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Disclaimer: On behalf of the Apis Europe, the present deliverable has been drafted by Assoc. Prof. Dr. Miroslava Manolova, Sofia University "St. Kliment Ohridski", Faculty of Law. **For the purposes of this report, national case law has been included only if issued after the approval of the procedural Directive it refers to.** The content of this report represents the views of the author only and is her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

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NATIONAL REPORT ON THE DOMESTIC IMPLEMENTATION OF THE CRIMINAL PROCEDURAL RIGHTS OF THE ACCUSED

4 Main findings/Executive summary

Certain requirements of Directive 2010/64/EU already existed in Bulgarian law even before the entry into force of this legal act. However, significant changes were made in 2014 at both the legal and regulatory levels in order to fully introduce into Bulgarian legal system the guarantees laid down in the Directive. Despite these changes, the Bulgarian legislation still do not seem in full compliance with the standards of the Directive. This concerns particularly the types of essential documents for which a translation is required and the lack of criteria for determining the qualifications of the interpreters and translators.

In contrast, Bulgarian legislation on the right to information in criminal proceedings largely complies with the standards of Directive 2012/13/EU, albeit without explicit transposition of the latter. However, two of the requirements of the Directive have been either not implemented at all or only partially implemented in Bulgarian law. This refers respectively to the Letter of Rights on arrest and the Letter of Rights in European Arrest Warrant proceedings.

As regards the right of access to a lawyer and to have a third party informed, in general the Bulgarian law even before the entry into force of the Directive 2013/48/EU was in compliance with the requirements as set out therein. However, it was necessary the existing legal framework to be supplemented in order to fully guarantee the rights provided for in the Directive. In this regard, 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 do not sufficiently guarantee the protection against self-incrimination of persons other than accused 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 accussed is a child as well as the right of access to a lawyer in European arrest warrant proceedings.

Among the six directives, Directive (EU) 2016/800 is the one, which requirements to a minimal extent result implemented in Bulgarian law. Although the national legislation even before adoption of the Directive provided for special rules, which are applicable only to juvenile accused and which are aimed at guaranteeing their procedural rights in criminal proceedings, it did not contain all the procedural safeguards for such persons as laid down in the Directive. It is no accident that at the end of 2020, a draft law was submitted to the National Assembly proposing major amendments to the Criminal Procedure Code for the full transposition of the Directive.[1] However, it has not been adopted yet. Therefore, at present, most of the requirements of the Directive are not implemented at all or only partially in Bulgarian law.

In contrast, regarding the legal aid Bulgarian law largely complies with the standards as set out in Directive (EU) 2016/1919. The national legal framework already provided for most of the requirements of this Directive even before adoption of the latter. Moreover, in some cases the Bulgarian law goes beyond 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.

As regards Directive (EU) 2016/343, most of its requirements are already de facto implemented into Bulgarian law. This mainly concerns the right to be present at the trial and the right to a new trial where the presence had not been assured. In contrast, although the presumption of innocence is guaranteed in both the Bulgarian Constitution and Criminal Procedure Code, certain EU requirements concerning this presumption result partially transposed. It is about the appropriate measures in the event of a breach of the obligation laid down in Article 4 (1) of the Directive not to refer to accused persons as being guilty, in particular, according to public statements made by public authorities. Although the Bulgarian law provides for such measures, they do not seem sufficiently effective within the meaning of Article 10 of the Directive.

[1] See https://parliament.bg/bg/bills/ID/163428/.

5 Introduction

Bulgarian legal framework governing criminal proceedings includes the Bulgarian Constitution, Criminal Procedure Code, other laws and a number of regulations. The fundamental rights of the citizens, also in criminal proceedings, are laid down in the Bulgarian Constitution. The provisions of the Constitution take precedence over other "ordinary" laws whose provisions can be declared unconstitutional by the Bulgarian Constitutional Court. The procedural guarantees for the effective exercise of the rights, in particular in the criminal proceedings, are provided for in Criminal Procedure Code. The Code also determines the order for conducting criminal proceedings as well as the competences of the bodies involved thereinto.

Some of the rights as laid down in the six EU Directives under examination are explicitly set out in Bulgarian Constitution. In adition to the *nullum crimen sine lege* principle[2] and the prohibition of torture and cruel, inhumane and degrading treatment[3], the following rights of the persons involved in criminal proceedings are established at the constitutional level: the right to personal liberty and inviolability and related prohibition of detention, inspection or search or any other interference with the personal inviolability thereof except under terms and according to a procedure established by a law[4]; the right to a lawyer[5]; presumption of innocence[6]; the right to a fair trial before the judiciary within the time limit established by a law.[7]

The fundamental rights aknowledgled in criminal proceedings are also guaranteed by the European Convention on Human Rights (ECHR). In this sense, it has to be mentioned that

[2] According to Article 5 (3) of the Constitution, no one may be convicted of any act or omission which was not criminalized by the law at the time of commission thereof.
[3] Under Article 29 (1) of the Constitution, no one may be subjected to torture or to cruel, inhuman, or degrading treatment, or to forcible assimilation.
[4] Article 30 (1)-(2) thereof.
[5] Everyone shall have the right to legal counsel as from the moment they are detained or constituted as an accused party. Everyone shall have the right to meet their defence counsel in private. The confidentiality of such communications shall be inviolable (Article 30 (4)-(5) thereof).
[6] Article 31 (3) of the Constitution states that an accused party shall be presumed innocent until otherwise proven by an enforceable sentence.
[7] Article 31 (1) of the Constitution states that anyone charged with a criminal offence must be brought before the judiciary within the time limit established by a law.

Bulgaria has ratified the Convention in 1992. By virtue of the Constitution, the Convention is part of the Bulgarian law and takes precedence over any conflicting standards of domestic legislation.[8] In the last two decades, significant changes have been made in the Bulgarian legislation in order to ensure the effective exercise of these rights in accordance with the provisions of the ECHR. Many of the standards of the ECHR regarding the rights of the persons in the criminal proceedings have already existed in the domestic law even before entry into force of the six EU Directives.

Besides the Bulgarian Constitution and Criminal Procedure Code, there are other laws that are part of the legislative criminal justice framework suchs as the Criminal Code, the Extradition and European Arrest Warrant Act (applicable in the European Arrest Warrant proceedings), the Implementation of Penal Sanctions and Detention in Custody Act (concerning the execution of penalties as well as the legal status of accused persons detained in custody) and Judiciary System Act (regarding the organisation and the principles of operation of the judicial system bodies).

The Bulgarian Constitution as well as the Judiciary System Act guarantee the independence of the judiciary.[9] According to Article 117 (2) of the Constitution, the judiciary shall be independent. In the performance of the functions thereof, all judges, jurors, prosecutors and investigating magistrates shall be subservient only to the law.

The Bulgarian judicial system is based on a three-instance trial system. The courts of first instance are the Regional Courts (in cases of minor offences) and the District Courts in cases of more serious crimes.[10] The Sofia Sity Court has a statute of a district court. The District Courts and the Appellate Courts act as an appellate instance, the Supreme Court of Cassation

[8] Article 5 (4) of the Constitution states that any international treaty, which has been ratified according to a procedure established by the Constitution, which has been promulgated, and which has entered into force for the Republic of Bulgaria, shall be part of the domestic law of the land. Any such treaty shall take precedence over any conflicting standards of domestic legislation. For further details in regards the interpretation of this provision see Decision N 7/1992 of the Bulgarian Constitutional Court.
[9] Article 1a (1) (2) thereof states that the judiciary shall be a branch of government which protects the rights and legitimate interests of citizens, legal persons and the State. The Judiciary shall be independent.
[10] Article 35 CPC defines the crimes within the jurisdiction of the regional and the district court as first instance.

– as a cassation instance. Only acts of the appellate instance are subject to cassation appeal, and not all of them.[11]

Bulgarian criminal procedure includes two stages - pre-trial proceedings and trial (court) proceedings. Trial proceedings have a central role within the criminal process unlike the pre-trial proceedings, which have a preparatory nature (Article 7 CPC).[12] The pre-trial proceedings are carried out only in publicly actionable criminal cases [13] and can be divided in two stages - investigation and action taken by the prosecutor after the completion of the investigation.[14] The prosecutor is the pre-trial authority who press charges for publicly actionable criminal offences. In discharge of this assignment, the prosecutor directs the investigation and exercises constant supervision for its lawful and timely conduct. In addition, he/she may personally conduct investigation or undertake separate investigative or other procedural action.[15] In practice, other pre-trial authorities - investigative bodies, carry out the investigation. These are investigators, Ministry of Interior officers appointed at the position of "investigating police officer" and officials of the Customs Agency appointed at the position of "investigating customs inspector" as well as police authorities within the Ministry of Interior and customs authorities within the Customs Agency, in the cases provided for in the Criminal Procedure Code. In this regard, it should be noted that investigators, also called “investigating magistrates”, are magistrates unlike the other investigative bodies who are executive authorities.[16] Investigation is conducted by investigators in cases explicitly provided for in the Criminal Procedure Code.[17] Investigative bodies operate under the guidance and supervision of a prosecutor.

[11] See Маргарита Чинова и Георги Митов, Кратък лекционен курс по наказателно-процесуално право, Сиела, 2021, 34.
[12] In the scientific literature, the legal concept “central role” is criticized as being inappropriate. It points to the place of trial proceedings in criminal criminal process rather than to the main role and importance of this stage. See Маргарита Чинова и Георги Митов, Кратък лекционен курс по наказателно-процесуално правол Сиела, 2021, с. 124.
[13] The Criminal Code defines most of the offences as publicly prosecuted, such as those against the Republic, most of the crimes against the person and property, etc.
[14] Article 191 and 192 CPC.
[15] Article 46 (1) (2) CPC.
[16] Article 128 of trhe Bulgarian Constitution states that the investigating authorities shall be part of the judiciary system. They shall conduct investigation in criminal cases where so provided for in a law.
[17] These are some serious intentional criminal offences committed by minors; some criminal offences

Since the current Criminal Procedure Code came into force in 2006, the judicial control over pre-trial proceedings has been strengthened. Almost all coercive measures in these proceedings are taken by the court. There are investigative actions (such as the use of special intelligence means, interception and seizure of correspondence, searches and seizures in non-urgent cases) that cannot be carried out without the permission of a court. Besides, most of the acts issued at the pre-trial proceedings can be appealed in court.[18]

After the completion of the investigation, if the prosecutor is persuaded that the necessary evidence for the discovery of the objective truth and for pressing charges before court were collected, that there are no grounds for terminating or suspending the proceedings and no remediable substantial breach of procedural rules has been committed, he/she shall draw up an indictment and submit it to the court.[19] The prosecutor maintains the indictment before the court.

Unlike the pre-trial proceedings, the court proceedings are adversarial. The parties have equal procedural rights, except in the cases specified by the Code[20]. In this regard, the doctrine discusses how the principle of adversariality relates to the *ex proprio motu* principle as laid down in Article 107 (2) CPC, according to which the court shall collect evidence following requests made by the parties, and of its own motion, whenever this is necessary to the discovery of the objective truth.[21] Some scholars consider that the latter is not inconsistent with the principle of adversariality. The activity of the court to clarify the substance of the case does not derive directly from the principle of adversariality, but is the result of the interaction of several principles of the Bulgarian criminal procedure law, such as those of discovery of the objective truth, of making decisions out of inner conviction, of adversarial nature of the court proceedings etc.[22]

committed by magistrates, prosecutors, investigators, and other individuals enjoying immunity, members of the Council of Ministers, or civil servants, criminal offences against the Republic etc. (Article 194 CPC).

[18] See Маргарита Чинова и Георги Митов, Кратък лекционен курс по наказателно-процесуално право, Сиела, 2021, с. 35.

[19] Article 246 CPC.

[20] Article 12 CPC. For example, such an exception is the right of the defendant to last plea, which the prosecutor does not have.

[21] See Маргарита Чинова и Георги Митов, Кратък лекционен курс по наказателно-процесуално право, Сиела, 2021, с. 117.

[22] See Ивайло Цонков, Теория и практика на съдебното производство по наказателни дела.

The trial proceedings includes five stages. The first stage, called "Submission to court and preparatory actions for examination of the case at a court hearing" has a preparatory nature, i.e. the court does not consider the case on the merits.[23]

After the initiation of the case on the basis of the indictment a judge-rapporteur is appointed. Where the judge-rapporteur finds that the case falls within the jurisdiction of the court, he/she shall refer the case initiated on the basis of indictment in an operative hearing within two months of receiving the case.[24] Competent to hear the case in an operative hearing is the same court that shall hear the case at first instance. The operative hearing is postponed where any of the following does not appear: the prosecutor, the accused party, if his/her appearance is mandatory, the defender.[25] Issues to be discussed at the operative hearing include 1) whether the case is within the jurisdiction of the court; 2) whether there are grounds for termination or suspension of the criminal proceedings; 3) whether there have been any substantial breaches of procedural rules in the course of pre-trial proceedings susceptible of being removed, which have resulted in the restriction of procedural rights of the accused, of the victim or of his/her heirs; 4) the scheduling of the court hearing and the persons to be summoned to it, etc.[26]

After hearing the prosecutor and the other persons, such as the defendant, the defence counsel, as well as the victim or his/her heirs and the prejudiced legal person the court shall make pronouncement by a ruling whereby it:
1. terminates the court proceedings;
2. terminates the criminal proceedings;
3. suspends criminal proceedings;

Състезателността в светлината на Европейската конвенция за правата на човека, Сиела, 2014; Маргарита Чинова и Георги Митов, Кратък лекционен курс по наказателно-процесуално право, Сиела, 2021, 117-118.

[23] See Маргарита Чинова и Георги Митов, Кратък лекционен курс по наказателно-процесуално право, Сиела, 2021, 425.

[24] Articles 247, 247b CPC.

[25] Article 247d CPC.

[26] Article 248 (1) CPC.

4. schedules the case for hearing and notifies the persons who have appeared where no grounds exist for the examination of the case in accordance with the special rules, or where the court has found obvious factual errors in the indictment.[27]

The other four stages of the trial proceedings are court hearing at the first instance, intermediate appellate review proceedings, cassation proceedings and re-opening of criminal cases. The latter constitutes a procedure for verification of the final sentences and judgements.

[27] Article 248 (5) CPC.

6 Directive 2010/64/EU: Right to interpretation and translation in criminal proceedings

6.1. Introduction

Explicit amendments to the pre-existing national rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant were adopted in 2014. These are resulted in changes to the Criminal Procedure Code.[28] In this regard, the Minister of Justice issued a new ordinance, namely Ordinance No. D-1 of 16 May 2014 on the court interpreters.[29]

The requirements of the Directive are also de facto contained in separate provisions of Administrative Violations and Sanctions Act, Extradition and European Arrest Warrant Act and Judiciary System Act.

