FULL PROOF

National Report for Bulgaria

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Abbreviations and acronyms

CA	Consortium Agreement
D	Deliverable
DoA	Description of Action
EC	European Commission
EU	European Union
GA	Grant Agreement
G.A	General Assembly
GDPR	General Data Protection Regulation
IPRs	Intellectual Property Rights
KO	Kick-off
LEAs	Law Enforcement Agencies
M	Month
PC	Project Coordinator
PO	Project Officer
R&D	Research and Development
RFI	Request For Information
RP	Reporting Period
T	Task
TOC	Table of Content
TRL	Technology Readiness Levels
WP	Work Package
WPL	Work Package Leader

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Executive summary

Bulgarian legislation on the rights of suspects and accused persons in criminal proceedings contains provisions which have been more or less in line with the standards laid down in the six Directives in this area even before their adoption, including the three Directives subject to this study. However, substantial changes have been made to national legislation in order to transpose, fully and correctly the EU minimum requirements.

For example, as regards the right to information in criminal proceedings, explicit legislative amendments were made in March 2024 for full transposition of the Directive's requirements. Nevertheless, certain requirements have been only partially implemented in Bulgarian law. This refers respectively to the scope of the Directive respecting the rights of the suspects as well as the Letter of Rights on arrest and the Letter of Rights in European Arrest Warrant proceedings.

Concerning the right of access to a lawyer and to have a third party informed, major changes were made in 2019 by the legislator not only in the Criminal Procedure Code, but also in other laws. Nevertheless, not all the requirements of the Directive have yet been fully transposed. Thus, the Bulgarian law still does not sufficiently guarantee the rights of the suspects, including the protection against self-incrimination of these persons who, in the course of questioning by the police or by another law enforcement authority, become accused persons. The same could be said for the right to have a third party informed of the detention where the accused is a child as well as the right of access to a lawyer in European arrest warrant proceedings.

As regards the legal aid the national legal framework already provided for most of the requirements of Directive (EU) 2016/1919 even before adoption of the latter. Moreover, in some cases the Bulgarian law goes beyond the standards of the Directive. Nevertheless, significant changes were adopted in December 2022 and March 2024 in order to bring national legislation into line with the standards of the Directive.

However, one of these standards raises questions in the doctrine and in case law, namely the possibility for accused or requested persons to bear part of the costs for legal aid themselves, depending on their financial resources (Recital 8 of the Directive). The application in practice of some of the rules concerning the legal aid is also identified as problematic.

However, in recent years, infringement procedures have been initiated against Bulgaria concerning five of the six Directives on the rights of the suspects and accused persons in criminal proceedings, including two of those under review, namely Directive 2012/13/EU and Directive 2013/48/EU. One of the main issues raised by the European Commission is related to the correct transposition of the scope of the Directives, in particular to the procedural rights of the suspects in the criminal proceedings as mentioned above. The issue is raised due to the lack of the figure of the so-called "suspect" in national law, i.e. a person who has not been constituted as an accused yet. This questions the extent to which the Bulgarian legislation complies with the Directives' standards with regard to the rights of such persons. It should be noted, however, that the national legal framework contains provisions that, more or less, guarantee certain of their rights in the criminal proceedings. On the other hand, the case law recognises the violation of the rights of these persons as a substantial breach of procedural rules. Nevertheless, further legislative changes seem to be necessary to ensure the full implementation of the Directives' requirements concerning the rights of such persons in the criminal proceedings.

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1. FULL-PROOF Scope

FULL-PROOF "Ensuring the due course of criminal proceedings via strengthened respect for the procedural rights of the suspect and the accused" (Grant Agreement nº 101160524), is a 2-year (October 2024 – September 2026) project co-funded by the European Union, via the Justice Programme (JUST-2023-JACC-EJUSTICE) call for proposals for action grants to promote judicial cooperation in civil and criminal matters. FULL-PROOF's main objective is to raise awareness and knowledge on Directives 2012/13/EU, 2013/48/EU, and 2016/1919/EU to better approach and work with suspects and accused. The partnership will analyse the most prominent and common breaches in the practical implementation of these Directives, building upon identified best practices and develop a framework for their replicability, streamline the use of new and existing tools and materials to assist professionals in their daily work and promote international communication.

Ensuring at national level the procedural rights of suspects and accused persons in criminal proceedings, especially in the early stages of justice process, is the basis of the national report for Bulgaria, prepared under the Full Proof project.

Bulgarian legislation implementing the requirements of Directives 2012/13/EU, 2013/48/EU and (EU) 2016/1919, as well as the related national case law, has been analysed. Infringements of the procedural guarantees ensuring the rights under the Directives have also been examined, as far as possible.

2. Directives 2012/13/EU, 2013/48/EU and (EU) 2016/1919

2.1. Directive 2012/13/EU: Right to information in criminal proceedings

Certain of the minimum requirements established in the Directive, aimed at guaranteeing the right to information in criminal proceedings, are de facto contained in Bulgarian law. Thus, the national legislation in this area seems to comply with certain standards of the Directive, especially concerning the rights of the accused persons under the CPC.[1] As regards the rights of the suspects in criminal proceedings, the situation differs, as explained below. In addition, the requirements of the Directive on the Letter of Rights on arrest set out in Articles 4 and 5 of the Directive had been only partially implemented in Bulgarian law. Therefore, major changes were made in March 2024 to explicitly introduced these requirements into national law.[2]

2.1.1. Scope (Article 2 of the Directive)

Concerning the scope of the Directive, the question arises as to how far the national legislation complies with the standard of the Directive given the absence of the figure of the so-called "suspect" in national law, i.e. a person who has not been constituted as an accused yet[3].

[1]See, in that regard, Chinova, Margarita. Pre-trial Proceedings under the Criminal Procedure Code. Theory and Practice, Ciela, 2013; Marinova, Gergana. Challenges to Criminal Procurement Legislation in Implementing the Requirements of the Directives of the European Parliament and the Council of the European Union, 2018, https://ebox.nbu.bg/bgineu/index4.php?id=45#t .

[2] SG, No.18/1.03.2024.

[3] See in this regard Accessible Letters of Rights in Europe – Comparative study, Sect. 2.1., 15-17, available at https://helsinki.hu/wp-content/uploads/Comparative-Report_FINAL_ENG.pdf. The study was conducted as part of the 2-year international research project "Accessible letters of rights in Europe", which was launched to contribute to the correct implementation of Directive 2012/13/EU, supported by the European Commission. It was launched by the Hungarian Helsinki Committee (Magyar Helsinki Bizottság, HHC) – with the participation of Rights International Spain, the Lithuanian Human Rights Monitoring Institute, Fair Trial Europe and the Bulgarian Helsinki Committee.

In this regard, however, it should be noted that the Criminal Procedure Code recognised such a figure, alongside the figure of the accused, until 2006.[4] According to Article 202 (1) (repealed), a suspect was defined as a person detained for committing a publicly actionable criminal offence in any of the following cases where: 1) the person was caught in the act or immediately after the perpetration; 2) an eye-witness has designated the perpetrator of the crime; 3) obvious traces of the crime have been found on the body or the clothes of the perpetrator or 4) the person has attempted to escape or after a relevant check, his identity or place of residence cannot be established and there is sufficient evidence that he has committed a crime.

However, the suspect had only certain of the rights of the accused, namely – to be informed of the criminal offence in relation to which he/she has been constituted as suspect to the proceedings in this particular capacity; provide explanations; make requests, comments and raise objections; file appeal from acts of the prosecutor and investigator infringing on his/her rights and legal interests, and have a defence counsel (Article 206 (repealed).

According to the doctrine at the time, the figure of the suspect was defined as a procedural one that existed for a short period of time until it was clarified whether the conditions for constituting the person as accused party were met, i.e. where sufficient evidence was collected of the person's guilt in the perpetration of the crime.[5] Moreover, it was noted that in practice in many cases the figure of the suspect replaced the figure of the accused, i.e. where persons are questioned as accused, without however being constituted as such, respectively without being provided with the procedural guarantees and defence rights related to this capacity. Therefore, such a replacement was rightly criticized as inadmissible.[6]

[4] It is about the Criminal Procedure Code, which was in effect from March 1975 until its repeal in April 2006.
[5] See in this regard Pavlov, Stefan. Criminal Procedure Law of the People's Republic of Bulgaria, St. Kliment Ohridski University Press, 1989, 412, 415.
[6] Ibidem, 411.

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The existence of such abuse of the procedural rights of the accused in criminal proceedings by the law enforcement authorities could also be cited as one of the reasons why, with the adoption of the current Criminal Procedure Code in 2005[7], the figure of the "suspect" was abolished. Instead, the Criminal Procedure Code now provided that the constituting a person as an accused should take place not only by issuing a decree by the investigating body where sufficient evidence is collected for the guilt of that person in the perpetration of a crime (Article 219 (1) CPC), but also by drafting the record for the first investigative action against him/her (Article 219 (2) CPC)[8]. The aim of the latter provision is precisely to cover the cases of the suspected persons against whom there is insufficient evidence of their guilt, i.e. the provision of Article 219 (1) CPC is not applicable.

The issue of the Directive's scope with regard to rights of the suspects in criminal proceedings has also been discussed by the Court of Justice of the European Union (CJEU). In its judgment of 7 September 2023, the Court held that „*Article 2(1) of Directive 2012/13 and Article 2(1) of Directive 2013/48 must be interpreted as meaning that those directives apply to a situation in which a person, in respect of whom there is information to the effect that he is in possession of illicit substances, is subject to a personal search and seizure of those substances. The fact that national law does not recognise the concept of 'suspect' and that that person has not been officially informed that he or she is an 'accused person' is irrelevant in that regard*".[9]

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[7] SG, № 86/28.10.2005, in force since 29 April 2006.

[8] The "first investigative action" means any action taken with the participation of a person, including interrogation as a witness, for whom sufficient evidence is collected for his participation in a crime. From that moment the person acquires the status of an accused and should be able to enjoy the rights of the accused under the Directive.

[9] See Judgment of 7 September 2023, C-209/22, para. 45, available at https://curia.europa.eu/juris/document/document.jsf;jsessionid=A2C588D3919C080E2ADCD0B63B141D44?text=&docid=277070&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3090674.
In relation to the scope of the two Directives it is interesting to note the statement of the Regional Court - Lukovit as the court referring for a preliminary ruling. According to the national court, "even if national law does not recognise the concept of a 'suspect', Article 219(2) of the Code of Criminal Procedure could, in principle, guarantee the rights of defence of persons for whom there is insufficient evidence of their guilt, but who, due to the need to carry out investigative actions with their participation, will be formally 'accused' and will therefore be able to benefit from the rights set out in Article 55 of the Code

The absence of the figure of the suspect in national legislation has also been identified by the European Commission. Five infringement procedures against Bulgaria has been lunched, most of them precisely for incomplete transposition of the scope of the Directive.[10]

As mentioned above, the national legislation after 2005 does not provide for the figure of the so-called "suspect". However, there are cases where a person can be defined as such, i.e. before has been constituted as an accused under the Criminal Procedure Code. These are 1) the cases of detention within no more than 24 hours by the police bodies, by the "Military Police" Service authorities, by the officers of the State Agency for National Security or by the customs authorities of the person of whom data exist that he/she had committed a crime. In these cases the rules under the relevant laws apply, not those under the Criminal Procedure Code; 2) the cases where a person became a suspect during questioning as a witness in pre-trial proceedings under the Criminal Procedure Code or 3) during questioning by the police under the Ministry of Interior Act without detention.[11] And while for the first two hypotheses, the national legislation still contains certain provisions that more or less implement the standards of the Directive, in the third hypothesis the situation differs.

of Criminal Procedure, which meet the requirements of Directives 2012/13 and 2013/48" (para. 29 thereof). However, according to the referring court, "that procedural provision is not clear. It is also applied in an ambiguous and contradictory manner, or is not applied at all" (para. 30 thereof).

[10] According to the Commission, Bulgarian law does not cover persons who are de facto suspected of having committed a criminal offence but who have not yet been officially recognised as accused persons. This means that, in Bulgaria, persons who are only suspected and not yet officially accused of having committed a criminal offence do not enjoy the rights to which they are entitled under the Directive, which can significantly impact the fairness of their trial. This issue interlinks with the incorrect transposition of substantive rights set out in the Directive, such as the right to information about rights, which Bulgarian law does not extend to de facto suspects. See for more details, March infringements package: key decisions, 12 March 2025, available at https://ec.europa.eu/commission/presscorner/detail/en/inf_25_503. See also in this regard Marinova, Gergana. On the transposition of the EU Directives on procedural rights for suspects and accused persons in Bulgaria, Society and law Journal, Issue 2/2025.

[11] This could also include cases of questioning by the "Military Police" Service authorities, by the officers of the State Agency for National Security or by the customs authorities.

In this regard, it should be noted that the case law recognizes the figure of the suspect in the above-mentioned hypotheses, despite the absence of such figure in the legislation. The courts consider the violation of his/her rights as a substantial breach of the procedural rules, which leads either to the revokement of the detention order or to the exclusion of the improperly collected piece of evidence from these ones that may be used in sentencing.[12]

2.1.2. Right to information about rights (Article 3 of the Directive)

The right to information regarding the rights of suspects or accused persons is de facto introduced in a number of rules of the Criminal Procedure Code. Such is, for example, the general provision of Article 15 (2) and (3) of the Code, established in the chapter on the basic principles on which the criminal proceedings in Bulgaria are based. It obliges the court, the prosecution and the investigative bodies to explain to the accused and the other persons involved in the criminal proceedings their procedural rights and provide them with the opportunity to exercise them. This obligation of the authorities is subject to a detailed regulation by many rules of the Criminal Procedure Code covering the entire course of criminal proceedings both at pre-trial and trial stages. It can be said that these rules are fairly implemented in practice.

Moreover, according to case law if the failure of the authorities to comply with its obligations under this provision reflects to the exercising of the person's procedural rights, it constitutes a substantial breach of procedural rules – one of the grounds for revocation the sentence and remit the case to the first instance or the appellate court[13].

[12] See, for example, Judgment № 263/20.01.2025 of Sofia District Court; Judgment № 3061/12.08.2025 of Sofia District Court; Judgment № 160/07.04.2025 of District Court-Blagoevgrad; Judgment № 695/09.06.2025 of District Court-Varna; Judgment № 511 of 22.10.2024 of Supreme Court of Cassation; Judgment № 61 of 26.01.2024 of Supreme Court of Cassation; Judgment № 26 of 10.01.2024 of Supreme Court of Cassation; Sentence № 58 of 7.05.2025 of Sofia City Court; Judgment № 375 of 01.07.2024 of Supreme Court of Cassation; Judgment № 87 of 18.05.2016 of Supreme Court of Cassation; Judgment № 42 of 20.03.2018 of Supreme Court of Cassation.

