions adopted by the Public Ministry or the inferior courts. Not least, it is important to mention in the legislation norms by which the penal justice actions should be accelerated.

Lately, the legislation made some steps regarding assuring the victim’s protection. So, in law nr 211/2004 regarding offence’s victim protection is mentioned some ways of ensuring their protection which we shall examine¹⁵.

2. Protection measurements in Law nr. 211/2004

1. The informing of the misdemeanor’s victim

The measurement of informing the misdemeanor’s victim is regulated by art. 4-6 of Law nr. 211/2004. According to art.4 from the law, in cases of crimes for which the complaint addresses the instance of judgment, the prosecutors, police officers and agents *have the obligation of letting the offence victim know of:*

a) the services and organizations that assure the psychological counseling or any other form of assistance to the victim, according to its needs. The services that assure psychological counseling to the victim are those mentioned by the Government Ordinance nr. 92/2000 regarding the organization and operation of services for the delinquent’s social reintegration

¹³ Published in the Official Monitor nr 559 from the 4th of August 2003.

¹⁴ Published in the Official Monitor nr 261 from the 24th of March 2003.

¹⁵ Law nr. 211/2004 was published in the Official Monitor nr.505 from the 4th of June 2004.

and supervision of the execution of the sanctions which do not imply lack of freedom, approved by the Parliament with annotations by law nr 129/2002.

- b) the forum of penal pursuit where it can make a complaint;
- c) the right to judicial assistance and the institution to address to for this right¹⁶;
- d) the conditions and the procedure to give free judicial assistance;
- e) procesual rights for the injured person, for the injured part and civil part¹⁷;
- f) the conditions and the procedure to benefit from the dispositions of art. 86¹,86²,86⁴ and 86⁵ from the criminal procedure code¹⁸ as well as the disposals of law nr.682/2002 regarding the witness protection.

g) the conditions and procedure to grant financial compensations from the state;

The information is brought to the victim's knowledge in writing or verbally in a language that he/she understands by the judge, prosecutor, police officer or agent to whom the victim goes. *The obligations' fulfillment* regarding the victim's information *is consigned in a minute (protocol)* that is kept at the institution of the judge, prosecutor, police officer or agent where the victim goes.

According to art. from the Law nr. 211/2004, The Justice Ministry, The Ministry of Administration and Interior with support from the Ministry of Communications and Information Technology assure the operation of the telephone lines available permanent to inform the offence's victims. Through the telephone line the communication of the above information is assured. The telephonic access is assured, freely, by dialing a unique national number and the personnel that assures the communication of the information has the obligation to announce the police units if from the telephone conversation results that the victim is in danger. The authorities of the local public administration, as well as the nongovernmental organizations can establish on a local level telephone lines to inform the victims of offences.

According to art.6 from Law nr.211/2004, the information mentioned by the law is published on the internet pages of the Justice Ministry and of the Ministry of Administration and Interior, and the courts of law, the parquets near the judicial courts and the police units can publish on the Internet these information.

2. Psychological counseling and other forms of assisting the victims

Psychological counseling of offences' victims is regulated by Chapter III align. 7-13 from Law nr. 217/2003.

According to art.7 from Law nr.211/2004 *psychological counseling is ensured by the service of victim's protection and delinquent's social reintegration* which functions next to the Courts.

According to art.8 from the same Law, psychological counseling ensured by the victim's protection and delinquents' social reintegration's are free at request for the victims of attemptive, qualified murder, extremely severe murder, foreseen by art 174-176 from the Penal Code, for the victims of infraction of percussion or other violence and corporal injury, made on the family members, foreseen at art. 180, align(1¹) and (2¹) and art.181 align(1¹) from the Penal Code, of the crime of corporal injury severe, foreseen at art.182 from the Penal Code, of the deliberate crime which led to severe corporal injury of the victim¹⁹, of rape,

¹⁶ Based on law nr. 51/1995 and the lawyer profession statute.

¹⁷ It is mainly about the rights mentioned in the Penal procedure code and those mentioned in the Civil procedure code.

¹⁸ These norms refer to victim's protection.