In general, the Directive has been correctly transposed in Bulgarian law.[30]

6.2. Subject matter and scope

Article 1 of the Directive is fully implemented in Bulgarian legislation. Even before the adoption of the Directive 2010/64/EU the Criminal Procedure Code provided that persons who do not have command of the Bulgarian language have the right to make use of their native or another language. An interpreter shall be appointed in this case (Article 21 (2) thereof). This general rule indicates the moment and duration of the application of the right to interpretation and translation - in criminal proceedings, i.e. in both pre-trial and trial stages.

[28] SG No.21/8.03.2014. A new Chapter 30a "Special Rules Governing the Examination of Cases for Crimes, Committed by Persons, Who Do Not Speak the Bulgarian Language" with Articles 395a-395h was introduced in the Criminal Procedure Code.
[29] SG No.43/23.05.2014.
[30] It should be noted that in Bulgarian language there is no distinction between the words "interpreter" and "translator", which are both called *преводач.* Therefore, under the law, "translation" in some cases also means "interpretation" and vice versa, in other cases two different terms are used - oral translation, i.e. interpretation and written translation, i.e. translation. However, this 'linguistic' aspect does not have an impact on the implementation of the guarantees set at the European level.

In clarification of this principle in 2010 Article 55 of the Criminal Procedural Code, regulating the rights of the accused, was supplemented by specifying that where the accused does not speak Bulgarian, he/she is provided a translation, in a language he/she understands, of the decree for constitution of the accused party; the court's rulings imposing a remand measure; the indictment; the conviction ruled, and the judgment of the intermediate appellate review instance.[31] With the 2014 amendments, this general rule on the rights of the accused has been supplemented again in order to fully implement the requirements of the Directive.[32]

As regards Article 1 (3) of the Directive, it is de facto implemented in the Administrative Violations and Sanctions Act.[33] This Act lays down the general rules in point of administrative violations and sanctions, the order for the establishment of administrative violations and for the imposition and application of sanctions, and sets out the necessary limits for the protection of rights and legal interests of both citizens and organisations. It provides that administrative sanctions are imposed by an administrative sanctioning authority, which is different from a court with jurisdiction in criminal matters. In these cases, the penal decree[34] imposing the respective administrative sanction on the violator is subject to appeal before the regional court, and the decision of the latter is subject to cassation appeal before the respective administrative court.

Under Article 84 of the Act, the provisions of the Criminal Procedure Code applies to summoning and serving subpoenas and giving notices; taking of distraints and seizure of effects; estimation of witnesses' expenditures and experts' recompense; calculation of terms and timeframes; as well as in respect of court proceedings on hearing appeals against penal decrees, cassation appeals before the respective administrative court and motions and resumption, insofar as no special rules are laid down herein.

[31] SG No.32/27.03.2010.
[32] Now Article 55 (4) CPC states that where the accused does not speak Bulgarian, he/she is provided oral and written translation of the criminal proceedings in a language he/she understands. The accused is provided a written translation of the decree for constitution of the accused party; the court's rulings imposing a remand measure; the indictment; the conviction ruled; the judgment of the intermediate appellate review instance; and the judgment of the cassation instance. The accused has the right to waive written translation under this Code, where he/she has a defence counsel and his/her procedural rights are not violated.
[33] SG No.92/28.11.1969.
[34] The adjective “penal” is not related to criminal matters. It defines the decree as an act imposing an administrative sanction.

Although according to the legislator, this article of the Directive seems fully implemented by the current provision that refers to the rules of Criminal Procedure Code, including the rules on the right to interpretation and translation, some scholars consider that this general rule is not sufficient for the fully implementation of the Directive provision.[35]

However, there is a case law that goes beyond the standards laid down by the Directive, regarding the imposition of a sanction for minor offences by an authority other than a court with jurisdiction in criminal matters (such as sanctions for administrative violations). Some courts have held that the right to interpretation and translation is applicable not only to the court proceedings but also to the proceedings before the administrative sanctioning authority.[36] This situation is cited as an example of good practice in a study conducted in 2015-2016 by the European Lawyers Foundation in partnership with the Council of Bars and Law Societies of Europe (CCBE).[37]

[35]According to Gergana Marinova, in order for Article 1 of the Directive to be implemented in Bulgarian law, explicit changes are needed not only in the Criminal Procedure Code, but also in the Administrative Violations and Sanctions Act, regarding the procedure for imposing sanctions for minor offenses by a body other than a court with jurisdiction in criminal matters. See Гергана Маринова, Директива 2010/64/ЕС на Европейския парламент и на Съвета от 20 октомври 2010 година относно правото на устен и писмен превод в наказателното производство и транспонирането ѝ в българското законодателство – в: Норма, 2014/4, 69-82.

[36] See in this context Judgment № 8214 of 21.12.2016 of Administrative Court Sofia City. The first instance court annuls the penal decree, issued by the penalising authority by which the offender, a US citizen, was fined BGN 4000 for an administrative violation of the Foreigners in the Republic of Bulgaria Act. The Administrative Court Sofia City confirms the first-instance decision. The court points out that upon presentation of the statement of establishment of an administrative violation to the offender, a US citizen, a translation and explanations were made in English by the official who drew the statement up, instead of an interpreter. It is inadmissible for the translation to be performed by a person who participates in the proceedings in another capacity and has not been appointed under Art. 395e of the CPC. In this sense, regardless of whether the official who drew the statement up speaks English or not, he cannot be an independent translator appointed under Art. 395e of the CPC. The objection that the Criminal Procedure Code is applied only with regard to the court proceedings is also unfounded, insofar as Art. 84 of the Administrative Violations and Sanctions Act provides the opposite, as is the settled case law on similar cases. In order to ensure the application of the principle of objectivity in the proceedings and to ensure the right of defense of persons, when presenting a statement of establishment of an administrative violation to a foreigner who does not speak Bulgarian, the administrative body should have appointed a sworn translator in the native language or another language, understandable for the offender.

[37]The study points out that some courts (Plovdiv, Balchik, Yambol), relying on the principle that the level of protection shall never go below the standards set forth by the European Convention on Human Rights and the

6.3. Right to interpretation

In general, **Article 2 of the Directive** regarding to the right to interpretation (oral translation) has been explicitly and fully implemented in Bulgarian law.

According to Article 395a (1) CPC, where the accused party does not speak the Bulgarian language, the court and the pre-trial authorities shall ensure oral translation in a language he understands. In these cases, the court or the pre-trial authorities appoint the translator. The proceeding authority shall point out in the act appointing a translator data about the languages that the accused party knows, the full name, education and specialty of the translator or the name of the institution at which the translator works and the type of the translation (Article 395f CPC). The provisions applies to both pre-trial and trial proceedings. Although no specific rule is introduced concerning the time to provide interpretation, e. g. "without delay", as mentioned in Article **2 (1) of the Directive** or "in due time", etc., according to practitioners there is no information about cases where interpretation was secured with unreasonable delays.

European Charter of Fundamental Rights, have firmly held that offenders who did not understand the language of proceedings should have had interpretation and translation provided for them not only before the court of appeal, which is the standard under Article 1 (3) of the Directive, but in the course of the entire administrative procedure resulting in imposing the administrative sanction before appealing this sanction before a court. See 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, pp. 32-33, 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.

The other requrements of **Article 2 (2)** [38], **(3)** [39] and **(4)** [40] **of the Directive** are also implemented in Criminal Procedure Code. The same could be said about **Article 2 (5) of the Directive**[41]**.**

In view of the problem of how quality is defined (or not defined), Bulgaria is cited as a good example since 'accuracy' is the accepted basis of the complaint instead of 'quality'. Under Bulgarian law, the interpreter is appointed from a list of experts approved as interpreters.[42] The quality of interpretation is guaranteed by the requirement of a certain level of command of the language concerned.[43] However, this may not always be an appropriate criterion, since accuracy does not always mean quality, especially in specific legal terminology.[44] It is also evident from the case law. [45] That's why some practitioners in Bulgaria consider that this legal opportunity for the accused lacks any further details setting any criteria and methods to assess an interpreter's qualification and his/her work. Where there are no such details, it is

[38] Under Article 395g (1) CPC, the translator shall be involved in all actions, in which the accused party is also involved and during his meetings with the defence counsel regarding interrogation of the accused party or requests, remarks, objections and appeals thereof.
[39] Article 395h CPC states that Where the accused party is deaf or dumb, an interpreter shall be appointed. The provisions of this chapter shall also apply in regards to the interpreter.
[40] According to Article 395b (1) CPC, the court and the pre-trial authorities may, at any stage of the case, establish the circumstance that the accused party does not speak the Bulgarian language.
[41] Article 395b (2) – (3) states that the decree of the investigating authority establishing that the accused party speaks Bulgarian is subject to appeal before the supervising prosecutor. The ruling or order establishing that the accused party speaks Bulgarian shall be appealed before the intermediate appellate review instance. According to Article 395e of Criminal Procedure Code, the accused party has the right to objection against the accuracy of the translation at any stage of the case. Where the competent authority finds the objection to be grounded, it shall remove the translator and appoint a new one or order a repeated translation.
[42] Article 396 (1) of Judiciary System Act.
[43] According to Article 8, p. 1 of Ordinance No. D-1 of 16 May 2014 on the court interpreters the court interpreter must have a level C1 or C2 in the relevant foreign language according to the Common European Framework of Reference for Languages. See more about the quality requirements in Sect. 6.6. below.
[44]See the TRAINAC study mentioned above in footnote 37.
[45] By Judgement № 309/2015, the Sofia Court of Appeal as an appellate instance revoked the sentence and returned the case for another examination by the prosecutor. The defendant was a Polish citizen convicted of smuggling and possession of drugs for the purpose of distribution. An interpreter was involved throughout the proceedings, who was not included in the register of certified court interpreters. The interpreter himself stated that he is a textile engineer, but since he is married to a Polish woman and has lived and worked in Poland for 30 years, he has knowledge of Polish (written and spoken), but has some difficulties with special legal terminology. The Court held that in this way the rights of the foreign citizen, provided for in the Bulgarian and European legislation, had been violated.

difficult for the competent authority to decide whether the objection is well-grounded and should be allowed or not.[46]

With regard to **Article 2 (6) of the Directive,** it has to be noted that Bulgarian law provides for the possibility the oral translation to be performed through a video or phone conference or another technical means where this don't hinder the exercise of the right to defence (Article 395g (2) CPC).

6.4. Right to translation of essential documents (Article 3 of the Directive)

Article 3 (1) and (2) of the Directive regarding the right to translation of essential documents within a reasonable period of time are explicitly transposed in Criminal Procedure Code.[47] It has to be noted, however, that the national provisions do not explicitly contain a time limit for providing a written translation of such documents. The lack of a specific time limit can be explained by the legislator's view that the 'reasonable time' requirement will be respected in practice. This is indeed the case, according to practitioners. Excusable delays are mostly due to the need to translate voluminous documents or to translate documents into a little common language.[48] In practice, such delays in the translation of documents lead to an extension of the proceedings in time. However, according to scientific opinion, an explicit condition for a term in law is needed.[49]

Under another respect, although it does not use the words "essential documents", the national provision explicitly states those for which a written translation is required, namely the acts under Article 55 (4) CPC: the decree for constitution of the accused party; the court's rulings

[46]See Annex 3 of the TRAINAC study mentioned above in footnote 37, p. 121 thereof, regarding the answer from Bulgaria to the question about the right to challenge a decision or complain about quality.
[47] According to Article 395a (1) CPC, where the accused party does not speak the Bulgarian language, the court and the pre-trial authorities shall ensure oral translation in a language he understands as well as written translation of the acts under Article 55, Paragraph (4), namely the decree for constitution of the accused party; the court's rulings imposing a remand measure; the indictment; the conviction ruled; the judgment of the intermediate appellate review instance and the judgment of the cassation instance.
[48] See Annex 3 the TRAINAC study mentioned above in footnote 37, pp. 125 thereof, regarding to the answer from Bulgaria to the question about the situation in the Member State concerned with respect to the right to translation regarding what documents are translated and are they provided in a reasonable time.
[49]See the article mentioned above in footnote 35. It is proposed either to indicate in the Criminal Procedure Code itself a term in which to provide the translation of the respective act, or to provide that the act for appointing the translation also indicates the term for its execution.

imposing a remand measure; the indictment; the conviction ruled; the judgment of the intermediate appellate review instance; and the judgment of the cassation instance. According to some scholars, other acts should be added to achieve full and precise transposition of the Directive such as a complaint in cases of proceedings for a criminal offence actionable at the complaint of the victim or the court's rulings imposing placement for examination purposes in a mental health institution.[50]

Article 3 (3) and (4) of the Directive, by contrast, is explicitly and fully transposed. Article 395a (2) CPC states that the court and the pre-trial authorities, acting on their own initiative or on a reasoned request of the accused party or the defence counsel, may also provide written translation of other documents within the case but the acts under Article 55 (4)[51], where they are of substantial importance for exercising the right to defence. In addition, Article 395d (1) CPC provides for that the court and the investigating authority may deny the provision of written or oral translation of the documents under Article 395a (2), where they are not of substantial importance for the exercise of the right to defence or to deny written translation of parts thereof, where they are not relevant to the right to defence of the accused party. In this respect, according to the settled case law, the understanding upheld by some courts that only the procedural documents explicitly listed in Article 55 (4) CPC should be translated in writing is completely incorrect and contrary to the procedural law and Directive 2010/64/EU. The minimum standards regarding the right to translation in Article 3 of the Directive include the right to translation of documents essential for the exercising of the right of defense and for the guarantee of a fair trial.[52] Such documents could be the records of the court hearings, conclusions of expert examinations, interrogation of witnesses etc.

Article 3 (8) of the Directive regarding the waiver of the right to translation of essential documents is also explicitly transposed in Bulgarian law. The accused has the right to waive written translation under the Criminal Procedure Code, where he/she has a defence counsel and his/her procedural rights are not violated[53]. The waiver of the right to written translation

[50] See the article mentioned above in footnote 35.
[51] It is about the acts mentioned above, namely the decree for constitution of the accused party; the court's rulings imposing a remand measure; the indictment; the conviction ruled; the judgment of the intermediate appellate review instance and the judgment of the cassation instance.
[52] See Judgement N 339/2019 of the Specialized Criminal Court; Judgement N 246/2014 of the Supreme Court of Cassation; Judgement N 202/2015 of the Supreme Court of Cassation.
[53] Article 55 (4) CPC.

of documents is possible under two conditions - the existence of a lawyer and if the waiver does not violate the accused's rights. The pre-trial investigation bodies and the courts are bound by law to inform the accused person about his right to waive written or oral translation.[54] This could be done only in the presence of the defendant's lawyer. This follows from Article 395c (2) CPC which requires the refusal to be reflected in a protocol signed by the accused person and his/her lawyer unless it has been drafted in a court hearing.

