Research project EUPRETRIALRIGHTS

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

EMPIRICAL STUDY

The actors of legal protection, their professional practices and the use of law in detention.

Report on BULGARIA

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1. THE NATIONAL CONTEXT

1.1 Spaces of pre-trial detention

Briefly; organisation, variety of spaces of pre-trial detention, including police custody, remand centers and prisons, with a focus on the latter

There are three categories of spaces for pre-trial detention in Bulgaria – detention premises in police stations, investigative detention facilities and prisons.

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. 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;[5] the number of detention premises under the control of the Ministry of Defense was five. However, there is no publicly accessible information about the location of the detention facilities. The National Preventive Mechanism (NPM) recommends that a detailed list of all detention facilities within the Ministry of Interior system should be made public.[6] More detailed regulation of the police detention, including the minimum requirements for the material conditions in police detention cells, regime of detainees, security and visiting arrangements, is stipulated in the *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*.[7]

For many years, conditions of detention in police detention facilities have been of particular concern to the national and international monitoring bodies. According to the latest observations of the NPM and European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT), the lack of bedding, in particular bed linen and mattresses, and food during police custody have been established to be systemic deficiencies.[8]

The Criminal Procedure Code regulates two hypotheses of detention of accused persons in formal criminal proceedings: with an order from the prosecutor for up to 72 hours with the aim

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[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" (2008), 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] Information received from the Ministry of Interior under the Access to Public Information Act, Letter from 29 March 2017.

[6] National Preventive Mechanism (2018). *2017 Annual Report of the Ombudsman Acting as National Preventive Mechanism*, p. 25, available at: https://www.ombudsman.bg/pictures/file/5751_Annual_Report_NPM_2017_EN.pdf.

[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] National Preventive Mechanism (2018), *2017 Annual Report of the Ombudsman Acting as National Preventive Mechanism*, p. 25.

of securing their appearance before the court[9] and with a court order imposing a custody measure on remand.[10] 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[11]. 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. According to the law, the region, where the pre-trial investigation and the trial take place, is the region, where the crime has been committed.[12] This means, that if the detained persons do not live in the same region, where the crime has been committed, they will not be placed in the closest facility to where they live, but in the closest facility to where the crime scene took place.

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

As of 1 January 2019, there were 28 **investigative detention facilities**, six of which were situated on the territory of prisons. Over the last 20 years, the number of the detention facilities has reduced significantly – from 89 in 1999, to 51 in 2004 to 28 in 2019. These facilities accommodate, although in separate cells, all categories of detainees in the criminal proceedings - male and female, adults and juveniles, nationals and foreigners. Depending on the charges, detainees could remain in such facilities for up to 20 months during the pre-trial stage of the proceedings. Investigative detention facilities could also temporarily accommodate convicted prisoners.

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; detainees have no access to organized activities, nor to outdoor exercises. The general rule is that prisoners spend no more than one hour outside their cell. 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 activities and visiting spaces. Several investigative detention facilities, especially those close to the state border (facilities in Russe, Svilengrad, Vidin), are in a state of overcrowding throughout most year [13]

Following the completion of the criminal investigation, by order of the prosecutor, accused persons are transferred to the nearest **prison**. Currently, there are 11 male prisons, one female prison, one reformatory home for boys and one reformatory home for girls. Each of these facilities houses at least one unit for unconvicted prisoners.

Most prisons were built in the first half of the 20th century to specifically serve the needs of the criminal justice system according to the standards applicable at that time. Other buildings had been workers' dormitories, military barracks or public schools, reconstructed under communism into prisons. Nevertheless, prisons provide more favourable material conditions

[9]Criminal Procedure Code (2006), Article 64(2), available in Bulgarian: https://www.lex.bg/bg/laws/ldoc/2135512224.
[10] *Ibid*., Articles 64, 65.
[11] Execution of Punishments and Detention Order Act (2009), Article 241, available in Bulgarian at: https://www.lex.bg/laws/ldoc/2135627067.
[12] *Ibid*, Article 244.
[13] General Directorate "Execution of Punishments" (2018), *2017 Report on the Activity of Sector "Security and Safety at the Investigative Detention Facilities"*, p. 6.

and regime for accused persons than investigative detention facilities, including an opportunity for more hours a day spent outside the cell, access to education, some, although limited opportunities for work or other purposeful activity.

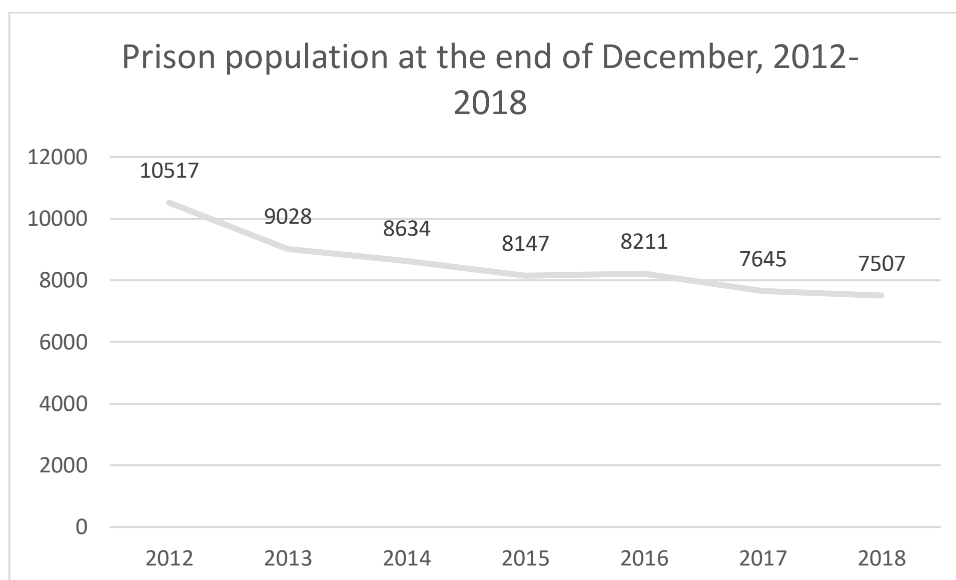
1.2 Main social characteristics of the general detained population in country

The National Statistical Institute publishes annual statistics related to convicted persons. In 2017, the number of persons sentenced by a final judgement were 25 800, of whom 8.3% (2 138) were females.[14] The criminal activity rate for 2017 was 421 per 100,000 persons of the criminally liable population. Compared to 2013, the criminal activity rate has declined by 22%.[15]

As of 1 January 2019, penitentiary institutions' population in Bulgaria was 7 507, comprising of:

- 6 651 individuals allocated to prisons and prison hostels (6 042 convicted prisoners and 609 remand prisoners; 127 foreign nationals, 15 juveniles, 184 life prisoners);
- 856 individuals allocated to investigative detention facilities.[16]

There is a general decreasing trend in the absolute number of **persons detained in penitentiary institutions** (prisons, prison hostels and investigative detention facilities) in Bulgaria – from 10 517 at the end of 2012 to 7 507 at the end of 2018.[17]



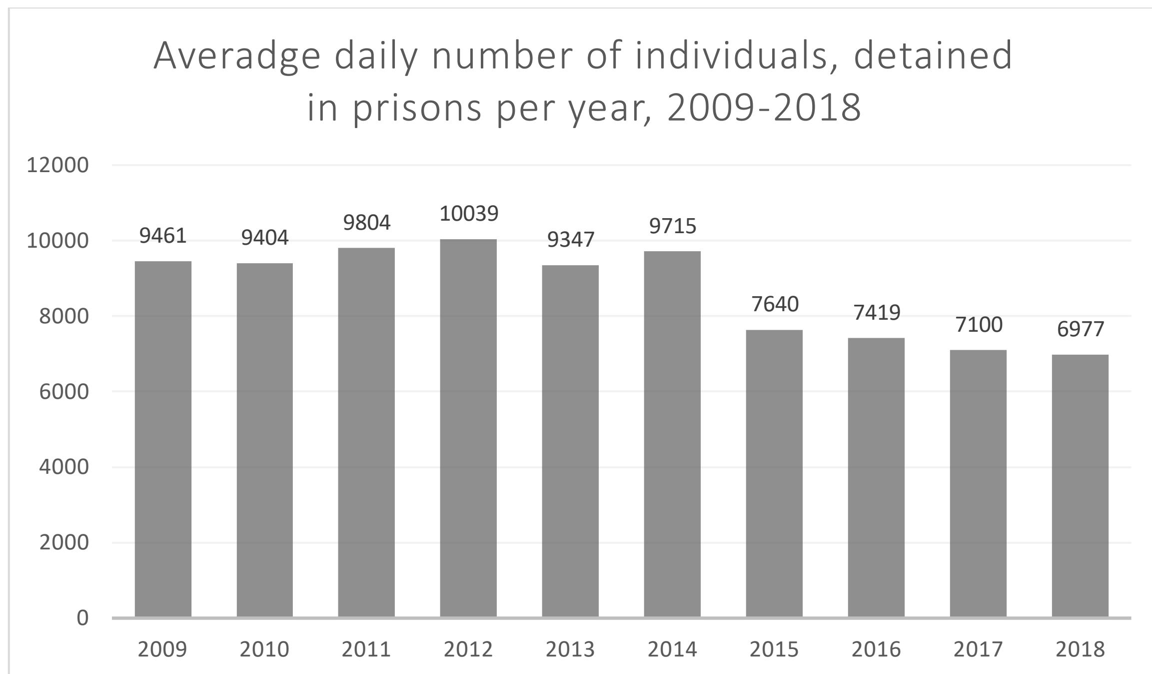
[14] National Statistical Institute (2017), *Persons convicted by chapters of penal code and some kind of crimes and by age and sex of perpetrators*, available at: http://www.nsi.bg/en/content/6260/persons-convicted-chapters-penal-code-and-some-kind-crimes-and-age-and-sex-perpetrators.

[15] National Statistical Institute (2017), Persons convicted by sex - number, structure and rate per 100 000 persons of criminaly responsible population (14 years and above), available at: http://www.nsi.bg/en/content/6269/persons-convicted-sex-number-structure-and-rate-100-000-persons-criminaly-responsible.

[16] Source of information: General Directorate "Execution of Punishments".

[17] Source of information: General Directorate "Execution of Punishments".

On the other hand, over the past ten years the **prison population** (prisons and prison hostels) in Bulgaria fluctuated with the years 2011 and 2012 representing peaks. The latter were due to the previous government's excessively tough policy on crime. The table below represents the trend in the period 2009-2018 measured by the average number of prisoners per day for the respective year.



It could be argued that the share of prisoners from the total population of Bulgaria has increased since 2001 because of the decrease of the general population due to the demographic collapse. This trend is even more expressed among the group of the persons 20-39 years of age (in 2017 more than 50% of the prisoners in Bulgaria are in this age group). This age group was particularly affected by emigration, which resulted in the loss of more than 1.5 mln. Bulgarians since 1990. According to the data from the two censuses of the population, from 2001 and 2011, the population in the age group 20-39 years decreased by 156 000 persons[18].

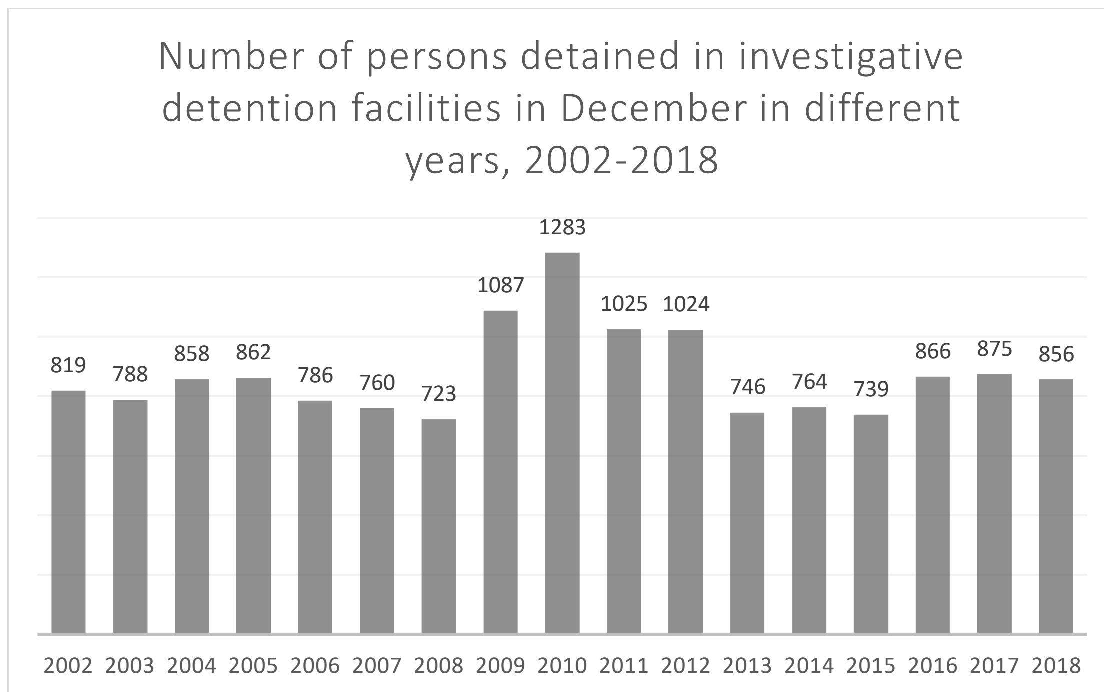
The overall number of individuals detained in **investigative detention facilities** throughout 2018 was 12 618.[19] Compared to 2017, the number has dropped by 10%. Of them, 6 286 were remand prisoners, detained in the course of criminal proceedings, while the rest were convicted persons, temporarily allocated there for purposes such as court appearance, transfer from one prison to another, etc.[20] Statistics show that in 2018 72 % of remand prisoners, allocated to investigative detention facilities served up to two months, 20 % – between two and

[18] Data from the 2001 and 2011 census of population is available on the web site of the National Statistical Institute: www.nsi.bg.