[13] See in this context Judgment № 1182 of 24.11.2014 of Sofia City Court before which the case was brought on appeal. At the court hearing, the identity of the defendant was established and the court

The substantial breach of procedural rules is one of the cassation grounds that lead to the revocation of the sentence or judgement and remit of the case to the first instance or the appellate court.[14] According to the Criminal Procedure Code, the breach of procedural rules is substantial where: 1) it has led to restriction of the procedural rights of the parties and has not been remedied; 2) there is no reasoning or record of the court hearing of the first instance or the intermediate appellate review instance; 3) the sentence or judgment have been issued by an illegitimate panel; 4) secrecy of deliberations has been infringed upon on the occasion of rendering a sentence or judgment.

In the latter three cases, the court is obliged to revoke the sentence or judgement without assessing the result of the breach of procedural rules. This assessment has already been made a priori by the legislator. In contrast, in the case of the substantial breach of procedural rules, which has led to restriction of the procedural rights of the parties and has not been remedied, the court shall assesses which provision has been violated and whether this violation restricts the rights of the parties.[15] Any party that claims such breach of procedural rules bears the burden to prove that the breach has had an impact on procedural rights. In addition, the court *ex officio*, by virtue of the ex proprio motu principle shall verify whether the cassation grounds are present.[16]

According to the case law, there is substantial breach of procedural rules, which has led to restriction of the procedural rights of the parties when the case was resolved without sending a copy of the indictment to the defendant; a lawyer has not participated in cases where his participation is mandatory; the case was resolved in

investigation was launched, but - as can be seen from the record - the rights of neither the defendant nor the victim as such and after his constitution as a private prosecutor, were explained. According to the court, this is a flagrant breach of the principle under Article 15 (3) of the CPC and is capable of limiting the procedural rights of the respective parties - grounds for revocation the sentence and remit the case to the first instance.

[14] The other two are a breach of law and an obviously unfair punishment (Article 348 (1) CPC).

[15] See in this context, Margarita Chinova and Georgi Mitov, Short Lecture Course in Criminal Procedure Law, Ciela, 2021, 545.

[16] Ibidem, 537.

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the absence of the accused in breach of the conditions laid down for this procedure, etc.[17]

As regards the implementation of these requirements of the Directive concerning the so called suspects in cases other than those under CPC, the national legislation does not satisfy these standards. It is about cases where, for example, a person is questioning by the police, is not detained and in the course of the questioning the data is identified that he/she had committed a crime. The situation is similar in the case of a person being questioned as a witness under the CPC. The lack of provisions in the Ministry of Interior Act, respectively the Criminal Procedure Code, provided for the right to information about the rights of these persons in accordance with Article 3 (1) of the Directive makes its transposition incomplete, including the requirement under Article 3 (2) thereof. In this regard, it should be noted, however, that the case law recognizes the standard of the Directive with concerning these persons. According to the national courts, such data collected by the police during investigative interviews conducted under detention or in police-controlled environment, without the person being informed of his/her rights, including the right to a lawyer, cannot be used as evidence in the case.[18]

2.1.3. Letter of Rights on arrest (Articles 4 and 5 of the Directive)

These are the provisions of the Directive, which are partially implemented in Bulgarian law regardless of the significant legislative changes made in this regard in 2024.[19]

First of all, the Criminal Procedure Code does not provide for an explicit rule such as Article 4 (1) of the Directive.

Furthermore, the Code does not lay down the decree of the prosecutor for detention of the accused person for up to 72 hours until the latter is brought before court to be

[17] Ibidem, 546.
[18] See, for example, Judgment № 375 of 01.07.2024 of Supreme Court of Cassation; Judgment № 42 of 20.03.2018 of Supreme Court of Cassation.
[19] SG, № 18/01.03.2024.

served on the accused person or any specific requirements for the content of this decree concerning the rights of the detainee. The decree for constitution of the accused person is served on the accused and includes information about his procedural rights under Article 55 of the Code but does not contain all information about the rights on arrest as mentioned under Article 4 of the Directive[20]. Similarly to the detention prosecutor's decrees, the Code does not provide for specific requirements for the content of the detention court's rulings concerning the rights of the detainee.

It should be noted in this respect, however, that the general rules in Article 15 (2) and (3) of the Code, namely the obligation of the authorities to inform and explain the persons their procedural rights, as well as to ensure the possibility to exercise these rights, are applicable in cases of detention of the accused persons. However, according to some scholars the rules are not sufficient for the implementation of the Directive. Criminal Procedure Code should be amended in order to transpose correctly the provisions of Article 4 of the Directive[21].

Nevertheless, Bulgarian law until March 2024 contained some provisions, which partially transposed Article 4 of the Directive regarding the Letter of Rights on arrest. They were applicable in cases of detention other than detention under Criminal Procedure Code such as police detention under the Ministry of Interior Act, a detention under State Agency for National Security Act, the Military Police Act and the Customs Act (where the detained person has not been constituted yet as an accused party under the Code). In these cases, a written detention order containing the rights of the detainee should be issued. The person filled and signed a declaration

[20] There is a lack of information, for example, about the right of access to urgent medical assistance and the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.
[21] See in this regard Chinova Margarita. A new directive on the right to information in criminal proceedings has entered into force for Bulgaria in: - Norma, 9/2012 г., 51; Chinova, Margarita. Pre-trial Proceedings under the Criminal Procedure Code. Theory and Practice, Ciela, 2013.

that he/she was aware of these rights[22]. However, only some of the rights of the detained person referred to in Articles 3 (1) and 4 (2) of the Directive were listed both in the written detention warrant and the declaration, signed by the detained person. A similar conclusion was drawn in a Bulgarian Helsinki Committee study on the right of detained suspects and accused persons in Bulgaria to receive written information on the rights in criminal proceedings set out in Article 4 of the Directive[23].

The fact that our country had not introduced a Letter of Rights on arrest within the meaning of Article 4 of the Directive was also mentioned in the 2016 European Union Agency for Fundamental Rights (FRA) survey[24].

On the other hand, only in cases of police detention the model of declaration, filled and signed by the detained person was set out in a legal act, namely as an Annex 1 to the Instruction No. 8121h-78 of 24 January 2015 on the procedure for detention, the furnishing of the premises for accommodation of detainees and the order therein at the Ministry of Interior[25]. According to the Bulgarian Helsinki Committee study

[22]Until March 2024 only in cases of detention by the customs authorities the law did not specify the contents of the detention warrant, neither did it provide for the completion of a declaration that the detained person was aware of his/her rights. However, the law itself provided for some of the rights of the detained person referred to in Articles 3 (1) and 4 (2) of the Directive as well as the obligations of the customs authorities to inform and clarify to the detained person these rights.

[23]See "Declarations on the rights of detainees in Bulgaria", 2017, p. 59-60, available at https://bghelsinki.org/media/uploads/special/2017-07_lor_comparative__report_bg.pdf.

[24]See the FRA survey "Rights of suspected and accused persons across the EU: translation, interpretation and information" (2016), p. 70-71, available at https://fra.europa.eu/en/publication/2016/rights-suspected-and-accused-persons-across-eu-translation-interpretation-and. The report is based on a request by the European Commission and outlines the research findings of the European Union Agency for Fundamental Rights (FRA) on Member States' legal frameworks and policies on two specific fair trial rights: the right to translation and interpretation in criminal proceedings covered by Directive 2010/64/ EU and the right to information in criminal proceedings covered by Directive 2012/13/EU.

[25] That fact, namely that the Letter of Rights on arrest was contained in an administrative order but only on police arrest, not on detention by the prosecutor or remand by the court was also indicated in the TRAINAC study mentioned above. See the TRAINAC Assessment, good practices and recommendations on the right to interpretation and translation, the right to information and the right of access to a lawyer in criminal proceedings, p. 37-38, available at http://europeanlawyersfoundation.eu/wp-content/uploads/2015/04/TRAINAC-study.pdf. The report has been produced as the outcome of the TRAINAC project, which was funded by the European Union's Justice Programme. The aim of the project was to provide an assessment by defence practitioners in the EU of the implementation of three directives: Directive 2010/64 on the right to interpretation and translation; Directive 2012/13 on the right to information and Directive 2013/48 on the right of access to a lawyer.

mentioned above, this model of declaration did not entirely satisfy the requirements of Article 4 (4) of the Directive regarding simple and accessible language[26].

However, in March 2024, significant legal changes came into force, adopted precisely to achieve the full transposition of Article 4 of the Directive. The amendments provide for in cases of detention other than those under Criminal Procedure Code, namely police detention under the Ministry of Interior Act, a detention under State Agency for National Security Act, the Military Police Act and the Customs Act, the person fills and signs a declaration according to the model set out as an Annex in the relevant laws that he/she was aware of these rights.[27] The model declarations entitled "Letter of Rights for a Detained Person" provided for in these laws are almost identical to that set out in Annex I of the Directive (Article 4 (4) thereof).[28] However, these declarations do not contain the right laid down in Article 4(2)(a) of the Directive, namely the right of access to the materials of the case as well as the information about any possibility, under national law, of making a request for provisional release (Article 4(3) of the Directive). Due to the lack of the right to access to the materials of the case, the model declarations also incompletely transpose the right to interpretation and translation regarding the translation of at least the relevant passages of essential documents.

All the model declarations contain a statement by the detained person that the relevant Letter of Rights is provided to that person immediately after his/her detention and that he/she was given the opportunity to read it and keep it for the duration of the detention. According to the legal acts (including the instruction) mentioned

[26]See the study mentioned in footnote 23, p. 60.

[27] In cases of police detention, the model declaration is not provided for in the Ministry of Interior Act, but in an Instruction No. 8121h-78 of 24 January 2015 mentioned above. The latter was amended back in February 2023 (SG, №18/24.02.2023, with entry into force on 1 April 2023) to bring it into line with the requirements of Article 4 of the Directive.

[28] For example, Part One of these declarations provided for that the detained person has the following rights: assistance of a lawyer/entitlement to legal aid; right to information regarding grounds for detention; right of interpretation and written translation/right of interpreter; right to remain silent; notifying another person about your detention/notifying the consulate or embassy of your country; medical assistance; right to information about detention period; right to appeal the lawfulness of the detention; right of visits and right to receive parcels and food; right to obtain a copy of the detention order.

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above, the information referred to the rights of the detained person shall be provided to him/her in a language and manner which he/she understands, considering his/her specific needs. If that person is not fluent in Bulgarian, he/she shall be informed forthwith of the reasons for his/her detention in a language he/she understands. The model declarations themselves state that if there is no Letter of Rights in the relevant language, the detained person shall be informed orally of his/her rights in a language he/she understands with the help of an interpreter. That person shall then be provided with a Letter of Rights in that language in due course.

As regards Article 5 of the Directive, until December 2023 Bulgarian law did not provide for such explicit rule. Under the Extradition and European Arrest Warrant Act, in the proceedings for the imposition of remand in custody of the requested person the court shall appoint a defence counsel and an interpreter for the person if the latter has no command of the Bulgarian language and shall explain the grounds for his/her detention, the content of the European arrest warrant and his/her right to give consent to surrender to the competent authorities of the issuing Member States and the implications thereof. The same obligation on the court is provided for by this law in the judicial proceedings for the examination of the European arrest warrant.

However, according to some scholars these rules were not sufficient for the implementation of the Directive's standard. The law did not provide for an obligation for either oral or written notification of the detainee's rights. There were no specific mandatory details for content of the court's ruling for the detention of the person[29].

The Extradition and European Arrest Warrant Act was, therefore, amended in this regard in December 2023.[30] It now explicitly provides that in cases of detention of a

[29]See in this regard Chinova Margarita. A new directive on the right to information in criminal proceedings has entered into force for Bulgaria in: - Norma, 9/2012 г., p. 30-56. Therefore, according to the author the Extradition and European Arrest Warrant Act should be amended, providing for a Letter of Rights on arrest in order to transpose correctly the provisions of Article 5 of the Directive. This conclusion is also confirmed by the Bulgarian Helsinki Committee study mentioned above in footnote 23, p. 60.
[30] SG, № 100/ 1.12.2023.

person for the purpose of the execution of a European Arrest Warrant that person, immediately after their detention by the police authorities, shall be provided with an official or contracted defence counsel, as well as an interpreter, in whose presence and against the signature of the persons, a declaration of the rights of the person detained on the basis of the European Arrest Warrant shall be handed over, in a language understandable to the person. The form of the declaration shall be approved by instruction of the Minister of Interior.[31]

It should be noted that the model declaration under Article 42 (6) of the Extradition and European Arrest Warrant Act does not repeat the model as set out in Annex II of the Directive. For example, it contains the rights of the detained person under Articles 3 (1) and 4 (2) of the Directive, but does not take into account the specific rights when a person is detained for the purpose of the execution of a European Arrest Warrant, such as information about the European Arrest Warrant, the possibility to consent to being surrendered and hearing, as listed in Annex II of the Directive.

However, it can be assumed that the person is also informed of these rights. According to the Extradition and European Arrest Warrant Act, in the proceedings for the imposition of remand in custody of the requested person the court shall appoint a defence counsel and an interpreter for the person if the latter has no command of the Bulgarian language and shall explain the grounds for his/her detention, the content of the European arrest warrant and his/her right to give consent to surrender to the competent authorities of the issuing Member States and the implications thereof. The same obligation on the court is provided for by this law in the judicial proceedings for the examination of the European Arrest Warrant.

Nevertheless, it seems more appropriate to provide for a specific declaration of rights in European Arrest Warrant proceedings as an annex to the Extradition and European Arrest Warrant Act, in the form set out in Annex II of the Directive.

[31] Article 42 (1)-(2) and (6)-(7) of the Extradition and European Arrest Warrant Act.

