

EMERGENCY DEFENCE SERVICES IN BULGARIA: LAW, PRACTICE, CHALLENGES AND SOLUTIONS

1. Some preliminary remarks how the early access to a lawyer is organised in Bulgaria

Since 2005 when Bulgaria had adopted the Legal Aid Act art.21 of it recognized litigation in event of police arrest as one of the types of legal aid.

A lawyer can intervene from the moment of arrest. Immediately upon detention, the police officer is obliged to inform the detained person about the grounds for detention, the liability provided by law. It explains the rights and gives to the detained person a declaration to sign, where all rights are described.

There are not exclusive provisions that forbid or allow take statements from the person before the lawyer arrived. If such statements are taken, they are not considered as evidences, but only used by the prosecutor to assess if a criminal proceeding needs to be initiated.

In order to participate in the duty solicitor scheme, a lawyer must be registered in the National Legal Aid Register and must have explicitly stated his/her willingness to be included in the list of duty solicitors. The list of duty solicitors is compiled and kept by the respective Local Bar Councils that uses an electronic system for random case assignment of attorneys. Legal aid act provides that whereas possible, the attorney council shall nominate attorney as nominated by the person to which the legal support shall be provided, but this provision is rarely implemented.

Pursuant to art. 30 (4) of Legal Aid Act the duty solicitor shall continue performance of legal support at all stages of the proceedings. In practice, neither the Bar, nor the prosecutor or court has no information who was the attorney on duty.

2. Short project information

Project was directed to enhance access to legal advice and representation during police arrest by ensuring better coordination between police and local Bars in the attorneys' appointment process. The main element is launching a Pilot police station duty solicitor scheme in Veliko Tarnovo, a middle size city.

3. Where the problems still lie in practice?

Despite clear legislative provisions that require appointment of a state-paid lawyer to all persons in police custody irrespective of their financial status, police detainees in Bulgaria still have problems to benefit from the assistance of a legal aid attorney.

Five factors are identified and still exist in this regard:

1) Firstly, a large part of the Ministry of Interior officials are still reluctant to inform the detainee about the right to a lawyer as early as arrest at the police station, and to provide the suspect with the opportunity to solicit appointment of a legal aid attorney.

Under the project activities several trainings to the police were delivered and the duty solicitor scheme was used to amend the Instruction on the Procedure for Detention by Police Authorities of Persons at Ministry of Interior Structural Units. In October 2009 a new Instruction № I3-1711 for police stations entered into force, where specific provisions about registering all telephone calls to the local Bar Council as well as keeping appropriate records of lawyers' attendance at police stations are included. In addition, a new paragraph gives clear instruction of police officers to provide prior information to the attorney/local Bar Council sufficient for them to organize the preliminary defense.

OSI continues to monitor the application of the Instruction and is getting more data under the Civil Monitoring of the Police Project. Next year we will have information how the Instruction is applied in 7 big cities, including Sofia. The project provided for independent civil monitoring of police detention facilities and conditions, and aimed at establishing the degree of observance of statutory requirements and human rights.

2) On the second place, the detainees, too, are rarely aware of this right.

In order to fill this gap, an information brochure was developed. Though it is designed to the general public, it appears to be very helpful for the police and the Bar, as well. The brochure contains information about all right of detainees, letter of rights for foreign citizens in 10 languages – Bulgarian, English, French, German, Russian, Greek, Rumanian, Macedonian, Serbian and Turkish. At the end there are two pages description of the obligations of attorney who defence a person in police station. The brochure contains address of all EU member states' and neighbouring countries Embassies.

The brochure was printed in 3000 copies and distributed in police stations of whole country through the Ministry of Interior. The National legal aid bureau and Supreme Bar Counsel, as well.

3) Another reasons that still exists, especially in big cities, is the lack of proper coordination between police and local Bars.

The duty solicitor scheme has proved that is an efficient coordination mechanism that can be easily implemented. Here are some data collected during the period of one year:

Total people arrested: **312 arrested**

Number of people ask for legal aid request: **55 people**

Number of requests received under the scheme: **47 calls**

Number of legal aid provided: **47 times legal aid provided**

Average time period of call - appearance of attorney in police station: **31 min.**

Average time period appearance and the attorney-client meeting: **16 min.**

Average duration of attorney-client meeting: **41 min.**

Number of attorneys: **15 attorneys**

4) Lack of motivation for attorneys to appear in police stations, mainly because of the low fee, lack of clear understanding what their role are when they meet the detainee and no control of the quality of services they provide.

As a result of the project efforts the last amendment of the Regulation on payments of legal aid services was adopted in July 2009. It mainly separates all cases where a legal aid service is paid and specifies the attorneys' fee. In particular, art. 14 regulate minimum and maximum limits for fees for attorneys in duty. Additional payment is envisages for attorney that provide legal aid service out of usual office hours.

If appear, lawyers can not guarantee quality of services they provide. Neither Bar Council, nor National legal aid bureau, nor NGOs provide training for them. In addition, there are not mechanisms adopted for guaranteeing and monitoring good quality service.

While the Legal Aid Act significantly enhances the scope of legal aid upon police arrest, it fails to introduce mechanisms to control the quality of assigned counsel and continues to rely on local Bar Associations for the selection of lawyers providing legal aid. In practice, assignment of cases to defense lawyers remains uncontrolled, hindering the provision of widely accessible and quality legal aid services.

5) There is no enough statistics about the number of the legal aid provided in police station.

Legal Aid Bureau has started gathering statistics in this respect since January 2010. Here some numbers of legal aid registered in police stations for the period of 1 January 20 September 2010: Police detentions for 24 hours: 15 cases and Pre-trial detentions: more that 10 000 cases.

4. Last developments at national level

Bulgarian government has difficulties in providing sufficient funding to the National Legal Aid Bureau that delays payment for attorneys for several months. When the Bulgarian National Legal Aid Bureau has warned that attorneys will stop providing free legal protection to clients because the state funding has been spent, the government has allocated additional 3 million lv. for legal aid.

Since this week, the Government is establishing a working group that will analyze the effectiveness of the NLAB and decide whether its place is in executive or judicial system.