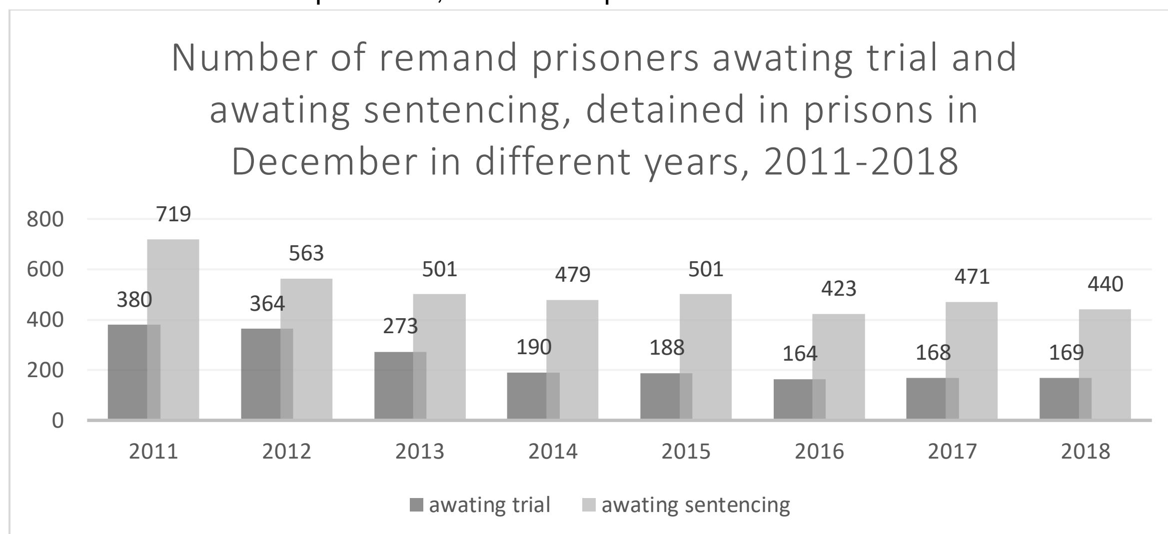
[19] General Directorate "Execution of Punishments" (2019), *2018 Report on the Activity of Sector "Security and Safety at the Investigative Detention Facilities"*, p. 3.

[20] *Ibid*, p.3.

six months and 8 % remained on remand for more than six months.[21] In 2018 the average daily number of detainees in investigative detention facilities has been 951, compared to 1 043 in 2017.[22] Compared to 2017, in 2018 there has been a considerable decrease in the number of foreign nationals detained in investigative detention facilities - from 1 474 to 1 002.



The number of remand prisoners, detained in prisons in 2017 was 1627.[23]



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[21] *Ibid*., p.5.
[22] Ibid, p. 5
[23] General Directorate “Execution of Punishments”, *2017 Report on the Activity of General Directorate “Execution of Punishments”*, pp.7-9. p.3.

Types of convictions/motives for pre-trial detention

According to the official **crime statistics**, in 2017 transport crimes constituted the largest share of convictions (regardless of the imposed punishment) in Bulgaria - 35%, followed by theft, which accounted for 17% of all convictions.[24]

The Council of Europe SPACE I statistics provides percentage breakdown of the main offences of sentenced prison population per country. According to the latest edition of the statistics, the most relevant offences for Bulgaria were robbery and other theft (56%), followed by homicide (12,3%) and road traffic offences (11,5%). Bulgaria has the second highest number of persons imprisoned for road traffic offences and the third highest – for theft, among the member states of the Council of Europe.

There is no official data collated for the motives for pre-trial detention in Bulgaria.

The 2017 annual report of GDEP estimates that around 17% of the prison population lacks any **education**, 2.7% has obtained higher education and 58.44% - has no professional qualification.[25] Inmates are further characterized as illiterate, with "low intellectual capacity", socially vulnerable.[26] According to the prison administration, at the end of 2017, the most numerous **age group** among the prison population was 31-40 (32%), followed by the age group 20-30 (23%).[27]

Official data on the **ethnicity** of prison population is not processed and published regularly. Alternative data is provided by the Bulgarian Helsinki Committee (BHC). In the period May-June 2015, the organization carried out a large-scale survey among 1 691 convicted prisoners from all Bulgarian prisons and prison hostels, whose pre-trial proceedings had been initiated after January 2014.[28] It should be noted that the average daily number of inmates in prisons in 2015 has been 7 640. Thus, the number of persons surveyed made up for a representative sample of all newly-arrived prisoners in the prisons of Bulgaria. Respondents were questioned about their access to legal aid in pre-trial and trial criminal proceedings, occurrence of violence during police arrest, police detention and subsequent detention in the pre-trial proceedings. They were also invited to indicate their ethnicity, based on self-identification, just like in the national census. The ethnic categories, included in the questionnaire were "Bulgarian", "Roma", "Turk" and "Other". The survey revealed that Roma are heavily overrepresented among convicted prisoners, making up 50.1% of the inmates surveyed, followed by 38.8% Bulgarians, 8.9% Turks and 2% of another ethnicity

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[24] National Statistical Institute (2017*), Persons convicted by chapters of penal code and some kind of crimes and by age and sex of perpetrators*.

[25] General Directorate "Execution of Punishments", 2017 Report on the Activity of General Directorate "Execution of Punishments", pp.7-9.

[26] *Ibid*.

[27] *Ibid*., p.6.

[28] Bulgarian Helsinki Committee (2015). *Use of Force of Law Enforcement Authorities against Detained Persons during Police Detention and Pre-Trial Proceeding*s. Available in Bulgarian at: http://bghelsinki.org/media/uploads/documents/reports/special/2015_report_on_police_violence.pdf

1.3 Recent evolutions of initiatives to compensate juridical inequalities among detainees/prisoners

After the 2015 European Court of Human Rights' judgement in the case of *Neshkov and others v. Bulgaria*,[29] prisoners' access to justice in Bulgaria is reported as being in the process of improvement. A major achievement in this respect are the amendments to the Execution of Punishments and Detention Order Act adopted in January 2017, which introduced special preventive and compensatory judicial remedies against inhuman and degrading treatment, available to both pre-trial and convicted prisoners. Courts however still persistently refuse to extend their jurisdiction to all areas of prison life and to exercise judicial review of administrative decisions of prison authorities, unless there is a specific legal ground for this. One such area is the disciplinary fictions of prison governors.

The legislative reform did not address the question of availability of legal aid for prisoners, who claim to be victims of inhuman or degrading treatment. On the other hand, prisoners' right to legal aid in early release proceedings was introduced by an express provision in the Criminal Procedure Code.

1.4 Litigant information

General litigant information

National authorities do not collect information on the litigants' profile within the penitentiary system. There is no information on their age, sex, nationality, class, minorities, diplomas and general level of education, types of convictions/grounds for pre-trial detention, position inside facility: social position within the prison hierarchy, kind of convictions/motives for pre-trial detention, prison past.

Cases

Administrative complaint mechanisms

Decisions and events that affect prisoners can be challenged via a number of 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's office or the Ombudsperson. These institutions gave general competence to review prisoners' complaints. For several categories of decisions of the penitentiary authorities, there are mandatory appeal procedures foreseen in the Execution of Punishments and Detention Order Act.

The annual reports of the penitentiary service in Bulgaria indicate the total number of complaints and requests filled by inmates to the central prison administration - Directorate General "Execution of Punishments", and those filled to or through the prison governors. The

29 European Court of Human rights, *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.

numbers however are not further broken down by issues addressed, outcome or other relevant indicators. The information below is obtained from the 2016 and 2017 annual reports of the GDEP. It applies to prisoners, allocated to prisons and prison hostels.

Year	**No. of complaints and requests, made by prisoners to the Directorate General "Execution of Punishments"**	**No. of complaints and requests, made by prisoners to prison governors**
2017	1 261	27 782
2016	1 189	34 595

More detailed statistics are provided only with regard to the complaints against disciplinary punishments, imposed to prisoners allocated to prisons and prison hostels. Isolation in disciplinary cell as a disciplinary punishment is subject to judicial review. Despite of some recent development of the case law, it is still widely accepted that other types of disciplinary punishments are subject to administrative appeal within the penitentiary system only. The data below indicates that only a marginal percentage of all punishments are being appealed.

	Review of disciplinary punishments, other than isolation in disciplinary cell				**Review of disciplinary punishments, involving isolation in disciplinary cell**			
year	No. of punishments	No. of appeals	Upheld	Overturned	No. of punishments	No. of appeals	Upheld	Overturned
2017	4 221	103	97	6	1 191	147	106	41
2016	2 937	103	97	6	2 003	295	248	47

The number of complaints received by remand prisoners, detained in investigative detention facilities is significantly lower than the one received by persons, allocated to prisons and prison hostels. In 2017 there were 33 complaints submitted through internal complaint mechanism; in 2018 their number was 78.[30]

Regardless of the existence of numerous administrative avenues for redress, the prison complaint system lacks coherence. 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 also 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

[30] General Directorate "Execution of Punishments" (2019), *2018 Report on the Activity of Sector "Security and Safety at the Investigative Detention Facilities",* p. 11.

possibility because they feared retaliation from staff. Moreover, some allegations were received that complaints sent to competent outside bodies received no response.[31] 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.[32]

In assessing the administrative complaint mechanisms in Bulgarian prisons for their compliance with the requirements of Article 13 of the Convention in the *Neshkov and others* case, 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."*[33]

Judicial complaint mechanisms

Courts' jurisdiction to deal with prisoners' complaints include claims for damages, injunction proceedings, judicial appeal of prison authorities' decisions, requests for prevention of torture, inhuman or degrading treatment. Claims for discrimination could be adjudicated both before the civil court of the Commission for the Protection against Discrimination. Prison authorities collect and publish statistics only on certain types of prisoners' complaints, adjudicated by the court.

According to the prison administration, in 2018 the newly introduced remedy for prevention against inhuman and degrading treatment in places of detention was applied only three times. On the other hand, a non-exhaustive review of the administrative courts' case law for 2018, conducted by the BHC, identified at least six cases in which the preventive remedy was applied successfully. Applicants in four out of the six cases complained of inhuman or degrading treatment due to health-related issues; in one case the applicant complained about handcuffing in public hospital during medical treatment and one case concerned overcrowding in the cell. Notwithstanding the exact number of cases – three or six, it could be concluded that the preventive remedy has a very insignificant application.

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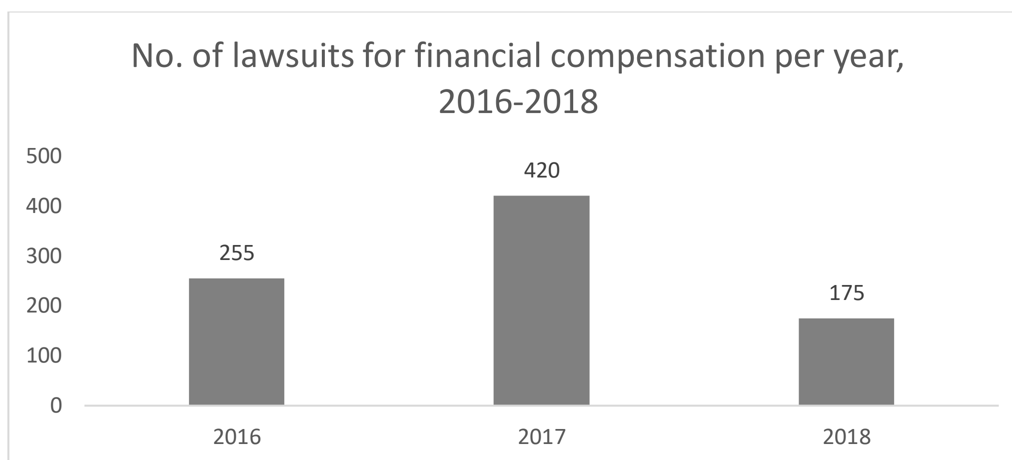
[31] European Committee for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment, *Report to the Bulgarian Government on the visit to Bulgaria from 24 March to 3 April 2014*, p. 62, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806940c4.

