

[Home](#) > ... > [Your Rights](#) > [Fundamental Rights](#) > [Business and Human Rights](#) > Romania

Business and human rights

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Romania

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1. What kind of judicial protection do I have in your country as a victim of business- related human rights violations? Does this protection include compensation?

Judicial protection of human rights is provided through national courts, depending on the matter to which the act that has triggered violation of that right relates. Thus, situations may arise, owing to business activities, which result in human rights violations in civil or criminal matters and so, depending on the case particularities and the nature of the act that has led to violation of the right, the injured person may take legal action or file a complaint to the investigation bodies – the police or prosecutor’s office.

Such protection may lead to compensation being granted in the form of material and/or non-material damages if the conduct/practices of a business is/are found to have led to violation of human rights.

2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?

Various human rights violations in the context of business activities trigger civil, administrative or disciplinary liability.

Environmental crimes are provided for in both the special legislation (e.g. Emergency Order No 195/2005 on environmental protection) and the Criminal Code among crimes against public security (spread of diseases to animals or plants, water contamination, trafficking in toxic products or substances, breach of the regime of nuclear material or other radioactive matter, of explosive materials or restricted explosive precursors etc.).

Serious labour exploitations may be deemed violations of the Criminal Code (crimes such as slavery, trafficking in human beings, child trafficking, subjection to forced or compulsory labour, procuring for prostitution or sexual acts, use of services of an exploited person) or of the criminal rules laid down in the Labour Code.

3. I am the victim of a human rights violation resulting from activities carried out outside the European Union by a European transnational corporation. Do I have access to the courts in your country if I am not an EU citizen or I don't live in the EU? Under what conditions can I claim a violation of my rights? Where can I find additional information?

A. In civil matters

- International civil proceedings are regulated in Book VII of the Code of Civil Procedure, which is the relevant common law and applies to proceedings under private law with cross-border implications, unless otherwise specified in the international treaties to which Romania is a party, under EU law or special laws.
- International jurisdiction of Romanian courts under common law is based on the existence of the

defendant's principal place of business or, in the absence thereof, of their secondary office or business assets within Romania on the date when the action has been filed.

- Moreover, in a choice of court agreement, the parties may agree to choose Romanian courts as having jurisdiction to decide disputes which have arisen in connection with cross-border implications.
- With regard to certain actions for material damages, Romanian courts have exclusive jurisdiction, such as disputes with cross-border implications concerning:
 - property located within Romania;
 - contracts concluded with consumers having their domicile or habitual residence in Romania, for everyday consumer services for consumers' personal or family use and not related to the consumers' professional activity or business, if:
 - the provider has received the order in Romania;
 - the conclusion of the contract has been preceded, in Romania, by an offer or advertisement and the consumer has carried out all the formalities required to conclude the contract.
- Also, by derogation from the rules of common law, the claimant may choose the Romanian courts (preferential jurisdiction) for disputes where:
 - the place where a contractual obligation has arisen or should have been fulfilled, even if only in part, is in Romania;
 - the place where a legal act from which non-contractual obligations arise was concluded, or where such act produces effects, is in Romania;
 - the rail or road station or the port or airport of boarding/loading or landing/unloading of passengers or goods transported is in Romania;
 - the insured property or the place where the insured event has occurred is in Romania.
- Romanian courts are also competent to hear:
 - cases regarding cross-border protection of the intellectual property of a person domiciled in Romania, whether a Romanian citizen or stateless person, subject to a choice of court agreement;
 - cases between foreigners if they have expressly agreed so and the legal relations concern rights they may have with regard to property or interests of persons from Romania;
 - cases regarding collisions at sea or of aircraft and cases regarding assistance or rescue of persons or goods on the high seas or in an area falling outside the sovereignty of any State, under particular circumstances;
 - cases involving civil liability for damage caused by products originating in Romania, regardless of the victim's nationality, place of accident or place where the damage was caused.

As regards the foreigner's status in international civil proceedings, natural and legal persons who are foreigners have, under the law, the same procedural rights and obligations before Romanian courts as Romanian citizens and legal persons.

More information can be found [here](#).