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2.1.4. Right to information about the accusation (Article 6 of the Directive)

The requirement on the right to information about the accusation is also de facto introduced in the Bulgarian Criminal Procedure Code and in the case law. Article 219 (3), p. 3 of the Code states that in the decree for constitution of the accused party and the record for the first investigative action against him/her shall be indicated the full name of the individual constituted as accused party, the offence on account of which he/she is constituted and its legal qualification. Article 219 (4) CPC adds that the investigative body shall present the decree for constitution to the accused party and his/her defence counsel, allowing them to gain knowledge of its full content and, where needed, giving additional explanations. The investigative body shall serve against a signature a copy of the decree on the accused party. Therefore, some scholars consider that although the Directive does not provide for such a mandatory standard, according to the law, information about the accusation is provided to the accused in writing with the obligation to be clarified.[32] The decree is presented to the accused before the first interrogation, thus ensuring that the investigative body may not take any investigative action involving the accused until the latter has received the information about the accusation.

According to the interpretative judgement adopted in 2002 by the Supreme Court of Cassation concerning the breach of procedural rules, which judgement is binding on the courts, the abovementioned Article 219 (3), p. 3 CPC means that the decree for constitution of the accused party must indicate the crime the person is charged and its factual objective and subjective features. The description of the facts in summary form is permitted. In addition, the decree must specify the applicable provision of the special part of the Criminal Code. When the penal norm is blanket or referral, it is necessary to additionally indicate the other legal provisions.

In the case law, the right of the accused to know what he is accused of, i.e. the right established in **Article 6 (1) of the Directive**, is understood as his primary and irrevocable

[32] See in this regard article mentioned in footnote 29.

right. Only after this is done he is able to participate effectively in the criminal proceedings and organize his defence.[33] According to the interpretative judgement adopted in 2002 by the Supreme Court of Cassation, mentioned above, there has been a substantial breach of procedural rules when the decree for constitution of the accused party does not contain a description of the committed act and the legal qualification or when it has not been presented to the accused and he has been interrogated without being aware of the accusation.

Although the Criminal Procedure Code does not provide for an explicit similar provision to **Article 6 (2) of the Directive**, some scholars consider that the requirement of the Directive is fully implemented[34]. According to the Code (Article 64 (1) (2) thereof), the measure of remand in custody can be applied only to a person who has already been constituted as an accused. This means that before the detention the accused person is informed of the offence on account of which he/she is constituted and its legal qualification as well as of the reasons for his/her detention.

The requirement of the Directive is also de facto implemented in other cases of detention where there is information that the person has committed an offence but he/she has not been constituted yet as an accused party under the Criminal Procedure Code. These are the cases of detention by the police bodies, by the "Military Police" Service authorities, by the officers of the State Agency for National Security or by the customs authorities. Under the national law a written detention warrant shall be issued, that shall contain the factual and legal grounds for the detention.

The rights of the accused according to the requirements of Article 6 (3) and (4) of the Directive are fully guaranteed under Bulgarian legislation. Article 246 (1) – (3) CPC

[33] According to Order № 1150/2019 of the Appellate Specialized Criminal Court, a basic right of every accused is "to learn (understand) for what crime he has been constituted in this capacity" (Article 55 (1) CPC). This right is guaranteed through the presentation of the decree for constitution the accused party (Article 219 (4) – (7) of the CPC), and in the court phase by handing over a transcript of the indictment. See in this context Judgment № 42/91 of the Supreme Court of Cassation, Judgment № 347/2008 of the Supreme Court of Cassation, Judgment № 421/2009 of the Supreme Court of Cassation.
[34] See article mentioned in footnote 29.

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states that the indictment drawn up by the prosecutor shall give detailed information on the accusation, including the nature and legal qualification of the criminal offence, as well as the nature of participation by the accused person. Article 247c (1) CPC provides for that at the order of the judge-rapporteur a copy of the indictment shall be served on the defendant before the operative hearing. In this way **Article 6 (3) of the Directive** seems fully implemented by the current provisions of the Criminal Procedure Code.

The same can be said for **Article 6 (4) of the Directive.** The right of the accused person to be informed promptly of any changes in the information about the accusation is guaranteed both in the pre-trial and trial proceedings. According to Article 225 CPC, where the investigation reveals grounds for applying a law for a more serious criminal offense or the factual circumstances have considerably changed, or it is necessary to include new offences or to be constituted new persons as accused, the investigative body reports to the prosecutor and perform a new constitution of the accused.

In the trial proceedings, where, in the course of the judicial trial, the prosecutor has found grounds for substantial changes in the factual part of the indictment or grounds to apply a law regulating a more severely punishable crime, the prosecutor shall issue a new indictment. In these cases, the court shall terminate the criminal proceedings and send the case-file to the respective public prosecutor (when the new indictment is for a crime falling under the jurisdiction of a higher court, the specialised criminal court or a military court) or shall adjourn the hearing should the parties request so in order to prepare themselves for the new indictment[35].

2.1.5. Right of access to the materials of the case (Article 7 of the Directive)

Right of access to the materials of the case as laid down in Article 7 of the Directive is fully transposed in Bulgarian law concerning the right of the detained persons under the CPC.

[35] Article 287 CPC.

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Although until March 2024 the Criminal Procedure Code did not provide for an explicit rule similar to **Article 7 (1) of the Directive**, that requirement was de facto implemented in practice. In addition, according to some scholars, there was no obstacle for the accused person (where he/she is detained) or his/her lawyer to acquaint themselves with all material evidence of the case, submitted to the court, competent to apply the measure of remand in custody or to rule on its lawfulness[36].

Nevertheless, an explicit amendment in the Criminal Procedure Code was made in order to fulfil the requirement of Article 7 (1) of the Directive.[37] According to Article 64 (3) of the Code entitled "Taking the measure of remand in custody in pre-trial proceedings", the court shall provide to the accused party and to their defendant the possibility to examine all case evidence gathered so far.

In this regard, it is interesting to note that during the parliamentary debate, the legal text introducing this requirement of the Directive was criticized since it stated that the accused and their defendant would only be provided with the evidence on the basis of which the measure of detention in custody was determined. The President vetoed the draft law as regards the part relating to this provision.[38] The grounds of the veto state that according to the national case-law, however, at this stage of the criminal proceedings the prosecution presents all available evidence to the defence. It is also pointed out that if the norm is adopted in the proposed version, the level of protection that Bulgarian law provides will be limited. The Parliament accepted the reasons set out in the presidential decree and Article 64 (3) CPC was adopted in its current version.

As regards the cases of detained persons other than those set out under the Criminal Procedure Code, the situation differs. These are the cases under the Interior Ministry Act, the Customs Act, the State Agency for National Security Act and the Military

[36] See in this regard Chinova, Margarita. Pre-trial Proceedings under the Criminal Procedure Code. Theory and Practice, Ciela, 2013, 280.
[37] SG No. 18/1.03.2024.
[38] Decree № 28/12.02.2024 of the President of the Republic of Bulgaria, available at https://www.president.bg/cat47/1695/ukaz-28-zakon.html .

Police Act where the person of whom data exist that he/she had committed a crime could be detained. In these cases the person has not been constituted as an accused yet, i.e. he/she is de facto suspect. Despite the significant changes made to these laws in March 2024, they do not explicitly provide for the right of access to the materials as set out in Article 7 (1) of the Directive, in particular the documents which are essential to challenging effectively the lawfulness of the detention. This in itself can be considered as a shortcoming in the transposition of the Directive in the national legislation. In this regard, it should be noted, however, that the case law recognizes this right of detainees in these proceedings. In cases where it is found that the detained person has not been provided with such materials collected so far, the court considers that this constitutes a substantial breach of administrative procedural rules and revokes the detention order.[39] Moreover, the illegally detained person has the right to remedy under the Act on the Liability for Damage Incurred by the State and the Municipalities.[40]

Article 7 (2-4) of the Directive is also transposed in Bulgarian legal system. The Criminal Procedure Code even before the entry into force of the Directive 2012/13/EU provided the accused party or his/her lawyer with the right to study the case, including the information obtained through the use of special intelligence means, and take excerpts that are necessary to him/her is unlimited during the trial proceedings. As regards the pre-trial proceeding, the accused person or his/her lawyer is able to acquaint

[39] The grounds for contestation of the individual administrative acts (such as these detention orders) are provided for in Article 146 of the Code of Administrative Procedure as far as administrative proceedings are concerned. In the grounds of its decisions, the courts refers either to the relevant case law of the CJEU and the ECtHR, or to the case law of the ECtHR. See, for example, Judgment № 263/20.01.2025 of Sofia District Court; Judgment № 3200/20.08.2025 of Sofia District Court; Judgment № 3208/21.08.2025 of Sofia District Court; Judgment № 3061/12.08.2025 of Sofia District Court; Judgment № 160/07.04.2025 of District Court-Blagoevgrad; Judgment № 695/09.06.2025 of District Court-Varna.

[40] SG, № 60/1988. According to Article 1 (1) thereof, the State and the municipalities shall be liable for any damage inflicted on individuals and legal persons by legally non-conforming acts, actions or omissions of State bodies and municipal authorities and officials upon or in connection with the performance of administrative activity.

himself/herself with all material evidence of the case after the completion of the investigation[41].

Moreover, some scholars consider that the Bulgarian law goes beyond the standard of the Directive regarding the right of access to the materials of the case, because the Criminal Procedure Code does not provide for derogation as referred to in Article 7 (4) of the Directive[42]. According to Article 227 (8) CPC, the investigation shall be presented, the investigative body placing at the disposal of the attending persons all relevant materials for examination. If only part of the materials is provided this constitutes a substantial breach of the procedural rules according to the settled case law because it restricts the procedural rights of the accused or their lawyers. It leads to remit the case to the prosecutor[43] or to revoke the sentence and remit the case for a new hearing by the respective instance.[44]

The access to the materials of the case is in practice free of charge. Thus, the standard of the Directive is fulfilled although the Criminal Procedure Code does not contain explicitly such requirement as laid down in Article 7 (5) of the Directive[45].

2.1.6. Verification and remedies (Article 8 of the Directive)

According to Article 128 CPC, for every investigative action and judicial trial action a record shall be drawn up at the place where it is performed. Thus, the requirement of **Article 8 (1) of the Directive** is fulfilled by this general rule[46].

As regards the right of the accused persons or their lawyers as mentioned in **Article 8 (2) of the Directive,** Bulgarian Criminal Procedure Code contains some general rules which guarantee this right. In the pre-trial proceedings the decrees of both the

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[41] Articles 55 (1), 99, 227 CPC.
[42] See in this regard article mentioned in footnote 29.
[43] See in this regard Order N 3507/18.09.2017 of Plovdiv District Court; Order of 2.06.2017 of Sliven District Court.
[44] See in this regard Judgment № 66/9.07.2015 of Sliven District Court as a court of appeal; Judgment № 78/ 29.06.2015 of Burgas Court of Appeal.
[45] See in this regard article mentioned in footnote 29.
[46] Ibidem.

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investigative bodies and the prosecutor, including those refusing information relating to the rights of the accused person or his/her access to the materials of the case may be appealed before the prosecutor, respectively before a prosecutor with a higher-standing prosecution office (Article 200 CPC). In the trial proceedings, the court's refusals in such cases may be appealed along with the sentence or the judgment before the intermediate appellate review instance or before the Supreme Court of Cassation (Articles 341, 346 CPC).

In addition, it should be noted that according to the law and the settled case law, the violation of the rights of the accused in both pre-trial and trial proceedings, constitutes a substantial breach of procedural rules. The breach is substantial where it has led to restriction of the procedural rights of the parties and has not been remedied (Article 348 (3), p. 1 CPC). It can be considered as an effective remedy because, as mentioned above, it constitutes grounds for remit the case to the prosecutor or revocation the sentence and remit the case for a new hearing by the respective instance.

2.2. Directive 2013/48/EU: Right of access to a lawyer and to have a third party informed

The right to access to a lawyer is proclaimed as one of the citizens' fundamental rights by the Bulgarian Constitution.[47] In addition, the right of defence is laid down as one of the fundamental principles in Criminal Procedure Code [48]. In general, Bulgarian law even before entry into force of the Directive 2013/48/EU was in compliance with certain of the requirements set out therein, especially concerning the rights of the

[47] Article 30 (4) of the Constitution states that everyone shall have the right to legal counsel as from the moment they are detained or constituted as an accused party. Article 30 (5) adds that everyone shall have the right to meet their defence counsel in private. The confidentiality of such communications shall be inviolable.
[48] According to Article 15 (1) thereof, the accused party shall enjoy the right of defence. This provision applies to persons constituted as accused of having committed a criminal offence.

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accused persons under the CPC. As regards the rights of the suspects in criminal proceedings, the situation differs, as explained below.

However, for fully implementation of the EU standard concerning the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, explicit amendments to the existing national rules were adopted in 2019[49]. These are changes in the Criminal Procedure Code as well as changes in other laws - Military Police Act, The State Agency for National Security Act, Customs Act, Ministry of Interior Act, Implementation of Penal Sanctions and Detention in Custody Act, Extradition and European Arrest Warrant Act.

2.2.1. Scope (Article 2 of the Directive)

While overall the scope of the right to access to lawyer at the national level seems substantially identical to the European one, Bulgarian legislation gives rise to particular issues under Article 2 of the Directive.

As noted above in relation to the Directive 2012/13/EU, the lack of the figure of the suspect in national criminal procedure law has been identified as a problem that calls into question the correct transposition of the scope of the rights under Directive 2013/48/EU as well.[50] Furthermore, this issue has also been identified by the European Commission following which an infringement procedure against Bulgaria has been lunched.[51] The lack of the figure of the suspect in national criminal procedure law also affects the extent of compliance of the national legislation with certain requirements of the Directive with regard to this category of persons in cases as defined in Sect. 2.1.1.

[49] SG, No 7/22.01.2019.

[50] See the analysis made in Sect. 2.1.1. See also in this regard Kanev Krasimir, International Standards on the Right to Legal Assistance and Legal Defence of Suspected and Accused Persons in Criminal Proceedings, 2018, Bulgarian Helsinki Committee, p. 7, available at https://bghelsinki.org/media/uploads/en_int_standards_legal_defense.pdf.

[51] According to the Commission, Bulgaria has incorrectly transposed the scope of the rights under the Directive. See Press release, 7 May 2025, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1124 .

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As regards Article 2 (3) on the applicability of the Directive to persons other than accused persons who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons, the situation is similar. Although according to the legislator, the existing provisions of the Criminal Procedure Code implement this article of the Directive[52], some scholars consider that these rules do not sufficiently guarantee the protection against self-incrimination.