¹⁹ In this category enters for example impingement or injury leading to death (183 Penal Code), robbery that led to the victim's death (211 Penal Code), piracy that led to the victim's death (212 Penal Code).

sexual act with a minor, sexual perversion and sexual corruption foreseen at art 197,198, art 201 align(2)-(5) and at art 202 from the Penal Code of crime of bad treatment allocated to minors foreseen in art 306 from the Penal Code, as well as for the victims of the crime foreseen by Law nr 678/2001 regarding the prevention and struggle against man traffic with subsequently modifications and annotations²⁰. Free psychological counseling is given to the victims of the above mentioned crimes if the crime is committed on the Romanian territory or if the crime was committed outside the Romanian territory and if the victim is a Romanian citizen or a foreigner who lives legally in Romania.

Art.9 from Law nr 211/2004 foresees that the activity of free psychological counseling given by the service of victim's protection and delinquent's social reintegration is given for at most 3 months and in the case of victims who are not 18 for at most 6 months.

The request to grant free psychological counseling is deposited at the service of victim's protection and delinquent's social reintegration next to the court in whose jurisdiction the victim lives (art.10 from the mentioned Law).The request can be put forward only after the intimation of the organ of penal pursuit or the court of law regarding the perpetration of crime and must contain: first name, last name, citizenship, date and place of birth, victim's residence or domicile, date, place and the circumstances of the crime perpetration, the date of the intimation and the organ of penal pursuit. At the request for the grant of psychological counseling is enclosed a copy of the justificatory documents for those written in the application. The application for granting free psychological counseling is solved in 10 days starting from the date of deposit.

The psychological counseling of the victims is not the only form of social assistance, the services of victim's protection and delinquent's social reintegration can ensure *other forms of assisting the victims*. (art. 11 from the Law).Moreover, the nongovernmental associations can organize, independently or in cooperation with the public authorities, services for psychological counseling of the victims and for the insurance of other forms of assistance to the offence's victims. For this purpose, the nongovernmental associations can benefit, under the law's conditions, of subventions from the state budget.

On the other hand, if there art normative acts that suggest other forms of assistance, those measures will be applied next to those enclosed in *the common law of the field* that is Law nr. 211/2004. For this there is also art 13 from this law that states that the victims of man traffic and of family violence benefit from protection measurements and assistance foreseen by Law nr. 678/2001, with the subsequent modifications, or, depending on the case, by Law nr. 217/2003 for the prevention and struggle against family violence, with its subsequent modifications and annotations.

3. Free judicial assistance to the victims of some crimes

Another measure to protect the crimes' victims is free judicial assistance, to which Law nr. 211/2004 reserves Chapter IV, art 14-20.

Accordingly to art. 14, free judicial assistance is granted, on request, to the following categories of victims:

a) persons on who was committed an attemptive murder, qualified murder, extremely severe murder, foreseen by art 174-176 from the Penal Code, of the crime of corporal injury severe, foreseen at art. 182 from the Penal Code, of the deliberate crime which led to severe corporal injury of the victim, of rape, sexual act with a minor, sexual perversion and sexual corruption foreseen at art 197,198, art 201 align (2)-(5).

²⁰ We well focus on this law.

b) The husband, children or persons who are in the maintenance of those who died by committing murder, qualified murder and extremely severe murder, foreseen at art. 1740176 from the Penal Code, as well as the above mentioned crimes which led to the person's death.

Comparing the content of art. 14 with that of art 8 of Law nr. 211/2004 emerges the fact that the person sphere that can benefit from free judicial counseling is more reduced than that of the person who can benefit from psychological counseling, and on the other hand is more expanded because it contains the people who are in the maintenance of the passive subject of the crime. Still, free judicial assistance is granted to the above mentioned victims if the crime is committed on the Romanian territory or if the crime was committed outside the Romanian territory and if the victim is a Romanian citizen or a foreigner who lives legally in Romania and the penal trial has place in Romania.

