

PILOT DUTY SOLICITOR SCHEME IN BULGARIA

Goals of the pilot scheme

The pilot duty solicitor scheme aims at extending the range of persons who use legal aid during police detention, establishing standards for the provision of legal aid by duty solicitors, and creating a mechanism for swift processing of legal aid applications by the local bar association. It also contributes to increasing public awareness of the right to free legal aid during 24-hour police detention.

Scope

The pilot scheme implements in Veliko Turnovo for the period of one year. It covers the provision of legal aid by duty solicitors during police detention. The scheme seeks to guarantee that duty solicitors will be able to provide 24-hour legal aid service that meets certain predefined minimum quality and quantity standards.

The scheme includes a detailed description of actions that need to be taken in case of a filed application for free legal aid during police detention under Art. 63, Section 1 of the Mol Act. It describes in detail the rights and responsibilities of participating police officers and duty solicitors.

The scheme also includes methods for registering certain predefined quality and quantity standards, as well as statistical data and information necessary to measure the results of its implementation.

CHAPTER I DUTY SOLICITORS

Participation in the scheme

In order to participate in the duty solicitor scheme, a lawyer must be registered in the National Legal Aid Register, he or she must have explicitly stated his or her willingness to join the scheme and must be included in the list of duty solicitors kept at the Veliko Turnovo Bar Council.

The duty solicitor must agree to follow the procedures established in the present scheme. Adherence to those rules also serves as a guarantee that solicitors would provide quality legal defense.

Main rights and responsibilities of duty solicitors

In addition to pursuing these goals, the duty solicitors included in the scheme must:

1. Explain to the clients in a comprehensible language that they have the right to use an attorney free of charge, outline the responsibilities of the attorney and inform clients that they can use the services of the same attorney in subsequent stages of the proceedings;
2. Be available at all times during the period when they are on duty, respond to emergency requests and meet the detained person within 1 hour of being called in
3. Provide legal advice and representation to the arrested person, unless there exists a conflict of interest; provide legal aid to another person arrested or is in court room; has health problems;
4. Review the necessary documentation and information provided by the police; keep separate files for each case; file and keep all forms introduced by the pilot scheme; take notes on the case, including complete information provided by the police and the client, time of meetings, interview with the police etc.;
5. Receive clients opinion about the arrest, reasons and grounds for it, police allegations etc.
6. Provide initial advice to the clients and explain what is current situation, what are the possibilities to appeal the detention, what other defense options exist, what are the future stages and possible evolution of the proceedings; Coordinate their defense strategy with the clients;
7. Participate in the actions taken by the police; to guarantee that clients' right are abide by the police

CHAPTER II

POLICE OFFICERS

Police officers participating in the pilot scheme are: the operative police officer on duty at the Regional Police Department, patrolling officers, and police officers who work with detainees.

Main responsibilities of police officers

1. Immediately upon detention, to inform the detained person in a comprehensible language about the grounds for detention and the liability provided by law, as well as to explain his or her rights, including right of legal defense;
2. To provide/ensure the detained person the ability to use legal defense from the moment of detention; to provide list of attorneys on duty.
3. To inform the Bar council and give initial information; provide duty solicitors with the opportunity to meet their clients without delay;
4. To ensure that client-lawyer conference is held in privacy and that patrolling officers are able to exercise visual supervision;
5. To present duty solicitors with the necessary information regarding the circumstances of detention, including a brief description of the case, how was the person detained, the conditions and reasons of detention, as well as the legal grounds for detention;
6. To fill in and keep the forms introduced by the pilot scheme; to present all necessary documentation, information and data, to issue recommendations for improving the pilot scheme;

CHAPTER III

PROCEDURE

For the purposes of the pilot scheme, a mobile phone communication is established between the Veliko Turnovo Regional Police Department and the local Bar Council. The

mobile phone of the bar association will be kept by one of its members according to a predefined schedule.

List of duty solicitors

For the purposes of the pilot scheme, the Veliko Turnovo Bar Council shall produce an updated list of duty solicitors, a copy of which shall be submitted to the Veliko Turnovo Regional Police Department.

The duty solicitor roster shall be compiled as follows: The Bar Council appoints a registrar that shall be changed every month. At the end of each month the registrar shall produce an empty calendar (roster) for the next month, which will be given to the enlisted duty solicitors. Each duty solicitor shall note down the days in which he or she would be available, taking into consideration his or her other commitments. Duty solicitors shall set independently the days in which they could be called in and shall record them in the roster.

When all lawyers who have agreed to provide services as duty solicitors have filled in the roster, the roster shall be kept by the registrar. The rosters of all months shall be kept at the Bar Council.

First stage: Notifying the detained person

1. When a detained person is brought to the police station, the police authority that has limited the person's right to free movement (the police inspector on duty or another police officer who has detained the person) issues a detention order, which is entered in the special register of the respective structural unit.
2. Immediately upon detention, the detained person must be informed about the grounds for detention and the liability provided by law, and their rights must be explained to them; in particular, the detained person must be informed that he or she has the right to use the services of an attorney of their choice and is entitled to legal aid under the Legal Aid Act, which legal aid would be provided to them free of charge.