It has to be noted that, at the national level, the waiver has a more extended scope. While according to the Directive it concerns only written translation, within the Bulgarian law such refusal applies also in relation to the oral translation of acts and documents.

6.5. Right to interpretation and right to translation of essential documents in proceedings for the execution of a European arrest warrant

Articles 2 (7) and 3 (6) (7) of the Directive are de facto implemented in the Extradition and European Arrest Warrant Act. According to its provisions, in proceedings for the execution of a European arrest warrant the court shall appoint an interpreter for the person if the latter has no command of the Bulgarian language.[55] Moreover, the Act contains a general provision that refers to the rules of Criminal Procedure Code, including those on the right to interpretation.[56] At the same time, there is a scientific opinion that the existing rules for the right to interpretation and particularly those for the right to translation under the Extradition and European Arrest Warrant Act do not constitute sufficient transposition of the Directive provisions. According to some scholars, these rules and especially the provision referring to Criminal Procedure Code are too general in order to fulfill the requirements of the Directive.[57]

[54] Article 395c (1) states that the court and the pre-trial authorities explain to the accused party his right to waive written or oral translation of the acts and documents under Article 395a. According to Paragraph 2, the waiver is reflected in a protocol, signed by the accused party and his defence counsel unless it has been drafted in a court hearing.
[55] Articles 43 (4), 44 (3 and 48 (2) of Extradition and European Arrest Warrant Act.
[56] According to Article 66, insofar as this Act contains no special rules, the provisions of the Criminal Procedure Code shall apply.
[57] See the article mentioned above in footnote 35.

However, considering the case law, it seems that these articles of the Directive are correctly applied.[58]

6.6. Costs of interpretation and translation

The requirements of **Article 4 of the Directive** regarding the costs of interpretation and translation are fully and explicitly implemented in Bulgarian law.[59] The costs to be paid by the defendant, if he's found guilty, are exhaustively stated in the Criminal Procedure Code. They do not include the costs of interpretation and translation, so these costs are always at the expense of the relevant authority, irrespective of the outcome of the proceedings.[60]

6.7. Quality of the interpretation and translation (Article 5 in conjunction with Articles 2 (8) and 3 (9) of the Directive)

Articles 5 (1) and (2) of the Directive have been transposed through amendments to the existing national rules concerning the quality of the interpretation and translation in criminal proceedings. The legislation was changed in 2014 at both the legal and regulatory levels, namely in Judiciary System Act[61] and Ordinance No. D-1 of 16 May 2014 on the court interpreters.[62] The main amendment provides for the establishment of lists of specialists

[58]See in this context Judgment № 172 of 27.05.2015 of Sofia Court of Appeal. According to the court, the general rule in Article 66 of Extradition and European Arrest Warrant Act, which refers to the Criminal Procedure Code for the cases not settled in that Act, is applicable. In this sense, the foreign citizen has the right to a written translation of the acts of the Bulgarian court, issued in the proceedings for the execution of a European arrest warrant, and when he makes such a request, the court cannot refuse him. However, the court consider that the lack of a written translation of these acts was not in itself a substantial breach of procedural rules, leading to the annulment of these acts, as a translator was involved in the proceedings under the Extradition and European Arrest Warrant Act, due to which the rights of the foreign citizen were not violated.

[59] Article 189 (2) CPC states that costs for translation during pre-trial proceedings shall be at the expense of the respective body, and those during court proceedings shall be at the expense of the court.

[60] According to Article 189 (3) and (4) CPC, where the accused party 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, as well as the expenses incurred by the private prosecutor and the civil claimant, where the latter have made a request to this effect. In presence of several sentenced persons, the court shall apportion the costs payable by each of them. Where the accused party is found not guilty on some charges, the court shall sentence the accused to pay only the costs incurred in connection with the charge under which he/she has been found guilty.

[61] SG No.21/8.03.2014.

[62] SG No.43/23.05.2014. In this case, the word “interpreters” also means “translators”, i.e. persons who carry

certified as court interpreters. The quality of oral and written translation is guaranteed by the established procedures for the approval of these specialists, which are applicable in both pre-trial and trial criminal proceedings.

Under Judiciary System Act, the lists of experts approved as interpreters are compiled for each judicial district of a regional court and of an administrative court, as well as for the specialised criminal court.[63] The Supreme Court of Cassation, the Supreme Administrative Court, the Supreme Cassation Prosecution Office, the Supreme Administrative Prosecution Office and the National Investigation Service approve, where necessary, separate lists for the needs of the operation thereof.[64] Both of the lists are public. Where the needs of the respective judicial authority so require, the said authority may appoint an expert witness or an interpreter from the lists of other judicial districts.[65]

The proposals for inclusion of experts in the lists of interpreters can be made by ministries, central-government departments, institutions, municipalities, professional and other organisations, scientific institutes and experts themselves.[66]

According to the Ordinance mentioned above, the activity of translators in court proceedings is based on the following principles - good faith, objectivity, accuracy and completeness of the translation.[67] Under the Ordinance, the court interpreter must meet the following conditions: have a level C1 or C2 in the relevant foreign language according to the Common European Framework of Reference for Languages; have not been convicted of a crime prosecuted by public prosecution; not to be deprived of the right to exercise a profession or

out both oral and written translation, not only in trial proceedings but also in pre-trial ones, regardless of the title of the ordinance. See in this respect Sect. 6.1.

[63] These lists of interpreters are approved by a commission composed of: the chairperson of the appellate court or a judge thereby designated, the chairperson of the appellate specialised criminal court or a judge thereby designated, the appellate prosecutor or a prosecutor thereby designated, the head of the appellate specialised prosecution office or a prosecutor thereby designated, the chairperson of the regional court, the chairperson of the specialised criminal court, the regional prosecutor, the head of the specialised prosecution office, and the chairperson of the administrative court (Article 401 (1) JSA).

[64] These lists of interpreters are approved by a commission composed of the Chairperson of the Supreme Court of Cassation, the Chairperson of the Supreme Administrative Court and the Prosecutor General (Article 401 (2) JSA).

[65] Article 398 JSA.

[66] Article 399 JSA.

[67] Article 2, p. 3 thereof.

activity; not to perform judicial functions in the system of the judiciary; have a permanent residence permit in the Republic of Bulgaria, if he/she is a foreign citizen.[68]

However, according to practitioners the Ordinance still does not contain efficient provisions, which could guarantee the compliance with the requirements for quality of the interpretation/translation as set forth by the Directive such as some criteria for that quality, namely qualifications, experience, regular reviews etc.[69].

A similar conclusion can be drawn from the comparative analysis of the minimum requirements for inclusion in the registers of translators or interpreters in 14 EU Member States, carried out in the framework of a 2016 European Union Agency for Fundamental Rights (FRA) survey. The research indicates that Member States require varying minimal qualifications for individuals to be included in such registers. Out of the five criteria mentioned in the report such as professional experience, exam,vocational training, higher education and language requirement, in Bulgaria it is sufficient to have only one of them - the language requirement. In other countries, at least two of these criteria need to be met.[70]

Regarding the confidentiality of interpretation and translation **(Article 5 (3) of the Directive)**, Bulgarian law is fully in line with this requirement. Under the Ordinance mentioned above, the court interpreter is obliged not to disseminate information about the circumstances, facts and documents that became known to him/her in the course of the court proceedings. The law provides for criminal liability in case of breaching of such duty.[71]

[68] Article 8.
[69]See the TRAINAC study mentioned above in footnote 37, p. 20 thereof as well as its Annex 3, p. 146, regarding the answer from Bulgaria to the question about the quality of interpretation and translation.
[70]See "Rights of suspected and accused persons across the EU: translation, interpretation and information" (2016), Table 4, p. 48, 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 EuropeanUnion 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.
[71] According to the Criminal Code, an expert witness, translator or Bulgarian sign interpreter who, to the detriment of the state, of an enterprise, an organisation or private person, informs another or publishes information which has become known to him/her in connection with a task assigned thereto, and which such a person has been obliged to keep in secret,, shall be punished by imprisonment for up to two years or by probation (Article 284 (3) CC).

Furthermore, upon termination of his/her activity, the court interpreter shall not be released from his/her obligation to keep secrets related to the activity in his/her capacity.[72] An additional guarantee for the confidentiality of interpretation and translation is provided by Article 121 (2) CPC. According to it, witnesses may not be interrogated on circumstances which were confided thereto as defence counsel or attorney or which have become known to them in the capacity as translators at the meeting of the accused party with the defence counsel.

6.8. Training (Article 6 of the Directive)

The necessity of a training concerning the particularities of communicating with the assistance of an interpreter is not explicitly implemented in Bulgarian law. It should be noted, however, that under Judiciary System Act (Article 249) the National Institute of Justice organizes and provides training (mandatory training and training for maintaining and upgrading the qualification) as well as different programs for magistrates - judges, prosecutors and investigating magistrates, and judicial staff.

6.9. Record-keeping (Article 7 of the Directive)

This requirement of the Directive seems de facto and fully implemented by the pre-existing general provisions on the duty to keep a detailed record of all actions in relation to all stages of criminal proceedings. 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. Article 129 states the content of the record.[73] In case of waiver of the right to translation of documents, Article 395c (2) CPC requires that the waiver is reflected in a protocol, signed by the accused party and his defence counsel unless it has been drafted in a court hearing.

[72] Articles 34 and 35 of the Ordinance.
[73] Article 129
(1) Records shall include: the date and place of the investigative actions and judicial trial actions; the time of their commencement and completion; persons who took part in them; any requests, comments, and objections made; the actions performed in their order of succession and the evidence collected.
(2) The record shall be signed by the authority which has taken the respective action, as well as by the other participants in criminal proceedings in the hypotheses herein set forth.

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

7.1. Introduction

Most 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 largely complies with the standards of the Directive, albeit without an explicit transposition.[74] Under some aspects the national rules even go beyond some of the standards set at European level (it is the case of Arts 3, 6 – 9). In contrast, the requirements of the Directive on the Letter of Rights on arrest set out in Articles 4 and 5 of the Directive have been either not implemented at all or only partially implemented in Bulgarian law. In this order they will be discussed below.

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

Thus, 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 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 their obligations under this provison has an impact on the person's procedural rights, this constitutes a substantial breach of procedural rules[75].

[74]See, in that regard, Маргарита Чинова. Досъдебното производство по НПК. Теория и практика, Сиела, 2013; Гергана Маринова. Предизвикателства пред наказателнопроцесуалното законодателство при въвеждане на изискванията на директивите на Европейския парламент и на Съвета на ЕС, 2014.
[75]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 investigation was

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.[76] 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.[77] Any party that claims such breach of procedural rules bears the burden to prove that the breach has had an impact on procedural rigths. In addition, the court ex officio, by virtue of the *ex proprio motu* principle shall verify whether the cassation grounds are present.[78]

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 the absence of the accused in breach of the conditions laid down for this procedure, etc.[79]

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 explaned. 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.

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

[77] See in this context, Маргарита Чинова и Георги Митов, Кратък лекционен курс по наказателно-процесуално право, Сиела, 2021, 545.

[78] Ibidem, 537.

[79] Ibidem, 546.

7.3. 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.[80] 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 right. Only after this is done he is able to participate effectively in the criminal proceedings and organize his defense.[81] According to the interpretative judgement adopted in 2002 by the

[80] See Маргарита Чинова. За България влезе в сила нова директива относно правото на информация в наказателното производство в: - Норма, бр. 9/2012 г., с. 30-56.
[81] According to Order № 1150/2019 of the Appellate Specialized Criminal Court, a basic right of every accused

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.[82] 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 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 247b (1) CPC provides for that at the order of the judge-rapporteur a copy of the indictment shall be served on the defendant before

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.

[82] See article, mentioned above in footnote 80.

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.[83]

7.4. 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.

Although the Criminal Procedure Code does not provide for an explicit rule similar to **Article 7 (1) of the Directive**, that requirement is de facto implemented in practice. In addition, according to some scholars, there is 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.[84]

[83] Article 287 CPC.
[84] See in this regard article mentioned above in footnote 80.

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 himself/herself with all material evidence of the case after the completion of the investigation.[85]

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.[86] 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[87] or to revoke the sentence and remit the case for a new hearing by the respective instance.[88]

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 dawn in Article 7 (5) of the Directive.[89]

7.5. 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.[90]

[85] Articles 55 (1), 99, 227 CPC.
[86] See in this regard article mentioned above in footnote 80.
[87] See in this regard Order N 3507/18.09.2017 of Plovdiv District Court; Order of 2.06.2017 of Sliven District Court.
[88] 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.
[89] See in this regard article mentioned above in footnote 80.
[90] Ibidem.

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 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 concidered 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.

7.6. 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.

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 provide for the service of the prosecutor's decree for detention for up to 72 hours on the accused nor does it lay down 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.[91] Similarly to the detention prosecutor's

[91] 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.

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.[92]

Nevertheless, Bulgarian law contains some provisions, which partially transposes Article 4 of the Directive regarding the Letter of Rights on arrest. They are 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 shall be issued. The person fills and signs a declaration that he/she is aware of these rights.[93] However, only some of the rights of the detained person referred to in Articles 3 (1) and 4 (2) of the Directive are listed both in the written detention warrant and the declaration, singned by the detained person. A similar conclusion is 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.[94]

[92]See Маргарита Чинова. Досъдебното производство по НПК. Теория и практика, Сиела, 2013.
[93]Only in cases of detention by the customs authorities the law does not specify the contents of the detention warrant, neither does it provide for the completion of a declaration that the detained person is aware of his/her rights. However, the law itself provides 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.
[94] See "Declarations on the rights of detainees in Bulgaria", 2017, pp. 59-60, available at https://bghelsinki.org/media/uploads/special/2017-07_lor_comparative__report_bg.pdf. The study was conducted as part of the 2-year international research project "Available declarations for detained suspects and accused persons in Europe", supported by the European Commission. It was launched in 2015 by the Hungarian Helsinki Committee (Magyar Helsinki Bizottság, HHC) – with the participation of Rights International Spain, theLithuanian Human Rights Monitoring Institute, Fair Trial Europe and the Bulgarian Helsinki Committee.