According to art. 15 from Law nr. 211/2004, free judicial assistance is granted, upon request, to the victims of other crimes than those mentioned above, only by respecting the conditioned established at art. 14 align. (2), if the monthly income on a family member of the victim is equal to at the very most the minimum rough base salary on the country for the year in which the victim formulated the request for free judicial assistance. Free judicial assistance is granted only if the victim informed the organ of penal action or the court of justice in 60 days from the perpetration of crime.

In the case of the victims who were in the maintenance of the passive subject of the crime, the 60 days term is calculated from the date on which the victim became aware of the crime's perpetration. If the victim was in impossibility, physical or mentally, to announce the organs of penal pursuit, the 60 days term is calculated from the date on which stopped the impossibility state. Victims who have not turned 18 and those under interdiction have the obligation to announce the organs of penal pursuit or the court of law regarding the crime's pursuit. The legal representative of the minor or of the person under interdiction can announce the oranges of penal pursuit regarding the perpetration of crime.

According to art. 17 from Law nr. 211/2004, the request for *free judicial assistance is deposited at the law court under which jurisdiction the victim lives and is solved by two judges* from the Commission for the grant of financial compensations to the victims of some offences, by closing, in 15 days from the date of deposit. The request for granting judicial assistance must contain: first name, last name, citizenship, date and place of birth, victim's residence or domicile, date, place and the circumstances of the crime perpetration, the date of the intimation and the organ of penal pursuit; the quality of husband, child or person under the maintenance of the dead person, in the case of the victims who are under the maintenance of the passive subject of the offence; e) if it is the case, the monthly income on family member for the victim; f) first name, last name and the form of exertion of lawyer from the chosen defender or the mention that the victim has not chosen one. To the request of granting free judicial assistance is enclosed , a copy of the justificatory document for the written data in the request and any other documents held by victim, useful for getting out of the request.

The request for granting free judicial assistance is solved on request, in the council room, with the victim's subpoena. In case the victim has not chosen a defender, the closing by which free judicial assistance was granted must contain also the nomination of a defender ex officio according to Law nr 51/1995 for the organization and exertion of lawyer profession, republished with modifications and annotations and to the lawyer's Statute.

The resolution by which the request for granting free judicial assistance was solved is being communicated to the victim. *The resolution* by which is rejected granting free judicial assistance was solved *is being reexamined* by the court where the Commission for granting compensations to the offence's victims functions, on the victim's request, in 15 days from the communication. The reexamination is solved by two judges.

Free judicial assistance is given to every victim along the trial, under the limits of an amount of money equivalent to two minimum wages on the country, established for the year in which the victim formulated the request for free judicial assistance. The funds necessary for the granting of free judicial assistance are given from the state budget, through the budget of the Ministry of Justice.

Art. 20 from Law nr. 211/2004 foresees that the request for granting free judicial assistance and the request for granting the necessary amount of money to proceed with the court's decision by which were given civil compensations to the offence's victim can be formulated by the legal representative of the minor or of the person under interdiction, as well as by the nongovernmental organizations which work in the field of juvenile protection, if they are signed by the victim, contain the data seen in the law.

The request for granting free judicial assistance and the request for granting a sum of money necessary to proceed with the court's decision by which civil compensations are given to the offence's victim are without stamp-duty.

4. Financial compensation given by the state to the offence's victims

Financial compensation is given, upon request, to the person who can benefit from free judicial assistance. Financial compensation is given if the offence was committed in Romania and if the victim is a Romanian citizen or a foreigner who lives legally in Romania. Financial compensation is given on the bases of international conventions to which Romania is a part, if the offence was committed in Romania and if the victim is a foreigner who does not live in Romania. On the bases of art. 22, the financial compensation is not given if:

a) is established the fact that the act *does not exist or is not foreseen by the criminal law* or that the act was committed *in self defense* against the victim's attack in the conditions of art. 44 from the Penal Code. The second thesis is about the perpetration of a deed under the conditions of self defense.