[32] European Committee for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment, *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.

[33] European Court of Human rights, *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.

The immediate effect of the introduction of a new compensatory remedy in 2017 was an increase by 65% of the number of lawsuits for financial compensation brought against the prison administration for damages, suffered by prisoners as a result inhuman and degrading treatment. However, in 2018 the number of lawsuits dropped significantly – by 140%, compared to 2017.



Along with the decreasing number of the lawsuits, lawyers interviewed pointed out to a tendency of lowering of the amount of compensation awarded by courts in cases of poor material conditions. The review of the 2018 case law of the Supreme Administrative Court confirms that observation. It indicates that the average amount of the daily allowance awarded by the court for damages caused by inhuman and degrading conditions of detention (including for non-provision of the minimum living area, access to a sanitary unit and running water, direct access to light and possibility of natural ventilation of the premises) is between one and two levs (between € 0,50 and € 1). Further, a significant number of cases are discontinued without being examined in substance because of unresolved irregularities in claims, including unpaid state fee, unspecified claim, wrongfully determined defendant, etc. Notably, in these cases prisoners were self-represented.

2. LEGAL PRACTITIONERS - LAWYERS

2.1 Lawyers and litigation work

****General policy of the Bar (and of unions of lawyers) on legal counsel for prisoners****

- *Does the Bar organize dedicated workshops or education on penitentiary law? Precise frequency, size of audience*

By opening new avenues for judicial protection of prisoners' rights, the 2017 law reform increased the demand for lawyers, competent to litigate prison cases. However, the present study concludes that the demand is unmet, as there are hardly any training opportunities for lawyers who wish to specialize in this subject area. An introduction in execution of punishments law is offered in some law faculties as an elective course but is entirely missing from the training programmes of the national bar training center and the National Legal Aid Bureau.

All practicing lawyers admitted to the Bar are subject to mandatory continuing legal education. Attendance of minimum eight hours of training per year in any area of lawyers' interest is required.[34] 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 and by private companies, without clear requirements and procedure for accreditation of the courses. In the past four years, the national bar training center has provided various training opportunities on different aspects of criminal law, criminal procedure law, Article 6 of the European Convention of Human Rights, but not on penitentiary law or prisoners' rights in particular.[35]

The National Legal Aid Bureau does not have an obligation to provide training to legal aid lawyers and it rarely does so. In 2017 however, the Legal Aid Bureau organized 16 training seminars for legal aid lawyers across the country, covering recent amendments in the Criminal Code of Procedure.[36]

- *Are there dedicated networks of lawyers? Are they generalists or dedicated to specific categories of detainees/prisoners or for specific legal fields? (for incarcerated foreigners, for prisoners with certain types of conviction, …)*

According to the respondents in the research, networks or rosters of lawyers specialized in penitentiary law are non-existent in Bulgaria.

- *Does the Bar edit information booklets/digital tools on penitentiary law, access to legal counsel, practical problems faced by lawyers providing legal aid in police custody and prison? Who designs and promotes such tools? To what extent are they relevant with regard to major prison litigation issues? To what extent are they used by practioners? Which importance do they give to these tools?*

The National Legal Aid Bureau has produced some information materials, aimed to provide guidance and clarification on issues related to the legal aid system. They do not address practical problems faced by lawyers providing legal aid in police custody and prison. These materials include:

- information brochure to inform potential beneficiaries about the existing legal aid schemes and conditions for application;
- information brochure on the national hotline for free legal advice;
- four handbooks on the provision of legal aid to be used as reference documents by the various stakeholders, part of the legal aid system – lawyers, prosecutors, investigative police officers, judges and bar councils. The handbooks are published in 2016 in the National Bar Council's journal, which is available online and in a hard copy.
- publications on the website of the National Legal Aid Bureau, informing potential beneficiaries about the existing legal aid schemes and conditions for application;

[34] 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.

[35] The archive of the annual programmes of the national bar training center for the period 2014-2017 s available in Bulgarian here: http://advocenter-bg.com/obucheniya/provedeni-obucheniya/.

[36] Information received from the National Legal Aid Bureau under the Access to Public Information Act, Letter from 15 May 2018.

- instructions on the provision of legal aid in the pre-trial proceedings for police officers.[37]

On the other hand, lawyers interviewed were unaware of the availability of any digital materials or tools, designed to help legal professionals, litigating prisoners' cases.

General profile of lawyers active on litigation

- Level of legal education, average age, power position within the Bar and capacity to bring problems to the bar encountered during legal practice in prison.
- Professional profile of lawyers acting in the field of prison litigation (larger firms, smaller offices, members of NGOs or professional interest organisations).
- Which proportion of litigation case work within their everyday practise?
- Connections between lawyers and NGOs / Human Rights organisations / Legal Clinics/ Universities / …:
    - Are most dedicated lawyers either members of or close to such organisations?
    - Are there situations of competition/tensions between the two?
    - Relationship with the judiciary?

None of the lawyers interviewed had a specialization in penitentiary law. According to their observations and experience, it was usually criminal lawyers who would engage in providing prison law advice. It was also noted that a large number of lawyers, appointed by the investigative authorities as legal aid lawyers in the pre-trial stage of the proceedings happen to be former police investigative officers or prosecutors.

As mentioned earlier, there are no networks of lawyers working on prison-related issues. However, a handful of lawyers, including two of the interviewees in the present research have well established relationships and collaboration with non-governmental organisations, helping prisoners, which would refer cases to them.

Upon registration as legal aid providers, lawyers must select at least one out of the following three areas of law – criminal civil and administrative, in which they agree to be appointed as legal aid lawyers. Optionally, legal aid lawyers can indicate sub-areas of law, in which they have particular professional experience and qualification. However, when legal aid lawyers are being appointed to a case, their preferences in the selected sub-areas of law are not taken into consideration.

One of the interviewees mentioned that judges and penitentiary institutions have a general negative attitude towards lawyers' litigating clams for compensation against the state, as it was understood as unjustified spending of public money.

Legal relief specialization

Selection of cases - according to which legal or social/political criteria (is there a dedication to specific populations of detainees/prisoners or specific issues – i.e. disciplinary, security measures, relationship with the family, etc.)?

The present research did not register any particular specialisation of lawyers, assisting prisoners, according to legal or social criteria.

[37] Information received from the National Legal Aid Bureau under the Access to Public Information Act, Letter from 15 May 2018.

2.2 **How is litigation case work financed?**

- What is understood by "pro-bono" in the country?

The general rule is that lawyers must be remunerated for their work. The level of remuneration could be agreed between the client and the lawyer, but it is not permitted to agree on legal fees lower than stipulated in the Ordinance on the Minimum Attorneys' Fees.[38] The remuneration could be agreed as a flat-rate remuneration or as part of the adjudicated amount.[39]
The provision of legal advice and litigation free of charge (pro-bono) is an exception to the general rule. Pro-bono legal counselling is permitted only if the prospective client subscribes to one of the following categories:

1. is entitled to receive alimony/ maintenance;
2. has limited financial means;
3. is a relative or has close personal relationships with the lawyer;
4. is a lawyer herself/ himself.

If the case is successful, the lawyer is entitled to receive remuneration, determined by the court in accordance with the fees, stipulated in the Ordinance on the Minimum Attorneys' Fees, which should be paid by the losing party. However, when claiming the reimbursement from the other party to the case, the lawyer has to provide evidence that his/ her client was qualified to receive pro-bono legal services.

In overall, lawyers interviewed for this research stated that were reluctant to provide pro-bono legal assistance to prisoners. One respondent underlined that prison-related cases were low-profile cases, which do not entail any professional prestige value for the lawyers undertaking them. Another lawyer said she avoided working free-of-charge in this area of law because work was very exhausting, while reimbursement of costs was uncertain. Where she agreed to work pro-bono, it was mostly on companionate grounds, because of the severe medical condition of the clients. For example, she assisted several prisoners who were terminally ill and were unable to afford paid legal services. Her assistance included providing legal advice over the phone, drafting requests for their temporary release from prison and for presidential clemency, as well as alerting the ombudsperson for her client's situation. A lawyer, practicing in Sofia, explained that he would sometimes agree to provide pro-bono services on cases that were of particular interest to him personally and were also considered to be of wider public importance. Another lawyer mentioned that, although typically he did not work free-of-charge, on several occasions he was engaged in pro-bono litigation before the European Court on Human Rights. His motive for working free of charge on these cases was his personal dissatisfaction with the "injustice" served to his clients by the national courts.

- Is there state-funded pre-trial aid?
    - If yes, is it sufficient to cover expenses?
    - If not what are the consequences? (selection of specific cases, insufficient time, coverage of expenses through other sources than pre-trial aid?)
- Other? (e.g. private funding, coverage through other case work, legal insurance…)
- Legal aid:
    - Amount of aid?
    - What type of costs may it cover, which costs does it rule out?
    - Forms of payment?

[38] Attorney's Act (2004), Article 36 (2), available in Bulgarian: https://www.lex.bg/laws/ldoc/2135486731.
[39] Ibid, Article 36 (40).

- How is the aid provided? Directly to the lawyer or to the applicant? Can the aid be directed to the applicant's family?
- Are there any delays for reimbursement?

The legal aid system in Bulgaria is organized by the Legal Aid Bureau and the 27 local Bar councils. Legal aid is provided by qualified attorneys-at-law, registered with the Legal Aid Bureau. On 31 December 2017 the number of legal aid lawyers registered was 5 752.[40] NGOs, legal clinics or other entities are not part of the legal aid system and are not eligible to reimburse their costs for providing legal services. State-funded legal aid is available for pre-litigation legal advice and preparation of documents for initiating court proceedings, for legal assistance during police detention and other urgent proceedings and for litigation (in court).[41] It does not cover legal assistance or representation in proceedings before administrative or other non-judicial bodies, such as the equality body or the Ombudsperson.

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[42] sets a range of different minimum and maximum fees payable for legal aid lawyer's work depending on the type of case and the venue of proceedings. 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. In 2018 the Ministry of Justice proposed a draft law for the amendment of the ordinance, envisaging increase of the maximum amounts of the fees per case. The reform was justified by the existence of a huge gap between the fees normally charged by lawyers and those reimbursed under the legal aid system, the introduction of new requirements towards legal lawyers' performance and the decreased number of cases, paid under the legal aid system. At the beginning of 2019 the draft law was not yet adopted.

The type and amount of the work performed by the legal aid lawyer is certified by a timesheet.[43] Timesheets must be first submitted to the local Bar council for verification.[44] 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.[45] 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.[46] 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.[47]

Payments are made by the National Legal Aid Bureau via a bank transfer directly to the legal aid lawyers. The general rule is that the reimbursement of lawyer's fees is made upon completion the pre-trial proceedings and upon completion of the proceeding before the court

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[40] National Legal Aid Bureau (2018). *2017 Annual Report of the National Legal Aid Bureau*, p. 13, available online in Bulgarian at: https://www.nbpp.government.bg/images/documents/Otcheten_doklad_NBPP_2017.pdf.
[41] Legal Aid Act (2006), Article 21.
[42] 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
[43] Legal aid Act (2006), Article 38 (1).
[4444] *Ibid*, Article 38 (2).
[45] National Legal Aid Bureau (2016). *Guidelines for the Determination of Remuneration of Legal Aid Lawyers.*
[46] *Ibid.*
[47] Council of Ministers (2006), *Ordinance on the Remuneration of Legal Aid*, Article 9.

of the respective instance.[48] Legal aid providers could also apply for an advance payment of their fees, if the respective proceedings take longer than six months.[49] Travel and accommodation expenses, incurred by lawyers for visiting clients, who are detained in prisons or other detention facilities are also subject to reimbursement in accordance to the rules, set in the national legislation, but only if the detention facilities are situated outside the place of the lawyers' registration.[50]

In 2012, due to insufficient funding of the legal aid system, lawyers' payments were seriously delayed - with up to three months, which lead to tension and readiness among lawyers to quit the legal aid system.[51] In the following years the budget of the system increased and delays in reimbursement were no longer reported.