The fact that our country has not introduced a Letter of Rights on arrest within the meaning of Article 4 of the Directive is also mentioned in the 2016 European Union Agency for Fundamental Rights (FRA) survey.[95]

On the other hand, only in cases of police detention the model of declaration, filled and signed by the detained person, is 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[96]. According to the Bulgarian Helsinki Committee study mentioned above, this model of declaration does not entirely satisfy the requirements of Article 4 (4) of the Directive regarding simple and accessible language.[97]

As regards Article 5 of the Directive, Bulgarian law does 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 defense 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 court is obliged to do the same in the judicial proceedings for the examination of the European arrest warrant.

However, according to some scholars these rules are not sufficient for the implementation of the Directive's standard. The law does not provide for an obligation for either oral or written notification of the detainee's rights. There are no specific mandatory details for content of the court's ruling for the detentention of the person.[98] Therefore, the Extradition and European Arrest Warrant Act should be amended, providing for a Letter of Rights on arrest in order to

The project aimsto examine to what extent the requirementto use simple and accessible language in a Letterof Rights is followed in practice.

[95]See the FRA survey mentioned in footnote 70, p. 70-71.

[96] That fact, namely that the Letter of Rights on arrest is contained in an administrative order but only on police arrest, not on detention by the prosecutor or remand by the court is also indicated in the TRAINAC study mentioned above. See the TRAINAC study mentioned in footnote 37, p. 37-38.

[97]See the study mentioned in footnote 94, p. 60.

[98]See in this regard article mentioned above in footnote 80.

transpose correctly the provisions of Article 5 of the Directive. This conclusion is also confirmed by the Bulgarian Helsinki Committee study mentioned above.[99]

[99] See the BHC study mentioned in footnote 94, p. 60.

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

8.1. Introduction

The right to access to a lawyer is proclaimed as one of the citizens' fundamental rights by the Bulgarian Constitution.[100] In addition, the right of defence is laid down as one of the fundamental principles in Criminal Procedure Code.[101] In general, Bulgarian law even before entry into force of the Directive 2013/48/EU was in compliance with almost all the requirements set out therein.

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 [102]. 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.

8.2. Scope (Article 2 of the Directive)

In general, the scope of the right to access to lawyer at the national level is substantially identical (or even broader) to the European one following that the Bulgarian legislation does not give rise to particular issues under Article 2 of the Directive. Furthermore, some scholars concider that with regard to the requirement in Article 2 (4) of the Directive, Bulgarian law provides for a higher standard. Under Criminal Procedure Code, access to a lawyer is not depending on the severity of the penalty or the gravity of the offence. This access is even guaranteed in cases of minor crimes where deprivation of liberty cannot be imposed as a

[100] 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.
[101] According to Article 15 (1), the accused party shall enjoy the right of defence. This provision applies to persons constituted as accused of having committed a criminal offence.
[102] SG, No 7/22.01.2019.

sanction. In this case the Bulgarian law exceeds the minimum rules laid down in the Directive.[103]

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 different. Although according to the legislator, the existing provisions of the Criminal Procedure Code implement this article of the Directive[104], 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.[105] Moreover, they have to be informed about such right before being questioned.[106] 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.[107] 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.[108]

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.[109] 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

[103] See Маргарита Чинова, Павлина Панова. Новата директива относно правото на достъп до адвокат в наказателното производство в: - Норма, бр. 2 и 3 от 2014 г.
[104]See Articles 121 (1), 122 (2) and 219 (2) CPC.
[105] Article 121 (1) CPC.
[106] Article 139 (2) CPC.
[107] Article 122 (2) CPC.
[108]See article mentioned above in footnote 103.
[109] 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).

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. 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. [110]

8.3. 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 247b 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.[111]

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

[110] See article mentioned above in footnote 103.

[111] 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.

procedural action involving the accused party, until it has been acquitted of this obligation (Article 97 CPC).[112] The access to a lawyer is also guaranteed throughout the trial proceedings from the earliest stage, namely during the preparatory actions for examination of the case (Articles 247b, 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.[113] Specifically for the accused persons who are detained, this right is laid down in Implementation of Penal Sanctions and Detention in Custody Act.[114] 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.[115]

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

[112] 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 (see for further details Sect. 10.2) or where the accused has retained a lawyer of his/her own and wants him to be present.
[113] 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.
[114] Articles 76 (2) in conjunction with Article 240, 254, 256 thereof. See in this regard Judgment N 11/2018 of the Supreme Court of Casation. The Court held that the evidence does not support the defendant's complaint that his meetings with counsel had been unduly restricted. A defense 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 (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 defense 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 defense counsel.
[115] Article 99 (1) CPC, Article 34 (1) Bar Act.

guarantees the lawyer's effective participation in the questioning of the person both as an accused and as a defendant. For every investigative action and judicial trial action, a record shall be drawn up at the place where it is performed.[116]

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).

Under Bulgarian law, 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 constitute such investigative actions in which the Code does not provide for the presence of the accused and his/her defense counsel. However, in these cases the pre-trial body may allow them to attend, provided this does not obstruct the investigation,[117] According to the case-law, the defense 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 defense 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).[118]

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 the grounds for revocation the sentence and remit the case to the first instance or the appellate court.[119]

[116] Articles 128, 129, 236, 311 CPC.
[117] 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, incliding those under the Directive do not require the participation of the accused.
[118] See Judgments N 174/2017, N 32/2019 of the Supreme Court of Cassation.
[119] See Judgment N 119/2016 of the District Court – Vratsa.

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.[120] 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.[121] 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, Bulgarian law does not provide for the exceptions under Article 3 (5) and (6) of the Directive, i.e. under this aspect, the Bulgarian law provides a higher standard of guarantee.

8.4. 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 coversations 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

[120] Articles 147-149 of Bar Act.
[121] 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.

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.[122]

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.[123]

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[124].

8.5. The right to have a third person informed of the deprivation of liberty (Article 5 in conjuction 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.[125]

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.[126]

[122] Articles 33, 34 Bar Act.
[123] Articles 254, 256 thereof.
[124] Article 136 CPC.
[125] See article mentioned above in footnote 103.
[126] 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

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. Article 386 (4) CPC states that in cases of custody, under-aged persons shall be placed in suitable premises apart from adults, their parents or guardians and the principal of the educational establishment where they study being notified immediately thereof.

However, some scholars consider that this rule is not sufficient for the fully implementation of the Directive. It provides for certain persons to be informed immediately of the deprivation of liberty but not of the reasons for the detention.[127] Moreover, that provision does 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 is needed.[128]

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.[129] However, even during the parliamentary debate,

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.

[127] See article mentioned above in footnote 103. This is also noted in the TRAINAC study mentioned above in footnote 37, p. 73 thereof.

[128] See article mentioned above in footnote 103.

[129] 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

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 [130], which was subsequently overturned, and the relevant rules entered into force.

8.6. 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 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).

detention and postponement.

[130] 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.

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.[131]

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.[132]

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.[133] However, in order to fulfill 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 Priocedure Code has

[131] Articles 277, 278 and 281 thereof.

[132] 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. 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 above in footnote 32, p. 80 thereof.

[133] 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.

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[134] as well as in other laws in order to fully transpose the Directive.[135]

8.7. 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.[136] However, there is a scientific opinion that it is necessary to provide for explicitly that the waiver is given voluntarily and unequivocally[137]. No case law has been established in this regard.

[134] 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.

[135] 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).

[136] 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.

[137] See the article mentioned above in footnote 103.

8.8. 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.[138] The participation of a lawyer is mandatory and does not depend on the will of the requested person. In this respect, therefore, according to some scholars, the Bulgarian law provides a higher standard of guarantee[139].

With the changes in the law in 2019, the existing legal framework has been explicitly supplemented in order to fully transpose the EU standard.[140]

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

[138] 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.

[139] See Маргарита Чинова, Павлина Панова. Новата директива относно правото на достъп до адвокат в наказателното производство в: - Норма, бр. 3/2014.

[140] Articles 43 (5), 58 (2) of the Extradition and European Arrest Warrant Act concerning the requirements of Article 10 (5) of the Directive.

state.[141] In this regard, some scholars consider that the same provision is needed in the judicial proceedings concerning the examination of the European arrest warrant.[142]

The same applies to Article 43 (6) of the Extradition and European Arrest Warrant Act[143] by 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.[144]

8.9. 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

[141]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.
[142]See the article mentioned above in footnote 139. 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 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 Appelliate 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.
[143] 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.
[144]See the article mentioned above in footnote 139.

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.

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.[145]

According to the law and the settled case law[146], 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.[147] 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.[148]

[145] Articles 43, 44 and 48 thereof.
[146] See Judgment 27/2018 of the Supreme Court of Cassation. The court hearing in the appellate instance was held in the absence of the defense counsel of the defendant, i.e. in violation of Article 94 (1), item 6 CPC, according to which the participation of a lawer is mandatory where the accused is datained. The violation was substantial as it resrtricted 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.
[147] See the article mentioned above in footnote 139. 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.
[148] Articles 249, 335, 354 CPC.

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.[149] According to it, in case of substantial procedural violations in the collection of evidence, the court should exclude the improperly collected piece of evidence from these ones that may be used in sentencing. The established case law is in same sense.[150]

[149] See in this context the article mentioned above in footnote 139.

[150] 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 Appelate Court – Burgas, reducing the term of imprisonment.

9 Directive (EU) 2016/800: Procedural safeguards for juvenile defendants

9.1. Introduction

Even before the adoption of the Directive, the Bulgarian legislation provided for special requirements, which are applicable only to juvenile offenders (persons between 14 and 18 years of age)[151] and which guarantee their procedural rights in criminal proceedings. Thus, the special rules for examination of cases for crimes committed by under-aged persons are laid down in the Criminal Procedure Code in a separate chapter. According to these rules, the pre-trial proceedings in these cases are conducted by certain investigative bodies with special training.[152] The remand measures, which may be taken against juveniles, are different from the remand measures applicable to adult defendants.[153] For juveniles such measures are supervision by the parents or the guardian; supervision by the administration of the educational establishment where the underage person has been placed; supervision by the inspector at the child pedagogical facility; or by a member of the local Commission for Combating Anti-Social Acts of Minors and Underage Persons; remand in custody (Article 386 CPC). It is envisaged that detention shall be taken only in exceptional cases.[154] When necessary, a pedagogue or psychologist participates in the interrogation of the juvenile accused, and may, with the permission of the investigative body, ask him questions.[155]

However, despite the existing legal framework, Directive 2016/800/EU seems only partially tansposed. As already mentioned at the beginning of the report, at the end of 2020, a draft law was submitted to the National Assembly proposing amendments to the Criminal

[151] Special rules apply to persons between the age of 14 and 18 at the time of the committed crime or at the time of the constitution of the person as accused.
[152] See Article 385 CPC.
[153] For adults the measures are signed promise for appearance; bail; house arrest and remand in custody (Article 58 CPC).
[154] See Article 386 CPC.
[155] See Article 388 CPC. It does not mean in place of the investigative body.

Procedure Code for the full implementation of the EU standards for juvenile defendants into Bulgarian legislation. However, it has not been adopted yet.

9.2. Scope (Article 2 of the Directive)

The provisions laid down in the special chapter of the Criminal Procedure Code apply in cases for crimes commited by minors irrespective of the severity of the penalty, the gravity of the offence or whether or not the minor is deprived of liberty.

Article 2 (3) of the Directive states that with some exceptions, this Directive, or certain provisions thereof, applies to persons who were children when they became subject to the proceedings but have subsequently reached the age of 18, and the application of this Directive, or certain provisions thereof, is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned. According to Article 394 (1) CPC, where the individual (who has reached the age of eighteen) has been constituted as accused party for a crime committed by him/her prior to having reached legal age, the case shall be examined in pursuance of the general procedure. In these cases, the special rules for examination of cases for crimes committed by underage persons provided for by the Code do not apply. The settled case law concerning this provision is contradictory whether the special rules also apply when the juvenile accused reaches the age of majority in the course of the proceedings or not. Therefore, according to some scholars, the current rule shall be amended in order to fulfill the requirements of the Directive.[156]

Moreover, there is a scientific opinion that another provision of the Code does not comply with the EU standard mentioned above. Acccording to Article 394 (2) CPC, where the underaged individual has been constituted as accused party for any act committed in complicity with an adult, the cases shall not be separated and the proceedings shall be conducted in pursuance of the general procedure. Since the Directive does not contain such an exception, an amendment is needed for its correct transposition.[157]

[156] See Маргарита Чинова и Боян Бележков. Необходимите мерки за транспонирането на Директива (ЕС) 2016/800 на Европейския Парламент и Съвета от 11 май 2016 година относно процесуалните гаранции за децата, които са заподозрени или обвиняеми в рамките на наказателното производство - в: Годишник на Софийския университет „Св. Климент Охридски“, Юридически факултет, 2019, том 86.
[157] Ibidem.

9.3. The definition of a "child" (Article 3)

Under Bulgarian Criminal Code, a minor - a person who has completed 14 years of age, but has not completed 18 years of age yet - shall be penally responsible if he was able to understand the nature and meaning of the act and to manage his actions.[158] In this case, the reason for the inability of the person to be aware of his actions and to guide them is the lower age and the lower degree of physical and mental maturity, and not some disease. According to Decree № 6/1975 of the Plenum of the Supreme Court, it is necessary to carefully clarify the mental state of minors and in case of any doubt, an expert should be appointed. That is why forensic psychological examinations are usually performed in cases against minors. In this regard, according to scholars, a higher standard has been introduced in Bulgarian law.[159]

9.4. Right to information and right of the child to have the holder of parental responsibility informed (Articles 4 and 5 Directive 2016/800)

Article 4 Directive 2016/800 has been partially implemented into Bulgarian law. Under Criminal Procedure Code, the accused party and the other persons who take part in criminal proceedings shall be afforded all procedural means necessary for the defence of their rights and legal interests. The court, the prosecutor and investigative bodies shall explain the persons their procedural rights set out in Article 55 of the Code and shall ensure the possibility to exercise them.[160]

[158] Article 31 (2) CC.
[159] See the article mentioned above in footnote 156.
[160] According to Article 55 CPC, the accused party shall have the following rights: to be informed of the criminal offence in relation to which he/she has been constituted as party to the proceedings in this particular capacity and on the basis of what evidence; provide or refuse to provide explanations in relation to the charges against him/her; study the case, including the information obtained through the use of special intelligence means and take any abstracts that are necessary to him/her; adduce evidence; take part in criminal proceedings; make requests, comments and raise objections; be the last to make statements; file appeal from acts infringing on his/her rights and legal interests, and have a defence counsel. The accused party shall have the right his/her defence counsel to take part when investigative actions are taken, as well as in other procedural action requiring the participation thereof, unless he has expressively made waiver of this particular right. 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. The accused party shall also have the right of speaking last. Where the accused party does not speak Bulgarian, he shall be provided oral and written translation of the criminal proceedings in a language

However, these rules do not seem sufficient for the fully implementation of the Directive concerning the right of the minor to information. Article 55 of the Code does not provide for all rights of the minor referred to in Article 4 (1) (a) - (c) of the Directive, such as the following rights: to have the holder of parental responsibility informed, the protection of privacy, to be accompanied by the holder of parental responsibility during all stages of the proceedings, an individual assessment, a medical examination and medical assistance, to be accompanied by the holder of parental responsibility during court hearings, upon deprivation of liberty in respect of the right to specific treatment during deprivation of liberty. Some scholars, therefore, consider that this national provision should be supplemented in order to fulfill the requirements of the Directive.[161]

Article 5 Directive 2016/800 has been also partially implemented into Bulgarian law. According to that rule of the Directive, Member States shall ensure that the holder of parental responsibility is provided, as soon as possible, with the information that the child has a right to receive in accordance with Article 4 thereof. In the cases referred to in Article 5 (2) of the Directive, this information should be provided to another appropriate adult who is nominated by the child and accepted as such by the competent authority.