b) *the victim is definitively convicted for having taken part in a criminal organized group*. The criminal organized group is the group structured, formed by 3 or more person, which exists for a period of time and acts in a coordinated way with the sole purpose of committing one or more severe offences, of obtaining directly or indirectly a financial benefit or any other material benefit. It is not a criminal organized group the group formed occasionally with the sole purpose of committing immediately one or two offences and which has not continuity or a determined structure or reestablished roles for its members. The severe offence, according to the special law, is an offence which makes part of one of the offences mentioned in art.2 aligns. (2), letter b)²¹.

c) *the victim is definitively convicted for one of the offences foreseen in art 21 aligns (1)*. It is about the perpetration of one of *the crimes which come under the incidence of the law which foresees financial compensation*.

d) the court engages in favor of the delinquent *the attenuate circumstance of over passing the limits of self defense* against the victim's attack, foreseen at art.73 let. a) from the Penal Code or the attenuate circumstance of *provoking* foreseen at art.73 let b0 from the Penal Code. In art 73 let a) and b) are foreseen the three judicial attenuate circumstances, that is the defense's pardonable excess, the over passing of the necessity state's limits and challenge²².

²¹ In art.2 align (2) from law nr 39/2003 are enumerated the deeds that constitute serious offences, in the sense to define the organized delinquent group.

²² According to art.73 from the Penal Code:” The following circumstances constitute attenuate circumstances:

a)the surpassing of self defense or necessity state;

b)proliferation of offence under a powerful disturbance or emotion, determined by a challenge from the injured part, produced by violence, by a severe touch of the person's dignity pr any other serious illicit action.”

The victim who has benefited of financial compensation or of any kind of advance from the financial compensation is forced to give back the amounts of money if it is established the existence of a case in which there is no financial compensation.

According to art.23 from Law nr.211/2004, the financial compensation is given to the victim only if he/she has announced the organs of penal pursuit or the court-law in 60 days from the perpetration of crime. In the case of the victims who are under the maintenance of the passive subjects (directly wounded), the term of 60 days is calculated starting with the date when the victim was aware of the perpetration of crime. If the victim was in impossibility, physical or mentally, to announce the organs of penal pursuit, the 60 days term is calculated from the date on which stopped the impossibility state. Victims who have not turned 18 and those under interdiction have the obligation to announce the organs of penal pursuit or the court of law regarding the crime's pursuit. The legal representative of the minor or of the person under interdiction can announce the oranges of penal pursuit regarding the perpetration of crime.

According to art.24 from Law nr.211/2004 if the defendant is known, the financial compensation can be given to the victim if the following conditions are respected:

a) the victim has formulated the request for financial compensation in term of a year, depending on the case:

1. *starting from the date of the definitely confinement of the decision by which the penal instance pronounced the conviction or acquittal* in the cases mentioned at art.10 align (1), let d) and e) from the Penal procedure code and has given civil indemnification or has pronounced the acquittal in the case mentioned at art.10 align (1) let.c) from the Penal procedure code or the surcease of the penal trial in the cases mentioned at art. 10 let.g) and i) from the Penal procedure code. It is about the following cases: lack of a constituent element to the offence, the existence of a cause which eliminates the penal character of the act, the act was not committed by the defendant or inductees, amnesty arouse, the penal responsibility prescription arouse or is under incidence a cause of un-punishment;

2. *starting from the date the prosecutor disposed the removal from the criminal pursuit* in the cases mentioned in art.10 align. (1) let.c) and e) from the Penal Procedure Code or has disposed the cease of criminal pursuit in the case mentioned at art.10 align (1) let.g) from the Penal Procedure Code;

3. *starting from the date when was disposed the cease of criminal pursuit* in the cases mentioned at art.10 align. (10) Let.c), d), e) and g) from the Penal Procedure Code.

b) the victim constituted as civil part in the criminal trial, excepting the case mentioned at let a) pct.3;

c) the delinquent is bankrupt or missing;

d) the victim did not obtain integral mend of the prejudice suffered from an insurance company.

In the case in which the victim was in impossibility to formulate a financial compensation request, the one year term is calculated from *the date the impossibility state ceased*. In the case in which the court disposed the separation of the civil action from the penal one, the one year term is calculated starting from the date of the admission of the unchangeable decision by which the civil action was admitted.