In fact, certain provisions of the Code seem to provide protection against self-incrimination as mentioned in Recital 21 of the Directive. In this sense, it has to be noted that witnesses are not obliged to testify on questions, the answers to which might incriminate them, their relatives of ascending and descending line, brothers, sisters, spouses or individuals with whom they live together, in the commission of crime[53]. Moreover, they have to be informed about such right before being questioned. [54] Besides, in case of self-incrimination, the witness has the right to consult a lawyer, and the investigative body is obliged to allow for this possibility.[55] However, some scholars consider that these rules do not sufficiently guarantee the protection against self-incrimination because the very fact of keeping silent actually incriminates the witnesses or their relatives[56].

In this regard, in March 2024 the change was made in CPC concerning the rights of witnesses. In such cases (of self-incrimination) in addition to the right to consult with a lawyer, the witness now also has the right to attend an interrogation accompanied by a lawyer. Failure of a lawyer to appear without a valid reason shall not be an obstacle to conducting the interrogation. [57]

[52]See Articles 121 (1), 122 (2) and 219 (2) CPC.
[53] Article 121 (1) CPC.
[54] Article 139 (2) CPC.
[55] Article 122 (2) CPC in the version in force before March 2024.
[56] See Margarita Chinova and Pavlina Panova. The New Directive on the Right of Access to a Lawyer in Criminal Proceedings in: - Norma, 3/2014.
[57] SG, № 18/1.03.2024. Article 122 (2) CPC was supplemented in this sense.

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In addition, Criminal Procedure Code contains another provision that seems to provide protection against self-incrimination, namely Article 219 (2) thereof. According to it, the person is brought in as an accused with drawing up of a protocol for the first action of the investigation.[58] The "first investigative action" within the meaning of that provision is first action taken with the participation of a person, including interrogation as a witness, for whom evidence or actual facts are collected for his participation in a crime but they are not sufficient to issue a decree to constitute the person as accused party under Article 219 (1) CPC. From that moment the person acquires the status of an accused and should be able to enjoy the rights of the accused under the Directive.[59] According to some scholars, another rules could be provided for in order to ensure protection against self-incrimination, such as prohibition a person to be questioned as a witness to whom data or evidence have been collected for his possible participation in a crime but they are not sufficient to issue a decree to constitute the person as an accused under Article 219 (1) CPC. However, where such information is established during the interrogation itself, the latter can only continue if the witness is informed that he is accused. Although, according to the scholars, such provisions will duplicate in some part Article 219 (2) CPC, they are necessary in order to transpose the EU standard as adequately as possible.[60]

[58] Where sufficient evidence is collected for the guilt of a person in the perpetration of a criminal offence, the investigative body constitutes the accused party with issuing a decree (Article 219 (1) CPC).
[59] See in this regard the article mentioned in footnote 56; Chinova Margarita, Pre-trial proceedings under the Criminal Procedure Code. Theory and Practice, Ciela, 2013, 324-325; Margarita Chinova and Georgi Mitov, Short Lecture Course in Criminal Procedure Law, Ciela, 2021, p. 399. It should be noted, however, that the opposite view is also held among the scholars. According to it, the presence of sufficient evidence collected for the guilt of a certain individual in the perpetration of a publicly actionable criminal offence is a prerequisite for constituting that person as accused party in both cases under Article 219 (1) and (2) CPC. See in this regard Mitov Georgi, involving a defendant by drawing up the record of the first action of investigation against him/her, Journal De Jure, "St. Cyril and St. Methodius" University of Veliko Tarnovo - University Press, Volume 12, Issue 2 (2021), 185-191, https://journals.uni-vt.bg/dejure/eng/vol12/iss2/.
[60] See article mentioned in footnote 56.

These conclusions remain true despite the aforementioned legislative change in CPC made in March 2024 because the latter does not sufficiently guarantee the rights of such a person under the Directive.

2.2.2. The right of access to a lawyer in criminal proceedings (Article 3 of the Directive)

Bulgarian legislation even before entry into force of the Directive contained many rules ensuring the right of access to a lawyer in criminal proceedings. However, in 2019 separate laws were amended for a full transposition of Directive.

In this context, Criminal Procedure Code provides for sufficient time limits in which the accused persons could effectively organize their defence, including find a lawyer (lawyers) of their choice (Articles 219 and 247c CPC). The summons for presenting the decree for constitution as an accused party must state the person's right to appear with a defence counsel and the possibility to have a defence counsel appointed in case the participation of defence counsel is mandatory (Article 219 CPC). The defence counsel may join criminal proceedings from the moment a person is detained or has been constituted as an accused party[61].

The pre-trial body is obligated to explain to the accused party that he/she has the right to defence counsel, as well as to immediately allow him/her to contact one. Said body is prevented from taking any investigative action, including questioning, as well as any other procedural action involving the accused party, until it has been acquitted of this obligation (Article 97 CPC).[62] The access to a lawyer is also guaranteed throughout the trial proceedings from the earliest stage, namely during

[61] The right of access to a lawyer without undue delay after deprivation of liberty is also guaranteed in other cases of detention where the person has not been constituted as an accused yet, such as detention by the police bodies, by the "Military Police" Service authorities, by the officers of the State Agency for National Security or by the customs authorities.

[62] The investigative body has to wait for the lawyer to be present at the questioning in cases where the participation of the defence counsel is mandatory under Article 94 CPC or where the accused has retained a lawyer of his/her own and wants him to be present.

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the preparatory actions for examination of the case (Articles 247c, 271, 328 and 353 CPC).

The right of the accused person to meet in private and communicate with his lawyer is unconditional and unlimited regarding the length or frequency of the meeting [63]. Specifically for the accused persons who are detained, this right is laid down in Implementation of Penal Sanctions and Detention in Custody Act[64]. The right of the accused person to meet in private and communicate with his lawyer is also provided for as a right of the defence counsel [65].

The accused party has the right his/her defence counsel to take part when investigative actions are taken, including questioning, as well as in other procedural action requiring the attendance thereof, unless he has expressively made waiver of this particular right (Article 55 (1) CPC). The defence counsel may make requests, comments and raise objections, as well as to file appeal from acts of the court and of the bodies entrusted with the pre-trial proceedings which infringe upon the rights and legal interests of the accused party (Article 99 (1) CPC). This general rule applies both to the pre-trial and trial proceedings and guarantees the lawyer's effective participation in the questioning of the person both as an accused and as a defendant.

[63] In this regard, Article 55 CPC was supplemented in 2019. It states that the accused party shall be entitled to receive general information facilitating his/her choice of defence counsel. He/she shall be entitled to communicate with his/her defence counsel, to meet in private, to receive advice and other legal assistance, including prior to the start of and during the questioning and any other procedural action requiring participation of the accused party.

[64] Articles 76 (2) in conjunction with Article 240, 254, 256 thereof. See in this regard Judgment N 11/2018 of the Supreme Court of Cassation. The Court held that the defendant's complaint that his meetings with counsel had been unduly restricted is not supported by the evidence. A defence attorney was appointed for the accused in the pre-trial proceedings. After his detention in execution of a measure of remand, he enjoyed the rights under Art. 253, para 1 and art. 254 of the Implementation of Penal Sanctions and Detention in Custody Act, regulating the contacts without restrictions of the defenders with the accused and the defendants. The appellant does not indicate specific situations in which the lawyer was denied access to his client. Moreover, the court actively assisted in holding meetings between the defendant and his defence counsel, as evidenced by the letters sent to Lovech Prison satisfying the defendant's requests to be brought beforehand the court hearings to meet with his defence counsel.

[65] Article 99 (1) CPC, Article 34 (1) Bar Act.

For every investigative action and judicial trial action, a record shall be drawn up at the place where it is performed[66].

As already mentioned, the accused has the right his/her defence counsel to take part when investigative actions are taken as well as in other procedural action requiring the attendance thereof. A similar right is provided for the defence counsel – to take part in all investigative actions involving the accused party, his failure to appear not being an obstacle to their progress (Article 99 (1) CPC).

This also applies to the investigative actions as laid down in Article 3 (3) (c) of the Directive, namely identity parades, confrontations and reconstructions of the scene of a crime. However, where these investigative actions do not require the participation of the accused and his/her defence counsel, the pre-trial body may allow them to attend, provided this does not obstruct the investigation[67]. According to the case-law, the defence counsel may participate in all investigative actions to which the accused has access, not only in investigative actions carried out personally with the latter. The application of this rule requires the willingness expressed by the defence counsel to be reflected in the case file and his regular notification by the investigating body of the forthcoming investigative action in which to participate (in the absence of an obstacle).[68]

As regards trial proceedings, the right of the accused and his/her lawyer to attend and participate in all judicial trial actions is unlimited, whether or not their participation is required. According to the case-law, the failure to summon the accused and his/her lawyer to a court hearing constitutes a substantial breach of procedural rules – one of

[66] Articles 128, 129, 236, 311 CPC.
[67] According to Article 224 CPC, where the provisions of this Code do not provide for attendance of the accused party, of his/her defence counsel or of the victim and his/her counsel in conducting the respective investigative actions, the pre-trial body may allow them to attend, provided this shall not obstruct the investigation. This provision is applicable to the pre-trial proceedings in cases where the performance of investigative actions, including those under the Directive do not require the participation of the accused.
[68] See Judgments N 174/2017, N 32/2019 of the Supreme Court of Cassation.

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the grounds for revocation the sentence and remit the case to the first instance or the appellate court.[69]

Under Article 55 (2) CPC, the accused party shall be entitled to receive general information facilitating his/her choice of defence counsel. There are public registers for the attorneys-at- law, law firms and for the foreign attorneys-at-law, kept by Bar Councils and Supreme Bar Council. [70] The availability of such lawyer registers ensures sufficient information to facilitate the obtaining of a lawyer by accused persons, who are not detained. As for accused detainees, according to Bulgarian law, the participation of a defence counsel in these cases is mandatory.[71] The appointment of a lawyer is in accordance with Legal Aid Act, but only if the accused person has not retained a defence counsel of his/her own.

With regard to the right of access to a lawyer and more particularly the requirement under Article 3 (3) (b) of the Directive concerning the effective participation of a lawyer during questioning in cases where the person is suspect, i.e. before has been constituted as an accused under the Criminal Procedure Code (as mentioned above in Sect.2.1.1), some issues still remain. These are the cases under the Ministry of Interior Act, a detention under State Agency for National Security Act, the Military Police Act and the Customs Act - where such person is questioned by the police or other relevant authorities, including where he/she is detained for up to 24 hours on suspicion of committing a crime. It should be noted that significant changes were made in these laws in 2019 and 2024. They all explicitly provide for the right of access to a lawyer from the moment of detention[72], which, in addition to questioning, covers all actions with participation of the detainee. However, further changes seem to be needed to ensure

[69] See Judgment N 119/2016 of the District Court – Vratsa.
[70] Articles 147-149 of Bar Act.
[71] Article 94 (1), p. 6 CPC states that participation of the defence counsel in criminal proceedings shall be mandatory in cases where the accused party is detained.
[72] Article 72 (5) of the Ministry of Interior Act, Article 13 (2) of the Military Police Act, Article 16a (5) of the Customs Act and Article 124b (9) of the State Agency for National Security Act. The declarations of rights for the detained person are also introduced thereof. As stated therein, the detained persons have the right to speak confidentially to a lawyer.

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in practice the effective participation of a lawyer in the questioning of such persons as suspects in these cases.

With regard to the right of access to a lawyer, Bulgarian law does not provide for the exceptions under Article 3 (5) and (6) of the Directive. However, according to the European Commission, the national legislation contains provisions (Article 122 (2) CPC and Article 219 (7) CPC) that allow carrying out of the investigative actions in the absence of a lawyer, i.e. exceptions to the right of access to a lawyer. The Commission claims that these provisions are not in accordance with the Directive, which provides for the possibility of questioning of suspects or accused persons in the absence of a lawyer to be carried out only in two cases – in the event of an explicit waiver of the right of access to a lawyer pursuant to Article 9 of the Directive or by applying the derogation under Article 3 (6) (b) thereof. Therefore, according to the Commission, Bulgaria has not correctly transposed the aforementioned derogation.

However, such an interpretation seems incorrect. As mentioned above, from the moment of self-incrimination, this person becomes an accused and Article 219 (2) CPC should be applied. In addition, there is a case-law where the interrogation of a suspect as a witness without providing him with access to a lawyer not only during the interrogation, but also during any action involving him/her, is recognized as a substantial breach of the procedural rules.[73]

As regards Article 219 (7) CPC, it should be noted that if in such cases the person has appeared without an authorised defence counsel and it is not a case of mandatory defence under Article 94 (1) CPC, the investigative body is obliged to always provide him with the opportunity to authorize a defence counsel, if the person requests such. In these cases the investigative body cannot proceed with actions at all, and not only in the situations specified in the Directive. Moreover, such a derogation - in case of a detained person - could conflict with the Bulgarian Constitution, according to which

[73] See, for example, Judgment № 61 of 26.01.2024 of Supreme Court of Cassation; Judgment № 244 of 01.10.2022 of District Court - Plovdiv; Judgment № 42 of 20.03.2018 of Supreme Court of Cassation.

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(Article 30 (4) thereof), everyone has the right to legal counsel as from the moment they are detained or constituted as an accused party. The rights of an accused party may not be restricted beyond what is necessary to ensure good justice (Article 31 (4) thereof).

The absence of national legislation providing for a derogation from the right of access to a lawyer under Article 3 (6) of the Directive has been the subject of discussion by the CJEU. According to the Court, *"in the present case, it is sufficient to note that Article 3(6)(b) of Directive 2013/48 does not establish a right that may be relied on by an individual against a Member State, but, rather, allows Member States to provide for a derogation from the application of the right of access to a lawyer in exceptional circumstances. Consequently, [….], a public authority cannot, in the absence of transposition of that provision, rely on it against a suspect or accused person. In the light of all the foregoing considerations, [….] where that provision [Article 3(6)(b) of Directive 2013/48] has not been transposed into the national legal order, the police authorities of the Member State concerned cannot rely on that provision in relation to a suspect or accused person in order to derogate from the application of the right of access to a lawyer, which is laid down in a clear, precise and unconditional manner by that directive."*[74] In this regard the scientific literature notes that *"the lack of a national rules for derogation from the right of access to a lawyer is fully justified. This is because such rules would open the door to numerous abuses, justified by blanket "urgent need"*.[75]

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[74] See Judgment of 14 May 2024, C-15/24, para. 52-53, available at https://curia.europa.eu/juris/document/document.jsf;jsessionid=D43F1CCC9CBAB82C5D84926E28223987?text=&docid=286041&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6128512 . Regional Court - Sofia is the court referring for a preliminary ruling.