Although the Criminal Procedure Code lays down provisions concerning the participation of the parents or guardians of minor in the presentation of the investigation and in the court hearings[162], it does not provide for rules such as those referred to in the above mentioned

he understands. The accused party shall be provided a written translation of the decree for constitution of the accused party; the court's rulings imposing a remand measure; the indictment; the conviction ruled; the judgment of the intermediate appellate review instance; and the judgment of the cassation instance. The accused party has the right to waive written translation under this Code, where he has a defence counsel and his procedural rights are not violated.

[161] See the article mentioned above in footnote 156.

[162] Article 389 CPC states that the parents or guardians of the underage accused party shall be mandatorily notified of the presentation of the investigation and shall be present at the presentation if they so request. Article 392 CPC provided for that the parents or guardians of underage persons shall be summonsed to the hearings of cases against them. They have the right to take part in the collection and verification of evidentiary materials and to make requests, remarks and objections. Failure of the parents or guardians to appear shall not be an obstacle to the examination of the case, unless the court finds that their participation is necessary.

article. Some scholars, therefore, consider that explicit provisions are necessary in order to transpose the text of the Directive.[163]

9.5. Assistance by a lawyer (Article 6 Directive 2016/800)

The situation with Article 6 of the Directive is different. Its requirements have been implemented into Bulgarian law. The right to access to a lawyer is proclaimed as one of the citizens' fundamental rights by the Bulgarian Constitution. This right was established in many provisions of the Criminal Procedure Code even before the adoption of the Directive. According to the Code, the participation of the defence counsel in criminal proceedings shall be mandatory in cases where the accused party is underage.[164] The right of minors to have a lawyer before being questioned or in the course of taking evidence, or without undue delay after their detention or when summoned to appear in front of court competent in criminal cases is also guaranteed by certain rules of the Criminal Procedure Code and the Implementation of Penal Sanctions and Detention in Custody Act[165] as well as by the case law.[166]

[163]See the article mentioned above in footnote 156.
[164] See Article 94 (1), p. 1 CPC.
[165]See Articles 219 (5), 55 (1), 97 (1), 222 (1) - (2), 247b (1) - (2), 321, 328, 353 CPC, Articles 254 and 256 of the IPSDCA.
[166] 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 Appelate Court – Burgas, reducing the term of imprisonment.

9.6. Right to an individual assessment (Article 7 Directive 2016/800)

This requirement of the Directive does not result implemented into national law. The Criminal Procedure Code does not provide for explicit rules such as those referred to in that norm of the Directive. According to Article 387 of the Code, evidence about the month and year of birth of the accused underage person, about the education, environment and conditions of living thereof, and evidence whether the crime was due to the influence of adult persons shall be collected in the course of investigation and judicial trial. In practice, such individual assessment is carried out on the basis of character reference for the accused as well as a report made by social worker from the Social Assistance Directorate as laid down in Child Protection Act.[167] However, some scholars consider that this provision is too concise and Criminal Procedure Code therefore should be amended.[168]

9.7. Right to a medical examination (Article 8 Directive 2016/800)

In general, Bulgarian law was in compliance with the requirements as laid down in Article 8 of the Directive even before entry into force of the latter.[169] In this regard, the following acts are applicable: Criminal Procedure Code, Implementation of Penal Sanctions and Detention in Custody Act and Ordinance No. 2 of 22 March 2010 on Conditions and Procedure for Medical Services in Places of Deprivation of Liberty.[170] Their general rules regarding the medical examination and medical care for the accused adults also concern the under-age accused. Under these rules, each person newly admitted to an investigative detention facility shall be submitted to a search, sanitary treatment, and a medical examination. In cases of admitted minors, supervision by an educator, a doctor and a psychologist is provided. Should any traces of violence be detected or information about such traces be received, the person

[167] See in this regard Ruling № 544/2019 of the District Court-Vratsa. The court pointed out that the attached character reference for the under-aged accused (made by officer from the Child Counselling Service-Kozloduy), to which the prosecutor refered, did not contain complete and exhaustive information about all the data referred to in Article 387 CPC (for example, there was no social report on the personality and social environment of the juvenile offender by argument of Article 15 (6) of the Child Protection Act). Therefore, the Court confirmed the ruling of the Regional Court-Kozloduy, which terminated the court proceedings and returned the case to the prosecutor.

[168] See the article mentioned above in footnote 156.

[169] Ibidem.

[170] The right to a medical examination from the moment of detention is also guaranteed in other cases of detention where the person has not been constituted yet as an accused party under the Criminal Procedure Code.

shall be certified and measures shall be taken for the provision of medical care. The case shall be reported immediately to the competent director, who shall notify the prosecutor exercising supervision as to legality.

Under the Criminal Procedure Code, in setting the type of remand measure, the health condition along with the degree of social risk inherent to the criminal offence, the evidence against the accused party, the health condition, family status, occupation, age and other personal data about the accused party shall be taken into consideration (Article 56 (3) CPC). Furthermore, the expert assessment is mandatory where there is doubt about the capability of the accused party to correctly perceive facts of significance to the case, in view of his/her physical or mental status, and to give reliable explanations in relation to them (Article 144 (2) CPC).

9.8. Audiovisual recording of questioning (Article 9 Directive 2016/800)

Unlike Article 8 of the Directive, **Article 9 thereof** in regards to audiovisual recording of questioning of children by police or other law enforcement authorities during the criminal proceedings is partially transposed into Bulgarian law. In general, the Criminal Procedure Code contains detailed regulations regarding the preparation of audio and video recordings of the interrogation of an accused or witness. Under national law, the making of such a record is not mandatory. According to Article 238 of the Code, at the request of the interrogated or on the initiative of the body of the pre-trial proceedings a sound or video recording may be prepared, for which the interrogated shall be notified before the interrogation. In these cases a protocol shall be prepared by the pre-trial body.[171] According to scholars, the Criminal Procedure Code provides certain guarantees that ensure the authenticity of the recording.[172] For example, no sound recording or video recording of part of the interrogation is allowed[173] and after the completion of the interrogation the sound recording shall be played in full to the person interrogated. According to Article 238 (5) of the Code, the recording ends with a

[171] The protocol contains: the major circumstances of the interrogation; the decision to make audio or video recording; the notification of the person interrogated of the recording; the remarks made by the person interrogated in relation to the recording; the reproduction of the recording before the person interrogated and the statement of the pre-trial body and of the person interrogated as to the correctness of the recording (Article 239 (3) CPC).
[172] See the article mentioned above in footnote 156.
[173] Article 238 (3) – (4) CPC.

declaration by the person interrogated that it reflects correctly the explanations and testimonies given thereby. The sound recording shall be enclosed with the record, after it has been sealed with a note indicating: the body conducting the interrogation; the case, the name of the person interrogated and the date of interrogation. The note shall be signed by the pre-trial body and the interrogated person.[174]

These provisions also apply to the questioning of juvenile accused in pre-trial proceedings. However, according to some scholars, the rules do not seem sufficient for the fully implementation of Article 9 of the Directive as regards the guarantees of protection of such children within the meaning of Recital 42 thereof. The recital focuses on the fact that children who are suspects or accused persons in criminal proceedings are not always able to understand the content of questioning to which they are subject. It is necessary to provide for an explicit provision to guarantee the right of defense of the juvenile accused, taking into account the best interests of the child.[175]

9.9. Limitation of deprivation of liberty (Article 10 Directive 2016/800)

Unlike the deprivation of liberty of adults, Criminal Procedure Code explicitly states that the remand measure of custody with respect to underage persons shall be taken in exceptional cases (article 386 (2) CPC).[176] In addition, in setting the type of remand measure, age and other personal data about the accused party shall be taken into consideration along with the degree of social risk inherent to the criminal offence, the evidence against the accused party, the health condition, family status, occupation.

[174]Article 239 (4) CPC.
[175]See the article mentioned above in footnote 156.
[176] See in this context Ruling N 156/2020 of the Appellate Court-Plovdiv. The Court confirms the ruling of the Haskovo District Court by which the request of the lawyer of the accused juvenile in the pre-trial proceedings for transformation of his remand measure from "Remand in custody" in a lighter one is disregarded. According to the Appellate Court, the real danger of absconding on the part of the juvenile accused has not disappeared. Effective control cannot be exercised by the appointed custodian and deputy custodian, which conclusion is derived from the evidence gathered in the case regarding the care for the accused before his detention. The only adequate measure that corresponds to the objectives in Article 57 CPC, remains the “remand in custody”, taken, according to the requirements of Article 386 (2) CPC. This measure is consistent with the high public danger of the crime and the manner of its commission, as well as with the circumstance that it is a serious intentional crime within the meaning of Article 93, item 7 of the Criminal Code. The remand in custody would also ensure the timely completion of the criminal proceedings against the accused.

However, it should be noted that the Criminal Procedure Code does not contain any specific rules concerning the duration of the measure of remand in custody of underage persons at any stage of the proceedings. In these cases, the relevant general rules apply. In the pre-trial proceedings the measure of remand in custody may not last more than eight months, where the accused party has been constituted in this capacity because of a serious intentional criminal offence[177], and more than eighteen months, where the accused party has been constituted in this capacity because of a criminal offence punishable by no less than fifteen years of deprivation of liberty or a heavier punishment. In all other cases remand in custody in the pre-trial proceedings may not last more than two months (Article 63 (4) CPC). Unlike the pre-trial proceedings, the law does not provide for limitation of detention in time during trial proceedings (Article 270 CPC). Therefore, these rules do not seem sufficient for the fully implementation of Article 10 of the Directive.[178]

9.10. Alternative measures (Article 11 Directive 2016/800)

In contrast, Bulgarian law is compliant with the requirements of Article 11 of the Directive on the application of alternative measures regarding the underage accused persons. Under Criminal Procedure Code, such alternative measures are the following: supervision by the parents or the guardian; supervision by the administration of the educational establishment where the underage person has been placed or supervision by the inspector at the child pedagogical facility or by a member of the local Commission for Combating Anti-Social Acts of Minors and Underage Persons.[179] The detention also is a remand measure applicable in exceptional cases (article 386 (2) CPC).

[177] The term "serious criminal offence" is defined in the Criminal Code and means any crime for which the law provides punishment by imprisonment for more than five years, life imprisonment or life imprisonment without substitution.
[178] See in this context the article mentioned above in footnote 156.
[179] The remand of underage persons in supervision of these persons and bodies is accomplished through signature, whereby the latter shall assume the obligation to exercise educative supervision over the underage persons, to watch over their conduct, and to secure their appearance before the investigative body and the court. A fine of up to BGN 500 is provided for to be imposed for culpable default by such persons (Article 386 (1) and (3) CPC).

9.11. Specific treatment in the case of deprivation of liberty (Article 12 Directive 2016/800)

Article 12 of the Directive regarding the specific treatment in case of deprivation of liberty seems to result partially implemented in Bulgarian law. Criminal Procedure Code provides that, in case of custody, underage accused persons are placed in suitable premises apart from adults irrespective of whether or not this is in the child's best interests.[180] It should be noted, however, that it could be interpreted that the child's best interest in these cases is presumed. Nevertheless, Bulgarian law does not contain provisions to introduce the requirements of Article 12 (3) and (4) of the Directive.[181] The same goes for Article 12 (6) of the Directive. In cases of deprivation of liberty of underage persons, including in cases of police detention, the law provides for that they can meet with their defence counsel immediately after the detention but not with the holder of parental responsibility. The Implementation of Penal Sanctions and Detention in Custody Act contain rules for meetengs with family members[182] but they concern the regular visits between detained underage persons and their close relatives. Some scholars, therefore, consider that the law should be amended in order to fulfill these requirements.[183]

In contrast, Article 12 (5) of the Directive seems fully implemented. The Bulgarian law provides for many provisions in order to ensure the rights of detained underage persons as laid down in the Directive. [184]

[180] See Article 386 (4) CPC. According to Article 246 (1) of the Implementation of Penal Sanctions and Detention in Custody Act, upon allocation, the juveniles shall be accommodated separately from the adults. The same is envisaged in the cases of detention by the police bodies under the rules of the Instuction 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.

[181] Namely, when the detained child reaches the age of 18, he/she should continue to be placed separately from other detained adults, taking into account the circumstances of the person concerned, provided that this is compatible with the best interests of children who are detained with that person (Article 12 (3) of the Directive) or the detainee to be accommodated with young adults, unless this contradicts the best interest of the child (Article12 (4) of the Directive).

[182] See Article 256 thereof.

[183] See the article mentioned above in footnote 156.

