Research project EUPRETRIALRIGHTS

Improving the protection of fundamental rights and access to legal aid for remand prisoners in the European Union

ANALYSIS OF NATIONAL LAW

National norms as regard to access of detained persons to the law and to court

Report on BULGARIA

Dilyana Angelova
Krasimir Kanev

Bulgarian Helsinki Committee

April 2019

BULGARIAN
HELSINKI
COMMITTEE

This report is part of the research project EUPRETRIALRIGHTS from the consortium of partners :

Centre National de la Recherche Scientifique
Laboratoire SAGE, Université de Strasbourg
CESDIP, Université de Saint Quentin en Yvelines/Ministère de la Justice
European Prison Litigation Network
University of Utrecht, Montaigne Centre for Rule of Law and Administration of Justice
Helsinki Foundation for Human Rights, Poland
Dortmund University of Applied Sciences and Arts
University of Florence, L'Altro diritto - Inter-university Centre
Bulgarian Helsinki Committee
Ghent University, Institute for International Research on Criminal Policy
General Council of Spanish Bars
Pontifical University of Comillas

This project was funded by the European Union's Justice Programme (2014-2020).

INTRODUCTORY PART: CONTEXTUALIZATION

i. Regime of detention applicable to pre-trial detainees

There are two categories of pre-trial detention in criminal proceedings: judicial and non-judicial detention (administrative).

Non-judicial detention (administrative) detention

- Grounds for detention

Persons suspected of criminal offences may be held in custody for up to 24 hours on the basis of an administrative order, issued by the police or another law enforcement authority pursuant to the following statutory legislation: Ministry of Interior Act[1], Customs Act[2], State Agency "National Security"[3], Law on the Military Police and Anti-Terrorism Act[4]. Bulgarian law and jurisprudence define 24-hour detention of persons, suspected of having committed a criminal offence as administrative in nature, regulated by administrative law and falling outside the scope of the criminal proceedings. Minors cannot be held criminally responsible. Nevertheless, if there is suspicion of a crime, the police can also detain children under 14. Police detainees have the right to appeal the lawfulness of the detention to the district court.[5] The court shall rule on the appeal immediately and its decision is subject to a cassation appeal under the Administrative Procedure Code before the respective administrative court.

- Places for detention

Most premises for administrative detention are under the control of the Ministry of Interior. As of March 2017, the number of **police stations**, including boarder police stations, having detention premises, was 153;[6] the number of detention premises under the control of the Ministry of Defense was five. More detailed regulation of the police detention, including the minimum requirements for the material conditions in police detention cells, regime of detention, security and visiting arrangements, is stipulated in the *Ministry of Interior Instruction No. 8121з-78 of 24 January 2015 on the detention, equipment of police detention facilities and the rules applicable to them*.[7]

According to the legislation, the following categories of police detainees shall be accommodated separately: men and women; children and adults; law enforcement or military officials and other categories of detainees; persons who are mentally ill, persons with communicable diseases, recidivists, persons suspected of having committed serious crime and other categories of detained persons. Detention cells should have access to natural light, should be ventilated and properly heated. The premises where children are held must be specifically equipped and adapted to their needs as well as meet higher safety standards as laid down in the legislation.[8] There are no explicit normative standards, concerning size or occupancy of the police detention cells.

---

[1] Ministry of Interior Act (2014). Article 1 (1)(1), available in Bulgarian at: https://www.lex.bg/laws/ldoc/2136243824.
[2] Customs Act (1998), Article 16a, (1), available in Bulgarian at: https://www.lex.bg/laws/ldoc/2134384640.
[3] State Agency "National Security", 124b, (1), available in Bulgarian: https://www.lex.bg/bg/laws/ldoc/2135574489.
[4] Anti-Terrorism Act (2016), Article 11(1)(1), available in Bulgarian at: https://www.lex.bg/bg/laws/ldoc/2136974730.
[5] Ministry of Interior Act, Article 72 (4).
[6] Information received from the Ministry of Interior under the Access to Public Information Act, Letter from 29 March 2017.
[7] Ministry of Interior Order No. 8121з-78 of 24 January 2015 on the detention, equipment of police detention facilities and the rules applicable to them (2015), available in Bulgarian at: http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=91688
[8] *Ibid*, Article 73.

While in police custody, detainees are placed under constant surveillance – either directly or through video surveillance system. Upon allocation to the detention cell, police officers should seize and store property belonging to the detained person and return it to him/ her upon release. During police custody, detainees may keep certain personal items with them in the cell, including religious and other literature, medical documents, legal books, documents, issued in connection to the detention, pictures. They are not entitled to spend time in open air. Detained persons shall be offered food. They may receive food, clothes and other allowed items during visits only upon express permission of the authority that have ordered the detention and in the presence of a police officer.

Judicial detention

- Grounds for detention

The Criminal Procedure Code (CPC) regulates two hypotheses of detention of persons formally charged with the commission of a criminal offence: with an order from the prosecutor for up to 72 hours with the aim of securing accused persons' appearance before the court[9] and with a court order imposing a detention measure on remand.[10] The detention measure can be imposed only when the crime, for which the person is charged is punishable by imprisonment or a heavier sanction, and the collected evidence shows that that there is a real danger that the accused may hide or commit another crime.[11] When this danger is no longer present, detention must be repealed or replaced by a lighter measure and the detained person must be released from custody. The measure of detention is subject to judicial control. At any time during the pre-trial stage, the accused and their lawyer can file a request to the court for changing the imposed measure. The court must hold a hearing within three days after the receipt of the request. If the measure is confirmed, the court can restrict the filing of further requests for a certain period of time. This period cannot be longer than two months and does not apply if the new request is justified by deteriorating state of health of the accused.[12] Depending on the charges, detention of accused persons in the pre-trial stage of the proceedings could last up to 20 months.

- Places for detention

In the pre-trial proceedings, accused persons detained by an order of the prosecutor or by a decision of the court are as a rule detained in investigative detention facilities. As of 1 January 2019, there were 28 investigative detention facilities, six of which were situated on the territory of prisons. These facilities accommodate, although in separate cells, all categories of detainees in the criminal proceedings - male and female, adults and juveniles, nationals and foreigners. Investigative detention facilities could also temporarily accommodate convicted prisoners. The competent authorities are not obliged to take into account the accused person's place of residence when they decide in which detention facility they should be placed. The general rule is that detainees must be placed in the facility located in the same region, where the pre-trial investigation take place or, when this is not possible, in the closest available facility. As an exception, detainees can also be placed in a prison, which is located in the same region.[13]

Today, the majority of the investigative detention facilities are small, located within confined urban settings. Their material infrastructure and regime are outdated and sub-standard – the minimum 4 sq. m. per person living area standard is not complied with, cells are equipped with old, dilapidated furniture; they lack ventilation and access to natural light, as well as hygiene materials. The general rule is that detainees are locked in their cells for 23 hours per day. The only opportunity for detainees to socialize with detainees, other than their cell mates is during their daily one-hour out-of-sell time. According to the law, detainees are entitled to one hour of outdoor exercises per day, but most detention facilities lack outdoor areas. Instead, detainees are allowed to spend one hour per day walking or exercising

[9]Criminal Procedure Code (CPC) (2006), Article 64(2), available in Bulgarian: https://www.lex.bg/bg/laws/ldoc/2135512224.
[10] *Ibid*., Articles 64, 65.
[11] CPC, Article 63 (1).
[12] *Ibid*, Article 65.
[13] Execution of Punishments and Detention Order Act (EPDOA)(2009), Article 241 (4), available in Bulgarian at: https://www.lex.bg/laws/ldoc/2135627067.

inside in an empty room of the size of several cells. Further, the legislation does not envisage the organisation of any out-of-cell activities, such as education, training, work, therapy, religious services.

In 2015 and 2016, the Ministry of Justice started gradual moving of the investigative detention facilities to separate units within the prison buildings. There are six such newly established units, which provide better material conditions and improved access to activity and visiting spaces.

In the trial stage of the proceedings, the rule is that detainees are allocated to a special unit for remand prisoners in the nearest prisons. Currently, there are 11 male prisons, one female prison, one reformatory home for boys and one reformatory home for girls. Prisons provide more favourable material conditions and regime for accused persons than investigative detention facilities, including an opportunity for more hours per day spent outside the cell, access to education, some, although limited opportunities for work or other purposeful activity.

Regardless of their place of detention, remand prisoners are entitled to receive and dispatch unlimited number of letters and to make outgoing phone calls on their expense. Their correspondence could not be read or monitored. They also have the right to two 40-minute visits per month with friends and family members. Detainees and visitors are separated by a glass partition and physical contact between them is prohibited. During visits detainees may receive food and other items, allowed for use in the detention facility. In any case, family visits take place in the presence of security officers. Under Bulgarian law, the prosecutor or the court, depending on the phase of the criminal proceedings may ban detainee's visits, correspondence and telephone calls with certain persons, where this is necessary for the investigation or the prevention of a serious crime.

Remand prisoners could be classified in a higher security regime and placed in a permanently locked cells, without opportunity to participate in common activities, if they violate the internal order or if they are charged with a crime, punishable with a term of imprisonment of 15 years or more. Such restrictive measures are subject to appeal.

The regime of detention of pre-trial detainees has been subject to increasing criticism by the National Preventive Mechanism (NPM). It its 2017 annual report, it points out that the regime in the detention facilities corresponds to the special regime for prisoners sentenced to life imprisonment and that such level of isolation is "unacceptable".[14] The NMP suggests that the "degree of isolation in detention may be made more accurate by taking measures to isolate only persons who are being tried, if the prosecutor so rules. It is possible to introduce a regime that allows to lock corridors [instead of cells] and respectively implement the recommendation made by the CPT to engage inmates with meaningful activities. The NPM monitors some difficulties in finding work for [detainees]. In two of the detention facilities in Plovdiv and Shumen there are premises for work but there is no staff to perform any activity. The other detention facilities avail of no such premises."[15]

Representatives of religious denominations, NGOs and other organisations could meet with a detainee only upon the explicit permission of the prosecutor, supervising the case (in pre-trial stage) or the trial judge (in trial stage). Similarly, remand prisoners could meet with journalists upon an express permission of the prosecutor or the court.

Prisons and investigative detention facilities are part of the Bulgarian penitentiary system, which is governed by the Directorate General "Execution of Sentences" (DGES), administrative unit of the Ministry of Justice.

[14] 2017 Annual Report of the Ombudsman acting as National Preventive Mechanism, p. 14, available at: https://www.ombudsman.bg/pictures/file/5751_Annual_Report_NPM_2017_EN.pdf.
[15] *Ibid*.

ii. What bodies are entitled to receive formal complaints? How effective are they (with regard to Article 13 ECHR)?

Bulgarian prison system allows prisoners to make complaints through a range of avenues, both administrative and judicial.

Administrative complaint mechanisms

Prisoners, including remand prisoners, have the right to pursue a request or complaint arising from their imprisonment with the governor of the prison in writing as well as to appear before the governor in person. Grievances could also be addressed to the Directorate General "Execution of Punishments", the Minister of Justice, the Inspectorate within the Ministry of Justice, the prosecutor or the Ombudsperson. These bodies have general competence to review prisoners' complaints.

For several categories of decisions of the penitentiary authorities, the Execution of Punishments and Detention Order Act (EPDOA) and the secondary legislation for its implementation envisage mandatory administrative appeal procedures. Such categories of decisions, relevant to the scope of the present study, include:

- Article 110 (1) EPDOA: Disciplinary punishments, other than isolation in a punitive cell, imposed to remand prisoners, accommodated in prisons. These decisions are reviewed by the Directorate General "Execution of Punishments".
- Article 110 (1) EPDOA: Disciplinary decisions, other than isolation in punitive cell, imposed by the Directorate General "Execution of Punishments" are reviewed by the Minister of Justice.

According to Article 127 (5) Bulgarian Constitution, the prosecutor's office exercises control over the legality of the execution of sentences. More detailed regulation of the prosecutor's powers in the field of execution of sentences is envisaged by Article 146 of the Judiciary Act and the Article 5 of EPDOA. Prosecutors may carry out prison inspections, talk to detainees in private and examine prisoners' applications and complaints. Article 146 (2) of the Judiciary Act provides that public prosecutors may order the release of any person who is being detained unlawfully. Prison administration is under the obligation to report to the district prosecutor on various issues, including for each case of use of force, auxiliary means and weapon and for cases of preventive isolation. The regional prosecutor is the competent authority to grant applications of prisoners for temporary suspension of the sentence. Inmates can submit complaints and requests to the prosecution office, but there are no specific regulations, governing the procedure.