[75] See Gatov, Antoniy. On Certain Aspects of the Temporary Derogation from the Rights of a Charged Person to Have Access to a Lawyer, Journal of Legal Studies, Issue No. 1, Volume XXXI/2024, 275-281, https://www.ceeol.com/search/article-detail?id=1325372 .

2.2.3. Confidentiality (Article 4 of the Directive)

The confidentiality of communication between accused persons and their lawyer was guaranteed even before entry into force of the Directive. Under Bulgarian Constitution, everyone shall have the right to meet their defence counsel in private. The confidentiality of such communications shall be inviolable (Article 30 (5). According to Bulgarian Constitutional Court's Decision of 18 April 2006, this provision must be interpreted as meaning that it applies not only to the communication between the accused person and his/her lawyer during their meetings, but also to all forms of exchange of information between them.

Bulgarian law contains many rules to ensure the confidentiality of communication between accused persons and their lawyer. According to Bar Act, the correspondence between an attorney-at-law and his/her client, irrespective of the manner it is maintained, including electronically, shall not be subject to inspection, verification or seizure and shall not be used as evidence. Attorneys-at-law shall have the right to meet their clients privately, including where the latter are held in custody or are deprived of their liberty. The conversations between an attorney-at-law and his/her client shall not be intercepted and recorded, however meetings may be subject to observation. Any recordings, where available, shall not be used as means of evidence and shall be subject to immediate destruction. The attorneys-at-law shall not be interrogated in their procedural capacity with regard to their conferences and correspondence with clients. Attorney-at-law papers, files, electronic documents, computer equipment and other carriers of information shall be inviolable and shall not be subject to inspection, copying, verification or seizure.[76]

Similar provisions which ensure the confidentiality of communication between accused persons who are detained and their lawyers are provided for in Implementation of Penal Sanctions and Detention in Custody Act [77].

[76] Articles 33, 34 Bar Act.
[77] Articles 254, 256 thereof.

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In addition, Criminal Procedure Code lays down a tacit prohibition on the applying the techniques for establishing evidence, namely search and seizure, interception and seizure of correspondence, interception of communications etc., in respect to lawyers. This is because the reference to the rules of the Bar Act, mentioned above[78].

2.2.4. The right to have a third person informed of the deprivation of liberty (Article 5 in conjunction with Article 8 of the Directive)

In general, Bulgarian law even before entry into force of the Directive was in compliance with the requirements of Article 5. Article 17 (3) CPC states that the respective body shall be obligated to immediately notify a person indicated by the detained individual of the detention. The provision provides for such notification not as a right of the accused person but as an obligation of the respective body. Therefore, some scholars consider that this general rule goes beyond the standard of the Directive regarding the right to have a third person informed of the deprivation of liberty.[79]

In addition, according to Article 63 (7) CPC, the persons who should be informed immediately both in case of remand in custody and detention for up to 72 hours are the family of the accused party or another person specified by the latter and the employer of the accused party, unless he/she states he does not wish so.[80]

As regards the right to have a third person informed of the deprivation of liberty if the accused person is a child, the requirement of the Directive (Article 5 (2) thereof) was *de facto* implemented in Criminal Procedure Code before the entry into force of the Directive. Until September 2023 Article 386 (4) CPC stated that in cases of custody, under-aged persons shall be placed in suitable premises apart from adults, their

[78] Article 136 CPC.
[79] See article mentioned in footnote 56.
[80] This article was supplemented in 2019 in order to transpose correctly the Directive. The right to have a third person informed of the deprivation of liberty is guaranteed by Bulgarian law in cases of detention where the person has not been yet constituted as an accused. These are the cases under the Ministry of Interior Act, the State Agency for National Security Act, the Military Police Act and the Customs Act.

parents or guardians and the principal of the educational establishment where they study being notified immediately thereof.

However, some scholars considered that this rule was not sufficient for the fully implementation of the Directive. It provided for certain persons to be informed immediately of the deprivation of liberty but not of the reasons for the detention.[81] Moreover, that provision did not contain the exception in Article 5 (2) of the Directive, namely where informing the persons mentioned above would be contrary to the best interests of the child, in which case another appropriate adult shall be informed. Therefore, an explicit amendment in this regard was needed.[82]

Such an amendment, among other significant ones, entered into force in September 2023 to implement into national legislation the requirements of the Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.[83] Thus Article 386 (4) CPC in its current version provides for that if the circumstances under Article 385b (2) CPC have ceased to exist, the detention of the underage person shall be notified to another adult, indicated by that underaged person and approved by the supervising prosecutor. As for Article 385b (2) CPC, it states that the information shall be furnished to another adult person indicated by the underage accused party and approved by the supervising prosecutor, where: 1) informing the parent, the guardian or the person caring for the accused by law is detrimental to their best interest or could considerably impede the criminal proceedings; 2) the parent, the guardian or the person who takes care of the accused party by virtue of law cannot be found or is of unknown identity. Although according to the legislator, Article 5 (2) of the Directive seems fully implemented by Article 386 (4) CPC, it still provides for certain persons to be informed immediately of the deprivation of liberty but not of the reasons for the detention.

[81] See article mentioned in footnote 56. This is also noted in the TRAINAC study mentioned above in footnote 25, p. 73 thereof.
[82] See article mentioned in footnote 56.
[83] SG, № 48/2.06.2023.

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The derogation of the right to have a third person informed of the deprivation of liberty set out in Article 5 (3) and (4) of the Directive in conjunction with Article 8 thereof was explicitly implemented in Bulgarian law in 2019.[84] However, even during the parliamentary debate, the legal texts introducing this derogation, including those concerning the cases where the accused is a child, were criticized as imprecise and proposed without reason. The President vetoed the draft law as regards the part relating to these provisions [85], which was subsequently overturned, and the relevant rules entered into force.

As regards the right to have a third person informed of the deprivation of liberty in relation to persons, suspected of committing a crime and detained under other laws, i.e. in cases other than those under the Criminal Procedure Code[86], the national legislation satisfies the requirements of the Directive. According to these laws, the respective body shall be obliged to immediately notify of the detention any person, designated by the detainee.[87] The provisions provide for such notification not as a right

[84] According to Article 63 (9) CPC, the notification of detention of the accused concerning a specific person may be postponed for a period of up to 48 hours, in case of an urgent need to prevent the occurrence of grave unfavourable consequences for the life, freedom or physical integrity of a person or when investigative bodies must undertake action, hindrance of which would seriously impede the criminal proceedings. Postponement of this notification shall be applied in view of the special circumstances of every specific case, without exceeding what is necessary and not based only on the type and gravity of the committed crime. A similar provision was provided for the notification of detention of the accused under-aged persons. Under Article 386 (5) CPC, in view of protecting the best interests of the under-aged person, the notification of the specific person pursuant to paragraph 4 may be postponed for a period of up to 24 hours where there is an urgent need, in order to prevent the occurrence of grave unfavourable consequences for the life, freedom or physical integrity of a person or where the investigative bodies need to undertake measures, hindrance of which would seriously impede the criminal proceedings. Postponement of this notification shall be applied in view of the special circumstances of every specific case, without exceeding what is necessary and not based only on the type and gravity of the committed crime. In this case, the State Agency for Child Protection shall be notified immediately of the detention and postponement.

[85] Decree № 309/2018 г. of the President of the Republic of Bulgaria. According to the grounds of the veto, the adopted legislation does not contain the guarantees for the introduction of such derogations as laid down in the Directive. Therefore, the adopted rules do not guarantee that there will be no cases in which none of the relatives of the accused has been notified of his/her detention. https://m.president.bg/bg/cat47/1168/president-veto-zakon-nakazatelen-kodeks.html.

[86] These are the Ministry of Interior Act, the State Agency for National Security Act, the Military Police Act and the Customs Act.

[87] Article 72 (6) the Ministry of Interior Act, Article 124b (6) of the State Agency for National Security Act, Article 13 (3) of the Military Police Act and Article 16a (7) of the Customs Act.

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of the person but as an obligation of the respective body. Therefore, as mentioned above, these rules go beyond the standard of the Directive regarding the right to have a third person informed of the deprivation of liberty.

In respect of the right to notification, when the detained person is a minor, the Directive's requirement was explicitly introduced into the legislation in 2023.[88] According to the Ministry of Interior Act (Article 74a thereof), in cases of police detention of a minor a copy of the detention order shall be served to the parent, the guardian or the person who takes care of the detained person by virtue of law. Instead to that person, the copy of the order shall be served to another adult person, appointed by the under-age detained person, and approved by the respective police official, where 1) informing the parent, the guardian or the person who takes care of the detained person by virtue of law would be detrimental to his/her best interest; or 2) the parent, the guardian or the person who takes care of the detained person by virtue of law cannot be found or is of unknown identity.

2.2.5. The right to communicate, while deprived of liberty, with third persons as well as with consular authorities (Articles 6 and 7 of the Directive)

Under Bulgarian law, there were several guarantees on the right of the accused to communicate, while deprived of liberty, with third persons even before entry into force of the Directive.

First of all, according to Implementation of Penal Sanctions and Detention in Custody Act, the rights to visits, telephone communications, correspondence, food parcels and the amount of the sums of money disposable for spending on personal needs shall immediately be explained to the detainee (Article 243 thereof). In particular, the accused and the defendants have the right 1) to visits, food parcels, parcels of clothing and other articles authorised for personal use, correspondence, outdoor time, and sums of money disposable for spending on their personal needs; 2) to telephone

[88] SG, No. 48/2023.

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communication with immediate and extended family members, defence counsel and representing counsel according to a procedure established by the Chief Director of the Chief Directorate of Implementation of Penal Sanctions. The accused and the defendants may be refused permission to visits, telephone conversations and correspondence with particular persons on a written warrant of the competent prosecutor or of the court, where this is necessitated for the detection or prevention of serious criminal offences. These restrictions on visits, telephone conversations and correspondence shall not apply to the defence counsel and the representing counsel, the lineal descendants and ascendants up to any degree, the spouse and the siblings (Article 256).

The rules of communication between accused persons, while deprived of liberty, and third persons are detailed in the Regulations for Application of the Implementation of Penal Sanctions and Detention in Custody Act[89].

Concerning the present requirement of the Directive, Bulgaria is pointed out as an example of a good legislative approach and good practice relating to the right of the accused to communicate with third persons during detention. According to the TRAINAC study, the scope of third persons with whom the accused may communicate is expanded beyond the scope of the Directive to international experts, who may visit detainees in compliance with the international treaties to which Bulgaria is a party. This can be considered to be a guarantee in addition to the EU standard. Communications are also possible, if the third persons are representatives of human rights NGOs or religious NGOs, or representatives of the mass media, but on condition that the communications with these representatives have been already permitted in writing by the prosecutor or the court[90].

[89] Articles 277, 278 and 281 thereof.
[90]Article 253 of Implementation of Penal Sanctions and Detention in Custody Act states that access to the accused and the defendants and to the places where they are placed shall be afforded to the international experts who have the right to visit such places by virtue of international treaties ratified by the Republic of Bulgaria. In such cases, the requirements of the relevant treaty shall be complied with.

As regards Article 7 of the Directive, the Bulgarian law provided for rules as laid down in the EU law even before entry into force of the Directive [91]. However, in order to fulfil correctly the requirements of Article 7 of the Directive, explicit amendments in the legislation were made in 2019. Thus, the new provision in the Criminal Procedure Code has been adopted, namely Article 63 (8). It states that where the person detained is a foreign national, the consular authorities of the state of which he/she is a citizen shall be immediately notified, at his/her request, through the Ministry of Foreign Affairs. If the person is a national of two or more states, he/she may choose the consular authorities of which state to be informed of his/her detention and with which consular authorities he/she wishes to make a connection. In this regard, changes were also adopted in the Implementation of Penal Sanctions and Detention in Custody Act [92] as well as in other laws in order to fully transpose the Directive [93].

As regards the right to communicate, while deprived of liberty, with third persons in cases of detention of the suspects that are not covered by the Criminal Procedure Code, the Bulgarian law contains rules which implement the requirement of the

The competent prosecutor or the court may allow the accused and the defendants interviews with representatives of human rights, religious and other organisations and communities registered in Bulgaria, as well as interviews with officers of the police detection services. See the TRAINAC study mentioned in footnote 25, p. 80 thereof.

[91] According to Article 51 of the Implementation of Penal Sanctions and Detention in Custody Act, any foreign nationals deprived of their liberty shall be informed in a language which they understand of:
1. the right to meet with a representative of the diplomatic or consular service of the State whose nationality they hold;
2. the right thereof to use legal aid and defence from the relevant diplomatic or consular services: applicable to the stateless persons and to the nationals of foreign states which do not have missions in the Republic of Bulgaria;
3. the conditions for transfer to the State whose nationality they hold, and the relevant competent authorities.
The Ministry of Foreign Affairs shall be notified immediately of the admission of any persons deprived of their liberty who are not Bulgarian nationals.

[92] According to Article 243 (3) thereof, the detainees who are not Bulgarian citizens shall be informed of their thereof to contact diplomatic agents or consular officers of the State whose nationality they hold and shall be immediately provided with the conditions to do so. If a detainee is a national of two or more states, he/she may choose the consular authorities of which state to be informed of his/her detention which consular authorities he/she wishes to contact.

[93] These are the Ministry of Interior Act, the State Agency for National Security Act, the Military Police Act and the Customs Act (where the detained person has not been constituted yet as an accused party under the Criminal Procedure Code).

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Directive. It's about the Ministry of Interior Act, the State Agency for National Security Act, the Military Police Act and the Customs Act. Although these laws do not explicitly provide for this right, it is laid down in the declarations of rights for a detained person.[94] According to Part One of these declarations, the detained persons have the right to visits and the right to receive parcels and food.

As for the requirement of Article 7 of the Directive with regard to these persons, it has been explicitly introduced into national legislation in 2019. All the laws mentioned above provide for that where the person arrested is a foreign national, the consular authorities of the state of which he/she is a citizen shall be immediately notified, at his/her request, through the Ministry of Foreign Affairs. If the person arrested is a national of two or more states, he/she may choose the consular authorities of which state to be informed of his/her detention and with which consular authorities he/she wishes to make a connection.[95]

2.2.6. Waiver (Article 9 of the Directive)

Article 9 of the Directive related to waiver of a right of access to a lawyer was transposed into Bulgarian law in 2019 as the existing Article 96 (1) of the Criminal Procedure Code was supplemented[96]. However, there is a scientific opinion that it is necessary to provide for explicitly that the waiver is given voluntarily and unequivocally[97]. No case law has been established in this regard.