B. In criminal matters

Pursuant to Article 9, in conjunction with Article 12 of the Criminal Code, unless otherwise specified in an international treaty to which Romania is a party, the Romanian criminal law is applicable to acts committed outside Romania under the personality principle provided for in criminal law (Article 9 of the Criminal Code), regardless of whether the injured person is a foreign citizen, a Romanian citizen or a stateless person or of whether they are in Romania, if certain conditions have been met: the perpetrator is a Romanian legal person; the sentence provided for under Romanian law with regard to the act committed is imprisonment for life or for more than 10 years (even if the act is not deemed a criminal offence by the law of the State where it has been committed) – where other penalties are provided for, the act must be classified as a criminal offence also under the criminal law of the country where it has been committed (dual criminality) or must have been committed in a place falling outside the jurisdiction of any State. Indictment is subject to prior authorisation by the general prosecutor of the prosecutor's office attached to the court of appeal having territorial jurisdiction over the prosecutor's office first referred to or, where applicable, by the general prosecutor of the prosecutor's office attached to the High Court of Cassation and Justice.

It is noteworthy that the criminal offence is considered as having been committed on the territory of Romania also when the commission, instigation or aiding and abetting have taken place, or the proceeds of crime have been generated, even in part, within that territory or on a vessel flying the Romanian flag or in an aircraft registered in Romania. In these cases, the Romanian criminal law applies under the territoriality principle.

As regards the jurisdiction of criminal courts for criminal offences committed outside the territory of Romania, the Code of Criminal Procedure (Article 42) stipulates that criminal offences committed outside the territory of Romania are tried by courts having jurisdiction over the registered office of the legal person acting as the accused. If the accused has no registered office in Romania, and the criminal offence falls under the jurisdiction of the district court, the case is tried by the District Court of Bucharest District 2 and, in the other cases, by the court with competence according to the matter or to the status of the person being from Bucharest, unless otherwise provided for by law.

For criminal offences with regard to which indictment is contingent on the filing of a prior complaint by the injured person, the prior complaint must be filed within 3 months of the day when the injured person became aware of the act.

More information can be found [here](#), [here](#) and [here](#).

4. Can ombudsman institutions, equality bodies or national human rights institutions support victims of business-related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen or I don't live in the EU? Are there other public services (such as a labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?

Pursuant to Article 1(1) of Law No 35 of 13 March 1997 on the organisation and functioning of the Ombudsman [Instituția Avocatul Poporului]: 'The Ombudsman shall aim to safeguard the rights and freedoms of natural persons in their relations with public authorities'; therefore its remit does not cover business related human rights violations.

Consumers' complaints filed against companies within the EU can be taken over by the European Consumer Centre in Romania (ECC Romania) only if those consumers are residents or nationals of an EU Member State (including Norway and Iceland) and if EU legislation is applicable.

The Labour Inspection Authority [Inspekția Muncii], the National Authority for Disabled Persons' Rights, Children and Adoptions [Autoritatea Națională pentru Drepturile Persoanelor cu Dizabilități, Copii și Adopții], the National Agency for Gender Equality [Agenția Națională pentru Egalitatea de Șanse între Femei și Bărbați], the National Environmental Guard [Garda Națională de Mediu], the National Authority for Consumer Protection [Autoritatea Națională pentru Protecția Consumatorului], and the National Regulatory and Managing Authority for Communications [Autoritatea Națională pentru Administrare și Reglementare în Comunicații (ANCOM)] are public authorities with no competence in cross-border cases.

Additional information can be found [here](#) and [here](#).

5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations also apply to violations that occur outside the European Union? Who is in charge of monitoring these activities in your country? Are there public reports available providing information on the functioning of the system?

As regards human rights violations resulting from activities carried out by European transnational corporations, no mandatory mediation systems are in place in Romania, however mediation is possible as an option, when chosen by the parties. Therefore, the person whose rights have been violated may avail himself or herself of judicial protection under common law, through a civil or criminal court, depending on the nature of the right

violated, or the parties may agree to seek the services of a mediator, whose profession is regulated by Law No 192/2006 on mediation and the organisation of the profession of mediator.

Moreover, Order No 38/2015 on alternative dispute resolution between consumers and traders creates the legal framework for enabling consumers to refer, on a voluntary basis, claims filed against a professional/undertaking to entities applying alternative dispute resolution procedures in an independent, impartial, transparent, effective, expeditious and fair manner in order to ensure a high consumer protection level and the smooth functioning of the market.