As a public advocate, charged with the protection of human rights, the Ombudsperson is mandated to receive complaints and referrals from any person against violations, committed by state authorities, officials, companies and natural persons.[16] Pursuant to Article 24 (2), complaints and referrals could also be submitted by human rights NGOs. Anonymous complaints as well as complaints, filled outside the two-year statute of limitations are not considered. All complaints and referrals, including measures undertaken by the Ombudsperson and outcome of complaints proceedings, should be registered in a dedicated public register. To redress the established human rights violations and other deficiencies or malpractices of the state administration, the Ombudsperson has the power to issue opinions, proposals and recommendations, which are not of a binding nature, but concerned parties are obliged to consider

[16] Ombudsperson Act, Article 19 (1)(1), available in Bulgarian: https://www.lex.bg/laws/ldoc/2135467520.

them within 14 days and inform the Ombudsperson of the measures they have undertaken to resolve the issue.[17] The procedure is free of charge.[18]

Regardless of the existence of numerous administrative avenues for redress, the prison complaint system lacks coherence. The complaint system is highly fragmented; there is no clear guidance on the operation of each of the complaint mechanisms and the powers of the authorities, dealing with the complaints. Most of these mechanisms lack rules on confidentiality, time-limits for responding to complaints and giving reasons for decisions.

On many occasions the CPT's has recommended to the Bulgarian government to review the operation of complaints procedures in penitentiary establishments, so as to ensure that inmates are genuinely enabled to send complaints to outside bodies in a free, expeditious and confidential manner. Following their 2014 visit, the CPT noted that prisoners had been, in principle, allowed to send complaints to outside bodies, as well as to prison directors. However, there had been a widespread lack of trust among prisoners in the existing complaints system, especially concerning the confidentiality of the complaints sent to outside bodies. Many prisoners interviewed by the delegation felt that filing a complaint would aggravate their situation; more specifically, some of them claimed that they would not make use of this possibility because they feared retaliation from staff. Moreover, some allegations were received that complaints sent to competent outside bodies received no response.[19] Similarly, during its last visit to Bulgaria in September 2017, the CPT has received information that prisoners' complaints are not duly and speedily transmitted to outside authorities; that inmates preferred to bribe staff to allow them to send e-mail, rather than counting on the formal complaint mechanism; that prisoners are being threatened or offered privileges so that they don't make complaints.[20]

On 27 January 2015 the European Court of Human Rights (ECtHR, the Court) delivered its pilot judgment in the case of *Neshkov and Others v. Bulgaria*. In it the Court found violations of Article 3 and of Article 13 of the Convention concerning the inhuman and degrading conditions in several Bulgarian prisons and the lack of effective remedies in this respect. Assessing the administrative complaint mechanisms in Bulgarian prisons for their compliance with the requirements of Article 13 of the Convention, the ECtHR ruled that existing remedies are not effective to prevent inhuman and degrading treatment caused by conditions of detention.

"As regards preventive remedies, a complaint to the prison authorities could not lead to effective redress because it was not sufficiently certain and predictable and could not solve problems, such as overcrowding, that affected all prisons in the country. Complaints to a supervising prosecutor were not effective either, due to the lack of a requirement for the prosecutor to hear the complainant or ensure his or her participation in the proceedings, and the lack of a personal right for the complainants to compel prosecutors to exercise their supervisory powers. The same went for complaints to the Ombudsman of the Republic, who had no power to render a legally binding decision."[21]

Judicial complaint mechanism

Bulgarian judicial system is comprised of the following types of courts:

[17] *Ibid*, Article 28.
[18] *Ibid*, Article 26.
[19] European Committee for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment (CPT), *Report to the Bulgarian Government on the visit to Bulgaria from 24 March to 3 April 2014*, p. 62, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806940c4.
[20] CPT, *Report to the Bulgarian Government on the visit to Bulgaria from 25 September to 6 October 2017*, CPT/ Inf (2018) 15, p. 56, available at: https://rm.coe.int/16807c4b74.
[21] European Court of Human Rights (ECtHR), *Neshkov and others v. Bulgaria*, applications nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, Judgement of 27 January 2015, para. 176.

- District courts
- Regional courts
- Administrative courts
- Military courts
- Specialized criminal courts
- Courts of appeal
- Military court of appeal
- Specialized criminal court of appeal
- Supreme court of cassation
- Supreme administrative court

These courts, having certain legally defined jurisdiction to deal with prisoners' complaints, outside the criminal proceedings, as a first instance are district, regional and administrative courts.

District courts

District courts have limited role in prisoners' rights litigation. According to the EPDOA, governor's decisions on deductions from prisoners' monthly remuneration for damages are subject to appeal before the district court.[22] Decisions for segregation of remand prisoners in permanently locked cells without access to collective activities are also appealed in district courts. Until 2017, decisions for segregation in a punitive cell for disciplinary purposes were also appealed in regional courts. Following the 2017 penitentiary law reform, the jurisdiction of these cases was transferred to administrative courts. District courts could also hear cases for discrimination.

Regional courts

Traditionally, regional courts have the primary role in the execution of sentences. Decisions on all forms of sentence adjustments which add new restrictions on the prisoner's legal status or security regime are made by the regional court, exercising jurisdiction over the respective prison.[23] The regional court is competent to decide also on applications for early conditional release[24] and replacement of life imprisonment punishment with a deprivation of liberty for a definite term[25]. Under Article 120 (2) of EPDOA, regional courts have jurisdiction to review decisions of the prison governor, imposing preventive isolation of prisoners for a period of up to two months.

Administrative courts

Administrative courts have general jurisdiction over all cases on motions for issuance, modification, revocation or declaration of nullity of administrative acts; remedies against unwarranted actions and omissions by the administration; compensation for damages resulting from legally non-conforming acts, actions and omissions by administrative authorities and officials, etc. In terms of prisoners' rights, administrative courts have the exclusive jurisdiction to adjudicate claims for damages, caused by torture, inhuman and degrading treatment in prisons and investigative detention facilities (Article 285 (2) EPDOA); requests for prevention or termination of actions or inactions of prison authorities that constitute torture, inhuman or degrading treatment (Article 277 (1) EPDOA); complains against certain decisions of prison authorities, such as decisions for disciplinary isolation (Article 111 (1) EPDOA).

[22] EPDOA, Article123 (2), (3).
[23] CPC, Articles 443-446.
[24] CPC, Articles 437-442.
[25] CPC, Articles 449-450.

In *Neshkov*, the Court examined if the judicial complaint mechanisms existing back than might deliver effective preventive remedy in cases of inhuman and degrading treatment caused by overcrowding and poor conditions of detention, including investigative detention conditions. The Court noted that the injunctive proceedings under the Administrative Procedure Code could be theoretically capable of providing preventive redress to victims, but for the time being they did not appear to be capable of doing so in practice. With regard to the compensatory remedy, the Court undertook a review of the case law of the Bulgarian courts under the State and Municipalities Responsibility for Damage Act related to conditions of detention. It observed various deficiencies in the way claims for damages were dealt with by the domestic courts, including: failure to make clear the specific acts or omissions the prisoner was required to establish, an overly strict burden of proof, a tendency to assess individual aspects of the conditions of detention rather than their cumulative impact, a failure to recognise that even briefly non-compliant conditions must be presumed to cause non-pecuniary damage; application of domestic time-limits without taking into account the continuous nature of the overall situation; uncertainty about the proper defendant; inadequate compensation awarded by the domestic courts where the litigants were successful. It was thus established that the remedy could not be regarded as effective.

With the 2017 penitentiary law reform, which aimed to address the problems identified in *Neshkov*, a new preventive remedy was introduced in the Execution of Punishments and Detention Order Act. It took the form of a special complaint procedure before the administrative court. By virtue of the new provisions, convicted prisoners and detainees are now entitled to complain directly before the administrative court against any alleged violation of their right to be free from torture, cruel, inhuman or degrading treatment, including in cases of overcrowding and/or placement in poor material conditions. In this regard, applicants could request the court to issue an injunction or grant other equitable relief appropriate to ensure termination or prevention of any treatment, violating Article 3 of the EPDOA.

In order to establish the facts of the case, the court may use all evidentiary means available, as well as to request information from third parties, such as the prosecutor, the police, experts, the Ombudsperson or NGOs. The case is heard within 14 days after the complaint is filed, with the participation of the applicant, his/her representative and the head of the respective correctional or detention facility. If the complaint is found to have merit, depending on the nature of the underlying problem, the court orders prison authorities to perform, restrain from or terminate the performance of certain acts amounting to violations of Article 3 of the EPDOA. The decision of the administrative court is appealable before another panel of the same court. Courts' decisions are binding on the prison administration.

The 2017 reform declared also the state's liability for any treatment of convicted and remand prisoners that amounts to torture, cruel, inhuman or degrading treatment and set up a dedicated court procedure for the examination of claims for damages resulting from such treatment. The remedy is designed to provide monetary compensation to persons who are or have been subject to detention conditions, contrary to Article 3 of the EPDOA. The authority, which is competent to hear claims for damages, is the administrative court in two-instance proceedings. Claimants do not have to deposit fees in advance, as was the case before. By virtue of an express provision, once a prima face case is submitted to the court, a presumption that non-pecuniary damages have occurred applies. Another legislative novelty is that the court is now under obligation to examine the cumulative, as opposed to the individual, effect of the different aspects of the detention conditions on the prisoner, as well the time that he/she has spent in these conditions, in order to establish whether the treatment has amounted to a violation of Article 3. The law does not stipulate specific rules, guiding the determination of the amount of money to be awarded as compensation for non-pecuniary damages, meaning that the amount of compensation is to be determined with regard to the general rules of the Bulgarian tort law. Presumably, it "must not be unreasonable in comparison with the awards of just satisfaction made by this Court". The execution of the pilot judgement is currently pending before the Committee of Ministers of the Council of Europe

In *Atanasov and Apostolov v. Bulgaria,*[26] a judgement delivered in 2017, following the prison law reform, the ECtHR concluded that in principle the new preventive and compensatory remedies could be considered effective means to prevent, terminate and compensate breaches of Article 3 of the Convention resulting from overcrowding and poor conditions of detention, taking onto consideration the characteristics of the new procedures and the improvement of the situation of overcrowding in the country. Stating that, the Court found the two applications inadmissible for non-exhaustion of domestic remedies. It also noted that the manner in which the Bulgarian courts deal with such cases, the extent to which the prison authorities comply with the injunctions against them (in the case of the preventive remedy) and the promptness with which awards of compensation is awarded by the authorities (in the case of compensatory remedy) may affect the decision of the Court on the point of the effectiveness of the remedies..

The importance of ensuring freedom from intimidation and reprisals against prisoners who make complaints was at the focus of two other judgements against Bulgaria – *Marin Kostov*[27] and *Shahanov and Palfreeman*[28] of the ECtHR. The three applicants are prisoners, disciplinary punished for filing complaints against prison authorities, using complaint mechanisms, established by domestic law. Taking note of the context in which the interference of the applicant's right to freedom of expression was made, in *Marin Kostov*, the Court stressed out that "punishment for non-abusive complaints filed by prisoners could have a serious chilling effect and discourage them from reporting irregularities in prison".[29] In *Shahanov and Palfreeman,* the Court further stated that "[t]he possibility to report alleged irregularities and make complaints against public officials takes on an added importance in the case of persons under the control of the authorities, such as prisoners. Prisoners should be able to avail themselves of that opportunity without having to fear that they will suffer negative consequences for doing so".[30] Violation of Article 10 of the Convention was found in both cases.

iii. What is the impact of ECtHR judgments on the system of legal aid/access to legal information?