The table below summarises data on the budgets of the legal system for the period 2012-2017.[52] It could be noted that for a period of 6 years, the number of reports for the provision of legal aid reimbursed per year has decreased, whereas the averaged amount of payment made per report has increased by 28 %. The major share of the annual budgets is spent on legal aid provided in criminal cases.[53]

Legal Aid System Budget, 2012-2017						
	2012	2013	2014	2015	2016	2017
Total budget	11,780,900 levs	9,467,930 levs	8,916,000 levs	9,925,000 levs	8,833,358 levs	9,932,000 levs
- Of which for legal aid	10,495,449 levs	9,294,100 levs	8,535,395 levs	8,374,005 levs	7,879,770 levs	7,765,100 levs
Number of reports	55,467 (13,220 from 2011)	43,327	39,092	36,831	32,797	32,114
Average amount of payment made per report	189 levs (EUR 95)	215 levs (EUR 107)	218 levs (EUR 109)	227 levs (EUR 114)	240 levs (EUR 120)	242 levs (EUR 121)

Source: Annual Reports of the National Legal Aid Bureau for 2012-2017

According to a nationally representative research of legal aid for 2015, carried out by the Open Society Institute-Sofia, which was based on the reports of all legal aid lawyers, submitted to the National Legal Aid Bureau, in 2015 the average amount reimbursed to legal aid lawyers, working on pre-trial cases was 203 levs (EUR 102).[54] According to the study, the lowest paid fee for legal assistance in the pre-trial proceedings in the sample was 50 levs (EUR 25) and the highest was 2 600 levs (EUR 1 300).[55] Most often, the amount of fees paid felt within the

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[48] *Ibid,* Article 3 (1).
[49] *Ibid*, Article 3 (2).
[50] Legal Aid Act (2006), Article 38 (5).
[51] National Legal Aid Bureau (2013). *2012 Annual Report of the National Legal Aid Bureau*, p. 5, available online in Bulgarian at: https://www.nbpp.government.bg/images/documents/Otcheten%20doklad_2012.pdf
[52] Information is obtain from the annual reports of the National Legal Aid Bureau, available in Bulgarian at: https://www.nbpp.government.bg/%D0%B8%D0%BD%D1%84%D0%BE%D1%80%D0%BC%D0%B0%D1%86%D0%B8%D1%8F/%D0%B8%D0%BD%D1%84%D0%BE%D1%80%D0%BC%D0%B0%D1%86%D0%B8%D1%8F.
[53] Open Society Institute-Sofia (2018). *Assessment of the Access to Legal Aid in the Pre-trial Phase of Criminal Proceedings in Bulgaria in 2015*, p. 6, Table No. 1, available in Bulgarian at: https://osis.bg/wp-content/uploads/2018/04/Legal-aid-in-pretrial-criminal-cases-2018-BG.pdf.
[54] *Ibid,* p. 19, Table 18.
[55] *Ibid.*

range 101 to 150 levs (27% of all cases) and between BGN 151 and BGN 200 levs (also 27% of all cases).[56]

If convicted, beneficiaries of legal aid must reimburse the entire costs of legal aid, regardless of their financial situation. Claims for payment against the legal aid beneficiaries are made by the National Legal Aid Bureau. Often, convicted persons are not able to reimburse the fees. Yet, in 2017, the legal aid authority managed to collect 288 423 levs of fees, paid to beneficiaries.[57]

Police detainees have the right to legal aid in the form of legal assistance by a legal aid lawyer. Eligible to receive legal aid are those detainees who are "unable to retain a lawyer of their own choice".[58] However, the legislation does not contain further guidance on how the ability of detainees to retain a lawyer is to be determined. The cost for legal aid, granted to police detainees is born by the budget of the Legal Aid Bureau and is not subject to reimbursement. Detainees however are not informed that assistance from a lawyer is free of charge for them. According to the ordinance, lawyers appointed to provide legal assistance to police detainees are paid between 60 and 120 levs (EUR 30-60), depending to the amount and quality of their services.[59] Lawyer's travel expenses incurred for getting to the detention facility are not eligible for reimbursement.

According to data from the National Legal Aid Bureau the share of persons detained in the police, who are granted legal aid in Bulgaria is insignificant. In 2016 the number of cases of legal aid provided to detained persons under Ministry of Interior Act and the Customs Act was 25 out of 48,588 registered detentions (i.e., the legal aid during the year covered 0.05 % of the number of the detained persons), and in 2017 legal aid was provided in 47. The data suggests that the Ministry of Interior Act does not contain access conditions and a mechanism for securing legal aid during police detention.

Under the Criminal Procedure Code, legal aid is available during both the investigative and the trial phase of the proceedings. 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. Article 94 (1) of the Criminal Procedure Code enumerates eight 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.[60]

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

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[56] *Ibid.*

[57] National Legal Aid Bureau (2018). *2017 Annual Report of the National Legal Aid Bureau,* p.4.

[58] Legal Aid Act, Article 28 (2).

[59] Council of Ministers (2006), *Ordinance on the Remuneration of Legal Aid*, Article 14 (1).

[60] Criminal Procedure Code (2006). Article 94 (1)8.

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).[61] 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).[62] Legal aid lawyers, representing accused persons in proceedings for determination of remand measures are paid between 60 and 120 levs (EUR 30 and 60);[63] the minimum rate of lawyer's fee for the same work, performed outside the legal aid system is 400 levs (EUR 200).[64]

According to the study of the Open Society Institute-Sofia, in 2015 legal aid was provided in pre-trial criminal proceedings (excluding police detention) in 12 653 cases which is from 6 to 34 % (depending on the interpretation of data about the total number) of all pre-trial criminal proceedings.[65] In 96 % of the cases the request for appointment of legal aid lawyer to an accused person is done by a police officer.[66] The most common reason for request for legal aid is that the person cannot afford to hire a lawyer, wishes to be represented by a lawyer and the interests of justice so require (40%).[67] The second most common ground for appointment of a public defence lawyer is the remand measure decision – in 32% of the cases.[68] In 16% of the cases legal aid is provided because the accused person does not know Bulgarian language, in 11% - because he/she has physical or mental disabilities that prevent him/her from defending themselves and in 9% - because the accused person is minor.[69] Of all investigative actions in which public defence lawyers participated during the pre-trial phase the share of pre-trial hearings for decision making about the remand measure represents 8%.[70]

In court proceedings, concerning administrative and civil matters, individuals might be granted legal aid, if they prove lack sufficient resources to pay for the assistance of a lawyer, provided that the interests of justice so require.[71] Lega aid is provided by the court upon request of the individual who wants to be represented by a lawyer. According to the Ordinance on the Remuneration of Legal Aid, lawyers appointed to provide legal representation in administrative cases are paid between 100 and 200 levs (EUR 50-100).[72] Legal aid provided for pursuing claims for damages is remunerated between 100 and 300 levs (EUR 50-150).[73] The ordinance sets a special fee for provision of legal assistance and representation in cases under the Execution of Punishments and Detention Order Act – between 80 and 120 levs (EUR 40 and 60).[74]

State-funded legal aid is available also for pre-litigation advice for the following three purposes:

- consultation for reaching a settlement prior to bringing legal proceedings before the court;
- consultation for bringing legal proceedings before the court;
- legal assistance in drafting documents for bringing a case before the court.[75]

[61] Council of Ministers (2006), *Ordinance on the Remuneration of Legal Aid*, Article 15.
[62] Supreme Bar Council, *Ordinance No. 4 of 9 July 2004 on the Minimum Attorneys' Fees*, Article 13(1)1.
[63] Council of Ministers (2006), *Ordinance on the Remuneration of Legal Aid*, Article 14(1).
[64] Supreme Bar Council, *Ordinance No. 4 of 9 July 2004 on the Minimum Attorneys' Fees*, Article 28.
[65] Open Society Institute-Sofia (2018). *Assessment of the Access to Legal Aid in the Pre-trial Phase of Criminal Proceedings in Bulgaria in 2015*, p. 7.
[66] *Ibid*, p. 8.
[67] *Ibid.*
[68] *Ibid.*
[69] *Ibid.*
[70] *Ibid.*
[71] Legal Aid Act (2006), Article 23(3).
[72] Council of Ministers (2006), *Ordinance on the Remuneration of Legal Aid*, Article 24.
[73] *Ibid*. Article 25(1).
[74] *Ibid*, 27g.
[75] Legal Aid Act (2006), Article 21.

Individuals, belonging to one of the legally defined groups of indigent persons – beneficiaries of welfare benefits, asylum seekers, children in social care institutions, victims of human trafficking, etc., qualify for pre-litigation legal aid.[76] To be eligible to receive legal aid, they must also have low income. Prisoners are not specifically mentioned in the list of beneficiaries. Pre-litigation legal aid is poorly reimbursed – for legal consultation for reaching a settlement or for initiating court proceedings lawyers are reimbursed between 15 and 30 levs (EUR 7.5 and 15); the fee for preparation of documents for initiation of court proceedings is between 15 and 50 levs (EUR 7.5 and 25); the hourly rate for providing legal advice vie the national legal aid hotline is 30 levs (EUR 15).[77]

The pre-litigation legal aid scheme has limited application. In 2017 there were 492 requests for legal aid submitted to the National Legal Aid Bureau, 291 of which were approved.[78] In the same year, legal aid consultations, provided via the hotline were 3 004 and those, provided in the regional consultation centers – 262.[79]

Processionals working outside the legal aid system pointed out that the modest lawyers' fees awarded by courts in lawsuits for compensation for inhuman conditions of detention is a major deterrent for lawyers to engage in such lawsuits. The basic rule on cost and fee allocation is that the losing party must reimburse the cost and expenses of the prevailing party. If the plaintiff's claim is partially successful, the losing party must reimburse the plaintiff's cost for legal assistance in proportion to the extent of their success. In such cases, it is often that the attorneys' fees awarded by the court go below the statutory minimum lawyers' fees set out in the legislation. For example, in a recent case a prisoner claimed monetary compensation of 5 000 levs (EUR 2 500) for non-pecuniary damages suffered by him during a 6-month detention in an investigative detention facility in conditions of overcrowding, as well as 400 levs (EUR 200) for lawyer's fees.[80] The Supreme Administrative Court ruled that what it was justified to award the applicant 200 levs (EUR 100) as compensation for the breach of his right not to be subject to inhuman and degrading treatment, which was 25 times less than what he had claimed. Consequently, the amount, awarded for reimbursement of the lawyer's expenses was reduced by 25 times, in comparison to what was originally claimed, thus reaching the amount of 16 levs (EUR 16). An interviewee also complained of unreasonable delays in reimbursement of costs for legal representation, especially when the party, ordered by the court to pay the costs is the Directorate General "Execution of Punishments".

- What are the known consequences of the origin of funds (e.g. state-funded lawyer vs. paid lawyer) in terms of quality of service?

In Bulgaria the local 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. In 2016 there were eight lawyers removed from the register, where only one of the – for professional misconduct.

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[76] Legal Aid Act (2006), Article 22 (1).
[77] Council of Ministers (2006), *Ordinance on the Remuneration of Legal Aid*, Article 13.
[78] National Legal Aid Bureau (2018). *2017 Annual Report of the National Legal Aid Bureau*, p. 10.
[79] *Ibid.*
[80] Supreme Administrative Court, Decision No. 13522 from 6 November 2018 on Administrative Case No.14245/2017.

The level of satisfaction with the performance of the legal aid lawyers among inmates interviewed was very low. The most common complaint was that lawyers did not demonstrate enough dedication to their cases, spent little time on communication with clients and never visit them in detention facilities. Lawyers, on the other hand, suggested that quality of legal aid might also be affected by low remuneration of those providing legal aid, as their fees are set lower than the minimum lawyers' fees, applied outside the legal aid system.

During their last visit to the Bulgaria, the CPT has observed that *ex officio* lawyer's presence during police detention was "of a purely formal nature, aimed at ensuring that the detention protocol was "duly" filled in and that it contained the lawyer's signature" and "heard complaints from detained persons (who had benefited from the services of *ex officio* lawyers) about the quality of the lawyers' work".[81] In this regard, the CPT made a recommendation "that appropriate steps be taken, in consultation with the Bulgarian Bar Association, to ensure the effectiveness of the system for free legal representation throughout the criminal procedure, including at the initial stage of police custody".

A recent study by the Open Society Institute on the quality of legal aid in criminal cases in Bulgaria discovered that criminal cases litigated by *ex officio* lawyers in the pre-trial stage of the proceedings were resolved by plea bargain two or three times more often than on average for the country.[82] Experts, citied in the study explain the majority of the legal aid clients have previous experience in the criminal justice system and "they know what they can expect from the process and prefer the case to end faster, i.e. to plead guilty and to enter into plea bargain." Other experts suggested that "the quality of the work of *ex officio* lawyers is lower than that of legal counsels authorized by their clients".

Previous research, conducted by the BHC, indicates that often appointment of *ex officio* lawyers to specific cases was performed by the investigating authorities, instead of the Bar association, as required by the law. [83] This allows for creating dependency between public defenders, many of whom are financially dependent on the legal aid system as a source of income, and the prosecutor's office. It was also noted that a big number of legal aid lawyers, specialised in criminal law are former police officers and prosecutors who are considered more likely to cooperate with the criminal authorities than lawyers not having that professional background.