[184] According to the Implementation of Penal Sanctions and Detention in Custody Act, the juveniles shell be sent to a reformatory with the prison in question (Article 247). Upon admission to a reformatory with the prison in question, minor detainees shell be accommodated at a reception unit where they remain for a period from 14

9.12. Timely and diligent treatment of cases (Article 13 Directive 2016/800)

Article 13 of the Directive concerning timely treatment of cases is also partially implemented in Bulgarin law. According to Criminal Procedure Code, the court shall try and dispose of the cases within reasonable time. As regards the prosecutor and investigative bodies, they are obliged to secure the conduct of pre-trial proceedings within the time limits set forth in the code.[185] In addition, the law provides for maximum deadlines for carrying out procedural activities.[186] It should be noted that these deadlines are not preclusive.[187] In this regard, the doctrine as well as the case law assumes that where the court decides that the proceedings has lasted too long, beyond a reasonable time, it should reduce the sentence.[188]

In view of the urgency of the cases, the law provides for that those cases where the accused party has been remanded in custody shall be investigated, examined and disposed of before the others.[189] The Criminal Procedure Code does not contain such rule for cases of crimes committed by minors. Some scholars, therefore, consider that these rules do not seem

days to one month under the observation of an educator, a doctor and a psychologist (Article 187). They shall be visited by a doctor at least once a week, and shall receive medical attention instantly in cases of emergency (Article 255). Detained persons, who have not attained the age of 16 years, shall be subject to compulsory schooling at the schools at the places of deprivation of liberty and those, who aged 16 or above, shall study at the schools at their choice (Article 162). The overall activity comprehended in the resocialisation of juveniles deprived of their liberty shall be conducted in conditions of maximising opportunities for contact of the sentenced persons with the outside environment as a whole, with relatives and persons who exert a good influence thereon, with volunteers and representatives of non-governmental organisations (Article 190). Detained persons shall be afforded an opportunity to satisfy the needs of their religious life by means of attending religious services and rites, as well to use the relevant literature (Article 166).

[185] Article 22 (1)-(2) CPC.

[186] For example, Article 234 CPC states that the term for completion of the investigation is two months, and a procedure for its extension is envisaged. The prosecutor must take action after the investigation is completed within the shortest possible term, but not later than one month after receipt of the case file, with the possibility to extend this term by another month (Article 242 (4) and (5) CPC). The court hearing is also scheduled in short terms by the court. The Code provides time limit for setting forth the reasons of the sentence as well as deadlines for drawing up and announcement of the judgement of the intermediate appellate review instance are similar.

[187] Specifically for investigative actions taken outside the time limits under the CPC, they shall not generate legal effect and the evidence collected can not be used before court for the issuance of a sentence.

[188] See Маргарита Чинова и Георги Митов. Кратък лекционен курс по наказателно-процесуално право, Сиела, 2021, с. 129. See also Judgement N 60117/2021 of the Supreme Court of Cassation.

[189] Article 22 (3) CPC.

sufficient for the fully implementation of Article 13 (1) of the Directive and the amendments are needed.[190]

As regards the requirements for special treatment of accused under-age persons (Article 13 (2) of the Directive), it's true that Criminal Procedure Code lays down certain provisions that ensure that children are treated in a manner which protects their dignity and which is appropriate to their age, maturity and level of understanding.[191] However, since Articles 14 and 20 of the Directive result partially transposed in Bulgarian law, the current rules do not seem sufficient for the fully implementation of Article 13 (2) of the Directive.

9.13. Right to protection of privacy (Article 14 Directive 2016/800)

Bulgarian law contains some of the requirements regarding the right to protection of privacy of children during criminal proceedings. For example, according to Article 391 CPC, the court hearing in cases against underage persons shall be conducted behind closed doors, unless the court finds it in the interest of the public to examine the case at an open court hearing. By discretion of the court, an inspector from the child pedagogical facility and a representative of the educational establishment in which the underage person studies may be invited to the court hearing. However, according to some scholars these provisions do not seem sufficient for the fully implementation of Article 14 (1) and (2) of the Directive. An amendment is needed regarding the examining of the case at an open court hearing in order to take into account not the interest of the public but the best interest of the underage person.[192] However, in practice usually the interest of the child takes precedence.

On the other hand, the Criminal Procedure Code does not comply with Article 14 (3) of the Directive which requires member states to take appropriate measures, to ensure that the audio and video recordings of the interrogation of the juvenile accused are not publicly disseminated. Therefore, some scholars consider that an explicit amendment is needed in order to fulfill this requirement. They propose a new provision, according to which the public

[190] See the article mentioned above in footnote 156.
[191] Articles 385, 388, 390 CPC.
[192] See the article mentioned above in footnote 156.

should be removed from the courtroom when it is necessary to hear the audio- or to view the video recordings made in the pre-trial proceedings. [193]

9.14. Right of the child to be accompanied by the holder of parental responsibility during the proceedings (Article 15 Directive 2016/800)

Bulgarian law partially complies with the requirements of Article 15 of the Directive. Criminal Procedure Code contains separate provisions to ensure the right of the child to be accompanied by the holder of parental responsibility during the proceedings. For example, according to Article 392 (1) of the Code, the parents or guardians of underage persons shall be summonsed to the hearings. They have the right to take part in the collection and verification of evidentiary materials and to make requests, remarks and objections.[194]

On the other hand, the law does not provide for the possibility, as laid down in Article 15 (2) and (3) of the Directive, for the juvenile accused to be accompanied by another adult designated by the child and accepted as such by the competent authority.

As regards the requirement of Article 15 (4) of the Directive, it is partially transposed into Bulgarian law. According to Article 389 of the Code, the parents or guardians of the underage accused party are mandatorily notified of the presentation of the investigation. They are present at the presentation if they so request.[195] In other words, the parents or guardians of the underage accused party may accompany him/her during the pre-trial proceedings only upon presentation of the investigation. They do not call for any other action to be taken at this stage of the process.

In view of the above, some scholars consider that the law should be amended in order to fulfill the requirements laid down in Article 15 (2) - (4) of the Directive.[196]

[193] Ibidem.
[194] However, failure of the parents or guardians to appear is not an obstacle to the examination of the case, unless the court finds that their participation is necessary.
[195] During the presentation of the investigation the accused party and his/her defence counsel as well as other persons summoned are getting familiarized with the materials of the case. The investigative body shall set a term for examination of the materials, depending upon the factual and legal complexity of the case, the volume of the file and other circumstances, which may be of significance for the duration of the examination (Article 228 CPC).
[196] See the article mentioned above in footnote 156.

9.15. Right of children to appear in person at, and participate in, their trial (Article 16 Directive 2016/800)

Bulgarian law contains provisions, which ensure the right of underage accused to appear in person and participate in their trial as well as the right to a new trial laid down in Article 16 of the Directive. The right of the accused, including the juvenile one, to take part in criminal proceedings, the right to make requests, comments and raise objection, as well as the right to be the last to make statements are explicitly stated in Article 55 (1) CPC. In addition, the law provides for rules in cases of re-opening of a criminal case upon request of an individual sentenced in absentia (Articles 423, 425 CPC). These provisions are the same in respect to adults and underage persons.

However, according to Bulgarian law in cases of serious crimes, i.e. for crimes for which the law provides for imprisonment of more than 5 years, life imprisonment or life imprisonment without parole, the presence of the defendant at the hearing is mandatory. The rationale of this rule is to provide an opportunity for the person to defend himself in person, in addition to the diffence by a lawyer due to the severity of the crimes.

The court may order the accused party to also appear in cases where the presence thereof is not mandatory, if this is necessary for the discovery of the objective truth.[197] The law also provides for certain cases in which the case may be heard in the absence of the defendant.[198] That is why some scholars consider that the Bulgarian standard regarding the presence of the defendant in a court hearing is different from the one set out in the Directive. Unlike the Criminal Procedure Code, the Directive provides for the appearance of the underage accused

[197] Article 269 (1) (2) CPC. For example, such is the case where the presence of the accused is necessary for identification of persons and objects.

[198] According to Article 269 (3) CPC, these are the cases where:

1. the person could not be found at the address specified by him, or he has changed his/her address without notifying the respective body;
2. his/her place of residence in this country is not known and has not been identified after a thorough search;
3. the person had been validly summonsed but failed to show good cause for not appearing, and where the procedure under Article 247b, Paragraph (1) has been complied with;
4. the person is located outside the boundaries of the Republic of Bulgaria and:

a) his/her place of residence is not known;
b) may not be otherwise summonsed;
c) has been validly summonsed, but has failed to specify good reasons for his/her non-appearance.

in person at their trial as a right not as an obligation irrespecive of the seriousness of the crime. The scholars, therefore, consider that amendments are needed in order to fulfill the requirements of the Directive. According to them, the Code should be amended by providing for the right of the juvenile defendant to refuse to be present at the court hearing after the assessment of the judicial body that his presence is of special importance for justice or in his best interest.[199]

9.16. European arrest warrant proceedings (Article 17 Directive 2016/800)

Since some of the provisons of the Directive referred to in Article 17 result either partially implemented or do not result implemented in Bulgarian law, this article also results partially implemented. Therefore, amendments are needed in the Extradition and European Arrest Warrant Act in order to fulfill the requirements of the Directive as regards the rights of the minor who are requested persons, upon their arrest pursuant to European arrest warrant proceedings in Bulgaria as an executing state.

9.17. Right to legal aid (Article 18 Directive 2016/800)

Bulgarian law guaranteed the effective exercise of the right to legal aid of the accused minors, even before adoption of the Directive. According to Criminal Procedure Code, the participation of a defence counsel is mandatory where the accused is underage person. If the accused has not retained a defence counsel of his/her own, a lawyer is appointed in accordance with the Legal Aid Act, i.e. the general rules regarding the legal aid in criminal proceefings are applicable.

9.18. Remedies (Article 19 Directive 2016/800)

The requirements of the Directive regarding the remedies are indirectly implemented in Bulgarian law.

Under Criminal Procedure Code, there is no difference in extent of remedies in the event of a breach of the procedural rights of children and adults as accused in criminal proceedings.

[199]See in this context the article mentioned above in footnote 156.

Such remedies, first of all, are the appeal procedures laid down in Criminal Procedure Code, respectively in Extradition and European Arrest Warrant Act.[200] The general rule of appeal against decrees of both the investigative bodies and the prosecutor in case of breach of the procedural rights of the accused persons constitutes an effective remedy under the Directive.[201] As regards the judicial acts in such cases, they also may be appealed along with the conviction. Appeals, in particular, against remand measures are also such a remedy.

In addition, according to the law and the settled case law[202], the violation of the procedural 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 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.[203] Therefore, this legal institute seems to be an effective remedy.

9.19. Training (Article 20 Directive 2016/800)

In contrast, Article 20 of the Directive results partially transposed into Bulgarian law. The latter contains certain provisions regarding the training of magistrates, law enforcement officers and staff of detention facilities, as well as lawyers working in criminal proceedings

[200] Articles 43, 44, 48 thereof.
[201] Article 200 CPC.
[202] See Ruling N 544/2019 of the District Court-Vratsa. The Court confirmed the ruling of Regional Court-Kozloduy by which the court proceedings was terminated and the case file was returned to the prosecutor. The Court noted that according to Article 389 CPC, the parents or guardians of the juvenile accused shall be mandatorily notified of the presentation of the investigation. Their presence at the presentation itself is not obligatory, but the requirement for notification is an essential guarantee for the protection of the specific interests of the juvenile in the criminal proceedings. By failing to notify either of the two parents of the juvenile accused of presenting the materials of the investigation, the investigating authorities have committed a violation of the procedural rules which is material and susceptible of being removed within the meaning of Article 249 (4), item 1 CPC. The participation of a public defender in the proceedings, which in this case is also mandatory by virtue of Article 94 (1), item 1 CPC, to whom the investigation has been presented at the explicit request of the accused, shall not release the investigating body from the implementation of the provisions concerning the independent rights of his parents. The special rules under this chapter are aimed at providing enhanced protection to juvenile defendants, as criminal justice against them pursues specific objectives (Chapter Six of the Criminal Code).
[203] Articles 249, 335, 354 CPC.

involving children.[204] In cases for crimes committed by underage persons, the pre-trial proceedings is conducted by investigative bodies (investigating magistrates (investigators) or investigating police officers, who are civil servants of the Ministry of Interior) with appropriate training.[205] As regards the trial proceedings, the first-instance court sits in a panel of one judge and two lay judges, respectively in a panel of two judges and three lay judges - where the offense is punishable by a term of not less than 15 years imprisonment or another more severe punishment. These lay judges must be teachers or educators.[206]

However, according to some scholars these rules do not seem sufficient to ensure the implementation of Article 20 of the Directive as regards the specific training of these investigative bodies, prosecutors and judges to a level appropriate to their contact with children. They consider that Criminal Procedure Code does not provide for any gurantee to the effective application of these rules.[207] In practice, in cases for crimes committed by underage persons, the pre-trial and trial proceedings often are conducted by investigative bodies, respectively by judges and prosecutors without such specific training as required by the Directive. Besides, as already mentioned above, in cases for crimes committed by underage persons the Code lays down specific requirements only for the lay judges but not for the judges. Moreover, according to the settled case law, in these cases there is no substantial breach of procedural rules.[208]

[204]The National Institute of Justice, respectively the Academy of the Ministry of Interior, the research institutes of the Ministry of Interior and the training units of the Ministry of Interior organizes the training and the qualification of investigating magistrates (investigators), prosecutors, judges and investigating police officers. In most cases, the initial training is mandatory unlike the maintaining and upgrading the qualification of the mentioned persons.

[205] Article 385 CPC.

[206] Article 390 (1)-(2) CPC.

[207]See the article mentioned above in footnote 156.

[208]For example, in its Order № 130/2019 the Appelate Court - Plovdiv noted that Article 385 CPC required that the conduct of cases for crimes committed by minors be conducted by investigative bodies with specialized training. The assessment of the expertise of the investigative police officer was carried out by the supervising prosecutor, and this was done with the relevant decrees. What was much more important in this case was whether the investigative bodies and the supervising prosecutor had complied with the special rules for examination of cases for crimes committed by underage persons under Chapter 30 of the Criminal Procedure Code, which had been done in this case. For these reasons the Court accepted that there is no substantial breach of procedural rules. See also Judgment 155/2019 of of the Supreme Court of Cassation. The defendant was sentenced to 8 years of imprisonment for a murder. According to the defense counsel, the sentence has been

10 Directive (EU) 2016/1919: Legal aid

10.1. Introduction

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 largely complies with the standards of the Directive, albeit without an explicit transposition.

10.2. Scope (Article 2)

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

The Legal Aid Act[209] lays down four types of legal aid, such as 1) pre-litigation advice with a view to reaching a settlement prior to bringing legal proceedings or to bringing a case before a court, including advice on the National Legal Aid Hotline and at regional consultation centre; 2) preparation of documents for bringing a case before a court; 3) representation in court by legal counsel and 4) representation upon detention under the Ministry of Interior Act, the Customs Act and the State Agency for National Security Act.[210] In view of the scope of the Directive, the type of legal aid referred to in p. 3 is of interest.

issued by an illegitimate panel because only one of the three jurors had the capacity of teacher and educator. The court accepted that this was indeed the case, but this procedural violation was not substantial, because the high educational qualification has allowed the other two jurors to deal with the specifics of the case arising from the minor of the defendant. The Court, therefore, held that it was not necessary to revoke the sentence.

[209] Article 21 LLA.