In the course of the last 20 years Bulgarian legal aid system has undergone some major developments, including the introduction of free legal aid for indigent accused persons in 1999, the adoption of a Legal Aid Act and the establishment of a National Legal Aid Bureau in 2005.[31] According to some commentators, these developments "came as a result of the pressure from the EU, as well as the case law of the ECtHR".[32]

Until 1 January 2000, the 1974 Criminal Procedure Code (revoked) listed in an exhaustive manner the situations in which an accused who could not retain a counsel had to be provided with ex-officio lawyer. None of these situations covered the situation of a defendant who did not have sufficient means to retain a lawyer. In the judgement of the case *Padalov v. Bulgaria*, the ECtHR found a violation of the applicant's right to a fair trial in that he was not granted free legal assistance during criminal proceedings brought against him in 1997, even though the interests of justice so required (violation of Article 6§§1 and 3 c).[33] In 2000 the CPC was amended by adding a new ground for appointment of ex-officio lawyer - where the accused could not afford to retain a lawyer but wished to be legally represented and the interests of justice so required. Although the legislation was reformed prior to adoption of the decision in the case

[26] ECtHR, *Atanasov and Apostolov v Bulgaria,* application Nos.65540/2016 and 22368/2017, Decision of 27.06.2017.
[27] ECtHR, *Marin Kostov v. Bulgaria,* application no.13801/07, Judgement of 24 July 2012.
[28] ECtHR, *Shahanov and Palfreeman v. Bulgaria,* applications nos. 35365/12 and 69125/12, Judgement of 21 July 2016.
[29] ECtHR, *Marin Kostov v. Bulgaria,* § 47.
[30] ECtHR, *Shahanov and Palfreeman v. Bulgaria,* § 64.
[31] Legal Aid Act (2006), available in Bulgarian at: https://www.lex.bg/bg/laws/ldoc/2135511185.
[32] Grozev, Y. (2012). Bulgaria. In Cape, E. & Namoradze, Z. *Effective Criminal Defense in Eastern Europe*, pp. 112, Soros Foundation – Moldova.
[33] ECtHR, *Padalov V. Bulgaria*, application No. 54784/00, Judgement of 10 august 2006.

of *Padalov*, the Bulgarian government claimed that the amendment was intended to bring the Criminal Procedure Code into line with the Convention. In 2006 a new CPC was adopted. It contained an identical ground for appointment of an *ex officio* lawyer.

However, access to information about the procedural rights of suspects and accused, access to a lawyer and legal aid during the initial 24-hour police detention period in Bulgaria remained highly problematic. These issues were at stake in the Grand Chamber judgement in the case of *Simeonovi v. Bulgaria*.[34] Although the Court noted that the Mr Simeonov's access to legal assistance during the first three days of detention was restricted, it established that the fairness of the criminal proceedings taken as a whole had not been irremediably infringed by the absence of a lawyer. The Court substantiated its reasoning by stressing that there were no evidences that the applicant was formally or informally interrogated or had taken part in other investigative measures in absence of a lawyer, as well as that Mr Simeonov's confession made before the domestic courts, while assisted by a lawyer, had no link to the initial police detention, which took place two weeks earlier.

1. LEGAL SUPPORT (i.e. access to legal information (information on rights and duties))

1.1 Obligations as regard to legal support

Which texts define an obligation to provide a legal information in police custody/penitentiary facilities (related to penitentiary issues)? Are these a matter of general law or are they specific to prison issues? In what terms is the content / scope of the legal information obligation defined (in particular, is reference made to aspects of everyday life in detention)? Specify the conditions under which this obligation to provide legal information has emerged and been legally enshrined. As regards police custody, specify what information related to their rights (health, access to a lawyer, free legal aid) is provided to suspects or accused persons.

Article 25 (1) of the Legal Aid Act lays down a general obligation on national authorities to provide information on the right of accused and detained persons to be represented by a retained or appointed lawyer. Such information ought to be provided immediately after the arrest or accusation in a written document, the receipt of which is verified by the signature of the accused.

In the case of police detention, detainees are given a written declaration about their rights in police custody. The same information is however provided to any police detainee, regardless of the ground for detention; its prime aim is to serve as a safeguard against torture and ill-treatment and it makes no reference to procedural rights in criminal proceedings. Besides, the information about the rights is direct replication of the law, without any further instructions for the practical realisation of these rights.

In the case of formal criminal proceedings, the law imposes an obligation upon the court, the prosecutor and the other investigative authorities to explain to the accused persons their procedural rights, including their rights to access to a lawyer and legal aid, and to ensure possibility for these rights to be exercised. The right to access to a lawyer must be expressly stated in the act, constituting a person as an accused party in the criminal proceedings – the charge sheet, issued by the prosecutor or the protocol from the first investigative action against the accused. Furthermore, pursuant to Article 97(2) of the Criminal Procedure Code, investigative authorities must inform the accused of his/ her right to access to a lawyer and enable them to contact one. Investigative authorities could not proceed with conducting any investigative or evidence-gathering act, prior to informing the accused of his/ her right to obtain a lawyer. If accused persons are summoned for questioning or for other investigative actions, the summons must contain information on their right to appear with a lawyer. However, the Criminal Proceedings Code does not envisage a unified document that could be regarded as a "letter of rights" for accused persons,

[34] ECtHR, *Simeonovi v. Bulgaria*, application No. 21980/04, Judgement of 12 May 2017.

who are detained on remand, as required by Directive 2012/13/EU on the right to access to information in criminal proceedings.

Pursuant to Article 243 (2) of EPDOA, remand prisoners, allocated to investigative detention facilities must be immediately apprised of their entitlement to visits, telephone contacts, correspondence and parcels. Detainees who are not Bulgarian nationals must be informed of their right to contact the diplomatic or consular authorities of their State of origin (Article 243 (3) EPDOA). They should also be informed about the internal rules in the facility, which is attested by a signature (Article 243 (4) EPDOA). The way detainees could exercise their rights is not stipulated in the law but is set out in unpublished orders of the penitentiary authorities. Custodial staff do not have an obligation to familiarized orally or in writing detainees with their rights to access to a lawyer and legal aid. There is no obligation on the side of the staff to provide information on the existing complaints mechanisms or other information, necessary for accessing justice.

Upon arrival to prison, inmates are allocated to a reception unit for a period between one week to one month, where they must go through adaptation and classification process. During this initial period, prison social workers should familiarize inmates with the prison internal order and discipline, as well as with their rights and obligations as prisoners.[35] According to the law, prisoners have the right to receive a written copy of this information if they so require.[36] Further, prisoners are entitled to request information, relevant to the execution of their sentence.[37]

Under Article 99 of the Civil Procedure Code, which is applied subsidiarily to administrative litigation, the court in the proceedings has an obligation to inform the parties about their right to legal aid.

1.2 Legal support to non-native speakers

What does the law provide for in terms of legal support to non-native speakers? (support to apply for legal aid? Support once granted legal aid)

See 2.9 below.

The penitentiary system does not provide translations of legal information. In the 2017 judgement in the case of *Lebois v. Bulgaria*, the ECtHR found violation of Article 8 of the Convention, because of failure on the penitentiary authorities to inform the applicant, who was a foreign national detained in a pre-trial detention facility, about the internal rules in the facility, regulating detainees' possibilities to receive visits and to use telephone.[38] The Court ruled that internal orders setting out the practical details of how inmates in the pre-trial detention facility in which the applicant was kept could exercise their statutory rights to receive visits and use the telephone were not published or made accessible to the detainees in a standardized form. The Bulgarian government claimed execution of the judgement by way of circulating a letter to the penitentiary authorities, indicating that the internal rules regulating the visits and the use of phone should be translated into the two official languages of the Court.[39] The execution of the judgement is still pending.

1.3 Actors providing legal information

[35] EPDOA, Article 52 (1).
[36] *Ibid*,52 (2).
[37] EPDOA, Article 76 (1).
[38] ECtHR, *Lebois v. Bulgaria*, application No. 67482/14, Judgement of 19 October 2017.
[39] DH-DD(2018)809, Communication from Bulgaria, Action report, Lebois v. Bulgaria, available at: http://hudoc.exec.coe.int/eng?i=DH-DD(2018)809E.

Who are the actors responsible for providing legal information in detention? What is their status and what budgets are they dependent on? Do they have an ethical framework guaranteeing their independence and the secrecy of consultations?

At the police station, legal information is provided by police officers. In the course of the formal criminal proceedings, obligation to provide information about the rights of the accused persons have the investigative police officer, the prosecutor and the court.[40] At the investigative detention facilities, information about the internal rules is provided by security staff. Prison social workers have an obligation to familiarize inmates with the prison internal order and discipline rules, as well as with their rights and obligations as prisoners.[41] External actors, who may provide legal information to detainees, such as NGOs and the National Preventive Mechanism, enter places of detention only sporadically. Regarding their access to places of detention, see 41. And 41 below.

1.4 Practical arrangements

What are the practical arrangements for carrying out the task to provide legal information in custody, as specified by the law (regularity, type of premises, etc.)?

There is no express legal regulation of the practical arrangements for providing of information in custody.

1.5 Legal information tools

Under the law, are legal information through legal guides, Internet portals for legal information, translations of legal standards, etc) to be made available for detainees? What is detainees' access to online legal information portals?

Detention in the police
Under the law, police detainees should be provided with copies of the detention order and the declaration of rights, as well as with access to the list of duty lawyers, if they wish to be appointed a legal aid lawyer. The law does not envisage the provision of legal information by way of use of other information tools or facilities such as libraries, telephone helplines or internet portals. Detainees can keep legal literature and documents, related to the detention procedure (declaration of rights, detention order) in the cell.[42]

Detention in investigative detention facilities
The Execution of Punishments and Detention Order Act and the secondary legislation for its implementation do not envisage any specific legal information tools to be made available to remand prisoners, allocated to investigative detention facilities. Remand prisoners are entitled to correspondence via telephone and mail. They also have the right to receive visits. These channels for communication with the outside world could be used for obtaining legal information from friends and family, but also from NGOs and other state institutions, in the cases of written and telephone correspondence. Detainees must pay for all their phone calls. In exceptional cases, they could be allowed to make short phone calls free of charge by using the penitentiary staff's telephone. Telephones are accessible vie prepaid phone cards, which could be purchased through the penitentiary administration or could be delivered by detainees' visitors. There are no libraries, established in the facilities, but detainees can keep books and legal literature in the cell.

[40] CPC, Article 15 (3).
[41] EPDOA, Article 52 (1).
[42] Instruction No. 8121з-78 of 24 January 2015 on the detention, equipment of police detention facilities and the rules applicable to them, Article 20 (3).

Detention in prisons

Under the law, the availability of legal information tools in prisons is similar to the one in investigative detention facilities, the most significant difference being the existence of libraries. Pursuant to Article 165 (1) of the Execution of Punishments and Detention Order Act, each prison, prison hostel and reformatory home should establish a library. The library collection must be updated periodically and must include national and international legal acts regulating the execution of punishments.

1.6 Reporting on legal information

Are bodies in charge of legal information in custody subject to an obligation to report regularly and publicly on their actions?

Bodies in charge of providing legal information in custody are public bodies; they do not have an obligation to report publicly on their actions in this area. On the other side, national and international human organizations, which monitor the situation of human rights in places of detention document and report publicly on detainees' access to information. For example, the report of the European Committee for the Prevention against Torture, Inhuman or Degrading Treatment or Punishment (CPT), following its visit to Bulgaria in 2017, described various problems, related to the provision of information on the rights to detainees in police establishments and investigative detention facilities.

"36. As for information on rights, similar to the situation observed on previous visits, the individual case files consulted by the delegation in police establishments and IDFs visited generally contained copies of forms ("declarations of rights") referring to detained persons' rights of access to a lawyer (including ex officio), access to a doctor and notification of custody (and, in the case of foreign nationals, to contact a consular office). Those forms were as a rule signed by the detained persons.

That said, the delegation again heard allegations from detained persons that they had not been informed of their rights – a situation that can probably be at least partially explained by the fact (nota bene, contrary to the regulations in force) that a copy of the above-mentioned "declaration of rights" was usually not given to the persons concerned (unless they expressly requested otherwise).

The CPT therefore reiterates its recommendation that information on rights be given systematically to all persons apprehended by the police, first verbally at the very outset of their de facto deprivation of liberty and, subsequently, in a written form as soon as they are brought into a police establishment. Steps should be taken to ensure that detained persons are always given a copy of the "declaration of rights" (and allowed to keep it in the cell).

Further, despite earlier Committee's recommendations (and assurances by the Bulgarian authorities given in their responses to previous reports and again at the outset of the 2017 visit), the forms available in most of the police establishments visited were still only in Bulgarian. Consequently, ***the CPT reiterates its recommendation that the form on rights be made available in an appropriate range of languages.***

37. Several detained foreign nationals interviewed by the delegation claimed that they had been made to sign documents in the Bulgarian language without knowing their content. As mentioned above, no written information on rights was generally available in languages other than Bulgarian and some foreign nationals alleged that they had not been provided with any information (even verbal) in a language they understood. Of even more concern were the few allegations according to which detained persons had not been provided with an interpreter before the first court hearing, including during police interviews.