According to the 2018 research of the Open Society Institute-Sofia, in around 30 % of the cases examined legal aid lawyers explicitly state that they got acquainted with the case file, in 7 % of the reports lawyers state that they notified their clients of their rights in the proceedings, in less than 1 % of the reports is stated that lawyers met with their client in person, had a confidential meeting before the hearing and discussed the main points of the defence with the client. According to the authors of the research the problem with the extremely low share of such activities being reported is in the way the reporting to the National Legal Aid Bureau is organized. Some lawyers explained that it was self-explanatory that they meet with their clients, explain their rights and discuss the main points in the defence and this was why they did not think that this was necessary to report on this.

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[81] European Committee for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment, *Report to the Bulgarian Government on the visit to Bulgaria, carried out by the CPT from 25 September to 6 October 2017*, CPT/ Inf (2018) 15, p. 23.

[82] Open Society Institute – Sofia (2018). *Assessment of the Access to Legal Aid in the Pre-trial Phase of Criminal Proceedings in Bulgaria in 2015,* p. 2.

[83] Bulgarian Helsinki Committee (2018). *Right to a Lawyer and Legal Aid in Criminal Proceedings in five European Jurisdictions. Comparative Report*, p. 36, available at: http://bghelsinki.org/media/uploads/special/2018-right_to_a_lawyer_and_to_legal_aid_in_criminal_proceedings_in_five_european_jurisdictions_-_comparative_report.pdf.

2.3 Access of lawyers to their clients

- How does a lawyer access a potential client, that is, make his or her existence known to a prisoner?
- How is lawyer attendance organized within detention facilities?
- Material problems related to access (e.g. remote prisons, costs of transportation)
- Administrative problems related to access (e.g. security measures, searches)
- Problems within detention facilities (e.g. mobility between wards, waiting times, existence of a dedicated space to meet detainees? Issues of confidentiality? Relations with staff: with officers, medical staff, social workers etc., on legal issues connected with their specific fields).
- Access to detainees and prisoners' files?
- How are cases initiated, through initiative of the lawyer/the prisoner?

Our interviews indicated that lawyers secure their clients through word of mouth recommendations from former clients, whose cases were successfully litigated. It was also emphasised that although opportunities for seeking judicial protection against violations of fundamental rights of detainees exist, it was very uncommon for detainees to initiate such litigation while the case was still pending. Interviewees explained that remand prisoners are usually hopeful that they would soon be released and preferred not to spend money and resources on challenging detention conditions or other issues. They also feared that complaints against detention authorities would deteriorate their situation. Convicted prisoners are also passive in this respect because often they face harassment or reprisals for submitting complains against the prison administration. Most active litigants are life prisoners who are as a rule self-represented.

Access to detainees in the police
The Ministry of Interior Act stipulates the right to detainees, including suspects of crime, to meet with a lawyer in private in specially designated soundproofing premises. However, not all police stations have such premises and where they exist, according to interviewees, they are poorly maintained.

According to one of the interviewees, the situation with access to police detainees has been gradually improving over the years. Yet, various problems remain unresolved. Immediate access to detainees is almost always hampered. In many cases lawyers have to wait for hours before being allowed to visit their clients. Lawyers complain that they are allowed to meet their clients only once the initially police interrogation was over. Also, it is common that police authorities deny access to detainees, by arguing that although kept in the police station, suspects are not considered detained unless they are served detention orders. It was also reported that lawyers, contracted by relatives of the detainee are often refused immediate access to their clients, on the basis of not having a valid power-of-attorney.

Access to detainees in remand centers and prisons
The Execution of Punishment and Detention Order Act and the secondary legislation for its implementation regulate lawyer-client communication during detention, pending trial. Lawyers could ask for a meeting with their clients on remand at any time and their meetings are not subject to interception or recording but could be observed by the custodial staff. However, lawyers could waive the right to confidentiality of the communication with the accused and request the meeting to be attended by a custodial officer. There is no legal limitation, regarding the frequency or the duration of the meetings, which take place in specially designated premises. In 2006 the Constitutional Court proclaimed the unconstitutionality of a provision, providing that the entire correspondence of persons, detained on remand is subject to inspection by the custodial administration.

Most remand centers and all prisons have dedicated premises for lawyer-client meetings. However, seats in the visiting premises are limited, especially in remand centers, which results in permanently busy rooms and excessive waiting time (more than two hours) for each meeting. Even if lawyer-client meetings are not time-barred, when visiting facilities are busy, due to professional collegiality, lawyers feel pressured to terminate their meeting as fast as possible so that other lawyers could use the facility as well. The majority of the respondents mentioned that visiting premises were not adequately heated in the winter and cooled in the summer, which made long meetings undesired by both lawyers and detainees. When entering prisons and investigative detention facilities lawyers are subject to searches. There were no problems reported in relation to extraordinary security measures being applied towards lawyers.

There is no possibility for scheduling a legal visitation in advance. Although the law grants lawyers unlimited access to their clients detained on remand, legal visits are practically expected to take place during prison administration's working hours, including outside lunch time. According to our interviewees, certain detention facilities prohibited legal meetings during the weekends.

During the legal meeting, lawyers and clients are separated by a glass panel and communication is facilitated through a phone, which raises concerns about the confidentiality of messages transmitted. Where the phones are out of order, visitors have to speak loudly and that also compromises the confidentiality of the conversation, lawyers suggest. They also fear that, although legal visitations are not subject to auditory supervision, cameras in visiting rooms might be set to record both video and audio messages. Further, an inmate interviewed argued that the vising room in Sofia prison does not comply with the necessary confidentiality standards and conversations were easily overheard by guards, observing the order in the room. Visiting premises are in principle shared by several lawyers and detainees at the same time which is considered as another violation of their right to confidential communication.

Lawyers are not allowed to bring laptops or other electronic equipment inside prisons, which deprives them from easy access to legislation, case law or other electronic documents, that might be needed during legal visits. One respondent mentions that exchange of documents during legal visits is limited to documents that are directly related to the criminal proceedings, which excludes court jurisprudence, books of legislation or other written materials.

Commenting on the quality of the visiting arrangements in prisons and detention facilities, one of the lawyers interviewed stated the following:

In 99% of the cases in my practice I have had reasonable conditions for conducting the meeting with my clients kept in detention, except for the detention facility in Stara Zagora, where the visiting room has the size of my toilet here – a cabin of the size of two sq. m., inadequate conditions… The conditions in the Sliven detention facility are similar. The arrangements in Burgas detention facility, which was recently moved to the building of Burgas prison and is a new one, are tragic. There are two small rooms and that is it. Sometimes it happens that there are 4-5 lawyers visiting at the same time. Thus I could not remain in the visiting room with my client for as long as I want because this won't be well accepted by my colleagues, it would create tension, regardless of the fact that some indictments are up to 50 pages long and could not be read and discussed with the client for 10 or 30 minutes.

An inmate gave the following examples of problems encountered in relation to lawyer-client meeting in prison:

> *There have been problems for example in Bobov Dol Prison where the prison staff refused to take off handcuffs for a defendant when he was meeting with his lawyer. In another facility, prison staff refused to allow prisoners to give legal documents to their*

lawyers and when they did the documents had to be given to the staff, the staff subsequently photocopied all the document and kept copies of everything being passed between lawyer and client.

Access to detainees and prisoners' files
During police detention, the main documents to be issued are detention orders, letters of rights, protocols for search and receipts testifying to the serving of the order and the return of the personal belongings seized. These are not materials on the criminal case. There is no normative requirement to present to the detained person the materials on the basis of which the police had become convinced of the existence of evidence of crime committed.

Full access to the materials of the case of the detained person and his/her defence counsel is possible only after the formal indictment. One of the rights of the accused, regulated in Article 55 (1) of Criminal Procedure Code, is to be familiarised with the case, including with the information obtained by using special investigative means, and to make the necessary excerpts. The accused and his/her lawyer are given access to the materials of the case for the purposes of challenging the legality of detention. They can see the file, albeit sometimes for an unreasonably short period of time before the hearing for the determination of the remand measure.

Photocopies of documents of the case file could be made only after the start of the trial. Where criminal proceedings are terminated at the pre-trial stage, parties to the proceedings could obtain copies of documents, kept in the file by submitting a request to the prosecutor. However, the prosecutor's office only provides certified copies of documents, charging 1 lev (EUR 50 cents) per page. Interviewed lawyers find this price unreasonably high, serving as a barrier towards claiming compensation for wrongful accusation or poor detention conditions.

Lawyers interviewed shared have very limited access to the documents, kept in prisoners' files. The internal rules concerning prisoners' files management grant such access to the file only to the prison administration, the prosecutor, the court and the Ombudsperson. Yet, in the course of judicial proceedings, related to the execution of the sentence (early release, appeal of disciplinary punishments, etc.), prison administration is usually obliged to submit the prisoner's file to the court. Once submitted to the court, the file is included in the case-file and it should be fully accessible to each of the parties to the proceedings, including to the prisoner and his/ her representative.

Inmates interviewed complained of poor prisoners' file management, incomplete files and non-existent or not duly followed procedures for updating the files. According to interviewees, another obstacle for accessing justice was the fact that inmates are often not served copies of documents that concern their rights as detainees, their detention status or sentence execution.

3. LEGAL PRACTITIONERS - NGOs (e.g. NGOs / Human Rights organisations / Legal Clinics/ Universities / monitoring bodies that provide legal advice and/or may start litigation)

3.1 Description of dedicated networks (NGOs/ Human Rights organisations / Legal Clinics/ Universities / monitoring bodies (that provide legal advice and/or may start litigation).

- Brief history of each relevant body.
- Staff (number, permanent or temporary staff, professional experience)
- Internal relations between departments (policy, law, finance, HR…); and notably with the policy department: e.g. modes of cooperation, cases of conflict, strains and hierarchy between these departments and how they collide or not.
- Legal relief policy

Selection of cases - according to which legal or social/political criteria (is there a dedication to specific populations of prisoners or specific disciplinary cases)?

3.2 How is litigation work financed?

- Source of funding (public funds, funds stemming from private sectors such as private foundations)
- assessments of possible impacts of funding notably on the selection of cases and their publicity (press, reports, …)

3.3 Within detention facilities

- Where are these actors located? Possibility to use a permanent office/desk?
- How do they access a potential client, that is, make their existence known to a detainee/prisoner?
- Modes of organisation of attendance in prison facilities
- Material problems related to access (e.g. remote prisons, costs of transportation)
- Legal problems related to access (e.g. security measures, searches)
- Problems within police custody/prisons (e.g. mobility between wards, waiting times, existence of a dedicated space to meet prisoners? Issues of confidentiality? Relations with prison staff: with wardens, medical staff, social workers etc., on legal issues connected with their specific fields? Other aspects of work conditions?).
- Access to case files? (also in police custody). Is there more specifically access to digital tools for defenders: how, what are the known obstacles?

Legal clinics

Currently, only one out of nine law faculties in Bulgaria runs a legal clinic. Through the legal clinic, students gain practical experience in various fields of law, including criminal and penitentiary law. According to the information, published on the university's webpage, students provide consultations to inmates on issues related to their legal status and give presentations on prisoners' rights related topics in penitentiary facilities.[84] The clinic does not offer legal aid services in the form of drafting legal submissions or representation in court hearings.

National Preventive Mechanism

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) has entered into force in respect to Bulgaria on 1 July 2011. The National Assembly has adopted amendments to the Law on the Ombudsperson[85] related to the designation of the Ombudsperson as a national preventive mechanism (NPM) which have entered into force on 11 May 2012. Thus, a new Directorate of National Preventive Mechanism and Fundamental Right and Freedoms has been established at the Office of the Ombudsperson.

NPM conducts both announced and unannounced visits to various places and institutions, including prison and prison dormitories. The Bulgarian model of NMP does not envisage mandatory cooperation with civil society organizations in the process of implementing of its mandate. During visits, the NMP team is authorized to:

[84] More information about the Burgas Free University Legal Clinic is available in Bulgarian at: https://www.bfu.bg/bg/organizatsionna-struktura/pravna-klinika

[85] Law on the Ombudsperson (2004), Article 28a-28e, available in Bulgarian at: https://www.lex.bg/laws/ldoc/2135467520.

- speak to prisoners in private and to use an interpreter if necessary,
- access all information relevant to the treatment of persons detained and detention conditions;
- to require information from detention staff;
- to arrange medical examinations of the persons.

After each visit, the NPM experts draft a report which contains recommendations and suggestions aimed at improving the conditions of detention and treatment of detainees. The reports are submitted to the relevant competent authorities, which are under the obligation to inform the Ombudsperson within one month thereafter of the actions undertaken to implement the recommendations.

The Ombudsperson may recommend to the Minister of Justice to close, reconstruct or expand prisons or prison hostels due to overcrowding, poor hygiene or poor material conditions that seriously compromise prisoners' rehabilitation or expose prisoners' physical or mental health to considerable risk.[86] Within one month the Minister of Justice must present the recommendations to the Council of Ministers, which is expected to announce measures for their implementation.[87] Notwithstanding the existing mechanism, the Ministry of Justice systematically ignores the NPM's recommendations.[88]

The Ombudsperson receives complaints from inmates through mail and during visits to the penitentiaries, but it has no power to render legally binding decisions. Taking this into consideration, in *Neshkov* case the ECtHR concluded that in the light of Article 13 of the Convention, the Ombudsman is not an effective remedy to prisoners. The CPT has also recommended that the presently existing NPM should be reinforced so as to enable it to visit each penitentiary establishment in Bulgaria on a frequent basis.