[210] These are the cases of police detention, detention by the officers of the State Agency for National Security and by the customs authorities. These are the cases where the detained person has not been constituted yet as an accused under Criminal Procedure Code. 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 LLA). However, it should be noted that the law does not cover the cases of detention under the Military Police Act.

According to the Legal Aid Act, the legal aid as representation in court by legal counsel 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 21 (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 (Article 21 (2) thereof).

Criminal Procedure Code explicitly provides for several cases where the participation of a defense 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.[211]

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.[212]

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.

[211] Article 94 (1), p. 1, 2, 3, 6 and 8 CPC.
[212] Article 94 (1), p. 4-5 CPC.

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.[213]

In these cases of mandatory assistance by defense 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[214], 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 can not 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.[215]

Where the legal assistance is mandatory as provided by virtue of law 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 or by the customs authorities[216] 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

[213] See for more details Sect.8.8. concerning Article 10 of the Directive 2013/48/EU on the right od access to a lawyer in European Arrest Warrant proceedings, and the article cited therein.
[214] See Маргарита Чинова, Досъдебното производство по НПК. Теория и практика, Сиела, 2013, 203.
[215] Ibidem, 203-204.
[216] In cases mentioned above in footnote 210.

of legal aid. 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 whereto legal aid is granted.[217] 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.[218]

Questions in connection with its implemetation 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 Directive 2013/48/EU concerning the protection against self-incrimination seems partially transposed into national criminal procedure law, Article 2 (3) of the Directive 2016/1919 also seems partially transposed.[219]

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.[220] 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.

[217] Article 25 Legal Aid Act.
[218] Article 26 Legal Aid Act.
[219] See the written above in this report, Sect. 8.2. concerning Article 2 (3) of the Directive 2013/48/EU on the protection against self-incrimination, and the article cited therein.
[220] Interpretative decision N 4/2010.

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.[221]

10.3. 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.[222] 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 can not 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 reffered 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 require this.[223] In this respect, therefore, the Bulgarian law goes beyond the standard of the Directive.

[221] See Маргарита Чинова, Досъдебното производство по НПК. Теория и практика, Сиела, 2013, 209-210.
[222] Article 94 (1), p. 9 thereof.
[223] Article 23 (2) Legal Aid Act.

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.[224]

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 proceedings in five Member States[225], 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"*.[226] The same conclusion has been made before in the scientific literature.[227] 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.[228] 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 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.[229] In these cases, the participation of the defence counsel

[224] Article 23 (3)-(4) Legal Aid Act.
[225] Bulgaria, Hungary, Lithuania, Poland and Slovenia.
[226] 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.
[227] See Маргарита Чинова, Досъдебното производство по НПК. Теория и практика, Сиела, 2013, 205-207.
[228] Ibidem.
[229] See Article 94 (1), p. 6 CPC.

in criminal proceedings is mandatory regardless whether the interests of justice require legal aid to be granted.

10.4. 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.[230] 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.[231] In this respect, therefore, the Bulgarian law goes beyond the standard of the Directive.

10.5. 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[232], 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.[233] However, the application of these provisions in practice is criticized as regards the decisons for appointment of ex officio lawyers in the pre-trial proceedings. The comparative report on the right to a lawyer and to

[230] Articles 43 (4) and 44 (3) thereof.
[231] It means that the State pays for the lawyer, even where the requested person is wealthy. However, as already mentioned abobe in Sect.10.2., in case of a judgment finding against him/her, the person owes reimbursement of the costs of legal aid (Article 25 (1) Legal Aid Act).
[232] See Sect. 10.2.
[233] Article 25 (1), (5), 26 (1) and (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.

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.[234] According to the scientific literature, this practice reveals a dangerous tendency to circumvent the law.[235]

10.6. 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, 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.[236] 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

[234] See the report mentioned above in footnote 226.
[235] See Маргарита Чинова, Досъдебното производство по НПК. Теория и практика, Сиела, 2013, с. 208.
[236] See the report mentioned in footnote 226.

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.

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, incliding 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) 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 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).

10.7. 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.[237]

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.[238] The

[237] 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.

[238] 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

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). 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[239]. Therefore, this legal institute seems to be an effective remedy.

10.8. Vulnerable persons (Article 9)

As regards the requirement of Article 9, it should be noted that, as already mentioned above[240], 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.[241] It means that the State pays for the lawyer, even where the accused is able to pay. However, as already mentioned above in Sect.10.2., 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.

Supreme Court are prior to the entry into force of the Directive, they are mentioned because they are binding on the courts.

[239] Articles 249, 335, 354 CPC.

[240] See Sect. 10.2.

[241] See Ruling 177/2019 of the District Court-Shumen. The Court noted that the accused is a minor, deaf-mute, with intellectual disabilities and can not 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 defense counsel. The ex officio defense counsel stated that he had no communication with the defendant, which hindered his defense. This led to a restriction of the defendant's right to defense 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.

11 Directive (EU) 2016/343: Presumption of innocence and of the right to be present at the trial

11.1. Introduction

Although not explicitly transposed, most of the requirements of the Directive have been de facto implemented in Bulgarian law. The presumption of innocence in criminal proceedings (Article 3 of the Directive) is proclaimed as one of the citizens' fundamental rights by the Bulgarian Constitution.[242] Besides, it is qualified as a basic principle by the Criminal Procedure Code.[243] Bulgarian law also already guaranteed some of the other rights laid down in the Directive before adoption of the latter. The most problematic are two of the provisions of the Directive, which are partially implemented in Bulgarian law, namely Articles 4 and 10 of that legal act.

11.2. Public references to guilt (Article 4)

The requirements of the Directive regarding the public references to guilt seem partially implemented in Bulgarian legislation. It should be noted, however, that the Bulgarian law contains certain provisions, which seem to introduce the standard of the Directive. Under the Judiciary System Act, the judicial authorities (judges, prosecutors and investigating magistrates) shall discharge the functions thereof impartially (Article 4 thereof). This principle is further developed in the Code of Ethical Behaviour of Bulgarian Magistrates[244] as well as in the Code of Ethics regarding the conduct the MoI civil servants.[245]

[242] According to Article 31 (3) thereof, an accused party shall be presumed innocent until otherwise proven by an enforceable sentence.
[243] Article 16 CPC states that the accused party shall be presumed innocent until the reverse is established by virtue of an effective verdict.
[244]The provisions of the Code are applicable to judges, prosecutors and investigating magistrates. The Code states that the magistrate should remain impartial even in cases where society shows strong affinity or antipathy towards participants in proceedings pending before him/her and should decide the case solely on the basis of facts and law. In proceedings pending before him/her, the magistrate should not make public statements or comments, engaging with the final outcome of the case or creating the impression of partiality and prejudice (Articles 2.2. and 2.3 thereof).
[245]The provisions of the Code are applicable to the civil servants of the Ministry of Interior, including those acting as investigative bodies in the pre-trial proceedings under the Criminal Procedure Code. According to this

Failure to comply with these obligations constitutes a disciplinary offense. In these cases, it is possible to impose a disciplinary sanction on the respective magistrate or employee of the Ministry of Interior - investigating police officer.[246]

With particular reference to judges, according to the law[247] and the case law, the prejudice regarding the guilt of the accused constitutes a substantial breach of procedural rules, namely

Code of Ethics, the activities of civil servants shall be carried out in compliance with the ethical principles of conduct, one of which is impartiality, i.e. proper, objective and unbiased performance of their duties, creating conditions of equality between citizens in exercising their powers and avoiding behavior that may be perceived as privilege, bias or prejudice. Furthermore, the civil servant shall follow the principle according to which an accused person shall be presumed innocent until otherwise proven by an enforceable sentence. The civil servant shall perform his/her tasks by following the principles of impartiality and non-discrimination and shall form his/her inner conviction solely on the basis of the facts and data collected by the means offered by the law in any particular case. (Articles 13, 32 and 36 thereof).

[246] Article 307 (3), p. 3 of the Judiciary System Act states that any act or omission, including a breach of the Code of Ethical Behaviour of Bulgarian Magistrates, which damages the prestige of the Judiciary constitutes breaches of discipline for commission of which a disciplinary sanction shall be imposed. Accordingly, the Ministry of Interior Act defines as serious breaches of official discipline for which the disciplinary sanction "dismissal" is imposed any actions incompatible with ethical rules for conduct of the MoI employees, derogating the reputation of the service (Article 203 (1), p. 13 of the Ministry of Interior Act).

[247] Article 29 CPC states:

(1) A judge or an assessor may not be part of the panel of the court who:

1. Was included in the composition of the court, which issued:

a) A sentence or judgement at the first, the appellate or the cassation instance or upon reopening of the criminal case;

b) A ruling endorsing the agreement to dispose of the case;

c) A ruling, whereby criminal proceedings are terminated;

d) (Repealed, SG No. 63/2017, effective 5.11.2017);

2. He/she has been involved in investigating the case;

3. He/she has acted as prosecutor in the case;

4. He/she has had the capacity of an accused party, custodian or guardian of the accused party, of defence counsel or counsel in the case;

5. He/she has been involved or may join the criminal proceedings in the capacity of a private prosecutor, private complainant, a civil claimant or civil respondent;

6. (Amended, SG No. 9/2021, effective 6.02.2021) He/she has had the capacity of witness, certifying witness, expert witness, interpreter, Bulgarian sign interpreter, or technical expert in the case;

7. He/she is a spouse or close relative to the individuals under item 1 - 6;

8. He/she is a spouse or close relative to another member of the judicial panel.

(2) A judge or assessor may not be part of the court composition due to some other circumstances on account of which he/she may be considered biased or interested, directly or indirectly, in the outcome of the case.

the sentence or judgment have been issued by an illegitimate court panel[248] and leads to revocation of the sentence or the decision.[249]

As regards the press and media, similar provisions concerning the public references to guilt are provided for in Ethical Code of the Bulgarian Media.[250]

Bulgarian legislation also contains measures in cases of breach of the obligation established in Article 4 (1) of the Directive, such as the right of the accused person to appeal against acts infringing on his/her rights and legal interests[251], the possibility for the accused person to bring charges and maintain the accusation before court as a private complainant[252] or claims for damages under the Act on the Liability for Damage Incurred by the State and the Municipalities[253] or under the Obligations and Contracts Act.[254]

Although the Bulgarian legislation provides for the measures mentioned above, which may be applicable in cases of a breach of the obligation not to refer to suspects or accused persons as being guilty, the question arises whether whether they are appropriate and constitute a truly effective remedy within the meaning of Article 10 (1) of the Directive, especially in cases of violation of the presumption of innocence in public statements of ministers and other public representatives according to Recital 17 of the Directive. The issue acquires special significance in the context of the numerous decisions of the Court of Strasbourg convicting

[248] Article 348 (3), p. 3 CPC.
[249] See Judgmenet N 212/2019 of the Supreme Court of Cassation.
[250] Under the Code, the term "media" includes journalists, editors, producers, publishers and owners of print and electronic media. Articles 2.6.1. and 2.6.2. of the Code states that the media shall respect the 'assumption of innocence' and will not describe someone as a criminal prior to their conviction. And if the media identify a person as being charged with a crime, it shall also make known the outcome of the trial.
[251] Article 55 (1) CPC.
[252] According to Article 147 of the Criminal Code, a person who makes public a disgraceful fact about someone or ascribes to him a crime, shall be punished for slander by a fine from BGN three thousand up to seven thousand, as well as by public censure. The perpetrator shall not be punished if the truth of the divulged circumstances or of the ascribed crimes is proved. In these cases, the criminal prosecution is instituted on the basis of complaint by the victim.
[253] According to Article 2c thereof, the State shall be liable for any damage inflicted on citizens, which are caused by a sufficiently serious breach of European Union law. In these cases, compensation by the State is owed.
[254] The law states that every person must redress the damage he has guiltily caused to another person.In all cases of tort guilt is presumed until proven otherwise. Compensation shall be due for all damage which is a direct and immediate consequence of the tort. It may payable as a lump sum or in regular instalments.

Bulgaria for having violated Article 6 (2) of the Convention, due to public statements by the official authorities, including the Minister of the Interior, the spokesperson of the Prosecutor General, a member of the ruling majority, press releases from the police services, etc.[255].

In these cases, the Bulgarian authorities substantiate the thesis that the affected persons could have defended themselves in the criminal proceedings, and after the acquittal to file defamation cases or to file a claim for compensation under the Act on the Liability for Damage Incurred by the State and the Municipalities or the Obligations and Contracts Act. However, the Court held that these measures in most cases did not constitute effective domestic remedies.[256]

The numerous convictions against Bulgaria in Strasbourg for violation of the presumption of innocence under Article 6 (2) of the Convention, according to analysts and human rights activists, make the violation of the presumption of innocence in Bulgaria a systemic problem.[257]

[255]See in this context Stefanov v. Bulgaria, № 26198/13, Alexey Petrov v. Bulgaria, Gutsanovi v. Bulgaria, Petrov and Ivanova v. Bulgaria, Popovi v. Bulgaria, Slavov v. Bulgaria, Stoyanov and Others v. Bulgaria, Toni Kostadinov v. Bulgaria.

[256] See in this context: Stefanov v. Bulgaria, no. 26198/13, §§ 23-24, Maslarova v. Bulgaria, no. 26966/10, §§ 35 and 38, 29 January 2019, and Lolov and Others v. Bulgaria, no. 6123/11, §§ 43-51, 21 February 2019. The last mantioned case is due to a press release from the Burgas police in June 2010, which detailed allegations of crimes committed by five people involved in a criminal group. The Court emphasizes that this is a case of official public statement institution,which is responsible for the protection of public order and the conduct of criminal investigations. The Court held that the text of this press release went beyond the mere communication of information to conduct a criminal investigation or to indicate a suspicion of a crime. In this case, as in previous cases, the Bulgarian authorities substantiate the thesis that the affected persons could have defended themselves in the criminal proceedings, and after the acquittal to file a claim for compensation under the Act on the Liability for Damage Incurred by the State and the Municipalities or the Obligations and Contracts Act. However, the Court emphasizes that "in so far as the presumption of innocence is one of the elements of a fair criminal trial, it is not limited to a simple procedural guarantee in criminal proceedings. Its scope is wider and requires no public authority to declare that a a person is guilty of a crime before his guilt is established by a court."

[257]See a study of the Center for Legal Initiatives on the state and development of the legal order in our country for the period January - June 2019, published in the Legal Barometer magazine, p. 115, available at https://news.lex.bg/wp- content / uploads / 2019/10 /% D1% 82% D1% 83% D0% BA.pdf, as well as an article available at https://www.capital.bg/politika_i_ikonomika/bulgaria/2019/02/21/3393932_bulgariia_otnovo_osudena_v_strasburg_zaradi_narushena/.