The Committee recommends that effective measures be taken to ensure that detained foreign nationals who do not understand Bulgarian are promptly provided with the services of an interpreter and are not requested to sign any statements or other documents without this assistance. Reference is also made to the recommendation in paragraph 36 above."[43]

In its 2017 Concluding observations concerning the sixth periodic report of Bulgaria, the UN Committee against Torture also expressed concerns that police detainees are not effectively notified about their rights. In this regard it makes the following recommendations:

*"**10. The State party should ensure that all fundamental legal safeguards against torture are guaranteed in practice and not merely in law for all detained persons, including arrested persons and those in administrative detention, from the outset of their deprivation of liberty, in accordance with international standards. The State party should monitor the provision of such safeguards to persons deprived of their liberty and should ensure that any official who fails to provide them in practice is subjected to disciplinary or other appropriate punishment. Safeguards should cover the right of detainees to:***

***(a) Be promptly informed, in a language that they understand, both orally and in writing, of their rights, including by being served with the written letter of rights; be given the reasons for their arrest and the charges against them; and to sign a paper confirming that they have understood the information provided to them**".*[44]

Nevertheless, these recommendations did not trigger any major developments or trends in the national legislation.

2. LEGAL AID

(i.e. legal costs and legal representation fees)

2.1 Fees and mandatory (or not) character of legal representation

Is the representation by a lawyer mandatory during litigation concerning the conditions of detention and, more generally, the internal status (exercise of the fundamental rights inside the prison) and external status (access to an early release measure for medical reasons)? Is access to courts subject to the payment of a fee?

Article 56 of the Bulgarian Constitution guarantees the right to personal legal defence of citizens when their rights are violated or threatened, and their right to appear before any state institution accompanied by a legal counsel. In the sphere of criminal proceedings, Article 30, para. 4 of the Constitution expressly proclaims the right to legal counsel from the moment a person is detained or is being charged as an accused.

Representation in criminal proceedings

The right of the accused person to have a legal counsel is part of his/her more complex right to legal defence, which is a basic principle of criminal proceedings in Bulgaria[45]. This right is stated, among

[43] Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 6 October 2017, para. 37-37.
[44] UN Committee against Torture, Concluding observations on the sixth periodic report of Bulgaria, published on 15 December 2017, para 10.
[45] CPC, Article 15.

other fundamental procedural rights of the accused, in Article 55, para. 1 of the CPC[46]. The role of the legal counsel is regulated in detail in the CPC. A legal counsel of the accused in the trial may be any professional lawyer as well as the spouse or a relative in the ascending or descending line of the accused[47]. The legal counsel is a party to the criminal proceedings with independent procedural rights and obligations identical for the two categories of legal counsels – with or without a lawyer's practising certificate[48]. There is no limit to the number of legal counsels the accused may have in the proceedings.

In terms of whether the participation of a legal counsel is mandatory, defence under CPC is divided into three types: absolutely mandatory, conditionally mandatory and voluntary[49]. The law requires the mandatory defence to be carried out by a lawyer. Article 94, para. 1 of the CPC lists the following hypotheses of absolutely mandatory protection: 1) the accused is a minor; (2) the accused suffers from physical or mental disabilities which prevent him/her from defending himself/herself; 3) the trial is for a crime for which deprivation of liberty of not less than ten years or another more severe punishment is provided; (4) the prosecutor has requested that the court should impose the pre-trial supervision measure of detention in custody on the accused or the accused has been detained; (5) the case is tried in the absence of the accused. Besides these, there are other hypotheses of absolutely mandatory defence, including these: when the case is resolved by settlement [50] and during an expedited procedure[51]. In the case of absolutely mandatory protection the participation of a legal counsel does not depend on the will of the accused persons; if they have not authorized a lawyer, a legal aid lawyer is appointed by the criminal procedure authority[52].

Conditionally mandatory defence applies in the following two hypotheses: when the accused does not have command of the Bulgarian language and when the interests of the accused persons are contradictory and one of them has his/her own legal counsel. In such cases, access to a lawyer is mandatory unless the accused expressly states that he/she does not wish to have a lawyer.

Voluntary defence may be by choice or by appointment. In the case of voluntary defence by choice, the accused person authorizes a legal counsel (lawyer or not) by his/ her own choosing and at his/her own expense. In the even of mandatory defence, the authorized legal counsel has priority over appointments made by the criminal procedure authorities. The main hypothesis of voluntary defence by appointment is defined in Article 94, para. 1, item 9 of the CPC. According to it, a legal aid lawyer is appointed to the

[46] CPC, Article 55: (1) The accused has the following rights: to know with what crime and on the grounds of what evidence he/she is charged; to give or refuse to give explanations about the charge; to acquaint him/herself with the case, including information obtained through the use of special intelligence devices, and to make the necessary extracts; to provide evidence; to participate in the criminal proceedings; to make requests, remarks and objections; to make the last statement; to appeal against acts that violate his/her rights and legitimate interests and to have a legal counsel. The accused has the right of his legal counsel to participate in investigative and other procedural actions with his/her participation unless he/she expressly waives this right. (2) The defendant is also entitled to the last word. (3) (New, SG No. 32/2010, in force since 28.04.2011, amended, SG No. 21 of 2014) An accused person who does not have command of the Bulgarian language has the right to interpretation and translation in criminal proceedings into a language that is understandable to him/her. The accused shall be provided with a translation of the charging decree, the court's ruling for imposing pre-trial supervision, the indictment, the judgment of the court, the judgment of the appellate instance and the judgment of the cassation instance. The accused has the right to refuse translation in accordance with this Code when he/she has a legal counsel and his/her procedural rights are not violated.

[47] CPC, Article 91 (1),(2).

[48] CPC, Article 99.

[49] On the subject of the various classifications of the defence conducted by a legal counsel in criminal proceedings, see Chinova, M., *Dosadebnoto proizvodstvo po NPK. Teoriya i praktika* [Pre-trial Proceedings under the CPC. Theory and Practice], Sofia, 2013, pp. 202–225; Davidkova, E., *Zashtitnikat v nakazatelniya protses na Republika Balgariya* [The Legal council in the Criminal Proceedings of the Republic of Bulgaria.], Sofia, 2017, pp. 66–111.

[50] CPC, Article 381 (1).

[51] CPC, Article 372 (2).

[52] CPC, Article 94 (3).

accused, if he/she is unable to pay for a lawyer, wishes to have a lawyer and the interests of justice so require.

Representation during administrative detention

Unlike the CPC, the legal regulation of the institute of the legal counsel outside the formal criminal proceedings and the right of legal counsel of *de facto* suspects is laconic. The Ministry of the Interior Act[53], the Customs Act[54], the Military Police Act[55] and the State Agency for National Security Act[56] provide that persons who are detained as suspects of a crime have the right to access to a lawyer. Access to a lawyer is voluntary, which puts them at a much more disadvantageous situation than accused persons in formal criminal proceedings. The national law does not regulate the right of suspects who are detained to be assisted by a lawyer during operative (informal) investigative activities, such as operative interview, operative experiment, etc.

Representation in civil and administrative proceedings

The general rule is that in civil and administrative judicial proceeding representation by a lawyer is not mandatory. The legislation allows litigants to be represented by way of authorization by professional lawyers, in-house lawyers (for companies and state bodies) or by my close relatives (parents, grandparents, children, husband/wife). Pursuant to Article 71 (2) of the Anti-discrimination Act, NGOs, working in public benefit and trade unions may bring legal actions on behalf of persons whose rights are violated.

In some cases, representation in judicial proceedings is mandatory. Article 29 of the Civil Procedure Code determines those instances, in which the court has an obligation to assign a legal aid lawyer to act as a special representative of parties to the proceedings who:1) lack legal capacity and do not have legal representative, where urgent legal actions with their participation are required; 2) lack legal capacity, where a conflict between their interests and the interests of their legal parents or custodians is established; 3) have disappeared, are absent or whose address is unknown. Under Article 158 (3) legal representation of persons who are considered for compulsory medical treatment is also mandatory. In this case the lawyer will be appointed by the court in accordance the Legal Aid Act.

Following amendments to the Administrative Procedure Code, which came into force on 1 January 2019, an appeal before the Supreme Administrative Court must be signed by a lawyer, unless the appeal is related to retirement, health or social insurance case; the party appealing, has been exempt from state fees, is a convicted prisoners or a lawyer himself/ herself.[57]

Representation in prison litigation

In prison litigation, representation by a lawyer is possible, but not mandatory. Legal aid lawyer is awarded only if the general conditions of the means and merits tests are satisfied.

State fees

In cases of public prosecution of crimes, parties are not charged state fees. They are not required to pay deposit for the collection of evidences either. The cost of the proceeding is decided by the court with the sentence or the ruling.

[53] Ministry of Interior Act, Article 72 (5).
[54] Customs Act, Article 16a (5).
[55] Military Police Act, Act, Article 13 (5).
[56] State Agency for National Security Act, Article 124b (8).
[57] Administrative Procedure Code (2006), Article 242 (4), available in Bulgarian at: https://www.lex.bg/laws/ldoc/2135521015.

In civil and administrative proceedings, legal fees are paid before the proceedings begin or the required actions are performed. However, claimants are not bound to pay costs for collecting of evidences, initiated by the court. Tariff No 1 to the Law on State Taxes for Taxes Collected by the Courts, the Prosecutor's Office sets a flat non-refundable state fee of 10 levs (EUR 5) for initiating court proceedings for challenging of administrative acts. Where the administrative court has the jurisdiction to review the decisions of the penitentiary administration, the 10-lev flat fee applies.

Under the EPDOA, prisoners, claiming damages for inhuman or degrading treatment are required to pay a flat state fee, which is 10 levs or EUR 5 for the first instance court proceedings. However, pursuant to recent amendments in the Administrative Procedure Code, there was a considerable increase in the state fees for appeal before the court of cassation and an introduction of proportionate fees as a percentage of the material interest, as opposed to the fixed fees that were applied previously. Under Article 227a (1) of the Administrative Procedure Act, where there is a material interest, such as in the cases for damages suffered by prisoners as a result of inhuman and degrading treatment, the state fee for appeal for natural persons is proportional and amounts to 0.8 per cent of the material interest, but not more than BGN 1 700 (EUR 850) and in cases where the material interest exceeds BGN 10 000 000 (EUR 5 000 000) - the fee is 4 500 BGN (EUR 2 250).

Proof of payment of the state fee must be submitted to the court along with the complaint. Payment of court fees is only possible by way of bank transfer to the court account. If the payment proof is missing, the court will send a notice to the complainant, setting a short deadline for presenting the document. Failure to complying with the new deadline usually triggers the strike-out of the case.

Pursuant to the Execution of Punishments and Detention Order Act, prisoners detained in prisons and investigative detention facilities are not allowed to possess money in cash. Instead, their money is stored in the prison’s bank account under their name. The maximum amount of money that a prisoner could spent per month equals the national minimum monthly wage, which is currently fixed at 560 levs (EUR 230). Funds can be deposited by anyone outside prison in the prison’s account, by specifying the name of the recipient. Money earned through work in prison are also deposited in the same account. Prisoners who have a deposit may submit a request to the prison administration, asking them to transfer money from the prison account to an external bank account. For this purpose, they should provide the full information about the account the money is to be paid into. The money transfer procedure is not regulated in the law and there are no safeguards regarding timely processing of payments.

Expenses for copying of the court file are regulated by Tariff No 1 to the Law on State Taxes for Taxes Collected by the Courts, the Prosecutor's Office, the Investigation Service and the Ministry of Justice. The price for copying a document is 0,10 levs or EUR 0,05 per page or 0,07 levs or EUR 0,03 per page, if the number of pages copied is more than 50.