3. When the written detention order is issued, the detained person fills in a declaration in two copies, stating that he or she has been informed of his or her rights. The time of first contact is recorded in both copies of the declaration.
4. When the detained person has requested the services of a duty solicitor, the police officer uses the mobile phone provided by the project to call the Bar Council registrar and records the time of call in the declaration signed by the detained person (*see Annex 2*). The detained person is also notified of the time when a duty solicitor has been called.

Second stage: Notifying the duty solicitor

1. Immediately after the detention, the operative police officer on duty at the Regional Police Department informs by phone the representative of the Bar Council that a request for using duty solicitor services has been made.
2. During this first contact with the Bar Council, the operative police officer on duty notifies the Bar Council representative of the following:
 - ✓ the personal data of the detained person;
 - ✓ his or her request to use the services of a duty solicitor;
 - ✓ the grounds for detention;
 - ✓ the physical and mental condition of the detained person;
 - ✓ whether any explanations have been given by the detained person or not;
 - ✓ whether there are any police actions scheduled and if yes, when are they scheduled to begin.

The police officer also provides information that would allow the duty solicitor to establish whether there is any conflict of interest, what are the reasons for and circumstances of detention, whether any preparatory actions need to be taken (for instance, meeting the detainee's relatives, calling a doctor, etc.)

3. The registrar accepts the call and records it in the specially established register for incoming legal aid applications.

4. The registrar consults the roster and contacts the solicitor that the person has chosen, if any. If not, he contacts one of the solicitors on duty for that particular day, using the designated mobile phone line. The registrar records the time when the legal aid application has been received by the police station and the time when the duty solicitor has been contacted.
5. If the first contacted duty solicitor refuses to take the case, the registrar notes down the grounds for refusal and contacts the second duty solicitor on the roster. The time of this call is also recorded.
6. During the first communication with the duty solicitor who has agreed to take the case, the registrar reiterates the information, which he or she has received from the police under section 2 above. The registrar records the name of the duty solicitor who has taken the case and the time when he or she has been notified.

Third stage: Actions at the police station

1. The duty solicitor must arrive at the police station within one hour of being notified.
2. The arrival of the duty solicitor is recorded by the police officer on duty in the official registers kept at the respective Regional Police Department: Register of Visitors and Register of Held Meetings. The duty solicitor form shall be stamped by the police officer.
3. During this first appearance at the police station the duty solicitor is informed about the circumstances of detention, he or she is presented with the issued detention order and is notified in detail about other circumstances that are of importance for the defense of his or her client.
4. If charges are brought against the detained person before the 24-hour period of detention expires, procedural and investigative actions under the Code of Criminal Procedure are taken.

5. Police officers give the duty solicitor the opportunity to review the existing information and documentation and to meet with the detained person in private.

Fourth stage: Meeting with the client

During the first visit at the police station and the first meeting with the detained person, the duty solicitor should verify whether:

- all legal requirements have been met;
- the detained person has been informed of his or her rights and has been given the opportunity to exercise them from the moment of detention;
- a written detention order has been duly issued;
- the detained person has been immediately informed about the grounds of detention in a language that he or she can understand, in case the detained person does not speak Bulgarian;
- at the time of detention there was a need to place the detained person in special premises and take special personal protection measures, including provision of emergency medical assistance;
- the factual and legal status of the detained person has been properly determined: has his or her identity been established, has it been verified beyond doubt, does the detained person suffer from physical or mental disability that prevents him or her to defend himself or herself alone.

During this meeting, the duty solicitor informs the detained person about:

- i. the status and the responsibilities of duty solicitors; the opportunity to use free legal aid under the Legal Aid Act;
- ii. the rights and responsibilities of the detained person, stating explicitly that he or she has the right not to answer the questions of investigative authorities (the duty solicitor must make sure that at the time of detention the detained person has been informed of his or her rights and specifically of the right not to answer questions posed by police officers);
- iii. the weight and significance of any explanations and confessions that the detained person has made, clarifying also under what circumstance they have been given;

- iv. the grounds for detention and whether they meet the requirements of the law, the reasons for detention, etc.
- v. The procedural defense options that exist at the stage of 24-hour police detention depend primarily on whether the detention meets the requirements of the law from a procedural point of view and whether the lawful interest of the detained person has been respected in the process of detention: is his or her behavior potentially harmful to himself or herself or to others, does he or she need to be placed in a medical institution for that reasons, it this justified by the purposes of detention.

Fifth stage: Role of duty solicitor during police interview

During police interview the duty solicitor observes the procedure of questioning. The duty solicitor verifies if the detained person understands the procedure and its rights. The duty solicitor explains the weight and significance of any explanations and confessions.

The duty solicitor follows about leading questions and advises the detained person not to respond in any case the response can harm its client.

When the questioning ends, the duty solicitor checks if the protocol is completes and reflects all questions and answers.

Sixth stage: Actions of the duty solicitor after the end of the 24-hour detention period

The duty solicitor monitors the legal status of the detained person after the 24-hour detention period expires. The duty solicitor contacts the operative police officer on duty, verifies, based on the detention order number, the time of release or the status of the detained person, and acts accordingly. These circumstances are recorded in the legal aid report.

If the detained person has not been released, the duty solicitor establishes the reasons for continued detention and files a complaint, if there are no legal grounds to extend the detention period.