Bulgarian Helsinki Committee

The BHC was established on 14 July 1992 as an independent non-governmental organization for the protection of human rights. It is considered to be the largest and oldest human rights organisation in Bulgaria. The BHC has five programmes, each of which is led by a director. The programmes are:

- Monitoring and Research Programme;
- Legal Programme;
- Campaigns and Communications Programme;
- Refugee and Migrant Programme;
- Programming and Administration Programme.

As of December 2019, the BHC consisted of 22 full-time workers and 15 part-time workers. 15 of them are affiliated to the Refugees and Migrant Programme, which is relevantly independent from the rest of the organization in terms of funding and internal management.

The Monitoring and Research Programme was established in 1994. Its main focus is monitoring of places for derivation of liberty. In the area of prisons, the organisation's

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[86]Execution of Punishments and Detention Order Act (2009), Article 46 (1).

[87] *Ibid,* Article 46(2).

[88] National Preventive Mechanism (2018). *2017 Annual Report of the Ombudsman Acting as National Preventive Mechanism*, p. 11

monitoring activities are based on an agreement between the Ministry of Justice. In line with the agreement, BHC researchers are issued permits in the beginning of every year with which they can enter every prison in Bulgaria. They can visit, with no escort from guards, prison cells, medical facilities, isolation wings, kitchens, schools and other premises where prisoners are held, receive documents and interview convicted prisoners in private. They can interview remand prisoners only with the permission of the respective prosecutor or the court. BHC has published information about prison conditions in its annual reports and in numerous publications in Bulgaria and abroad. Since May 2018, initial screening of complaints to the BHC from detainees is performed by the Monitoring and Research Programme.

BHC's Legal Programme was established in 1995. Since then it has litigated on numerous strategic cases before national and international courts. The programme has also been the driving force for numerous changes in the legislation and big human rights campaigns. Furthermore, the Legal Programme is managing the incoming complaints, regarding human rights violations. All received complaints are being registered, read and decided whether further action is possible. The BHC provides legal assistance to individuals whose cases (i) are consistent with the BHC's strategic priorities, (ii) are a symptom of a systemic problem affecting many people, and (iii) are well supported by evidence. Legal assistance consists of consultations and/ or legal representation before the Bulgarian courts and other authorities, as well as before the European Court of Human Rights and other supranational bodies. BHC's priority areas include discrimination, rights of persons with mental disabilities, rights of migrants and asylum seekers, juvenile justice, freedom of association and peaceful assembly, freedom of expression, access to healthcare, detainees' rights.

BHC has produced a number of reports and other publications, documenting and analysing the situation in prisons and investigative detention facilities. Annually, it publishes information about prison conditions in a special chapter of its reports on the situation of human rights in Bulgaria. In 2015 the Bulgarian Helsinki Committee organized a series of five-project based workshops for legal practitioner, including 40 lawyers, on the Council of Europe's standards on deprivation of liberty and prison conditions.

The Committee has initiated prisoners' rights strategic litigation on various issues, including material conditions in prisons, healthcare, incident of violence, discrimination, voting rights and others, before national courts, the ECtHR and UN treaty bodies. Among the leading cases of the BHC brought before the European Court of Human Rights are *Neshkov and others*, *Dimcho Dimov*, *Kulinski and Sabev.*

The BHC cooperates with different national and international bodies, NGOs and professional organisations, including the CPT, the CoE Commissioner for Human Rights, the National Preventive Mechanism within the structure of the National Ombudsman, professional organisations of Bulgarian judges and others.

Through the years, the main donors of the organisation include: Open Society Institute – Budapest, Oak Foundation, UN High Commissioner for Refugees, EU Fundamental Rights Agency, European Union, European Refugee Fund, Leon Levy Foundation and others. Litigation work of the organisation is funded primarily by these donors, which provide core financial support to the organisation. Litigation is explicitly excluded from the list of activities

that could be funded through EU programmes. BHC receives compensation on some of the cases it litigates in the form of costs and expenses ordered by the court.

Bulgarian Prisoners' Association for Rehabilitation (BPRA)
BPRA is a grassroots NGO, formed of current and former prisoners with members and supporters in different prisons across Bulgaria. The association was registered in 2012. Its membership includes prisoners and ex-prisoner. Its main goal is to reduce the massive discrepancies between prisoners´ rights in Bulgaria and other EU Member States.

The BPRA does not have employees. It works with volunteers, who help with website management, e-communications and other logistics. It contracts lawyers for specific work and cases. Nevertheless, according to an organisation's representative, there was "a massive lack of interest from lawyers to work for us or to defend the rights of prisoners." It was also stated that remote prisons are a major problem for the NGO's work because lawyers are often unwilling to travel to prisons outside Sofia.

Prisoners become aware of BPRA's existence especially after a successfully litigated case. Another strategy for promotion of its work, which is considered a very effective one, is the use of stickers with the association's logo and contact information, that are distribute amongst prisoners. The logo is a fist, symbolising collective resistance. Most recently, there was an order from the Ministry of Justice, banning the display of the BPAR's logo in prisons.

The Association is funded primarily from private individual donations from outside of Bulgaria. Socially concerned groups also raise money for us but they are generally not registered foundations/NGO's themselves. So far, it had one small grant from an international company, dedicated to prison litigation. According to our interviews, volunteers, mainly prisoners themselves, do large amount of the BPRA work. Volunteer prisoners or "jailhouse lawyers" do a lot of preparation work for lawyers, but also conduct litigation work on their own behalf and on the behalf of other prisoners. It was further underlined that BPRA avoids publicity for specific cases as prisoners could face reprisals. It was mentioned that "with recent return of a hostile Ministry of Justice even active members are giving more cases to lawyers in an attempt to distance themselves so as not to be the targets of punishment and harassment from the prison authorities".

The rationale behind the selection of cases to be litigated was explained in the following way:

> *"Of course, the first requirement for case selection is that we believe we can win a case. […] If a prisoner already has a lawyer, we will often speak with them together. Especially important is that prisoners needing us to take up their cases are going to see the case to the end. It's a big problem that prisoners can be threatened to withdraw from a case or even worse, be forced by the prison authorities to blame the BPRA for starting cases that they didn't want. So, although it might sound strange, the character of the prisoner is a factor, in that we can trust to a reasonable degree that said prisoner will not back flip. Of course, then cases that are a precedent are also important, especially if the prison authorities are trying some new legal trick, it is good to get a case fast against new tricks so as to stop them as early as possible before they become systematic".*

The BPRA has very tense relationship with prison staff, wardens, medical staff and social workers, as they often reveal and make public information about human rights violations in prisons.

> *"Every time BPRA sends a report or complaint, the immediate reaction of the Ministry of Justice is to try and stop us instead of addressing the report or complaint. When we send a typed and printed complaint, the prison starts repressive measures and investigations into how prisoners were able to print. When we send reports to international bodies, the Ministry reacts with investigations into how we knew them and how we contacted them"".*

One of its representatives complained that prison authorities are constantly confiscating their legal documents. Major issue for the work of the Association are the lack of access to photocopying and printing, the prohibition on the use of Internet by prisoners, the lack of possibility for lawyers to return calls to prisoners.

Outside litigation, the Association is also involved in advocacy work. In 2015, it organised a petition in which more 200 prisoners expressed their desire members of the association to be included in the working group in the Ministry of Justice, which worked on the implementation of the *Neshkov and others v. Bulgaria* pilot judgement. As a result, a member of the Association successfully joined the working group. In 2018 BPRA made a submission to the Committee of Ministers of the Council of Europe on the execution of the *Neshkov and others* judgement. In the submission it criticised the authorities for a number of failures to implement measures related to the judgement and for providing false statistics to the Committee of Ministers. The submission also highlighted serious issues with overcrowding, corruption, etc. Subsequently, the president of the organisations was punished by three disciplinary punishments. It is believed that the disciplinary sanctions were a form of reprisal for his activity as a human rights defender.

4. PRISONERS AS LITIGANTS

4.1 Assessment of shortage of juridical and economical capital of remand prisoners

- Impact of recent austerity measures/budget cuts on access to legal information?
- Obstacles or facilitations of remedies within facilities through other actors than lawyers, and formal legal practitioners (NGOs, human rights organisations, legal clinics, universities), e.g.: Police officers/wardens; Social workers; Families; Prison priests/imams; Volunteers from non-legal NGOs (e.g. Prison visitor organisations, educational support, cultural organisations, …); social networks of former detainees/prisoners; …

There are no particular austerity measures or budget cuts that affected the provision of legal information to prisoners.

Prisoners have the right to authorize NGOs to file complaints and requests on their behalf. However, direct access to prisoners, especially pre-trial detainees, by NGO representatives is heavily restricted. While criminal proceedings are still pending, representatives of human rights

NGOs could 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). Similarly, remand prisoners may meet with journalists upon an express permission of the prosecutor or court.

The practice of the BHC indicates that obtaining a permission from the prosecutor could be an unpredictable and lengthy procedure. The organization has received numerous refusals for conducting visits with pre-trial detainees, many of which unmotivated. In 2018 the BHC was given permission by a judge from the Specialised Criminal Court to meet with two high profile remand prisoners, detained in an investigative detention facility in Sofia. The reason for the visit was a complaint by the detainees, concerning material conditions in their cell and access to medical services. However, BHC's researchers were not allowed by the penitentiary authorities to bring in a digital meter and another multifunctional digital device, measuring temperature, humidity and light. They were also prohibited from speaking with the detainees in private.

The procedure is also criticized by the UN Committee against Torture. In the Concluding observations on Bulgaria from December 2017 CAT again makes the recommendation that civil society organizations should be allowed to "carry out regular unannounced visits to all places of detention, including police detention units, to meet in private with detained persons, to receive complaints from inmates about their conditions of detention and treatment, to ensure that inmates are not subjected to reprisals, and to provide effective follow-up to such complaints".

Under Bulgarian law, remand prisoners' phone calls, letters, and visits with certain persons could be banned, if it is necessary for the prevention or investigation of serious crimes. These measures are imposed by the prosecutor or the court, depending on the phase of the criminal proceedings. However, the authorities could not restrict remand prisoner's contact with their lawyers and close family members.

In 2013, aiming to improve access to justice for disadvantaged persons, the National Legal Bureau launched a legal advice telephone line for preliminary information, advice and referrals. Advice is provided by qualified lawyers, registered with the National Legal Aid Bureau. However, according to inmates interviewed, the legal aid telephone line is not accessible from telephones installed in prisons and detention facilities, because they do not permit dialing premium-rate numbers starting with the prefix 0700, such as the number of the legal aid hotline. Therefore, the hotline remains inaccessible to detainees. No other telephone services, offering legal advice and information to prisoners are available.

4.2 Access to legal information

- What is the quality/relevance/accessibility of written/oral legal information on rights and duties in police custody/ prison?
- Where/through which members of staff is information made available?
- Is its availability mentioned to prisoners during intake?

- Is this legal information provided and circulated by incoming lawyers; NGO/ Human rights organizations/universities/legal clinics; or by other outsiders (prison priests/imams, volunteers from cultural or educational support groups, social networks of former detainees/prisoners; …etc.)?
- Are there issues related to written and language proficiency: possible access to public writers/ interpreters when conversing with lawyers or others, access to translated documents on legal information. Who are the public writers/interpreters, how reliable are they? Official interpreters, members of prison staff, other prisoners? Any related privacy issues?
- Is access to printed forms and other material enabling prisoners to file a motion on their own required by law / effectively provided?

Police stations

Immediately after arrest, police officers should inform suspects of crime about the grounds of their arrest, the criminal liability stipulated in the law and their rights as detainees. There are two other written documents, provided to detainees under the MoIA, which contain information on the rights of persons held in police custody: arrest warrant and letter of rights. These documents contain information about detainees' right to judicial review of the detention, the right to access to a lawyer and legal aid, the right to medical assistance, the right to notify a third person about his/her arrest, the right to contact the consular authorities of the respective state in the event that the person is not a Bulgarian citizen, and to be assigned a translator/interpreter if he/she does not understand the Bulgarian language. The Legal Aid Act also stipulates an express obligation on the part of the arresting authority to notify the detainees in writing about their right to be assisted by a lawyer of their own choice or by an *ex officio* lawyer.[89]

Recent report of the BHC on police custody concluded that the right to information in criminal proceedings of police detainees, as it is regulated in Bulgarian law and to a greater extent in practice, does not comply with the standards of Directive 2012/13/EC on the right to information in criminal proceedings.[90] Although required by the legislation, police officers do not familiarise detainees with their rights orally. The provision of written information about the rights of detainees is similarly problematic.[91] According to inmates interviewed for the purposes of the present and previous studies of the BHC, letters of rights are provided untimely or not provided at all; the time detainees have to familiarize themselves with the content of the letter of rights is insufficient; police officers do not provide support to the detainees who are illiterate or do not understand Bulgarian.[92] Further, the letter of rights for police detainees is not written in an easy-to-understand manner; it includes various references to the law, without actually explaining the content of the norms. The legislation does not provide adequately for the right of the detained person to keep a copy of the declaration with him/her while in police custody and the practice differs either. The letter of rights is not available in languages, other than

[89] Legal Aid Act (2006), Article 30 (2), available in Bulgarian at: https://www.lex.bg/laws/ldoc/2135511185.