2.2 Legal aid scheme

With the adoption of the Legal Aid Act, in 2006, Bulgaria established a new framework for the provision of legal aid in civil, administrative and criminal proceedings. The purpose of the Act is to guarantee equal access to justice and effective legal services. As a result of this new system for the organization of legal aid, a number of negative phenomena have been overcome, including the lack of accountability and control in the provision of legal aid, the lack of criteria for assessing legal aid, and the non-transparent financing of legal aid. Pursuant to Article 2 of the Legal Aid Act, legal aid is provided by professional lawyers (attorneys-at-law), registered to provide legal aid and is funded by the state budget. Responsible for administering legal aid is the Bulgarian National Legal Aid Bureau, an independent state entity, whose structure and functions are regulated by the Legal Aid Act. The responsibilities of the National Legal Aid Bureau include the monitoring and supervision of activities related to the provision of legal aid, the administering of payments for legal aid, the maintenance of the National Register of Legal Aid and the promotion of the legal aid system. Local Bar councils have important role in the administration

of the legal aid system as well. According to Article 18 of the Legal Aid Act, they select individual lawyers to be assigned on a case, exercise control over the services, provided by legal aid lawyers, organize lists of duty lawyers and lawyers providing consultations in the regional consultation centers, provide training to legal aid lawyers, etc. Their work under the Legal Aid Acts is financed by the budget of the National Legal Aid Bureau.

Attorneys wishing to provide legal aid under the Legal Aid Act must file an application with the National Legal Aid Bureau, which must be pre-approved by the respective local Bar council. Successful candidates are included in the National Legal Aid Register.

Article 21 of the Legal Aid Act defines four types of state-funded legal aid:

1. Consultation aimed at reaching a settlement prior to initiating legal proceedings before the judicial and consultation related to the initiation of judicial proceedings.
2. Legal assistance in drafting documents for initiating judicial proceedings.
3. Legal representation in civil, administrative and criminal litigation.
4. Legal representation of individuals detained pursuant to the Ministry of Interior Act, the Customs Act and the State Agency "National Security" Act.

1. Consultation aimed at reaching a settlement prior to initiating judicial proceedings and consultation related to the initiation of judicial proceedings

There are three modes of provision of pre-litigation consultations: through the national telephone helpline; through the regional consultation centers or by way of appointment of an individual legal aid lawyer. There is no specific protocol, governing the procedure and modalities for provision of pre-litigation consultations.

National telephone helpline

The National telephone helpline was set up by National Legal Aid Bureau in 2013 to facilitate access to preliminary legal advice free of charge to a larger number of individuals across the country. The legal aid scheme is regulated by the Legal Aid Act and the Rules for Operation of the National Telephone Helpline. The helpline is organized and managed by the administration of the National Legal Aid Bureau. It operates between 9.00 to 17.00 during week days. Legal advice is provided by lawyers from the Sofia Bar association, who are registered as providers of legal aid. The list of lawyers to work on the helpline is adopted by the National Legal Aid Bureau following a selection procedure, organized once every two years. Eligible to apply for the job are candidates, who cover the following criteria:

- have at least 5 years of professional knowledge and attorney experience in one of the areas of law for which they apply - civil, administrative, criminal;
- have no disciplinary sanctions;
- have been registered in the National Legal Aid Register for at least 3 years;
- have computer literacy;
- have excellent communication skills;
- be courteous and patient when listening to the client.

Regional consultation centers

Regional centers are set up to facilitate access to free legal assistance to individuals from vulnerable social groups by using the services of lawyers registered in the National Legal Aid Register. Their activity is regulated by the Legal Aid Act and the Rules for Operation of the Regional Consultation Centers. Legal aid is provided in the form of primary legal advice and consultations in civil, criminal and administrative proceedings. Clients can visit the centers without prior appointment. According to the Rules for Operation of the Regional Consultation Centers, consultations could cover information regarding legal deadlines and documents needed for addressing the problem referred, information, regarding the judicial and other bodies competent to deal with the problem, rules and legal procedures, the as well as an assessment of whether further provision of legal assistance/ preparation of documents

for the initiation of judicial proceedings is justified in terms of the benefit it would bring as well as whether the claim is well founded, justified and admissible.

If the problem requires further assistance by a lawyer, the client may apply for legal aid in the form of preparation of documents for litigation and legal representation in court by submitting an additional request for legal aid to the National Legal Aid Bureau. In this case, the client may choose to be assisted and represented by the lawyer, who has provided the preliminary advice. Where the problem is not within the scope of the services, provided by the center, clients may be referred to other authorities and professionals.

Regional consultation centers are established by a decision of the respective Bar council, which is responsible for the overall organization and management of the service, including for the following: to provide the required infrastructural facilities for the center; to organize the weekly or monthly schedule of the legal aid lawyers, providing consultations; to adopt internal rules for case management; to review and certify lawyers' timesheets and to forward them to the National Legal Aid Bureau for reimbursement. Local Bar councils are also responsible for promoting the services of the center, by disseminating information materials to state and municipal institutions that work with socially and economically vulnerable persons, including to shelters for victims of violence, residential care for asylum seekers, prisons.

2. Legal assistance in drafting documents for initiating judicial proceedings

This type of legal aid is provided by way of appointment of an individual legal aid lawyer. There is no specific protocol, governing the procedure and modalities for providing such assistance.

3. Duty lawyers

The duty lawyer scheme is envisaged in Chapter Five of the Legal Aid Act. It is available for certain urgent/ emergency cases: cases for imposition of coercive procedural measures, including detention on remand and questioning before a judge in the pre-trial proceeding, as well as in summary proceedings under the Criminal Procedure Code and in proceedings under the Health Act and the Child Protection Act.[58] In these cases, a duty lawyer is appointed if the person has not retained a lawyer of his or her own choice. A duty lawyer is also appointed to suspects who are subject to administrative detention under the Minister of Interior Act, the Customs Act and the State Agency "National Security" Act, provided that detainee is "unable to retain a lawyer on his/ her own".[59]

A duty lawyer is a lawyer, registered to provided legal aid and who has also explicitly agreed that for a certain period of time, but no less than one month, will be on duty to provide legal aid at any time of the day or night, including during holidays and weekends.[60] A request to designate a specific duty lawyer is made by the authority, awarding legal aid, to the respective regional Bar council by phone or in writing no later than three hours before the time scheduled for the relevant proceedings.[61] If necessary, the duty lawyer continues to provide legal aid in all phases of the trial.[62]

2.3 Emergence of a right to legal aid in penal facilities

When and under which political circumstances and policy implementation were the defraying of prison disputes decided?

[58] Legal Aid Act, Article 29 (1).

[59] *Ibid*, Article 29 (2).

[60] *Ibid*, Article 29 (1), (2).

[61] *Ibid*, Article 30 (1).

[62] *Ibid*, Article 30 (4).

2.4 Perimeter of the legal aid regarding prison litigation

What is the perimeter of the legal aid regarding prison litigation? Are certain aspects of prison life (that concern fundamental rights) excluded?

Bulgarian domestic legislation does not lay down a general remedy allowing protection of fundamental rights and freedoms enshrined in the ECHR. As the Court notes in para. 286 of *Neshkov and other v Bulgaria, "*[r]eforms bringing domestic remedial practice into line with Convention requirements have usually proceeded by way of dedicated legislation consisting in amendments to the State and Municipalities Liability for Damage Act 1988 (see *Goranova-Karaeneva v. Bulgaria*, no. 12739/05, §§ 25 and 30, 8 March 2011, regarding covert surveillance; *Zaharieva v. Bulgaria* (dec.), no. 6194/06, § 45, 20 November 2012, regarding court fees under the 1988 Act; *Balakchiev and Others v. Bulgaria* (dec.), no. 65187/10, §§ 20-22 and 25-29, 18 June 2013, and *Valcheva and Abrashev v. Bulgaria* (dec.), nos. 6194/11 and 34887/11, §§ 49-51 and 54-58, 18 June 2013, regarding remedies in respect of length of proceedings; and *Kostadinov v. Bulgaria*, no. 37124/10, communicated on 29 January 2013, regarding compensation for breaches of Article 5 §§ 2-4 of the Convention)". The 2017 prison legislation reform introduced a new procedure specifically designed for examine claims concerning conditions of detention, that allege violation of Article 3 of the Convention. It could not be applied with regard to other violations of the fundamental rights of prisoners, such as the right to family life.

There is contradictory case law regarding the jurisdiction of courts to review decisions, actions and inactions of prison administration that affect fundamental rights and freedoms of prisoners. It is still widely considered that administrative courts, which are in principle vested with the powers to exercise scrutiny over the decisions of the executive branch, do not have jurisdiction to intervene in the prison context, unless explicitly stated otherwise in the legislation. Bulgarian penitentiary legislation confer jurisdiction to courts to review only a limited number of such decisions, including transfer, administrative and disciplinary segregation, change of regime, confiscation of prisoners' property. Other measures of restriction, such as imposing restrictions on remand prisoners' right to correspondence, telephone calls and visits with certain persons, imposed by the prosecutor or the court are not explicitly mentioned as being subject to judicial review. What is also considered problematic is that in many occasions the legislation formulates privileges rather than rights of prisoners, which privileges could be rejected without any justification and without possibility for judicial intervention. Therefore, although the Legal Aid Act does not impose any specific limitations with respect to prison litigation, the dominating legal doctrine significantly limits prisoners' access to court for the purposes of challenging prison authorities' decisions.

What is the scope of legal aid granted for criminal proceedings in terms of dealing with prisoners' rights issues? In other words, does the legal aid granted for a criminal case provide for additional fees if the lawyer handles a proceeding linked to the defendants' rights within the prison?

Article 26 (2) of the Legal Aid Act lays down the principle of continuity of the legal representation - in the absence of specified reasons, the legal aid lawyer, having accepted a case, continues to provide legal aid to the person until the case is completed. According to § 2 of the additional provision of the Legal Aid Act legal aid, granted in civil cases covers also legal services in subsequent enforcement procedures.

However, legal aid in criminal proceedings is awarded to accused persons as a guarantee of their right to fair trial in criminal proceedings. Its scope does not cover other issues, not directly related to the criminal proceedings, such as complaints related to detention conditions or measures of security. Legal aid lawyers could request reimbursement if their fees, only if formally appointed to work on the specific case. For example, if a remand prisoner wants to receive compensation for damages, caused by inhuman and degrading treatment, resulted from detention conditions, the legal aid lawyer that represents him/ her in the criminal proceedings would not be entitled to receive additional fees for

assisting his/ her client outside the criminal case. The prisoner may apply for pre-litigation assistance for drafting the claim for compensation by submitting a written request to the National Legal Aid Bureau, along with other documents, proving his/ her poor financial status. With the application for legal aid, the prisoners may request from the National Legal Aid Bureau to appoint him/ her the same lawyer as in the criminal proceedings. In the judicial proceedings the prisoner should again request to be granted legal aid, this time – from the administrative court.

2.5 Scope of the compensation

What exactly does legal aid (that does not relate to criminal proceedings) take care of in terms of acts to be done by the lawyer? Do the texts provide for the overall management of the case, or do they differentiate between the different acts performed by the legal professional (pleadings, visiting clients in detention, hearing before the court, etc.)?

Under Article 37 (1) of the Legal Aid Act, compensation of legal aid work is done in accordance with the type and quantity of the performed activity and is determined in an ordinance of the Council of Ministers on proposal of the National Legal aid Bureau. The legal aid work compensation system, as established by the Ordinance on the Remuneration of Legal Aid,[63] provides for payment of lump sums for overall management of the case per court instance. Payment per act performed is also possible, but only where lawyers are appointed *ad hoc* for a specific act (interrogation of the accused person before the court, plea bargaining, etc.), and not for the entire case. The maximum possible payment per case could be enhanced by 50 per cent, under different circumstances, including when the lawyer has participated in more than three court hearings for the entire term of the appointment.

Pursuant to Article 38 (5) of the Legal Aid Act, travel and accommodation expenses, incurred by lawyers for visiting clients, who are detained in prisons or other detention facilities or for court appearance in city, different from lawyers' place of registration, are subject to reimbursement in accordance to the rules, set in the national legislation.

2.5 Eligibility to legal aid

Pre-litigation assistance
Eligible to receive legal aid in the form of pre-litigation legal consultation or assistance, provided by legal aid lawyers, including by lawyers at the regional consultation centers, are persons who meet one of the conditions set in Article 22 (1) of the Legal Aid Act or whose income does not exceed the poverty line set for the country.