[94] The right to visits and the right to food parcels and other parcels is explicitly set out in the above-mentioned Instruction No. 8121h-78 of 24 January 2015, applicable in cases of police detention, Article 15 (1), p. 11 thereof.

[95] Article 74 (2), p. 6e of the Ministry of Interior Act, Article 124b (2), p. 6e of the State Agency for National Security Act, Article 13 (2) of the Military Police Act and Article 16a (8) of the Customs Act.

[96] The provision states that the accused party may, at any time during the proceedings, make waiver of having a defence counsel, except in cases under Article 94 (1), p. 1 - 3 and 6. The consequences of defence counsel waiver shall be explained to the accused party. The explanation, as well as the reasons stated by the accused party, due to which he/she waives counsel, shall be reflected in the record of the respective procedural action or in a separate record. The accused party shall be entitled at any given stage of the proceedings to withdraw his/her defence counsel waiver, with all procedural actions completed up to that time preserving their procedural value. In case of withdrawal of the defence counsel waiver, the accused party shall immediately be given the opportunity to exercise his/her rights under Article 55.

[97]See the article mentioned in footnote 56.

The requirement of Article 9 of the Directive was also introduced in 2019 in other laws – in cases of detention of suspects other than those under the Criminal Procedure Code. In such cases the relevant authorities are required to clarify to the arrested person the right to refuse legal counsel and the consequences of exercising this right, as well as his/her right to refuse to give explanations. The waiver of counsel is not final and the person may withdraw it at any time and accordingly state that he/she wishes to be assisted by a lawyer.[98]

2.2.7. The right of access to a lawyer in European arrest warrant proceedings (Article 10 of the Directive)

In general, Bulgarian law was in compliance with the requirements of Article 10 of the Directive even before entry into force of the latter. Under Extradition and European Arrest Warrant Act, the right of access to a lawyer in European arrest warrant proceedings is guaranteed in the proceedings for the imposition of remand in custody of the requested person by the court as well as in the judicial proceedings for the examination of the European arrest warrant. In both cases, the court shall appoint a defence counsel and an interpreter for the requested person if the latter has no command of the Bulgarian language.[99] The participation of a lawyer is mandatory and does not depend on the will of the requested person. In this respect, therefore,

[98] Article 72 (5) of the Ministry of Interior Act, Article 124b (9) of the State Agency for National Security Act, Article 13 (2) of the Military Police Act and Article 16a (5) of the Customs Act as well as the Letters of Rights for a detained person.

[99] According to Article 43 (4) Extradition and European Arrest Warrant Act, applicable in the proceedings for the imposition of remand in custody of the requested person, the court shall explain the grounds for his/her detention, the content of the European arrest warrant and his/her right to give consent to surrender to the competent authorities of the issuing Member States and the implications thereof. As regards the judicial proceedings for the examination of the European arrest warrant, the court shall explain to the request person the right to give consent to surrender to the issuing Member State, as well as to renounce entitlement to the speciality rule under Article 61 and the consequences of these steps (Article 44 (3) Extradition and European Arrest Warrant Act). At the court session the court shall hear the prosecutor, the person claimed and his/her defence counsel (Article 44 (5) Extradition and European Arrest Warrant Act). The rule ensures the participation of the lawyer in the judicial proceedings.

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according to some scholars, the Bulgarian law provides a higher standard of guarantee[100].

With the changes in 2019, the existing legal framework has been explicitly supplemented in order to fully transpose the EU standard.[101] It was further improved in December 2023[102] by explicitly providing that the requested person, immediately after their detention by the police authorities, shall be provided with an official or contracted defence counsel, as well as an interpreter, in whose presence and against the signature of the persons, a declaration of the rights of the person detained on the basis of the European Arrest Warrant shall be handed over, in a language understandable to the person.[103]

However, some of them, according to a scientific opinion, are not sufficient for the full implementation of the Directive. For example, Article 10 (4) of the Directive on the access of the requested person to a lawyer in the issuing state is explicitly introduced in Extradition and European Arrest Warrant Act by Article 43 (5) thereof. However, this rule is only applicable in the proceedings for taking a measure of restraint where Bulgaria is an executing state.[104] In this regard, some scholars consider that the same provision is needed in the judicial proceedings concerning the examination of the European arrest warrant [105].

[100] See the article mentioned in footnote 56.
[101] Articles 43 (5), 58 (2) of the Extradition and European Arrest Warrant Act concerning the requirements of Article 10 (5) of the Directive.
[102] SG, № 100/1.12.2023.
[103] Article 42 (6) EEAWA.
[104] According to Article 43 (5) thereof, in the proceedings concerning the imposition of remand in custody of the requested person the court shall inform the person claimed of his/her right to a defence councel in the issuing Member State to support the defence councel in the Republic of Bulgaria with information and advice.
[105]See the article mentioned in footnote 50. See in this regard Judgement 123/2019 of the Appelliate Court-Varna. The Court held that the courts had not fulfilled their obligation to inform the requested person of her right to a defence councel in the issuing Member State-Belgium either in the proceedings concerning the imposition of remand in custody or in the judicial proceedings concerning the examination of the European arrest warrant. In these proceedings for the examination of the European arrest warrant, the requested person stated that she wished to be assigned a lawyer in the issuing Member State. The Bulgarian court has notified the issuer of the European Arrest Warrant in Belgium of the claimed

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The same applies to Article 43 (6) of the Extradition and European Arrest Warrant Act[106] which Article 10 (6) of the Directive was transposed. However, some practitioners consider that this rule is not sufficient for the fully implementation of the Directive provision. The current rules should be amended to refer not only to the time limits specified in Article 45 (3) and Article 48 (3) of that Act but also to the time limits in Article 49 (1) thereof, namely the extension of period for rendition of judicial decision by another 30 days[107].

2.2.8. Remedies (Articles 12 of the Directive)

Bulgarian law provides for effective remedies in the event of a breach of the rights under the Directive.

Such remedies are the appeal procedures laid down in Criminal Procedure Code and Extradition and European Arrest Warrant Act. For example, Article 200 CPC states that decrees of investigative bodies shall be appealed before the prosecutor. Decrees of the prosecutor that are not subject to judicial review shall be appealed before a prosecutor with a higher-standing prosecution office whose decree shall not be subject to further appeal. Thus, the general rule of appeal against decrees of both the investigative bodies and the prosecutor, including those refusing appointment of a lawyer or access to a lawyer constitutes an effective remedy under the Directive. As regards the court's refusals in such cases, they also may be appealed along with the conviction.

person's desire to exercise her rights under Art. 10 of Directive 2013/48/EU. Thus the court has exhausted its commitments and possibilities for influencing the issuing body. The Appellate Court-Varna has not been informed about the identity and contact details of the lawyer appointed as an official defender by the Bar Association in Brussels. However, this cannot justify a refusal to comply with the European Arrest Warrant.

[106] The rule is applicable in cases where Bulgaria is executing state and states that the right of requested person to a defence councel in the issuing Member State to support the defence councel in the Republic of Bulgaria shall not affect the time limits specified in Article 45 (3) and Article 48 (3) within which the court shall decide whether the person shall be surrendered.

[107]See the article mentioned in footnote 56.

The possibility of appeals against the imposition of remand in custody, the decision on the surrender of the requested person or on a refusal to execute the European arrest warrant as provided for in Extradition and European Arrest Warrant Act can also be considered to be an effective remedy under the Directive.[108]

According to the law and the settled case law[109], the violation of the rights of the accused in both pre-trial and trial proceedings, including the right to have a defence counsel constitutes a substantial breach of procedural rules. The breach is substantial where it has led to restriction of the procedural rights of the parties and has not been remedied (Article 348 (3), p. 1 CPC).

There is a scientific opinion that under the Bulgarian criminal procedure law, in particular in the event of a breach of the right of access to a lawyer, the legal institute of substantial breach of procedural rules is one of the most important remedies.[110] This is because, where there has been such violation it constitutes grounds for remit the case to the prosecutor or revocation the sentence and remit the case for a new hearing to the respective instance.[111]

As regards Article 12 (2) of the Directive, some scholars consider that it seems fully implemented by an interpretative judgement of the Supreme Court of Cassation in 2002, which is binding on the courts.[112] According to it, in case of substantial procedural violations in the collection of evidence, the court should exclude the

[108] Articles 43, 44 and 48 thereof.
[109] See Judgment 27/2018 of the Supreme Court of Cassation. The court hearing in the appellate instance was held in the absence of the defence counsel of the defendant, i.e. in violation of Article 94 (1), item 6 CPC, according to which the participation of a lawyer is mandatory where the accused is detained. The violation was substantial as it restricted the right of defence. The Court noted that the provision of Article 94 (1), item 6 CPC is imperative and does not allow exceptions to the obligation of the relevant authorities to ensure the participation of a lawyer for the detained defendant, and a statement of the latter in the opposite sense, as made in the present proceedings, is legally irrelevant. Therefore, the Court revoked the decision of the appellate instance and remired the case for a new hearing.
[110] See the article mentioned in footnote 56. See also Anneli Soo, How are the member states progressing on transposition of Directive 2013/48/EU on the right of access to a lawyer?: An inquiry conducted among the member states with the special focus on how Article 12 is transposed, First Published May 22, 2017, https://journals.sagepub.com/doi/full/10.1177/2032284417699294.
[111] Articles 249, 335, 354 CPC.
[112] See in this context the article mentioned in footnote 56.

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improperly collected piece of evidence from these ones that may be used in sentencing. The established case law is in the same sense.[113]

Furthermore, in March 2024 an explicit legislative change was made in this regard.[114] Article 118 (2) of the Criminal Procedure Code was supplemented, by extending the group of persons may not have the capacity of witnesses in criminal proceedings, adding those who have taken intelligence discussions within the meaning of the Ministry of Interior Act. This excludes the possibility of the statements of police officers who conducted such intelligence discussions with a suspect to be taken into account as oral objective forms of evidence.

[113] See Judgment 155/2019 of the Supreme Court of Cassation. The defendant was sentenced to 8 years of imprisonment for a murder. The Court found that during the pre-trial proceedings the accused was initially questioned as a witness. From the moment his reply gave rise to suspicion, the interrogation should have been suspended. His age at this time (15 years and 2 months) defines him as a child, and his mild mental retardation - as a vulnerable person. The situation in which he was placed - suddenly awakened from sleep in the early hours of the day, interrogated by two police officers without the presence of relatives, unable to fully comprehend what was happening due to personal characteristics, raises serious doubts about the authenticity of the explanations. The accused was not informed in advance of his rights, including the right to remain silent and not to incriminate himself, the interrogation was conducted in the absence of a lawyer and a parent, and no opinion was sought from a psychologist or psychiatrist. The incorporation into the evidence of the testimony taken in violation of the established order, by retelling them by a police officer, constitutes circumvention of the law and should not be tolerated. The proper way to eliminate the admitted procedural violation is to exclude from the evidence the part of the testimony of the police officer about his questioning of the defendant. According to the Court, in this case, it does not require annulment of the decision and remand of the case for a new hearing, as even without this testimony the factual situation remains indisputably clarified and unchanged. Therefore, the Court modifies the judgement of the Appellate Court – Burgas, reducing the term of imprisonment.

[114] SG, № 18/01.03.2024. The amendment was necessary due to a judgment of the European Court of Human Rights (ECtHR) of 8 June 2018 against Bulgaria (Case of Dimitar Mitev v. Bulgaria, no. 34779/09), available at https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-181387%22]}. According to the Court, "*there is no dispute that the applicant's confession as such could not have been used as evidence in the trial, as it was not obtained in accordance with the requirements of the Criminal Procedure Code. The confession was not made before a competent body (a prosecutor, an investigator or a court – see paragraph 29 above), which could take a statement from a suspect only after providing them with their full rights, including the right to a lawyer. Since the Criminal Procedure Code provides for the exclusion of evidence collected in a manner incompatible with its rules (see paragraph 28 above), the confession could not be included in the body of probative evidence. However, the effect of allowing the testimony of Officers Z.K. and V.V. was, for all practical purpose, precisely the same – to allow that confession as evidence circumventing all procedural rights of the applicant*" *(para. 67)*. Therefore the Court concludes that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention "*in view of its findings above: that the applicant was not assisted by a lawyer when making the confession which was subsequently used to secure his conviction for murder; that he was not shown to have waived the right to legal assistance …*" *(para. 72)*.

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2.3. Directive (EU) 2016/1919: Legal aid

Most of the minimum requirements established in the Directive aimed at ensuring legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings de facto exist in Bulgarian legislation (Criminal Procedure Code, Legal Aid Act, Extradition and European Arrest Warrant Act). Thus, the Bulgarian law in this area seems to comply with the standards of the Directive, albeit without an explicit transposition.[115] However, the transposition of certain of these standards in domestic law as well as the application in practice of some of the rules concerning the legal aid are identified as problematic.

2.3.1. Scope (Article 2)

The above conclusion is relevant to implementation of Article 2 of the Directive.

The Legal Aid Act[116] lays down four types of legal aid, such as 1) a consultation and/or preparing of documents in view of reaching a settlement before the start of court proceedings or to file a case, to start or conduct proceedings to issue an individual administrative act and/or dispute it under an administrative procedure, including advice on the National Legal Aid Hotline and at regional consultation centre; 2) procedural representation; 3) representation in out-of-court procedures and 4) representation upon detention under Article 72 (1) of the Ministry of Interior Act, under Article 16a of the Customs Act, under Article 13 of the Military Police Act and under Article 124b(1) of the State Agency for National Security Act.[117] In view of the scope of the Directive, the type of legal aid referred to in p. 2 and 4 are of interest.

[115] In fact the latest amendment to the Legal Aid Act was made in 2024 (SG, No. 18/01.03.2024) precisely in order to ensure its compliance with the Directive where Article 21, p. 4 LAA was supplemented, adding the cases of detention under the Military Police Act.
[116] Article 21 thereof.
[117] These are the cases of police detention, detention by the officers of the State Agency for National Security, by the customs authorities and by the "Military Police" Service authorities. These are the cases where the detained person has not been constituted yet as an accused under Criminal Procedure Code.

According to the Legal Aid Act, the procedural representation covers the cases in which the assistance of a lawyer, a stand-by defence counsel or representation is mandatory as provided by virtue of a law (Article 23 (1) thereof). It furthermore covers the cases in which an accused, a defendant, or a party to a criminal, civil or administrative matter is unable to pay for the assistance of a lawyer, wishes to have such assistance, and the interests of justice require this. In such cases, the person shall not reimbursement of the costs for the provided legal aid (Article 23 (2) thereof).