[90] Kanev, K., Petrov, S. (2018). *Inside Police Custody 2. Country Report for Bulgaria*, p. 25, available at: http://www.bghelsinki.org/media/uploads/special/2018-Inside-Police-Custody-2-Bulgaria-EN.pdf.

[91] Angelova, D., Kanev. K., Stanev, K. (2017). *Letters of Rights of Detained Persons in Bulgaria*, p. 55, available at: http://www.bghelsinki.org/media/uploads/special/2017-07_lor_national__report_en.pdf.

[92] *Ibid*.

Bulgarian. Some interviewees also shared that they have been discouraged by the police officers to exercise their rights as detainees, including through manipulations and threats.[93]

Assistance by an attorney or contact between detained persons and their attorneys is secured only after personal visits by the attorneys to the police stations. There is no normative document prescribing a possibility for provision of legal advice to detainees over the phone.

The law prescribes that an updated list of duty legal aid lawyers must be placed visibly in the premises for accommodation of detained persons in police stations, but previous research has established that such lists are often missing from the police stations.[94] Further, the police authorities do not have an obligation to provide detainees with access the internet-based register of practicing lawyers, available on the webpage of the National Bar Council.

According to the National Legal Aid Bureau, the proportion of persons detained in police stations who were granted legal aid is insignificant, although a supplement made to the Legal Aid Act as early as 2006 stated that legal aid could be provided even with representation upon detention under the Ministry of Interior Act. According to the National Legal Aid Bureau, the number of cases of legal aid granted to detained persons under the Ministry of Interior Act and the Customs Act was 23 out 44,320 reported detentions for 2015, and in 2016 the cases of legal aid granted were 25 out of 48,488 detainees, which means that legal aid over these two years covered 0.05% of the number of detained persons. These data indicate that the Legal Aid Act does not contain accessible conditions and a mechanism to provide legal aid during police detention.

Investigative detention facilities

Bringing charges against a suspect is a pre-condition for his/ her detention beyond the 24-hour police detention, which could be ordered by the prosecutor for up to 72 hours and then by a judge. Thus, if the investigating authority wishes to place a suspect in pretrial detention, the suspect must be formally charged. Information about the rights of accused persons, including their right to access to a lawyer, are stipulated in the charge sheet. The Criminal Procedure Code imposes a general 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. It does not however envisage a unified document that could be regarded as a "letter of rights" for accused persons, who are detained, as required by Directive 2012/13/EU on the right to access to information in criminal proceedings. In January 2019, the law was amended to prescribe the right of accused persons to be provided with general information, facilitating their access to a lawyer. The provisions however are lacking details about the exact nature of the information to be provided.

Detainees, 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 and must immediately be provided with possibility to do so. They should also be informed against signature about the internal rules in the facility. The

[93] *Ibid*.

[94] Kanev, K., Petrov, S. (2018). *Inside Police Custody 2. Country Report for Bulgaria*, p. 47.

manner in which detainees could exercise their rights is not stipulated in the law but is set out in unpublished orders of the penitentiary authorities.

During their stay in the investigation detention facilities, remand prisoners are not familiarized orally or in writing of their rights to access to a lawyer or legal aid. They do not have access to lists of practicing lawyers either. There is no obligation on the side of the prison authorities to provide information on the existing complaints mechanisms or other information, necessary for accessing justice.

The penitentiary system does not provide translations of legal information. There is no access to public translators within prison unless they are court appointed translators and they visit the facility in order to participate in an investigative activity with the detainee. Prisoners, who speak foreign languages are often assigned as translators to those who have no knowledge in Bulgarian. According to an inmate interviewed, there is a massive problem with inmate prison translators as it happens that they act as enforcers for the prison authorities. Even when the court appoints a translator, prisoners complain of the quality of the translation, especially from and to rare languages such as Kurdish, Pashtu or Urdu. The problem is particularly acute for suspects and accused persons, who are detained outside Sofia, somewhere close to the state borders.

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.[95] 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.

Throughout our interviews with inmates, it emerged that there were no opportunities for inmates to access legal literature unless it was provided to them by relatives or friends during visits. Moreover, some inmates claimed that they were allowed to bring in legal materials only in the form of a book, but not information that was printed from the internet. Investigative detention facilities are not equipped with libraries.

Interviews for this study raised also a number of issues in relation to the detainees' right to correspondence. During pre-trial detention, telephone conversations are the most common form of communication between accused persons and lawyers or other agents that provide legal assistance. 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. Detainees do not have immediate access to telephones. Telephones are accessible vie prepaid phone cards, which could be purchased through the penitentiary administration or could be delivered by visitors. The process of obtaining a phone card could be a lengthy one, especially if the detainee did not have money at the time of the arrest. In this case, he/ she has to wait until the next visit in order to receive money or a phone card from their visitors. Incoming calls in prisons are not allowed. If lawyers want to speak to their clients, they must visit them

[95] European Court of Human Rights, *Lebois v. Bulgaria,* Application No. 67482/14. Judgement of 19 October 2017.

in person. Inmates interviewed stated that the pre-paid phone cards used in the penitentiary system are very expensive and unaffordable to many. Further, they complained of the procedure for accessing the phone and of the limited time, they could actually spend talking on the phone. Usually, there is one telephone installed in the area for the daily one-hour out-of-cell walk. In order to make a phone call outside the one-hour out-of-the-cell time per day, detainees must submit a written request to the chief of the investigative detention facility, providing the number and the name of the person they wish to call, as well as the relationship they have with him/ her. Some interviewees also raised the issue that there was no access to telephones over the weekends.

Detainees have the right to dispatch and receive letters, without limitation of their number. As a rule, mail costs are covered by prisoners and only in rare occasions – by the budget of the penitentiary. Prison staff are allowed to screen mail for contraband but are prohibited from reading letters. Inmates interviewed complained of various practical problems, surrounding their mail such as being unable to bear the postal costs; lack of access to copy machines; not being issued outgoing mail tracking numbers; receiving responses to their grievances from state institutions in unsealed letters; having their legal mail illegally monitored, delayed or missing. A female prisoner complained that sometimes paper and stamps were missing from the prison shop for long periods of time. Since prisoners do not have access to copying machines, carbon paper is still widely used among them for making copies of complaints or letters in general. However, carbon paper is not included in the list of items that prisoners may legally possess. Because of the high level of distrust in the system, it was claimed that prisoners prefer to hand their mail to lawyers or family members to dispatch outside prison.

Prisons

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.[96] According to the law, prisoners have the right to receive a written copy of this information if they so require.[97] None of the inmates interviewed had received such written document. Yet, prison staff is not under an obligation to inform prisoners about existing complaints mechanisms outside prison, practical arrangements regarding the provision of legal aid or other information, necessary for accessing justice.

Prison officials do not have a duty to provide legal advice or assistance to prisoners, nor to facilitate their access to such services. According to the law, prisoners are entitled to request information, relevant to the execution of their sentence only.[98] Prisoners interviewed claim that prison staff event attempt to hide or provide false information pertaining to their rights.

Remand prisoners, allocated to prisons face similar issues, concerning their communication with the outside world via telephone and mail as those, experienced by persons, detained in investigative detention facilities. These issues are discussed in detail above.

[96] Execution of Punishments and Detention Order Act (2009), Article 25 (1).
[97] *Ibid,*52 (2).
[98] Execution of Punishments and Detention Order Act (2009), Article 76 (1).

Unlike investigative detention facilities, each prison, prison hostel and reformatory home must establish a library. According to the law, the library collection must be updated periodically and must include national and international legal acts regulating the execution of punishments. In the course of the present project, BHC researchers visited the prison libraries in Belene, Sliven and Vratsa. As a result, it was documented that although some legal literature was available in all prison facilities visited, it was outdated and incomplete. None of the librarians were trained to assist in finding the right legal information. The usefulness of the libraries was also limited because of poor literacy among prisoners and restricted time in the library. In Belene, an electronic version of the Execution of Punishments and Detention Order Act was available on the single computer in the library. However, it was a 2013 edition of the legal act, not reflecting the latest big prison law reform from 2017. Furthermore, access to the computer was only granted to the librarian. Women prisoners in Sliven prison also did not have access to updated penitentiary or other legislation. Following its visit, the BHC made a donation to the Sliven prison library, consisting of penitentiary, civil, administrative and criminal legislation, as well as some law text books. A single more recent edition of the penitentiary act was available in the Vratsa prison library, but it was kept locked in the desk of the librarian and was not readily provided to inmates. By the time of the BHC's visit to the reformatory home for juvenile male prisoners, which is part of Vratsa prison, the facility did not have a library, nor were juveniles granted access to the adult prisoners' library.

A specialised law library, unique for the entire penitentiary system, operated in Sofia prison until the summer of 2018. It operated separately from the general prison library. The library was considered "legal" for its access to legal software and because the librarian provided legal information and assistance to inmates. The facility was equipped with computer, laptop, scanner and printer. The laptop was loaded with legal database software (legislation and case law), which was updated several times throughout the year. Both the laptop and the software were provided through a private donation. The library possessed also print-based legal collection, which however was considered by the librarian an outdated one. Other than the State Official Journal, the library did not receive any legal periodicals. Office supplies, including paper for printing paper was purchased by inmates.

The library was administrated by an inmate, who was not a lawyer by education, but had with good knowledge in penitentiary law. He was assisting prisoners by conducting basic legal research, drafting papers and potions, providing other information and contact details of institutions, as well as translation. It was opened for inmates Monday to Friday, 9:30-11:30 and 13:30-15:30; inmates from each prison unit could visit the library once a week, according to time scheduled of their group.

Officially, the library was closed down and merged with the general prison library due to space considerations. However, inmates interviewed suggested that the actual motive of the newly appointed then prison governor was to restrict prisoners' access to legal information and assistance in lodging complaints to external redress mechanisms.

Volunteers and non-legal NGOs can access prison as providers of different services in the fields of education, professional training, sports, and culture.[99] However, currently in Bulgaria there are no permanently active networks of volunteers or NGOs, working with prisoners.

[99] Execution of Punishments and Detention Order Act (2009), Article 162(1),(2).

Instead, there are some one-off, project-based initiatives, addressing particular prison life aspects such as professional training, screening for infection diseases, distributing presents to children with incarcerated parents. Yet, such projects are run in cooperation with the prison administration and external participants do not engage in providing legal information or facilitating prisoners' complaints. According to one respondent, priests and imams refuse to defend the human rights of prisoners as they are afraid that their access to preach will be terminated if they get involved in what they call "politics".

Prisoners distribute copies of the most popular motions, for example applications for appeal of disciplinary punishments or requests for early release. However, in prisons pre-trial detainees are placed separately from convicted prisoners, which renders their access to such copies of motions difficult.

Prisoners who write for other prisoners are often subject to harassment, formal or informal punishment from prison staff. A striking example in this regard is the case of a female inmate, who was prosecuted and found guilty for making false accusations against a prison guard because of writing a complaint for another illiterate prisoner to the prosecutor's office.[100] Therefore, the common practice is that prisoners copy the example text in their handwriting, so that the original author of the text could not be identified and punished.

4.3 **Organisational and practical issues related to legal aid**

Formalities for filing a claim for legal aid:

- Are pre-printed forms available in prisons and where? Are they provided to incoming lawyers; are they provided and circulated through NGO/ Human rights organizations/universities/legal clinics; are they provided through other outsiders (prison priests/imams, volunteers from cultural organizations or educational support groups, etc.), other…?
- What is the quality/relevance/complexity of these forms? Is the information to be provided easily available to prisoners? what are the concrete consequences of missing information? How long does it usually take to fill the form?
- What is the complexity of the appeal proceedings on refusals? Does it require a legal practitioner?

Organisation of financial aid for litigation and its concrete implementation

- Existence of dedicated staff/department to centralize and transmit claims for financial aid?
- When provision of legal aid is not automatic, is there a policy towards claims made by prisoners? What is the composition of the body which makes the decision and to what extent it is aware of prison issues/ situation?
- What is the length of the processing time to get an decision on the grant of legal aid?
- In countries where the law provides that the money flows to the applicants, are there practical aspects for prisoners whose access to banking services are limited?
- Are detainees expected to reimburse legal fees through their salary? Is their family expected to contribute? As a consequence, are there differences between the financial situation of prisoners before their incarceration and after their release?