Pursuant to Article 22 (1), access to legal aid is granted to the following categories of vulnerable persons:

- persons and families, who are eligible for monthly social welfare benefits or heating benefits;
- persons benefiting from social or integrated health and social residential services, pregnant women and mothers at risk of abandoning their children, using social services to prevent abandonment;
- children placed in foster families or in families of relatives;
- children at risk within the meaning of the Child Protection Act;
- victims of domestic or sexual violence or trafficking in persons who do not have sufficient financial means and wish to be assisted by a lawyer;

[63] Council of Ministers (2006), *Ordinance on the Remuneration of Legal Aid*, available in Bulgarian at: https://www.nbpp.government.bg/images/%D0%9D%D0%90%D0%A0%D0%95%D0%94%D0%91%D0%90_%D0%97%D0%90_%D0%97%D0%90%D0%9F%D0%9B%D0%90%D0%A9%D0%90%D0%9D%D0%95%D0%A2%D0%9E_%D0%9D%D0%90_%D0%9F%D0%A0%D0%90%D0%92%D0%9D%D0%90%D0%A2%D0%90_%D0%9F%D0%9E%D0%9C%D0%9E%D0%A9.pdf

- persons seeking international protection under the Law on Asylum and Refugees, who do not benefit from legal aid on another legal ground;
- migrants, who are imprisoned in accordance to the Law on Foreign Nationals in the Republic of Bulgaria who do not have sufficient financial means and wish to be assisted by a lawyer;
- stateless persons who have been refused or withdrawn the status of a stateless person in Bulgaria or the procedure for granting the status of a stateless person has been discontinued, if they do not have sufficient means and wish to be consulted by a lawyer.

Where persons, applying for legal aid fail to certify one or more of the circumstances, listed in Article 22 (1), assessment on the legal aid eligibility should be conducted on the bases of the facts, established by documents from the relevant competent authorities and according to the poverty line determined for the country. In 2019, the poverty line is 348 levs (EUR 174) per person.

Representation in civil and administrative proceedings
Under Article 23 (3), eligible to receive legal aid in the form of representation in civil and administrative cases are individuals, who are unable to pay lawyer's fees. The assessment of the ability of the applicant to pay for a lawyer is performed by the court in the case, based on the following factors: income of the applicant and his/ her family, his/ her property status, state of health, employment, age and other circumstances. Legal aid could be refused also if the court determines that granting of legal aid is not justified in terms of the benefit that such aid would confer on the applicant of legal aid as well as if the claim is manifestly unfounded, unjustified, or inadmissible.

Representation in criminal proceedings
Under the Criminal Procedure Code, legal aid lawyer is appointed in cases where legal representation by a lawyer is mandatory, provided that the accused party has not retained a lawyer by her/ his own choosing. In these cases, the economic situation of the accused persons or their legality of residence are without legal relevance for the award of legal aid. Article 94 (1) of the Criminal Procedure Code enumerates seven grounds of mandatory defence. In five of them, representation by a lawyer is considered absolutely mandatory (not subject to a waiver, even against the will of the accused party), on the basis of the seriousness of the offence or the vulnerability of the accused persons, without consideration of their financial situation. These cases are as follows: 1) the accused is a child (under the age of 18); 2) the accused suffers from a mental or physical disabilities, which prevents him/her from assuming his/her own defence; 3) the case involves a crime, punishable by life imprisonment or imprisonment of at least 10 years; 4) the accused is detained; 5) the case is heard in the absence of the accused person. In case the accused does not have sufficient command of Bulgarian language or the interests of the co-defendants are in conflict and one of them has a lawyer, representation by a lawyer is mandatory, but could be waived by the accused.

The accused is also eligible for legal aid, if the following conditions are cumulatively fulfilled: the applicant lacks sufficient financial resources to meet the costs of the defence; representation by a lawyer is required in the interests of justice and the applicant wishes to be represented by a lawyer.[64]

Representation during administrative detention
According to Article 28 (2) of the Legal Adi Act, persons detained under the Ministry of Interior Act, the Customs Act and the National Agency "State Security" Act are granted legal aid, "if they could not authorize a lawyer".

2.6 Choice of the lawyer

[64] CPC, Article 94 (1)8.

Can the detainee choose his/her lawyer in case he/she is granted legal aid (not directly related to criminal proceedings)?

Pursuant to Article 18 (3) of the Legal Aid Act, where legal aid is granted, the local Bar councils appoint the individual lawyer to the case. The general rule is that lawyers are selected from the National Legal Aid Registry, while taking into account the professional experience and qualification of the attorney with regard to the type, factual and legal complexity of the case and their current workload. If the law requires the appointment of a duty lawyer, the selection is made among the lawyers, included in the list of duty lawyers list of the local Bar council.

According to Article 25 (6) of the Legal Aid Act, where possible, beneficiaries of legal aid, regardless of the type of the proceedings, are appointed a lawyer of their choice, provided that he/ she is enrolled in the National Register of Legal Aid Lawyers. The Register is available online on the webpage of the National Legal Aid Bureau. However, detainees are not allowed access to internet.

While in police custody, detainees should be provided with the list of legal aid lawyers on duty from which to choose.[65] No similar rule applies with regard to accused persons, detained in investigative detention facilities or prisons. With the recent amendments to the CPC, a new paragraph 2 was added to Article 55, proclaiming the right of accused persons to receive general information facilitating their choice of a defence council in the criminal proceedings. There is no further clarification on the exact obligations for the authorities to provide information and the nature of that information.

2.6 Application for legal aid

In cases of mandatory legal representation in criminal proceedings, accused persons who have not retained their own lawyer, are awarded legal aid by virtue of the law. Accused persons, who are detained in the course of the criminal proceedings are entitled to mandatory legal representation.

Pre-litigation assistance
Pursuant to Article 22 (2) of the Legal Aid Act, applicants for legal aid for pre-litigation assistance or consultation submit a standard application form and a declaration for family and property status, which are available on the website of the National Legal Aid Bureau and in the offices of the Bar associations. Pre-printed forms are not available in prisons and detention facilities.

Along with these, applicants, falling within the scope of Article 22 (1) of the Legal Aid Act, are required to attach documents, certifying their socially or financially disadvantaged status. Depending on the particular eligibility ground, these documents might be: order from the social welfare services certifying eligibility for monthly social welfare benefits; contract with specialized institution for granting social services – contract with a house for elderly people, contract for granting social services with centres for rehabilitation and social integration of disables people as well as with centres for temporary lodging of homeless people, etc.

For applicants who do not qualify for legal aid under the conditions of Article 22 (1) of the Legal Aid Act, a special means test apply. Pursuant to Article 22 (3), the president of the National Legal Aid Bureau will assess their eligibility for legal aid on the basis the documents submitted and in accordance to the poverty line determined for the country.

According to a newly adopted provision to the Legal Aid Act – Article 22 (4), information about the applicant, that is available to other state authorities, must be now collected *ex officio* by the National Legal Aid Bureau. Previously, failure on the side of the applicants to submit documents, necessary to

[65] Ministry of Interior Instruction No. 8121з-78 of 24 January 2015 on the detention, equipment of police detention facilities and the rules applicable to them, Article 15, (6), (7).

establish their eligibility for legal aid, for example, a contract for placement in residential care, resulted in refusal for granting legal aid.

Application documents should be sent to the National Legal Aid Bureau by post, fax or email or should be delivered in person to their central office in Sofia.

Applications for legal consultations, provided in regional consultation centers are submitted directly to the service providers.

Representation in criminal proceedings
Where legal representation in criminal proceedings is voluntary, the request for legal aid is made before the investigative body or the court, depending on the stage of the criminal proceedings. There is no specific application form envisaged. The request could also be made orally. Pursuant to Article 23 (4) of the Legal Aid Act, accused persons are not required to submit evidences for their lack of financial means to retain a lawyer; such evidences are gathered by the deciding body *ex officio*.

Representation during administrative detention
Police detainees who wish to be appointed a lawyer should indicate this in the letter of rights. They are not required to declare any further facts, to their economic or family status.

Representation in civil and administrative proceedings
Legal aid for representation in civil and administrative litigation is requested from the court orally or in writing. Regardless of the form of the request, the applicant must submit a written declaration for his/ her property status to the court. Legal aid for representation in administrative and civil matters could not be granted prior to bringing the case to the court. In practical terms that means that applicants could request legal aid only after or along with the submission of their claim, complaint or request to the court.

2.7 Evaluation and granting of applications for legal aid

Which bodies are competent to decide whether or not legal aid (not directly related to criminal proceedings) will be granted to the applicant? What is their composition and deliberative rules? Are there opportunities to appeal against refusals? If so, to what procedural requirements are appeals subordinated?

Competent to award legal aid for **pre-litigation assistance and consultation** for initiating litigation is the president of National Legal Aid Bureau. The National Legal Aid Bureau is an independent state body - a legal entity, with budget support to the Minister of Justice. It is managed by a president, who is nominated by the Minister of Justice and appointed by the Council of Ministers for a four-year term which could be renewed once. The president of the National Legal Aid Bureau decides on the application for legal aid within 14 days from the receipt of the application and the supporting documents.

Competent to award legal aid for the purposes of **representation in judicial proceedings** is the court in the proceedings.[66] Refusal to provide legal aid must be motivated and are subject to appeal. Refusals of legal aid for administrative and civil judicial proceedings are subject to appeal before the higher instance court.[67] The complaint must be submitted within seven days of notification of the refusal of the

[66] Legal Aid Act, Article 25 (1).

[67] *Ibid.*

legal aid applicant.[68] The complaint does not suspend the main proceedings unless otherwise ordered by the court.[69] The decision of the appeal court is final.[70]

In case of **administrative detention**, decisions for granting legal aid are taken by the relevant authority, that has ordered the detention.[71] According to Article 25 (1) of the Legal Aid Act, refusals to provide legal aid must be motivated and are subject to appeal, but the respective legislation, regulating powers of administrative bodies to detain suspects of crime do not envisage appeal procedures.

2.8 Remuneration of legal aid lawyers

What are the remuneration levels of legal aid lawyers defined by the law in prison litigation (provide comparison with other matters and indications of the level of net remuneration that this implies)?

Legal aid lawyers could request reimbursement if their fees, only if formally appointed to work on the specific case. The Ordinance on the Remuneration of Legal Aid[72] sets a range of different minimum and maximum fees payable for legal aid lawyer's work depending on the nature of the litigation, the value of the claim and the jurisdiction. Legal aid fees are set significantly lower than the minimum fees that could be charged by lawyers. They have not been updated since the ordinance was adopted in 2006.

Primary legal aid, granted for purposes other than litigation is remunerated as follows:

- Pre-litigation information: 10-30 levs (EUR 5-15)
- Preparation for documents for initiating litigation: 15-50 levs (EUR 7.5-25)
- Legal advice or consultation, provided via the legal aid hotline or in the regional legal consultation centers: 30 lev per hour of actual provision of legal services (EUR 15)

The minimum and maximum fees, envisaged for legal aid lawyers in formal criminal proceedings are set on different levels, in accordance to the stage of the proceedings and the gravity of the charge. For example, fees for legal assistance and representation in pre-trial proceedings of a person who is accused of an offense that carries a non-custodial sentence as a possible penalty is between 50 and 100 levs (EUR 25-50) and between 60 and 120 levs (EUR 30-60) in the trial proceedings.[73] In comparison, the legally defined minimum fee, that could be charged by a lawyer for work on the same type of case, outside the legal aid system is 400 levs (EUR 200).[74] Legal aid lawyers, representing accused persons in proceedings for determination of remand measures are paid between 60 and 120 levs (EUR 30 and 60);[75] the minimum rate of lawyer's fee for the same work, performed outside the legal aid system is 400 levs (EUR 200).[76] The fees for legal aid lawyers, representing accused persons,

[68] Civil Procedure Code, Article 275.

[69] *Ibid*, 277.

[70] *Ibid*, Article 274 (4).

[71] *Ibid.*

[72] Council of Ministers (2006), Ordinance on the Remuneration of Legal Aid, available in Bulgarian at: https://www.nbpp.government.bg/images/%D0%9D%D0%90%D0%A0%D0%95%D0%94%D0%91%D0%90_%D0%97%D0%90_%D0%97%D0%90%D0%9F%D0%9B%D0%90%D0%A9%D0%90%D0%9D%D0%95%D0%A2%D0%9E_%D0%9D%D0%90_%D0%9F%D0%A0%D0%90%D0%92%D0%9D%D0%90%D0%A2%D0%90_%D0%9F%D0%9E%D0%9C%D0%9E%D0%A9.pdf

[73] Council of Ministers, Ordinance on the Remuneration of Legal Aid, Article 15.