Criminal Procedure Code explicitly provides for several cases where the participation of a defence counsel is mandatory in the criminal proceedings, i.e. these are cases in which the assistance of a lawyer is mandatory as provided by virtue of a law. This means that the defence counsel will be appointed if the accused has not retained one of his/her own and regardless whether such request is made by the accused or not. These are the following cases as laid down in Article 94 (1) CPC: 1) where the accused party is underage or 2) suffers from physical or mental deficiencies, which prevent him/her from proceeding pro se; 3) where the case is concerned with a criminal offence punishable by deprivation of liberty of no less than ten years or another heavier punishment; 4) where the accused person is detained or such request has been made by the prosecutor; 5) where the case is tried in the absence of the accused party.[118]

In two cases (where the accused does not have command of the Bulgarian language or the interests of the accused parties are contradictory and one of the parties has his/her own defence counsel), the participation of a defence counsel is mandatory. However, unlike the cases mentioned above, the accused may make a statement that he/she wishes to dispense with having a defence counsel.[119]

In these cases a lawyer on duty is designated where the detainee is unable to retain a lawyer of his or her own (Article 28 LAA).
[118]Article 94 (1), p. 1, 2, 3, 6 and 8 CPC.
[119] Article 94 (1), p. 4-5 CPC.

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The legal aid in cases where the participation of a lawyer is mandatory is not depending on the severity of the penalty or the gravity of the offence except in one case mentioned above. Thus, the legal aid is guaranteed in cases of minor crimes where deprivation of liberty cannot be imposed as a sanction if the other requirements of Article 94 (1) CPC are present. In this case the national law exceeds the minimum rules laid down in the Directive.

The legal aid is also guaranteed in cases of detention of requested persons under Extradition and European Arrest Warrant Act. In these cases the legal assistance is also mandatory and the court is obliged to appoint a lawyer if the requested person has not retain a lawyer of his or her own.[120]

In these cases of mandatory assistance by defence counsel mentioned above, the condition of the accused being unable to pay is not relevant.

More special is the case where the accused cannot afford to pay a lawyer fee, wishes to have a defence counsel and the interests of justice so require (Article 94 (1), p. 9 CPC). Although it is set out in a provision titled "Mandatory participation of defence counsel", in the doctrine the participation of the defence counsel in this case is defined not as mandatory but as voluntary by appointment. This is because the relevant authority points out a lawyer only if the accused makes such request and if the other two conditions are met [121], i.e. the appointment of a lawyer is not provided ex officio by the relevant body, as in the cases of mandatory legal assistance mentioned above. Besides, the accused cannot choose a lawyer and retain him/her of his/her own, as in cases of voluntary defence by choice. The relevant body appoints the lawyer here.[122]

[120] See for more details Sect.2.2.7. concerning Article 10 of the Directive 2013/48/EU on the right of access to a lawyer in European Arrest Warrant proceedings, and the article cited therein.
[121] See Chinova Margarita, Pre-trial proceedings under the Criminal Procedure Code. Theory and Practice, Ciela, 2013, 203.
[122] Ibidem, 203-204.

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Where the legal assistance is mandatory as provided by virtue of law or in cases of representation upon detention or where the accused cannot afford to pay a lawyer fee, wishes to have a defence counsel and the interests of justice so require, the appointment of a public defender is in accordance with the Legal Aid Act if the person has not retained a defence counsel of his/her own. The decision to grant legal aid is made by the authority directing the procedural steps or by the relevant police bodies, the officers of the State Agency for National Security, by the customs authorities or by the "Military Police" Service authorities[123], at the request of the person concerned or by virtue of the law. The explanations in writing are provided to the person by a declaration in a standard form to the effect that in case of a judgment finding against him/her or a sentence, the person owes reimbursement of the costs of legal aid, except for the cases under Article 23 (2) LAA.[124] These explanations are provided before the appointment of a lawyer. The act for granting of legal aid is transmitted forthwith to the relevant Bar Council for designation of a lawyer entered in the National Legal Aid Register. If practicable, the Bar Council designates a lawyer named by the person where to legal aid is granted.[125] The Bar Council notifies the relevant authority of the designated lawyer. The authority appoints the designated lawyer as public defender for all phases and courts of all instances, unless there has been an objection to this.[126]

Questions in connection with its implementation in the Bulgarian law raises the requirement of **Article 2 (3) of the Directive** on the applicability of the legal aid in relation to persons who were not initially suspects or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority. Since, according to some scholars, Article 2 (3) of the

[123] In cases mentioned above in footnote 114.
[124] These are the cases in which an accused, a defendant, or a party to a criminal, civil or administrative matter is unable to pay for the assistance of a lawyer, wishes to have such assistance, and the interests of justice require this. In such cases, the person shall not reimbursement of the costs for the provided legal aid.
[125] Article 25 Legal Aid Act.
[126] Article 26 Legal Aid Act.

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Directive 2013/48/EU concerning the protection against self-incrimination seems partially transposed into national criminal procedure law, Article 2 (3) of the Directive (EU) 2016/1919 also seems partially transposed.[127]

The costs of the defence of accused and requested persons covered by legal aid, in particular, the possibility accused or requested persons to bear part of those costs themselves, depending on their financial resources (Recital 8 of the Directive) also have raised questions even before adoption of the Directive. Under CPC, where the accused is found guilty, the court shall sentence him/her to pay the costs for the trial including attorney fees and other expenses for the defence counsel appointed ex officio (Article 189 (3) thereof). However, the case law was contradictory regarding the costs for the lawyer appointed by the respective body where the accused cannot afford to pay a lawyer fee, wishes to have a defence counsel and the interests of justice so require. Therefore, in 2010 the Supreme Court of Cassation adopted an interpretative decision, which is binding on the courts[128]. The Court held that where the accused is found guilty, he/she should pay the lawyer's fee in all cases where the lawyer is appointed by the relevant authority, including in cases under Article 94 (1), p. 9 CPC. However, part of the judges did not share the opinion of the majority. According to them, this national rule is in compliance with Article 6, § 3 (c) ECHR and should therefore be interpreted as part of the minimum guarantees provided to the accused in the context of the right to a fair trial. This view is also supported in the scientific literature.[129]

The issue was resolved, albeit partially, in 2022 by an amendment to the Legal Aid Act.[130] Thus, Article 25 (1) of the Act explicitly states that the person shall not reimbursement of the costs for the provided legal aid in cases where an accused, a

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[127] See the written above in this report, Sect. 2.2.1. concerning Article 2 (3) of the Directive 2013/48/EU on the protection against self-incrimination, and the article cited therein.
[128] Interpretative decision N 4/2010.
[129] See Chinova, Margarita. Pre-trial Proceedings under the Criminal Procedure Code. Theory and Practice, Ciela, 2013, 209-210.
[130] SG, № 102/23.12.2022.

defendant, or a party to a criminal, civil or administrative matter is unable to pay for the assistance of a lawyer, wishes to have such assistance, and the interests of justice require this.

2.3.2. Legal aid in criminal proceedings (Article 4)

The requirements of **Article 4 of the Directive** are also implemented in Bulgarian law. As mentioned above, where the legal assistance is mandatory the condition of the accused being unable to pay is not relevant. The respective authority appoints a lawyer ex officio in accordance with the Legal Aid Act if the accused has not retain a lawyer of his/her own.

The fact that the accused lacks sufficient resources to pay for the assistance of a lawyer is relevant in the case under Article 94 (1), p. 9 CPC, namely where the accused person cannot afford to pay a lawyer fee, wishes to have a defence counsel and the interests of justice so require.[131] Where these three conditions are met, the lawyer shall be pointed out under the Legal Aid Act by the relevant authority if the accused person has not retained a defence counsel of his/her own. However, if the accused wishes to appoint a retained counsel but cannot afford it, the legal aid does not cover the costs for such lawyer. As mentioned above, in this case, the participation of the defence counsel is voluntary by appointment, i.e. the accused cannot choose a lawyer and retain him/her of his/her own.

It should be noted that under the law the right of legal aid (as referred to in Article 4 of the Directive) is guaranteed not only to accused persons or defendants but also other parties in criminal proceedings, namely the private accuser, the civil plaintiff, the civil respondent and the private complainant if they are unable to pay for the assistance of a lawyer, wishes to have such assistance, and the interests of justice

[131] Article 94 (1), p. 9 thereof.

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require this.[132] In this respect, therefore, the Bulgarian law goes beyond the standard of the Directive.

The determination that the accused or the defendant is unable to pay a lawyer's fee is made by the authority who directs the procedural steps. The means test is conducted on the basis of the property status of the person ascertained ex officio and of other circumstances such as the income accruing to the person or to the family thereof; the marital status; the state of health; the employment; the age etc.[133] Indeed the Legal Aid Act does not explicitly provide for the costs of the assistance of a lawyer under Article 4 (3) of the Directive.[134] Therefore, this could be considered a shortcoming in the transposition of the Directive's requirement. It should_be noted however that according to Article 23 (3) LAA to which para. 5 of Article 23 refers[135], in addition to the circumstances specified there (such as the income accruing to the person or to the family thereof; the marital status; the state of health; the employment; the age), the general concept "other circumstances" is set out. In this sense, the costs of the assistance of a lawyer could be taken into account under this concept. Nevertheless, in order to fully transpose the Directive's requirement, the costs of the assistance of a lawyer could be explicitly added among the circumstances specified in Article 23 LAA.

As regards the merits test it seems fully implemented in law and in practice. Such test applies where the accused cannot afford to pay a lawyer fee, wishes to have a defence counsel and the interests of justice so require (Article 94 (1), p. 9 CPC). As noted in a comparative report on the right to a lawyer and to legal aid in criminal

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[132] Article 23 (2) Legal Aid Act.
[133] Article 23 (3) and (5) Legal Aid Act.
[134] Article 23 (3), p. 1-7 thereof.
[135] According to Article 23 (5) LAA "In criminal matters, the determination that the accused or the defendant is unable to pay a lawyer's fee shall be made by the authority who directs the procedural steps on the basis of the property status of the person ascertained ex officio in the specific matter and of the circumstances referred to in Items 1, 3, 4, 5, 6, and 7 of Paragraph (3). In respect of the private accuser, the civil plaintiff, the civil respondent and the private complainant, the determination shall be made according to the procedure established by Paragraph (3)".

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proceedings in five Member States[136], in Bulgaria the respective authority *"has very wide discretion to decide whether the "interests of justice" require free legal assistance, as there are no prescribed criteria for exercising the discretion"*.[137] The same conclusion has been made before in the scientific literature.[138] However, as mentioned in the doctrine, whether the interests of justice require free legal assistance is always a matter of specific assessment for each particular case, which assessment is always subjective.[139] Besides, the relevant authority itself has no interest in interpreting the provision broadly. If no lawyer is appointed when one should have been, this constitutes a substantial breach of procedural rules that leads to remit the case.

According to the case law existing even before the adoption of the Directive, the seriousness of the criminal offence, the complexity of the case and the severity of the sanction as laid down in Article 4 (4) of the Directive should be taken into account by the relevant body in order to determine whether the interests of justice require legal aid to be granted. In contrast, such merits test does not apply in the cases of mandatory legal assistance, including where the accused person is detained or such request has been made by the prosecutor.[140] In these cases, the participation of the defence counsel in criminal proceedings is mandatory regardless whether the interests of justice require legal aid to be granted.

In this regard, it should be noted that the national legislation satisfies the requirements of both situations under Article 4 (4) (a)-(b) of the Directive. According to Article 21, p. 4 of the Legal Aid Act, legal aid is representation upon detention under the Ministry of

[136] Bulgaria, Hungary, Lithuania, Poland and Slovenia.
[137] See Right to a lawyer and to legal aid in criminal proceedings in five European jurisdictions: comparative report, Sofia, 2018, https://bghelsinki.org/web/files/reports/137/files/2018-right-to-a-lawyer-and-to-legal-aid-in-criminal-proceedings-in-five-european-jurisdictions--comparative-report-en.pdf.
[138] See Chinova, Margarita. Pre-trial Proceedings under the Criminal Procedure Code. Theory and Practice, Ciela, 2013, 205-207.
[139] Ibidem.
[140] See Article 94 (1), p. 6 CPC.

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Interior Act, the Customs Act, the Military Police Act and the State Agency for National Security Act.[141]

Under these laws from the moment of being detained, the person has the right to a defence counsel, the right to refuse defence and the consequences of such refusal for him/her, as well as his/her right to refuse to give explanations (where the person is detained due to data that he/she had committed a crime) shall be explained to him/her.[142] Therefore, the right to a defence counsel includes not only the representation of the lawyer (retained by the person of his/her own or appointed ex officio) in appealing the detention before the court, but also in other actions with that person during his/her detention, including, for example, investigative interview under the Ministry of Interior Act.[143]

[141] It is also applicable to the proceedings under the Decree No. 904 for Fight against Petty Hooliganism (SG No. 102/1963) and Act on Protection of Public Order upon Conduct of Sports Events (APPOCSE) (SG No. 96/2004), where in cases of administrative violations the deprivation of liberty can be imposed. According to these laws, the person has the right to defence counsel (Articles 5 (3) of the Decree and 32 (4) APPOCSE respectively). In these proceedings, when the person wishes a lawyer but has not retained such of his/her own, the court appoints a lawyer ex officio under the Legal Aid Act. See, for example, Order №25/2018 of District Court-Samokov; Order №170/2017 of District Court-Pleven; Order №50/2018 of District Court-Dryanovo; Order №791/2019 of District Court-Plovdiv.

[142] Articles 72 (5) of the Ministry of Interior Act, Article 16a (5) of the Customs Act, Article 13 (2) of the Military Police Act and Article 124b (9) of the State Agency for National Security Act.

[143]See in this regard Judgment № 8983/2013 of the Supreme Administrative Court. According to the Court, the right to a defence counsel obliges the police authority not to take any action against the detained person if the latter states that he/she wishes to be represented by a lawyer. The meaning of the right to a defence counsel is that the lawyer (retained by the person of his/her own or appointed ex officio) must be present during the actions taken against the detained person, ensuring that they are carried out in accordance with the law. See also, in this regard,
Judgment № 96/2023 of the District Court-Smolyan; Judgment № 27/2017 of the Administrative Court-Haskovo; Judgment № 350/2022 of the Administrative Court-Pleven; Judgment № 154/2021 of the Administrative Court-Veliko Turnovo; Judgment № 177/2019 of the Administrative Court-Haskovo.
However, it should also be borne in mind that according to a study, conducted by the Bulgarian Helsinki Committee in June-November 2021 among 1,010 prisoners, whose pre-trial proceedings began after July 1, 2019, 61.4% of them claimed that they did not have a lawyer during the 24-hour police detention, https://prisonreform.bg/wp-content/uploads/2022/09/2022-kanev-problemite-s-ravnoto-tretirane-v-dosadebnoto-nakatelno-proizvodstvo.pdf .