The victims that are not 18 year old and those under interdiction do not have the obligation to formulate the compensation request in one year. According to art.25 from Law nr. 211/2004 in the case when the delinquent is unknown, the victim can formulate de financial compensation request in 3 years from the date of commitment, if the victim did not obtained total remediation of the prejudice suffered from an insurance company.

If the victim is minor and the legal representative did not formulate the financial compensation request in the terms mentioned in the law, these terms start from the date on which the victim reached 18.

The prejudice of an offence suffered by the victim can contain various elements, such as: the loss of the incomes made previous to the offence, medical expenses (hospitalization, medicines, special equipments and so on), and funeral expenses, expenses made for the fulfillment of some customs or traditions (requiescat, for example), the loss of maintenance, other material damages (loss or degradation of some goods, for example), also moral damages (the impossibility of taking part in the public life, for example). From all types of damages, material or moral, which can be made to the offence's victim, according to art.27 from Law nr.211/2004, financial compensation, is given to the victim for the following *categories of prejudices* suffered by him/her as a consequence of the offence:

a) in the case of the victims towards which was made an attempt of murder, qualified murder and extremely severe murder, mentioned in the art.174-176 from the Penal Code, severe corporal injury, mentioned at art.182 from the Penal Code, of the deliberate crime which led to severe corporal injury of the victim, of rape, sexual act with a minor, sexual perversion mentioned at art 197,198, art 201 align (2)-(5) from the Penal Code:

1. the hospitalization expenses and other type of *medical expenses* supported by the victim;

2. *the material prejudices* resulted from the destruction, degradation or bringing in a state of unsuitability to use the victim's goods or from his/hers deprivation by committing the act;

3. *earnings* of which the victim is deprived as a consequence of the offence;

b)in the case of the indirect victims(husband, children and those under the maintenance of the deceased person by committing manslaughter, qualified murder and extremely severe murder, mentioned in the art. 174-176 from the Penal Code, as well as the deliberate actions which led to the person's death):

1. *the funeral expenses*;

2. *the maintenance from which the victim is deprived* of because the commitment of the offence.

The financial compensation for the material prejudices resulted from the destruction, degradation or bringing in a state of unsuitability to use the victim's goods or from his/hers deprivation by committing the act is given in the limit of an amount of money equivalent to ten national minimum rough wages established for the year in which the victim formulated the request for financial compensation. The amount of money paid by the delinquent as civil indemnification and the indemnification obtained by the victim from an insurance company for the caused prejudices by committing the offence are subtracted from the financial compensation quantum given by the state to the victim.

The request for financial compensation is deposited at the court under whose jurisdiction the victim lives and is solved by two judges from the Commission for the grant of financial compensations to the victims of some offences from the particular court.

Commission for the grant of financial compensations to the victims of some offences is made out of at least 2 judges, named for 3 years by the General Gathering of the court's judges. The General Gathering of the court's judges name, for 3 years, an equal number of deputy-judges to that of the judges who establish the Commission for the grant of financial compensations to the victims of some offences. The deputy-judges participate in the solving of the financial compensation requests in the case of participation impossibility of one or both judges who make the Commission for the grant of financial compensations to the victims of some offences. The Commission for the grant of financial compensations to the victims of

some offences secretary is assured by one or more than one registrars, assigned by the court's president.

The request for financial compensation must contain: a) first name, last name, citizenship, date and place of birth, victim's residence or domicile, date, place and the circumstances of the crime perpetration; categories of suffered prejudices by making the offence which is mentioned by the Law; d) if it the case, the penal pursuit organ or law-court and the date of their intimation; e) if it is the case, the number and date of the court's decision or of the act for criminal pursuit; f) the quality of husband, child or person under the maintenance of the dead person, in the case of the victims who are under the maintenance of the passive subject of the offence; g) criminal record; h) the amount of money paid as indemnification by the delinquent or the indemnification obtained by the victim from an insurance company for the caused prejudices by committing the offence; i) the quantum of the solicited financial compensation. To the financial compensation request is enclosed, as copy, justificatory documents for the data written in the request and any other documents hold by the victim, useful to the request's resolution.