[74] Supreme Bar Council, Ordinance No. 4 of 9 July 2004 on the Minimum Attorneys' Fees, Article 13(1)1, available in Bulgarian at: https://www.lex.bg/laws/ldoc/2135488240.

[75] Council of Ministers, Ordinance on the Remuneration of Legal Aid, Article 14(1).

[76] Supreme Bar Council, Ordinance No. 4 of 9 July 2004 on the Minimum Attorneys' Fees, Article 28.

charged with a crime punishable by life imprisonment and life imprisonment without parole vary between 300 -500 levs (EUR 150-250) for the pre-trial stage of the criminal proceedings and between 500-1 000 levs (EUR 250-500) for the trial stage of the proceedings.

Duty lawyers, who are appointed to provide legal assistance to police detainees and to accused persons in certain urgent situations, stipulated in Article 28 of the Legal Aid Act are paid between 60 and 120 levs (EUR 30-60), depending to the amount and quality of their services.[77]

Lawyers appointed to provide legal representation in administrative cases are paid between 100 and 200 levs (EUR 50-100).[78] Legal aid provided for pursuing claims for damages is remunerated between 100 and 300 levs (EUR 50-150).[79]

The ordinance sets a special fee for provision of legal assistance and representation in cases under the Execution of Punishments and Detention Order Act and other cases, related to the execution of the sentence, regulated in the Criminal Procedure Code – between 80 and 120 levs (EUR 40 and 60).[80] These levels of remuneration are lower than the remunerations envisaged for representation in general administrative litigation, for example.

The type and amount of the work performed by the legal aid lawyer is certified by a timesheet.[81] Timesheets must be first submitted to the local Bar council for verification.[82] The local Bar council also must propose the amount of the payment to be made to the legal aid lawyer within the limits established by the ordinance, by following the Guidelines for the Determination of Remuneration of Legal Aid Lawyers.[83] Criteria to be considered when determining the fee to be paid in the particular case include: type of the case (for example - trial or plea bargain), length of case, complexity of the case, actual involvement of the lawyer in the case, lawyer's contribution to the result of the case, continuity in the provision of legal assistance, adherence to the quality standards for provision of legal aid, etc.[84] Furthermore, legal aid lawyers could request to be paid up to 50% more than the maximum defined fee for the particular type of case, if they are providing legal assistance at night, to more than one defendant, to a defendant, charged with more than one offence, etc.[85]

Payments are made by the National Legal Aid Bureau via a bank transfer directly to the legal aid lawyers. The general rule is reimbursement of lawyer's fees is made upon completion the pre-trial proceedings and upon completion of the proceeding before the court of the respective instance.[86] Legal aid providers could also apply for an advance payment of their fees, if the respective proceedings take longer than six months.[87]

Legal aid lawyers, providing legal consultations over the national telephone hotline, submit a report on their work for the month to the president of National Legal Aid Bureau. The report contains information about the number of consultations, the actual time spent by the lawyer on the phone with clients, datils about the beneficiaries of legal aid.

[77] Council of Ministers, Ordinance on the Remuneration of Legal Aid, Article 14 (1).
[78] *Ibid*, Article 24.
[79] *Ibid*. Article 25(1).
[80] *Ibid*, 27g.
[81] Legal Aid Act, Article 38 (1).
[82] *Ibid*, Article 38 (2).
[83] National Legal Aid Bureau, Guidelines for the Determination of Remuneration of Legal Aid Lawyers.
[84] *Ibid.*
[85] Council of Ministers, Ordinance on the Remuneration of Legal Aid, Article 9.
[86] *Ibid*, Article 3 (1).
[87] *Ibid*, Article 3 (2).

Under Article 38 (3) and (4) of the Legal Aid Act, legal aid lawyers are not remunerated for their work or if remunerated, they have to return the payment, if it is established that their legal work was performed negligently or unprofessionally, or if the submission of the timesheet has been delayed.

2.9 Support to non-native speakers

What support is provided under the law to detainees who do not speak or understand the language of the proceedings?

In Bulgaria, Directive 2010/64/EC of the European Parliament and Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings is not transposed with regard to police detention.

According to Article 72 (3) of the Ministry of Interior Act, if police detainees do not understand Bulgarian, they shall be informed of the reasons for their detention in a language they understand. More detailed regulation of that right is made in Instruction No. 8121з-78 of 24 January 2015 on the detention, equipment of police detention facilities and the rules applicable to them, as follows:

"Article 16. (1) A detained person who does not understand Bulgarian or is deaf-mute, deaf, mute or blind, shall be familiarised with the grounds for his/her detention and with his/her liability under the law, and his/her rights shall be explained, including those under Article 15, Paragraph 1, and procedure for action under Article 19 in a language he/she understand, with the help of an interpreter or sign language interpreter.
(2) (Amended – State Gazette, No 30/2016) In the cases under Paragraph 1, the police body that had detained the person, or the operative officer on duty at the Operational Centre on Duty or Operational Unit on Duty shall provide an interpreter or sign language interpreter.
(3) For the services rendered the interpreter/ sign language interpreter shall be entitled to remuneration under terms and procedure stipulated by a special Order by the Minister of Interior."

In January 2018, the legal framework under the MoIA was updated and Article 106a was added, which reads:

"Article 106a. (New, State Gazette No. 97/2017, effective 1.01.2018) (1) In the process of exercise of its powers the police body may use the services of an interpreter or commentator, with the view of familiarisation with the grounds of the actions taken and of explaining rights to a person who does not speak Bulgarian language or is deaf or mute.
(2) The use of an interpreter, sign language interpreter or any other person fluent in the relevant language and the determination of remuneration shall be made under terms and procedure prescribed by ordinance of the Minister of Interior."

The law however does not provide for a duty of the police to ensure translation during lawyer/client communications. The Legal Aid Act also does not provide for covering the expenses of the lawyer by the National Legal Aid Bureau. There is also no requirement in the Bulgarian legislation to secure translation of documents to persons detained under Ministry of Interior Act.

Accused persons, who do not understand Bulgarian language, are entitled to interpretation and translation in a language they understand, as proclaimed in Article 55 (4) the Criminal Procedure Code. Mode detailed regulation of the right is stipulated in Chapter 30a of the Criminal Procedure Code, which was adopted in 2014 as a result of the transposition of Directive 2010/64/EC on the right to interpretation and translation in criminal proceedings. The right to interpretation and translation covers both pre-trial and trial proceedings. The accused party shall be provided a written translation of essential documents, including charge sheet; the court's rulings imposing a remand measure; the indictment; the conviction ruled; the judgment of the intermediate appellate review instance; and the judgment of the cassation

instance. Other documents could also be translated, where they are of substantial importance for exercising the right to defence. The investigative body or the court may refuse to provide translation or oral interpretation of certain documents. These decisions are subject to appeal before the higher standing prosecutor or court. An interpretation should be provided in all investigative and procedural actions, involving the accuse persons. The communication of the accused persons and their legal counsels should also be interpreted, precisely their communication regarding the interrogation of the accused party or the preparation of requests, remarks, objections and appeals. Where this will not hinder the exercise of the right to defence, interpretation may be performed through a video or phone conference or another technical means. The law envisages also a possibility for the accused party object against the accuracy of the translation at any stage of the proceedings. The accused party has the right to waive translation, where he/ she has a lawyer and his/ her procedural rights are not violated.

Penitentiary legislation does not provide for the right to interpretation, translation or other assistance for non-Bulgarian speaking inmates. This applies to all proceedings taking place before a penitentiary body, including disciplinary proceedings.

According to Article 14 (2) of the Administrative Procedure Code parties to administrative proceedings who do not speak Bulgarian language are appointed an interpreter.

2.10 Exemption of costs for the legal aid beneficiary

Is the legal aid beneficiary exempted from the payment of expert fees and other legal fees (interpreter, copy of file…)?

The budget of the National Legal Aid Bureau does not provided funds for expenditures during the proceedings. In administrative litigation, claimants may apply for exemption of payment of state and other due fees (expert fees, translation, etc.), related to the lawsuit based on lack of sufficient resources. The request should be submitted to the court in the proceedings. Beneficiaries of legal aid are not automatically considered exempted from paying legal fees. According to Article 83 (2) of the Civil Procedure Code, which also applies in administrative litigation, when deciding on the requests for exemption, the court takes into consideration the following circumstances, relevant to the situation of the applicant:

- incomes of the person and the person's family
- property status, as certified by a declaration
- family status
- health status
- employment status
- age
- other relevant circumstances.

If exempted from payment, the fees are covered from the court's budget.

Under Article 189 (2) of the Criminal Procedure Code, costs for translation and interpretation during the pre-trial proceedings are at the expense of the investigative body, and those during court proceedings are at the expense of the court.

Expenses for copying the file are not subject to exemption, regardless of the nature of the proceedings.

2.11 Financial consequences of the failure of the proceedings for the legal aid beneficiary

What are the possible financial consequences of the failure of the proceedings for the legal aid beneficiary[88] (reimbursement of court costs, etc.)?

Pursuant to Article 25 (1) of the Legal Aid Act, if found guilty or have lost the case, beneficiaries of legal aid are liable for the entire cost of representation, regardless of their financial situation. The National Legal Aid Bureau has the regress right to reclaim the sums paid for legal aid lawyer's fees from the losing party. The general rule is that the losing party is ordered to pay other case-related expenses such as experts' and attorneys' fees, incurred by the winning party, where the latter have made a request to this effect. If the claim is partially successful, the losing party must reimburse the plaintiff's cost for legal assistance in proportion to the extent of their success. If the claim for damages is partially successful, the losing party must reimburse the plaintiff's cost for legal assistance in proportion to the extent of their success.

The court can reduce the attorney fee to be paid if its amount does not correspond to the legal and factual complexity of the case. In criminal proceedings, in presence of several sentenced persons, the court shall determine the costs payable by each of them.

According to Article 190 (1) of the Criminal Procedure Code, where the accused party is acquitted or criminal proceedings are terminated, all costs remain at the expense of the state. The costs for legal aid remain at the expense of the National Legal Aid Bureau. Where the accused party is found not guilty on some charges, the court shall sentence the accused to pay only the costs incurred in connection with the charge under which he/she has been found guilty.

In administrative and civil proceedings, if the claim, made by the beneficiary of legal aid is successful, the National Legal Aid Bureau has the regress right to reclaim the sums paid for legal aid lawyer's fees from the losing party.

2.12 Opportunities in case the legal aid beneficiary is not satisfied with his counsel

What opportunities are granted to the legal aid beneficiary who is unsatisfied with his counsel (briefly)?

The Bar associations exercise quality control of the actual services provided by legal aid lawyers. However, there are no clear indicators for the measurement of the quality. The National Legal Aid Bureau, on the other hand, has the power to check with the relevant authorities whether the scope and type of work that is reported in timesheets as performed by legal aid lawyers correspond to the actual situation. It might initiate investigations on particular cases by its own motion or upon complaints, submitted by authorities, granting legal aid or by legal aid beneficiaries. Legal aid lawyers, who are disciplinary sanctioned and those who are found liable for professional misconduct or of incompetency are temporarily ineligible for legal aid assignments and removed from the register of legal aid lawyers.

3. ORGANIZATION OF BARS AND LAWYERS' ACTION IN DETENTION

3.1 Regulations of bars' involvement in legal support to detainees

How is the involvements of the bars in legal support to detainees regulated (at the national level, at the level of local bars…)? In particular, is the organization of legal consultation in detention mandatory for the bars?

3.2 Lawyers specialized in detention/penitentiary law

[88]Legal aid not directly related to criminal proceedings.

Are there special statutory qualifications for lawyers specialized in detention/penitentiary law? Is there mandatory continuous training in prison law for criminal lawyers (or others)?

An introduction in execution of punishments law (prison law) is offered in some law faculties as an elective course. All practicing lawyers admitted to the Bar are subject to mandatory continuing legal education in any area of law they prefer. Attendance of minimum eight hours of training per year in any area of lawyers' interest is required.[89] Continuing training is offered primarily by the national bar training center, an entity, established by the National Bar Council, but also by the local bar associations, the National Legal Aid Bureau and by private companies. However, none of them offers courses or other forms of specialisation on prison law. [90]

3.3. Practical arrangements for carrying out legal assistance missions

How are the practical arrangements for carrying out legal assistance missions in custody specified by the law (regularity, type of premises, etc.)? Do lawyers have access to accommodation facilities in case of proceedings related to material conditions of detention? Do they have access to the penitentiary file of their client?