6. Do I have specific rights if I am a vulnerable victim seeking a remedy for business-related human rights violations? Can I have access to legal aid, and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?

Access to legal aid is a right recognised and guaranteed under Romanian law. This right is based on the concept of universal defence and is recognised for all persons, regardless of residence or nationality, on a circumstantial basis, as follows:

I. In civil matters, pursuant to Government Emergency Order No 51/2008 on public legal aid in civil matters:

a) For EU citizens: in all cases where public legal aid is applied for before courts or other Romanian authorities having judicial powers by any natural person having their domicile or habitual residence in Romania or in another EU Member State (Article 2 of Government Emergency Order No 51/2008);

b) For non-EU citizens and stateless persons: where applications are filed by natural persons who do not have their domicile or habitual residence within the territory of Romania or of another EU Member State, in so far as there is an arrangement between Romania and the State of nationality or of domicile of the applicant, which includes provisions on international access to justice (Article 21¹ of Government Emergency Order No 51/2008).

Moreover, pursuant to Article 1084(2) of the Code of Civil Procedure, *foreign citizens are entitled, in Romanian courts, in international civil proceedings, to exemptions and reductions in taxes and other costs of the proceedings, and to free legal aid to the same extent and under the same conditions as Romanian citizens, subject to reciprocity with the State of nationality or domicile of the applicant.*

Thus, the person who has been the victim of a violation of his or her legitimate rights may apply for legal aid if he or she cannot afford to pay the costs of the proceedings, as provided for in Article 6 of Government Emergency Order No 51/2008 - Public legal aid may be granted in the following forms:

a) payment of the fees for representation, legal aid and, where applicable, defence by a court-appointed lawyer or lawyer of their choice, for the realisation or protection of a right or legitimate interest in court or for the prevention of a dispute, hereinafter 'aid by a lawyer';

b) payment of the expert, translator or interpreter used in the proceedings, with the consent of the court or authority with judicial powers if such payment is incumbent on the person applying for public legal aid under the law;

c) payment of the bailiff's fee;

d) exemptions, reductions, instalments or deferrals of payment of legal costs provided for by law, including those due at the enforcement stage.

Nevertheless, the right to legal aid is not an absolute right and the person applying for legal aid must provide proof for his or her financial situation, attesting to the fact that he or she cannot afford to pay for the services of a lawyer of his or her choice or that he or she cannot bear the costs of proceedings, such as stamp duty, experts' fees, expert's reports, etc. In this respect, Article 16(1) of Government Emergency Order No 51/2008 stipulates

that: public legal aid may be refused when improperly claimed, when its estimated cost is disproportionate compared to the value of the legal matter, and when public legal aid is not applied for in order to safeguard a legitimate interest, or it is applied for in respect of an action which is contrary to public or constitutional order.

The public legal aid referred to in this Emergency Order is granted in civil, commercial, administrative, labour and social insurance cases, as well as in other matters, except for criminal cases.

In criminal cases, it is mandatory to grant legal aid to the injured person when that person/civil plaintiff is incapacitated or has limited capacity to act (pursuant to Article 93(4) of the Code of Criminal Procedure). Moreover, pursuant to Article 93(5), *when the judicial body deems that, for certain reasons, the injured party, the civil plaintiff ... would be unable to defend themselves, it shall arrange for a court-appointed lawyer.*

Article 29(1)(f) of Government Emergency Order No 80/2013 on court stamp duty, as subsequently amended, provides for an exemption from the payment of the duty for actions and claims, including appeals, whether ordinary or extraordinary, filed with regard to protection of consumer rights, when the natural persons and the consumer protection associations have the capacity of claimants against economic operators who have violated consumers' rights and legitimate interests.

Last but not least, victims of crime benefit from the application of [Law No 211/2004](#) on certain measures to ensure the information, support and protection of victims of crime, which, as inferred from the title of the law, makes provision for the information, support, protection, recognition and assessment measures available to victims of criminal offences, without such measures being contingent on the filing of a complaint to the prosecution bodies.

More information on legal aid in Romania can be found [here](#).

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