According to art.30 from the law, the victim can ask the Commission for the grant of financial compensations to the victims of some offences an amount of money equivalent to ten national minimum rough wages established for the year in which the victim formulated the request for financial compensation. The advance can be solicited through the financial compensation request or through a separate request which can be formulated at any time after the intimation of penal pursuit organs or of the law-court, if it's the case, according to art.22 of Law, and no later than 30 days beginning with the date of submitting the compensation request.

The advance is given if the victim is in a precarious financial state. The victim's request of a financial compensation is solved in 30 days from the date of request by two judges from the Commission for the grant of financial compensations to the victims of some offences. The victim who has benefited of financial compensation or of any kind of advance from the financial compensation is forced to give back the amounts of money if it is established the existence of a case in which there is no financial compensation.

The request of financial compensation and the request regarding an advance from the financial compensation are solved in the council room with the victim's citation. The prosecutor's presence is mandatory. In order to solve the request, Commission for the grant of financial compensations to the victims of some offences made out of two judges can bring forward persons, ask for documents and manage any other types of evidences that it considers useful to the request's resolution. By solving the request for financial compensation or the request to grant an advance from it, Commission for the grant of financial compensations to the victims of some offences made out of two judges can pronounce, by judiciary decision, one of the following solutions:

a) admits the request and establishes the financial compensation quantum or, depending on the case, of the advance;

b) rejects the request if the present law's conditions for granting financial compensation or, depending on the case, the advance are not fulfilled.

The ruling which solved the grant for financial compensation or the request to grant an advance from it is being communicated to the victim. The ruling can be contested with a petition at the Appeal Court, in 15 days from the communication.

Commission for the grant of financial compensations to the victims of some offences has the obligation to inform the penal pursuit organ or the court which judged the offence, according to the case, the court which deals with the solving of the civil action regarding the request for financial compensation or regarding the request by which the victim solicited an advance from the financial compensation.

The funds necessary for the granting of free judicial assistance are given from the state budget, through the budget of the Ministry of Justice.

The payment for financial compensation or advance for the offences' victims is insured by the financial departments of the court, in 15 days starting from the date of the ruling by which was granted the financial compensation or an advance from it.

The state, by the Ministry of Justice, is obliged to the victim's right who has benefited from financial compensation or from an advance from it to retrieve the amounts of money paid to the victim.

The request for financial compensation and the request to grant an advance from it can be formulated by the legal representative of the minor or of the person under interdiction. The request for financial compensation and the request to grant an advance from it can be the nongovernmental organizations which work in the field of juvenile protection, if they are signed by the victim, contain data and are enclosed documents mentioned by the law. If the advance is requested by a separated request, in it is mentioned the state of the judicial procedure. *The request for financial compensation and the request to grant an advance from it are off stamp-duty.*

Submitting to a critical examination the Law nr.211/2004, although it can be improved, we can say that it respects the principles of the European Council Convention regarding the indemnification of the violent offences' victim, ratified by Law nr.304/2005²³. The Convention entered in operation on the 31st October 2005.

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²³ Law nr.3004/2005 was published in the Official Monitor nr 960 from the 28th of October 2005 and was brought into operation on the 31st October 2005. The Strasbourg Convention had as a preparatory act the Resolution nr. (77)27 of the Comity of European Council Ministry regarding the offence's victim indemnification. According to the Convention's forward ;"considering that the European Council's purpose is to make a tight relation between its members, taking into consideration that because of social deliberation and equity reasons *it is necessary for the situation of the victims of deliberate offence's, committed with violence, who have suffered corporal injuries or the deterioration of health, and of the person who were in the maintenance of those who died as a result of these offences*, considering that it is necessary the introduction and development of a indemnification scheme by the state where the offences were committed, especially in the cases in which the delinquent is unknown or does not have the means, taking into consideration that it is necessary the settlement of a minimum of legal precognition in this area, considering the Resolution nr. (77) 27 of the Comity of European Council Ministry regarding offence's victim indemnification, we have adopted the following (...)"