The Attorneys Act regulates the legal profession and the rights and obligations of lawyers. According to its Article 34, lawyers have the right to meet with their client in private, including when they are detained or imprisoned. During lawyer-client meeting, lawyers are entitled to pass and receive written materials in connection with the case, the contents of which are not subject to control by the detention authorities. Further, Article 34 (3) stipulates that conversations during meetings may not be tapped or recorded, but meetings may be monitored.

Police detention facilities
Pursuant to Article 76 of the *Ministry of Interior Instruction No. 8121з-78 of 24 January 2015 on the detention, equipment of police detention facilities and the rules applicable to them*, lawyer-client meeting premises in police stations must be soundproofed and provided with guaranteed primary and emergency lighting, chairs, tables and other objects, fixed to the floor and/or the walls. They should ensure the confidentiality of the conversation, while allowing for the possibility of visual control through a glass door or other appropriate means.

Investigative detention facilities and prisons
Article 76 of the EPDOA stipulates prisoners' right to be consulted by a lawyer of their choice; to meet with lawyers in private at any time of the day, as well as to correspond with lawyers via telephone at any time during the day. Identical rights are guaranteed in Article 256 (1) of EPDOA, regulating the status of remand prisoners. According to Article 254 of EPDOA, remand prisoners have to right to meet with their lawyer without immediately after the arrest. Articles 7 and 8 of the Instruction by the Prosecutor General of 11 April 2011 on the actions that the bodies of the pre-trial proceedings can undertake with respect to attorneys provide that investigative bodies should interpret their obligation to provide detained persons access to a lawyer "immediately after the arrest" as meaning no later than two hours after the detention, and when lawyers visit the place of detention, access to the detained person should be given within 30 minutes of their arrival.

Prisoners' meetings with lawyers can be monitored, but their conversations may not be listened to or recorded. Further practical arrangements related to the lawyer-client meeting in prisons are regulated by Article 74 of the Regulations for the Implementation of the Execution of Punishments and Detention

[89] Ordinance No. 4 for Maintaining and Enhancing the Qualification of Attorneys and Attorneys of the European Union (title amended – SG 69 of 2018), Article 8(1), available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2135515374.
[90] The archive of the annual programmes of the national bar training center for the period 2014-2017 is available in Bulgarian here: http://advocenter-bg.com/obucheniya/provedeni-obucheniya/.

Order Act. It lays down that meetings should take place in a specially furnished rooms, without however elaborating further on the matter. There is no express requirement for organising lawyer-client meetings through a glass barrier, which is the rule in practice. When entering prison, lawyers must authorise their professional capacity by presenting a valid lawyers' card. Paragraph 3 of the same provision introduces a restriction to prisoners' right to meet with their lawyer at any time of the day, by stipulating that meetings in off-hours, over the weekend or during holidays may be held only with the permission of the prison director. Further, lawyers may waive their privilege to confidential communication with prisoners, by requesting that the meeting is attended by a custodial officer. There is no legal limitation, regarding the frequency or the duration of the meetings. Lawyers and clients may pass to each other only documents and papers, related to an ongoing or prospect case. Lawyers may not bring in items such as food, money, etc. To prevent smuggling of contraband, prisoners are searched upon completion of the meeting. If internal order is violated, the meeting may be terminated.

4. ROLE OF NGOS, LEGAL CLINICS AND NATIONAL MONITORING BODIES OF PRISON CONDITIONS

4.1 Ability for these organisations to intervene in prison and to provide legal advice

Are human rights NGOs, actors of legal clinics and National Monitoring Bodies (only if providing legal advice) entitled to visit prisons without need of prior authorization? Can they provide legal advice? Can they correspond/meet confidentially with prisoners?

Police detention facilities

Secondary legislation, regulating police detention, provides that international organisations, the Ombudsperson as well as non-governmental organisations have access to and may exercise control over detention facilities as a mechanism for prevention against ill-treatment. According to Article 53 (2) of the *Ministry of Interior Instruction No. 8121з-78 of 24 January 2015 on the detention, equipment of police detention facilities and the rules applicable to them*, representatives of such organisations can conduct independent monitoring of places of police detention and review of the situation there. Findings of individual visits and inspections are recorded in the inspection book, kept at each police detention facility. The possibility for provision of legal information or assistance to detainees by these actors is implicitly excluded.

Representatives of international organisations and international experts can access police detention facilities in accordance to the rules and procedures set in the respective international agreement, ratified by Bulgaria.[91]

With respect to **NGOs**, such monitoring may only be conducted on the basis of a specific agreement between a given entity within the structure of the Ministry of Interior and the NGO. [92] Such an agreement must contain procedures, regulating the monitoring activities, selection criteria of volunteers that are to conduct the monitoring visits, requirements for independence of the volunteers, minimum preliminary preparation of the volunteers.

The Ombudsperson, acting in its capacity of the **National Preventive Mechanism** under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, conducts both announced and unannounced visits to various places and institutions where persons are deprived of their liberty. During visits, the NMP team is authorized to:

- talk to detainees in private;

[91] Ministry of Interior Instruction No. 8121з-78 of 24 January 2015 on the detention, equipment of police detention facilities and the rules applicable to them, Article 53 (2).

[92] *Ibid*, Article 54.

- receive access to all information relevant to the treatment of the persons detained and to the conditions at the place of detention;
- obtain information from the staff at the place of detention;
- to arrange medical examinations of the persons, deprived of liberty.

After each visit, the NPM drafts a report which contains recommendations and suggestions aimed at the improving of the conditions of detention and the treatment of persons deprived of liberty, and at preventing torture and other cruel, inhuman or degrading treatment or punishment. The reports are submitted to the relevant authorities, which are under the obligation to inform the Ombudsperson within one month of the actions undertaken to implement the recommendations.

Investigative detention facilities and prisons

Actors, having access to the penitentiary system for the purpose of monitoring the conditions of detention and treatment of prisoners include: the prosecutor, judges, the Ombudsperson, NGOs, international organisations, supervisory committees, the Ministry of Justice Inspectorate. These bodies are granted different regime of access to detainees; none of them has a specific mandate in providing legal information or legal assistance.

According to Article 5 of the EPDOA, the prosecutor's office supervises the overall process of execution of punishments. **Prosecutors** can make unannounced visits at any time of the day to prisons and investigative detention facilities and meet with detainees in private. Their orders are binding on the penitentiary authorities.

According to Article 6 of EPDOA, **judges** have general authorization to visit prisons and investigative detention facilities and speak to detainees for the purposes of acquiring information about the process of execution of sentences.

The **Ombudsperson**, acting in its capacity of the NPM may conduct unannounced visits to penitentiary institutions at any time of the day, to interview detainees in private and to collect other information, relevant to the prevention of torture, inhuman and degrading treatment. Pursuant to Article 46 of the EPDOA, it may recommend to the Minister of Justice to close, reconstruct or expand a prison or a prison dormitory if the level of overcrowding or the poor hygiene or material conditions prevent prisoners' rehabilitation or are liable to put the inmates' physical or mental health at risk.[93]

According to Article 4 of the EPDOA, **NGOs** have a dedicated role in the execution of punishments. It proclaims that the control and monitoring of the system of execution of punishments is to be carried out by state bodies, organizations and non-profit legal entities, registered for public benefit. Further, NGOs can enter prisons as providers of education, trainings or other services, supporting the rehabilitation and social integration of inmates. NGO's access to penitentiary facilities and regime must be authorized by the central prison penitentiary administration or the Ministry of Justice. For example, the representatives of the Bulgarian Helsinki Committee, which conducts independent monitoring of prison conditions and treatment of detainees, by virtue of an express agreement, can access prisons and investigative facilities without prior announcement within the working hours of the administration, enter all premises on the territory of the facility and conduct interviews with convicted prisoners in private.

Access to remand prisoners is subject to special regulation, regardless of their place of detention. According to Article 253, unrestricted access to remand prisoners is granted to prosecutors, judges, investigative police officers, lawyers and international experts in accordance to the international agreements, in force for Bulgaria. Other actors, such as human rights NGO representatives, police officers and representatives of religious denominations may meet with detainees only upon the explicit permission of the prosecutor, supervising the case (in pre-trial stage) or the trial judge (in trial stage).

[93]EPDOA, Article 46 (1).

During regular visits remand prisoners can meet with persons of their choice, including NGO representatives.

Correspondence
According to Article 256 (1), remand prisoners are entitled to telephone correspondence with their family, relatives and lawyers. The internal rules for receiving access to the telephone are regulated in secondary legislation, adopted by the head of the prison administration and are not publicly available. Detainees have the right to receive and dispatch letters, the written content of which is not subject to control by the prison administration. If allocated in prisons, detainees receive and dispatch their written correspondence through a social inspector, who must control the content of the envelop as a preventive measure against smuggling unauthorized items or money. These rules have general application with regard to detainees' correspondence with the outside world; there are no specific restrictions or privileges, that apply with regard to their correspondence with NGO or NPM representatives.

4.2 Dissemination of legal documents

Can they disseminate legal documents (legal guides, leaflets, brochures) in detention?

During visits, prisoners can receive certain items, listed in an order of the Minister of Justice.[94] This list includes books, magazines, textbooks, personal correspondence. Foreign nationals are entitled to receive items vie post, if the package is sent from abroad. The practice is that with the express authorization of the prison administration, NGOs can donate books to the prison library as well. Normally, leaflets and brochures could also be sent by letter to specific addressees.

4.3 Legal action in court

Do these actors have standing to bring legal action in court (which may compensate for the weakness of the litigation initiated by the detainees themselves)? Can they act on behalf of a prisoner, or represent him? Can they challenge general and impersonal norms?

Pursuant to Article 18 (2) of the Administrative Procedure Code, NGOs and natural persons can represent applicants before administrative authorities if authorized by a power of attorney with notary certification of the signatures. In prison law, NGOs can submit requests and complaints on the behalf of prisoners, if they are explicitly authorized by way of a power of attorney, without the requirement for notary certification of the signatures.[95] In civil, administrative and criminal proceedings however, NGOs could not represent claimants.[96] Prisoners could receive representation only by attorneys-at-law or by close relatives (parents, grandparents, children, husband/wife).[97] The only exception to this rule are the proceedings under the Anti-discrimination Act. Pursuant to Article 71 (2) of the Anti-discrimination Act, NGOs, working in public benefit may bring action on behalf of persons whose rights are violated.
NGOs, active in the human rights field may submit complaints also to the Ombudsperson.[98]

Right to challenge secondary legislation, adopted by an administrative body is granted to persons, organizations and bodies who have legitimate legal interest - whose rights, freedoms or legitimate interests are or may be affected by the norms of that legislation.[99] According to Interpretative Decision No 2 of 12.02.2010 of the Supreme Administrative Court, NGOs may challenge secondary legislation, only if they have legitimate interest justified by the object of the activity and the purposes for which they

[94] EPDOA, Article 86 (4).
[95] EPDOA, Article 90 (2).
[96] Civil Procedure Code, Article 32.
[97] CPC, Article 91(1),(2), Civil Procedure Code, Article 32, Administrative Procedure Code, Article 18 (1).
[98] Ombudsperson Act, Article 24 (2).
[99] Administrative Procedure Code, Article 189 (1).

are established. National courts undertake narrow approach to the interpretation of whether legitimate interest is at stake, often finding NGOs appeals of statutory legislation inadmissible.

The National Preventive Mechanism could not represent litigants in court proceedings.

Under Article 10a of the Ordinance on the Unified Requirements for Acquiring Higher Education in Law and the Professional Qualification “Lawyer”, law faculties of higher education institutions can establish legal clinics for practical training of law students. Legal clinics should provide the opportunity for students to acquire skills necessary for practicing the legal profession through lectures, simulations and working with real clients under a program determined by the respective faculty of law. The work with real clients can only take place after appropriate theoretical training and under the guidance of practicing lawyers.

In 2015 proposed amendments to the Attorneys Act, envisaged that only attorneys-at-law, admitted to the Bar, could provide legal consultations, thus imposing severe restrictions to the work of other legal professionals. The proposal, which was supported by the Supreme Attorneys’ Council, but strongly opposed by various other public actors, was not adopted by the parliament.