[100] Решение № 27 от 7.02.2014 г. на ОС - Сливен по в. н. о. х. д. № 185/2013 г.

Competent to award legal aid for pre-litigation assistance and consultation is the National Legal Aid Bureau. To apply for such legal aid, one must submit a written request to the institution, along with a document, proving that he/ she: qualifies for monthly social benefits; is a victim of crime, domestic violence of trafficking in human beings; is a resident of a social service, that he/ she is a child at risk, etc. According to a recent amendment to the Legal Aid Act, information about the applicant, that is available to other state authorities, must be now collected in electronic form *ex officio* the National Legal Aid Bureau. Previously, failure on the side of the applicant to submit documents, necessary to establish his/ her eligibility for legal aid, for example, a contract for placement in residential care, resulted in refusal for granting legal aid.

Applicant must fill in and submit a specially designed request form, which is available on the website of the National Legal Aid Bureau and in the offices of the local Bar councils. Pre-printed request forms are not available in prisons and detention facilities, nor are being provided to prisoners through other channels such as volunteers, lawyers, etc. None of the inmates interviewed for the purposes of the present survey was aware of the existence of pre-litigation legal aid scheme.

State-funded legal aid for representation in administrative and civil cases is granted by the court in the proceedings. Eligible to receive legal aid 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 for legal aid as well as if the claim is manifestly unfounded, unjustified, or inadmissible. The request for receiving legal aid must be made before 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 (preliminary version) claim, complaint or request to the court. According to lawyers and inmates interviewed for this study, prisoners who wish to use legal aid indicate this in the initial document they refer to the court. Afterwards, the court sends the applicants printed copies of the property status declaration, information from which must be taken into consideration for granting legal aid. The court also requests information from the prison authorities about the financial situation of the applicant, including whether he / she is employed, the amount of money he/ she receives from his family, etc.

Our review of the 2017-2018 case law of the Supreme Administrative Court on granting prisoners' access to legal aid in administrative cases leads to the following conclusions:

- In the majority of the cases, legal aid is requested for pursuing claims for damages caused by inhuman or degrading treatment.
- Applicants justify their requests for legal aid by lack of financial means, by lack of access to internet to prepare their cases by themselves and by lack of legal education or knowledge.[101]
- There are conflicting decisions regarding the obligation of the applicants to submit evidences for their inability to retain a lawyer. In some cases, the court states that the applicants' failure to present evidences for their financial and personal situation renders the request for legal aid unfounded.[102] In other cases, the court stipulates that

[101] Определение № 11613 от 3.10.2017 г. на ВАС по адм. д. № 9815/2017 г.; Определение № 13831 от 13.11.2018 г. на ВАС по адм. д. № 13505/2018 г.

[102] Определение № 6531 от 17.05.2018 г. на ВАС по адм. д. № 4898/2018 г.; Определение № 4043 от 28.03.2018 г. на ВАС по адм. д. № 3806/2018 г.; Определение № 13008 от 30.10.2017 г. на ВАС по адм. д. № 11100/2017 г.

applicants who are imprisoned are not obliged to provide evidences other than the declaration for their property status, as it is impossible for them to collect and present such evidences in the way individuals outside prison can[103].

- By motivating its refusal to grant access to legal aid, the court often states that there is no right to mandatory legal representation for the respective category of cases.[104]
- In some cases, the court refuses to grant legal aid, stating that the provision of legal aid is not justified in terms of the benefit that such aid would bring to the applicants,[105] because the interests of the justice does not require participation of a lawyer[106] or because it finds that the applicants are in a position to defend herself/ himself, regardless of their financial or personal situation[107]. In other cases, the court grants legal aid only based on the unfavorable financial situation of the applicants, without assessing other circumstances, related to their claim.[108]
- According to the court, the total amount of 457,96 levs (EUR 230), transferred to an applicant by his family throughout a period of six month was not sufficient to prove that the applicant could afford to pay for a lawyer.[109]

4.4 Prisoners belonging to various minorities, under-represented or isolated groups within prisons (e.g. LGBT, foreign-nationals, women, minors, disabled persons, persons suffering from chronic diseases, mental illness, …) or Prisoners facing special security measures, particular disciplinary sanctions, restrictions or isolation (e.g. individuals detained/convicted for terrorism, sexual assault, aggravated murder, gang-related violence, financial crimes, corruption, white-collar criminals, former law enforcement agents …)

- Status inside the facility / prison: access to social relief, financial aid.
- Limited attention from prison staff or heightened attention to them (e.g. prisoners deemed particularly dangerous or to be protected against other prisoners)
- Are there concentrations of specific categories of prisoners in designated wards/ or on the opposite a dispersion policy, and related obstacles (or facilitations) to the activation of certain types of legal relief, due to:
    - Mobility within the facility / the penitentiary system
    - The impossibility for lawyers, NGOs or other key actors to access disciplinary wards (e.g. "terrorism wings", …)
    - Intimidation/restrictions by wardens, social workers, other
    - Psychological effects of disciplinary measures and confinement, (e.g. mental health issues/depression).
    - Other

In investigative detention facilities, prisoners remain locked up in their cells for 23 hours a day. The only opportunity for inmates to socialize with other persons is during their daily one-hour out-of-sell time. Female inmates interviewed for this study complained that since the number of women and juveniles in detention facilities was much smaller than the number of men, it

[103] Определение № 11 от 2.01.2018 г. на ВАС по адм. д. № 14556/2017 г.
[104] Определение № 6531 от 17.05.2018 г. на ВАС по адм. д. № 4898/2018 г.; Определение № 4043 от 28.03.2018 г. на ВАС по адм. д. № 3806/2018 г.; Определение № 13008 от 30.10.2017 г. на ВАС по адм. д. № 11100/2017 г.
[105] Определение № 7915 от 13.06.2018 г. на ВАС по адм. д. № 6917/2018 г.
[106] Определение № 4673 от 13.04.2017 г. на ВАС по адм. д. № 4139/2017 г.
[107] Определение № 11226 от 25.09.2018 г. на ВАС по адм. д. № 10972/2018 г
[108] Определение № 6788 от 31.05.2017 г. на ВАС по адм. д. № 5621/2017 г
[109] Определение № 4673 от 13.04.2017 г. на ВАС по адм. д. № 4139/2017 г.

often happened that they had to spend their out-of-sell time alone or together with their cellmates, if they had any.

After being transferred to prisons, remand prisoners are allocated in special units, separately from convicted prisoners. As stated earlier, there are 11 male prisons, one female prisons, one reformatory home for boys and one for girls. Thus, as a rule, remand prisoners who are women, girls and boys are placed far away from their families and lawyers during the trial stage of the proceedings. Inevitably, this has a negative impact on their possibilities to obtain legal advice, to participate in the criminal case, including through access to the criminal file, to conduct visits, to receive support by other members of their community. In a case from 2018, two female remand prisoners requested from the court to remain in the investigative detention facility in Sofia during the trial stage of the criminal case, instead of being transferred to the prison in Sliven. They argued that if transferred to the prison in Sliven, their right to defend themselves in person and through the assistance of a lawyer will be compromised. Their requests were granted.

During the day, prison cells in the special units for remand detainees are kept unlocked and detainees may spend time in the corridor, but they are not allowed to move to other units. They could also attend school or other common activities. However, remand prisoners could be classified in a higher security regime and placed in an individual cell, 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. These categories of prisoners have limited access to legal information or support by other inmates. Remand prisoners could also be segregated as a form of disciplinary punishment. During disciplinary segregation, inmates do not have access to the library and could not socialise with inmates, other than those kept in the disciplinary unit.

Regardless of the security regime, prisoners' access to a lawyer is not restricted – according to the law, they have the right to meet with their lawyer at any time. Lawyers do not have access to prison units and detention cells, neither have a right to receive information about the detention conditions, as recommended by Directive 48/2013/EU.

According to BHC's observations, most prisons have an informal segregation of Roma and Bulgarian prisoners. Without it being official policy and not always strictly so, some groups or blocks become known as the "Roma" groups and others as the "Bulgarian" groups. The Roma groups are often nicknamed the "Ghetto". For example, during a visit to the unit for unconvicted prisoners in Sofia prison in March 2018, BHC researchers observed that there were three cells where only Roma detainees were placed. These cells were overcrowded and had worse material conditions than the rest cells in the unit.

Sofia prison also has a special unit for unconvicted prisoners who are foreigners. According to an inmate interviewed, there were both benefits and obstacles to this concentration. For example, a benefit was that generally foreigners can always find someone to speak with and socialise with in a language they understand. An obstacle was that there were very few prisoners who are literate in Bulgarian language so as to read legal information and also write requests and complaints. The interviewee also stated that "[o]ften prison staff uses the illiteracy in Bulgarian language to lie, manipulate and trick foreigners out of their rights".

4.5 Organisation of remedies inside prison facilities among prisoners

- Are there detainee committees? Are they self-organized or organized by the prison administration? Are they allowed to provide legal advice to other prisoners or not?
- Are there 'Jail-house lawyers' who help other prisoners (with practical information/ translation/ education/help in writing documents or making contacts lawyers/NGOs): Profile (e.g. type and length of conviction).
- Centralization (e.g. one or several prisoners are the key litigants and centralize complaints, serving as go-betweens for prisoners, barristers and NGOs) or
- Dispatching? (individualism and absence of organisation)?

Penitentiary law envisages the existence of prisoners' councils, which are consultative forums of inmates, organised at each prison unit, but not at investigative detention facilities.[110] Among other things, prisoners' councils may submit suggestions for the improvement of conditions, hygiene and domestic order in prisons to the prison administration, as well as to inform about the practical difficulties and problems encountered among prisoners; initiate and provide practical assistance in organizing, preparing and carrying out activities with prisoners, such as sports competitions, cultural events, writing newspapers, etc.[111] Council members are elected by prisoners of the respective prison unit. According to the data collected for this study, prison councils do not provide legal advice to prisoners. However, interviewees suggested that prisoners on these committees act as an auxiliary enforcement structure for the prison administration. Instead of the committees brining problems, concerns and requests to the prison administration, it is the prison administration that gives instructions to the committees. The CPT made similar observations following its last visit to Bulgaria in April 2017. The report describes the practice of inmates being given semi-official roles, including certain disciplinary functions such as reporting to staff on the conduct of fellow inmates and instructing them on how to behave. The CPT makes a recommendation to the Bulgarian authorities "to ensure that no prisoner is put in a position (even *de facto*) to exercise power over other prisoners".[112]

The security regime in investigative detention facilities, which involves segregation of inmates by cells and lack of common activities, renders communication between detainees very difficult. Therefore, assistance between prisoners in the form of practical information, translation, education, help in writing documents or making contacts with lawyers or NGOs is rather uncommon.

In prison, the most active litigants are long-term prisoners and persons sentenced to life imprisonment.

5. **ACCESS TO THE INTERNET/DIGITAL TOOLS FOR PRISONERS**

Experimentation with or implementation of digital legal tools for prisoners and for defenders.

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[110] Execution of Punishments and Detention Order Act (2009), Article 168 (2).
[111] Rules of Application of Execution of Punishments and Detention Order Act (2010), Article 161, available in Bulgarian at: https://www.lex.bg/laws/ldoc/2135661301.
[112] European Committee for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment, *Report to the Bulgarian Government on the visit to Bulgaria from 25 September to 6 October 2017*, CPT/ Inf (2018) 15, p. 39.

- Who designs and promotes such tools? To what extent are they relevant with regard to main prison litigation issues? Are they useful and understandable for those who need and use the information?
- Are they provided? If so how? What are the known obstacles?
- Are digital tools for communication between courts and applicants (in the framework of proceedings) available in prison? Under which conditions? To what extend is the confidentiality respected when using the computer equipment provided? In case IT tools are deployed at a large scale within the judicial system, how do courts deal with non digital applications? Is there a difference of treatment between the two kinds of applications (in terms of quality of the examination on the merits)?

Internet and digital technologies are not yet formally integrated in the operation of Bulgarian prisons for the purposes of securing prisoners' effective access to justice. All procedures and services in prison are paper-based. Prisoners are not allowed access to Internet for any purposes, including for searching for legal information, preparation of complaints or contacting lawyers, transmission of documents to the court or to other institutions. Lawyers are also prohibited from using laptops, mobile phones or other electronic devices when visiting their imprisoned clients. Yet, it should be noted that although prisoners are forbidden from possessing mobile phones, they are often smuggled in prison facilities.

In the course of the research, the BHC has documented one case of prisoners benefiting from internet technologies. The case was from the female prison, where a foreign national was allowed to make video call to her family members, who resided abroad.

6. RELEVANT LITERATURE

Please include references and web-links to relevant written material (e.g. reports by the Bar, NGOs, State; press articles; case work, …)

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