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2.3.3. Legal aid in European arrest warrant proceedings (Article 5 of the Directive)

The legal aid in European arrest warrant proceedings is also guaranteed by Bulgarian law and in particular by the rules of Extradition and European Arrest Warrant Act.[144] Its provisions are applicable no matter whether Bulgaria is an executing or an issuing state. In both cases the participation of a defence counsel is mandatory and does not depend on the will of the requested person. The Legal Aid Act is applicable if the requested person has not retained a defence counsel of his/her own. In such cases, there is no means test in accordance with Article 4 (3) of the Directive.[145] In this respect, therefore, the Bulgarian law goes beyond the standard of the Directive.

2.3.4. Decisions regarding the granting of legal aid (Article 6)

Article 6 of the Directive is de facto implemented in Bulgarian legal system but its application in practice raises questions. As already mentioned above [146], the decision to grant legal aid is made by the authority directing the procedural steps at the request of the person concerned or by virtue of the law. The act for granting legal aid shall be sent immediately to the relevant Bar Council for designation of a lawyer entered in the National Legal Aid Register. The Bar Council notifies the relevant authority of the designated lawyer. The authority appoints the designated lawyer as defence counsel. A refusal to grant legal aid shall be reasoned and shall be appealable according to the applicable procedure.[147] However, the application of these provisions in practice is criticized as regards the decisions for appointment of ex

[144] Articles 43 (4), 44 (3) and 58 (2) thereof.
[145] It means that the State pays for the lawyer, even where the requested person is wealthy. However, as already mentioned above in Sect.2.3.1., in case of a judgment finding against him/her, the person owes reimbursement of the costs of legal aid except in cases where an accused, a defendant, or a party to a criminal, civil or administrative matter is unable to pay for the assistance of a lawyer, wishes to have such assistance, and the interests of justice require this (Article 25 (1) Legal Aid Act).
[146] See Sect. 2.3.1. (Scope).
[147] Articles 25 (1), (5), 26 (1)-(2) Legal Aid Act. According to the Criminal Procedure Code, in pre-trial proceedings the prosecutor and the investigative bodies make pronouncement by decrees, which are written documents, including in cases of refusals to grant legal aid. In the trial proceedings if the court refuse to grant legal aid during the court hearing, such refusal is included in the record of the court hearing.

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officio lawyers in the pre-trial proceedings. The comparative report on the right to a lawyer and to legal aid in criminal proceedings in so far as it concerns Bulgaria, notes that very often selection of ex officio lawyers is made not by the Bar Council, as required by the law, but by the investigating authorities themselves.[148] According to the scientific literature, this practice reveals a dangerous tendency to circumvent the law.[149]

2.3.5. Quality of legal aid services and training (Article 7)

Article 7 of the Directive is also de facto implemented in Bulgarian legal system.

Under Criminal Procedure Code, the defence counsel may be an individual who practices the legal profession. The defence counsel may also be the spouse, an ascendant or descendant of the accused (Article 91 (1) and (2) CPC). However, where participation of a defence counsel is mandatory, the respective body shall appoint only lawyer as a defence counsel (Article 94 (3) CPC). Such a requirement is in accordance with Legal Aid Act, which provides for that only lawyers can be enrolled in the National Legal Aid Register, respectively can be appointed as public defenders by the relevant body (Article 31 thereof). In addition, the Bar Councils when designating a lawyer of the Bar Association, entered in the register, for implementation of the legal aid, should be sure that the professional experience and qualifications of the said lawyer are suitable for the type, the factual and legal complexity of the case, other appointments according to the procedure established by the Legal Aid Act, and the caseload of the said lawyer. The local Bar Councils shall also exercise current control as to the quality of the legal aid provided by the lawyers of the Bar Association and, to this end, carry out checks and ascertainments and, where necessary, institute disciplinary proceedings and inform the National Legal Aid Bureau of this (Article 18,

[148] See the report mentioned in footnote 137.
[149] See Chinova, Margarita. Pre-trial Proceedings under the Criminal Procedure Code. Theory and Practice, Ciela, 2013, p. 208.

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p. 3 and 5 Legal Aid Act). The comparative report on the right to a lawyer and to legal aid in criminal proceedings mentioned above indicates that according to Bulgarian lawyers, the quality of legal aid might 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.[150] In this regard, it should be noted that the maximum levels of the lawyers' fees in the legal aid system, particularly these for legal aid in criminal cases were increased by the latest amendments in the Ordinance on the payment of legal aid, which entered into force on October 1, 2021. The changes are motivated precisely by the need for adequate funding of legal aid in order to ensure effective and quality legal aid.[151]

As for the training of magistrates (judges, prosecutors and investigating magistrates), the institution which organizes and provides training is the National Institute of Justice. With regard to the training and maintaining the qualification of the lawyers, including public defenders, the Supreme Bar Council as well as the local Bar Councils organize these activities.

The requirement of Article 7 (4) of the Directive is also indirectly implemented in Bulgarian law. The appointed defence counsel may be replaced at the request of the relevant authority according to the procedure of the appointment thereof (Article 26 (5) Legal Aid Act)[152] and with the consent of the accused. These are the cases when the appointed public defender does not perform his procedural duties (for example, he does not appear when he has been summoned for the respective procedural

[150] See the report mentioned in footnote 137.
[151] Nevertheless, in early June 2025, the Bar Councils launched an effective protest precisely because of the low rates of legal aid fees. The protest lasted for nearly 20 days, during which the Bar Councils did not appoint public defenders. As a result, the government adopted changes to the Ordinance on the payment of legal aid that increased both minimum and maximum levels of the lawyers' fees in the legal aid system. The amendments came into effect on October 1, 2025.
[152] Article 26 (5) LAA states that "The appointed lawyer may be replaced at the request of the authority referred to in Article 25 (1) or (2) herein according to the procedure of the appointment thereof. Replacement may be carried out ex officio by the body under Article 25 (1) and (2), upon a request of the Bar Council, of the parties to the proceedings or of the appointed lawyer".

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action). The replacement of a defence counsel by another may take place only at the request or with consent of the accused (Article 96 (2) CPC).

The replacement of the appointed lawyer under Article 26 (5) Legal Aid Act is applicable in all cases where legal aid is granted, including e.g. in cases of detention of a person of whom data exist that he/she had committed a crime.[153] According to the national law the police detention as well as the detention by the other relevant authorities is considered to be a coercive administrative measure imposed by an administrative act, namely the detention order. Thus, it is an administrative proceeding. In this sense, the detained person is a party to these proceedings, and as such may request the replacement of the appointed lawyer under the Legal Aid Act.

2.3.6. Remedies (Article 8)

Bulgarian law provides for effective remedies for infringements of the rights as laid down in **Article 8 of the Directive.** On the one hand, such a remedy is the possibility of appealing against refusals to grant legal aid.[154]

On the other hand, according to the law and the settled case law, existing even before the adoption of the Directive, the violation of the procedural rights of the accused in both pre- trial and trial proceedings, including the right to legal aid in cases where the participation of the defence counsel is mandatory, constitutes a substantial breach of procedural rules.[155] The breach is substantial where it has led to restriction of

[153] These are the cases mentioned in footnote 117 where the detained person has not been constituted yet as an accused under Criminal Procedure Code.

[154] Article 25 (1) of the Legal Aid Act states that a refusal to grant legal aid shall be reasoned and shall be appealable according to the applicable procedure. In this context the general rule of appeal against decrees of both the investigative bodies and the prosecutor, including those to grant legal aid laid down in Criminal Procedure Code (Article 200 thereof) is applicable. As regards the court's refusals in such cases, they also may be appealed along with the conviction.

[155] See in this context Decree № 6/1978 of the Plenum of the Supreme Court, Interpretative judgement № 2/2002 of the General assembly of the Criminal college of the Supreme Court of Cassation. Although these acts of the Supreme Court are prior to the entry into force of the Directive, they are mentioned because they are binding on the courts.

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the procedural rights of the parties and has not been remedied (Article 348 (3), p. 1 CPC). Where there has been such violation, it constitutes grounds for remit the case to the prosecutor or for revocation the sentence and remit the case for a new hearing.[156] Therefore this legal institute seems to be an effective remedy.

Similarly, and specifically in cases of detention under the special laws, according to the law and the case law, the violation of the right to legal counsel in these proceedings, including the right to legal aid, constitutes a substantial breach of administrative procedural rules, which results in the revocation of the detention order.[157] Moreover, the illegally detained person has the right to remedy under the Act on the Liability for Damage Incurred by the State and the Municipalities.[158]

2.3.7. Vulnerable persons (Article 9)

As regards the requirement of Article 9, it should be noted that as already mentioned above[159], if the accused party is underage or suffers from physical or mental deficiencies, which prevent him/her from proceeding pro se, the participation of the defence counsel in criminal proceedings is mandatory (Article 94 (1), p. 1 and 2 CPC). In such cases, the appointment of a lawyer is in accordance with Legal Aid Act if the accused person has not retained a defence counsel of his/her own.[160] It means that

[156] Articles 249, 335, 354 CPC.

[157] The grounds for contestation of the individual administrative acts are provided for in Article 146 of the Code of Administrative Procedure as far as administrative proceedings are concerned. See examples for such violation Judgments № 3200/2025 and № 3061/2025 of the Sofia District Court; Judgment № 3410/2025 of the District Court-Plovdiv; Judgment № 96/2023 of the District Court-Smolyan; Judgment № 8983/2013 of the Supreme Administrative Court; Judgment № 406/2024 of the District Court-Pazardjik; Judgment № 27/2017 of the Administrative Court-Haskovo; Judgment № 33/2021 of the District Court-Velingrad.

[158] See Judgment № 2586/2025 of the Administrative Court-Pazardjik; Judgment № 154/2021 of the Administrative Court-Veliko Turnovo.

[159] See Sect. 2.3.1. (Scope).

[160] See Ruling 177/2019 of the District Court-Shumen. The Court noted that the accused is a minor, deaf-mute, with intellectual disabilities and cannot use sign language. In view of the requirements of Article 94 (1), p. 1, 2 and 4 CPC, when he was brought in as an accused, a defence counsel was appointed ex officio. It is not clear from the interrogation records how the accused communicated with the defence counsel. The *ex officio* defence counsel stated that he had no communication with the defendant, which

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the State pays for the lawyer, even where the accused is able to pay. However, as already mentioned above in Sect.2.3.1., according to Article 189 (3) CPC, where the accused is found guilty, the court shall sentence him/her to pay the costs for the trial including attorney fees and other expenses for the defence counsel appointed *ex officio*.

Conclusions

In view of the transposition of the three directives, the following should be noted.

Two of the Directives – 2012/13/EU and 2013/48/EU, have been introduced into Bulgarian legislation through explicit changes.

It should be noted that in general, Bulgarian legal framework even before adoption or entry into force of the three Directives already guaranteed certain rights as laid down in the latter, especially concerning the right of the accused persons under the CPC. This is because these rights are also guaranteed by the ECHR. And in the last 20 years Bulgarian legislation has undergone significant changes in order to introduce the standards of the ECHR in national criminal proceedings. This is one of the reasons why established case law refers more often to the provisions of the ECHR and the case law of the ECtHR than to the Directives.

On the other hand, however, the above interpretation seems problematic and irrelevant to all Directives. This is evidenced in the significant legislative changes made in 2022-2024 to correctly and fully implement the EU standards on the right to

hindered his defence. This led to a restriction of the defendant's right to defence due to his inability to communicate and correct interpretation by an interpreter of the sounds, facial expressions and gestures he uttered. Therefore the Court held that the court proceedings should be terminated and the case returned to the district prosecutor.

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information, the right of access to a lawyer and the right to legal aid in criminal proceedings into Bulgarian legal framework.

Such an interpretation is also undermined by the existence of ongoing infringement procedures against Bulgaria for incorrect transposition of five out of the six Directives in this area, including two of the Directives subject to this analysis. The problem identified by the European Commission is generally related to the inconsistencies of Bulgarian legislation with the EU standards regarding the rights of suspects in criminal proceedings.

The introduction of the EU standards into national legislation constitutes in principle a challenge. It is particularly large in the area of the procedural guarantees of the rights of suspected and accused persons in the criminal proceedings, respectively of the persons requested in the EAW proceedings. First, such implementation should take into account existing national standards, including these that go beyond the Directives' ones. A good example in this context are the remedies provided for in Bulgarian law and judicial practice in case of violation of the rights of persons under the three Directives, and in particular the concept of the so-called "substantial breach of procedural rules", which constitutes safeguard of the right of the persons to a fair trial.

However, a literal transposition of the requirements of the Directives is also problematic. As an example can be pointed out the legislator's approach where the derogation from the right of a third party to be notified of the detention, including when the accused is a child (Article 5 (3) Directive 2013/48/EU) was implemented in the Bulgarian legislation. This was done without stating the reasons that necessitate such an exception in national law. This legislator's approach was then severely criticized.

Last but not least, the difficulties in implementing these standards in the national legal framework also stem from the lack of the figure of the suspect in Bulgarian legislation.

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In this regard and in response to the criticism of the European Commission, a draft law prepared by the government has been published for public discussion.[161] The proposed legislative amendments are mainly related to strengthening the procedural guarantees of the rights of persons defined as suspects within the meaning of the Directives.[162] The draft law is about to be submitted to Bulgarian parliament. It is too early to say exactly what changes will be adopted, but it is undeniable that such legal amendments seem to be needed in order to transpose fully and correctly the Directives into national legislation.

161 https://strategy.bg/bg/public-consultations/11719 .

162 Specifically, changes are proposed in the Criminal Procedure Code related to extending the rights of the accused persons, including minors, as well as establishing procedural guarantees for the rights of the suspects in carrying out of the certain investigative actions in the pre-trial proceedings, without, however, explicitly introducing this figure into Bulgarian legislation. Amendments are also envisaged in other laws related to the rights of the suspects in cases of detention, as well as in cases of EAW proceedings. According to the explanatory memorandum to the draft law, the changes aim at full and correct transposition of the six Directives on the rights of the suspects and accused persons in criminal proceedings into national law.

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