Article 4 (3) of the Directive regarding the publicly disseminating information on the criminal proceedings where this is strictly necessary for reasons relating to the criminal investigation or to the public interest also seems partially implemented in national legislation. According to Article 198 of the Criminal Procedure Code, investigation materials may not be made public without authorisation by the prosecutor. Should it be necessary, the pre-trial body shall warn, against signature, the persons attending at investigative actions that they may not make public, without authorisation, any case materials, and that otherwise they shall be held responsible pursuant to Article 360 of the Criminal Code.[258] The provision applies only to the pre-trial proceedings. However, this rule does not transpose correctly the Directive's provision read in conjunction with Recitals 18 and 19 thereof.

In fact, Article 198 of the Criminal Procedure Code allows materials from the pre-trial proceedings to be disclosed after permission of a prosecutor. Recently, this possibility has been used too often by the prosecutor's office. It depends entirely on the judgment of the relevant prosecutor. The law does not contain the requirements laid down in the Directive, namely public disclosure of such materials could be made only where it is strictly necessary for reasons relating to the criminal investigation or to the public interest. In many of these cases, however, according to representatives of the legal community in Bulgaria, this disclosure violated the presumption of innocence by failing to comply with the standard of Article 4 (3) of the Directive.[259]

In this regard, in October 2020 the Supreme Bar Council made a request to the Supreme Court of Cassation for interpretation of Article 198 CPC. The request discusses particularly the practice of the prosecution to disclose certain materials from the pre-trial proceedings.[260] In this way, the public through the media became aware of excerpts from protocols for interrogation of the accused and witnesses, from telephone conversations made through special intelligence tools and so on. It is emphasized that in all cases the disclosed

[258] A person who discloses information of military, economic or other nature, which is no state secret, but the divulgence of which is forbidden by law, an order, or other administrative instruction, shall be punished by deprivation of liberty for up to one year or by probation (Article 360 thereof).

[259] In July 2020, sixteen well-known Bulgarian lawyers sent a signal to the European Commission stating that in this way the Bulgarian prosecutor's office did not comply with the requirements of the directive and violated the presumption of innocence.

[260] It is about excerpts from protocols for interrogation of the accused and witnesses, from telephone conversations made through special intelligence tools etc.

materials serve the thesis of the prosecution, while the accused and their defenders are prohibited from disclosing the materials of the investigation, including the materials that are in favor of the defence. According to the Supreme Bar Council, such a practice by representatives of the prosecution violates fundamental rights of citizens such as the presumption of innocence, privacy and secrecy of correspondence. The request refers to Article 4 of the Directive, to the European Convention on Human Rights and to the case law of the European Court of Human Rights.

By Ruling of 15 April 2021 the Supreme Court of Cassation rejected the request as inadmissible.[261] The Court held that it was not a competent body, as it carried out interpretive activity in case of established contradictory or incorrect practice of the courts and not of the prosecution. Moreover, the request raised the issue of contradiction of Article 198 CPC with the Bulgarian Constitution, which is within the jurisdiction of the Constitutional Court.

11.3. Presentation of suspects and accused persons (Article 5)

Article 5 of the Directive is de facto implemented in Bulgarian law. Under Judiciary System Act, the Security Directorate General at the Minister of Justice ensures order in the court buildings and the security of the judicial authorities in exercising their powers (Articles 391, 393 thereof). As regards the courtroom, obliged to maintain the decorum in it is the judge presiding the court panel, including by orders concerning the use of measures of physical restraint (Article 266 CPC).

Under the case law, presentation of accused persons through the use of measures of physical restraint in court or in public, in particular wearing handcuffs during the investigative actions directly relates to the presumption of innocence. The latter is violated in cases where handcuffing is done for reasons other than risk of absconding, injury to third parties, destruction of evidence, etc.[262]

[261] See http://www.vks.bg/talkuvatelni-dela-osnk/vks-osnk-tdelo-2020-2-opredelenie.pdf (accessed 16 August 2021).

[262] See Sentence N 23/2019 of the Specialized Criminal Court as a first instance. The three defendants have been convicted to imprisonment for bribery. The Court held that the presumption of innocence of one of them was violated insofar as she took part in the investigative actions with handcuffs fastened behind her back. Thus, during the investigation, she was unequivocally treated as guilty. The presumption of innocence has also been violated, given the publicity of her handcuffing. This publicity has reached the maximum possible size for our

11.4. Burden of proof (Article 6)

Bulgarian law was in compliance with the standard of the Directive concerning the burden of proof before the adoption of this legal act. Under Criminal Procedure Code, the burden of proving the accusation in publicly actionable cases shall lie with the prosecutor and the investigative bodies, and in cases actionable by complaint of the victim - with the private complainant. The accused shall not be obligated to prove that he or she is not guilty (Article 103 CPC). The bodies entrusted with pre-trial proceedings shall collect evidence ex officio or at the request of the interested individuals (Article 107 (1) CPC). The court, however, has not a burden but an obligation to collect evidence following requests made by the parties, and of its own motion, whenever this is necessary to the discovery of the objective truth (Article 107 (2) CPC). In addition, the law states that both the court and the bodies entrusted with pre-trial proceedings shall collect and verify both evidence, which exposes the accused or aggravate his or her responsibility, and evidence, which exonerates the accused or attenuates his or her responsibility (Article 107 (3) CPC).

As regards Article 5 (2) of the Directive, the Bulgarian law contain different standards. Under Criminal Procedure Code, the sentences may not be based on supposition. Where in the course of deliberations, i.e. before the sentence is pronounced, the court finds that the circumstances in the case have not been sufficiently elucidated, it shall re-open the judicial trial (Article 302 CPC). The court shall find the defendant guilty where the accusation is proved beyond doubt (Article 303 CPC). This means that in case of doubt, the relevant authorities are obliged to take additional actions to eliminate any doubt[263]. If, in spite of all efforts, the doubt does not disappear, the defendant must be acquitted not because the doubt is interpreted in his/her favor, but because the accusation has not been proved.[264] In this

country and our society. Not only was she with handcuffs for more than four hours in the center of the country's capital, at a busy crossroads, exposed to passers-by, but she was also filmed by journalists from various media; the footage was spread throughout the country and aroused mass interest. The general impression that is created in this way is the belief in the average viewer that the defendant is guilty. However, the Court held that the violated presumption of innocence concerned only the personal sphere of the defendant and had not affected the legality of the criminal proceedings. Evidence gathered during inspection, search and seizure should not be excluded as inadmissable.

[263] See Стефан Павлов. Наказателен процес на Народна Република България, УИ „Кл. Охридски, 1989, 108-109.

[264] See Радка Радева. Правото на защита на обвиняемия в наказателния процес на НРБ, ДИ „Наука и изкуство“, 1985, 92-93.

respect, the scientific literatute assumes that the formula *in dubio pro reo* does not work in Bulgarian criminal procedure.[265] The settled case law, which is binding on the courts, is also in the same sense[266]. In practice, however, courts often refer to the principle *in dubio pro reo* in their decisions in an attempt to tye it to the legal requirement of proof of the accusation beyond doubt.[267]

11.5. Right to remain silent and right not to incriminate oneself (Article 7)

Bulgarian law already contained certain provisions by which the requirements of Article 7 of the Directive are de facto implemented. One of the rights of the accused provided for in Article 55 CPC is the right to provide or refuse to provide explanations in relation to the charges against him/her. This right is laid down in the decree for constitution of the accused (Article 219 (3) CPC). The accused therefore is informed about it before the first interrogation (Article 221 CPC). In addition, according to Article 103 (3) CPC, no inferences may be made to the detriment of the accused on account of the fact that he/she has not provided, or refuses to provide explanations, or has not proved his/her objections.[268]

As regards the right of the accused of not self-incrimination, it is guaranteed by certain provisions. Under Bulgarian Constitution, no one may be compelled to plead guilty, nor may be convicted solely on the basis of the confession thereof. This rule is detailed in Criminal Procedure Code.[269]

[265] See Маргарита Чинова и Георги Митов, Кратък лекционен курс по наказателно-процесуално право. Сиела, 2021, 487.
[266] According to Decree № 6/1978 (amended in 1987) of the Plenum of the Supreme Court, the courts shall find the defendant not guilty where it is not established that the act has been committed, that it has been committed by the defendant or that it has been culpably committed by the defendant, as well as where the act does not constitute a crime. In these cases the defendant is found not guilty not because any doubt as to the question of guilt is interpreted in his/her favor, but because the accusation is not proved beyond doubt.
[267] See Judgment N 86/2020 of the Supreme Court of Cassation where the Court held that the conclusions on the guilt of the defendant must be categorical and unequivocal, to be only possible in compliance with the principle "in dubio pro reo". The appellate court approached in this way and the accusation against it for incorrect and perverse assessment of evidence or part of it is completely unfounded. Therefore, the Court leaved the sentence by which the defendand was found not guilty in force. See also in this respect Judgments N 135/2020; N 169/2020; N 288/2019 of the Supreme Court of Cassation.
[268] See also in this context the Decree № 6/1978 (amended in 1987) of the Plenum of the Supreme Court, which is binding on the courts.
[269] Article 116 thereof is similar. It states that the accusation and the sentence may not be solely based on the

11.6. Right to be present at the trial and right to a new trial (Articles 8 and 9)

According to Article 55 (1) CPC, the accused has the right to take part in criminal proceedings. In the trial proceedings, this right is unlimited, i.e. the accused can fully participates in all stages. In the earliest stage of the trial proceedings, namely the preparatory actions for examination of the case at a court hearing (operative hearing), at the order of the judge-rapporteur a copy of the indictment shall be served on the defendant. Upon serving the indictment, the defendant shall be notified of the date of the operative hearing and of the matters that shall be discussed at the operative hearing, of his/her right to appear with a defence counsel and of the possibility to have a defence counsel appointed in the cases of mandatory participation of such counsel, as well as of the fact that the case can be tried and adjudicated in the defendant's absence (Article 247b (1) CPC). The defendant is also summonsed in the other stages of the trial proceedings, namely at the first and second instance as well as in the cassation proceedings.[270]

Under Bulgarian law, the presence of the accused at the court hearing is mandatory in cases with indictment in serious crimes.[271] The court may order the accused to also appear in cases where the presence thereof is not mandatory, if this is necessary for the discovery of the objective truth (Article 269 (1-2) CPC). Although under the Directive, the presence of the accused at the trial is provided for as a right and not as an obligation, Bulgarian law seems to be in compliance with the Directive. Both provisions, cited above gurantee the right of the accused persons to be present at their trial. Besides, the requirements of the Directive regarding the trials that are hold in the absence of such persons are fully implemented.

According to the Criminal Procedure Code, the case may be tried in the absence of the accused when this will not prevent the disclosure of the objective truth and if the the person had been validly summonsed but failed to show good cause for not appearing, and where the

confessions of the accused party. A confession of the accused party shall not exempt the respective bodies from their obligation to collect other evidence in the case as well. In addition, in cases of disposing of the case by virtue of an agreement (plea-bargaining), if the court does not approve the agreement, it shall return the case-file to the prosecutor. In this case, confessions of the accused party shall not be treated as evidence.

[270] Articles 271, 329, 353 CPC.

[271] According to Article 93, p. 7 of Criminal Code, "serious crime" is any crime for which the law provides punishment by imprisonment for more than five years, life imprisonment or life imprisonment without substitution.

procedure under Article 247b (1) CPC has been complied with (Article 269 (3) CPC)[272]. In all cases where the trial is held in absence of the accused the participation of a lawyer is mandatory (Article 94 (1), p. 8 CPC), i.e. a lawyer will be appointed if the accused has not retained such one of his/her own and regardless whether such request is made by the accused or not.

According to the case law, failure to summon the accused to the court hearing, regardless of whether his/her participation is obligatory or not constitutes a substantial breach of procedural rules - grounds for remit the case to the prosecutor or revocation the sentence and remit the case to the first instance or the appellate court.[273]

As regards the right to a new trial, it is guaranteed under Bulgarian law. Criminal Procedure Code provides for provisions concerning the re-opening of a criminal case upon request of an individual sentenced in absentia due to the convict's non-participation in the criminal proceedings. Within six months from the date when the convict person (who has been sentenced in absentia) has come to knowledge of a sentence that has entered into force, he/she may file a request for re-opening the criminal case due to the convict's non-participation in the criminal proceedings. The request shall be honoured, unless the convict - upon being charged within the pre-trial proceedings - absconded, which hindered the procedure under Article 247b (1) CPC or, once the afore-mentioned procedure was completed, the convict failed to appear to a court hearing with no cogent reason.[274]

[272] Article 269 (3) CPC provides for three more conditions in the presence of which the case may be tried in the absence of the accused: 1) if the person could not be found at the address specified by him, or he has changed his/her address without notifying the respective body; 2) if his/her place of residence in this country is not known and has not been identified after a thorough search; 3) if the person is located outside the boundaries of the Republic of Bulgaria: a) his/her place of residence is not known; b) may not be otherwise summonsed; c) has been validly summonsed, but has failed to specify good reasons for his/her non-appearance.

[273] See in this respect Ruling 181/2020 of the District Court-Varna. The Court held that the right of individuals to be present at the trial against them is essential to ensure a fair trial. Their absence during the trial is a ground for a new trial and a new hearing on the merits. Article 8 of Directive 2016/343 states that "reasonable efforts" should be made for the accused to be identified, and such are missing in respect of the defendant in the case. Failure to notify the accused that he is being prosecuted, as well as his non-participation in the pre-trial, respectively in the court proceedings, is a significant procedural violation, which should be eliminated in the pre-trial phase of the process.

[274] See Judgment N 184/2019 of the Supreme Court of Cassation, Judgment N 210/2020 of the Supreme Court of Cassation.

In view of the above, Articles 8 and 9 of the Directive seem fully implemented.

11.7. Remedies (Article 10)

Bulgarian law provides for effective remedies for infringements of the rights as laid down in **Article 10 of the Directive.** On the one hand, such a remedy is the possibility of appealing against acts infringing on their rights and legal interests.

On the other hand, according to the law and the settled case law, existing before the adoption of the Directive, the violation of the procedural rights of the accused in both pre-trial and trial proceedings, including the rights as mentioned in the Directive, constitutes a substantial breach of procedural rules.[275] 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).

In the scientific literature it is pointed out that under the Bulgarian criminal procedure law, the legal institute of substantial breach of procedural rules is one of the most important remedies in the event of a breach of the rights of the accused.[276] 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.[277]

As regards the measures **in cases of breach of the obligation established in Article 4 (1) of the Directive,** the situation is different. As already mentioned above, although the Bulgarian law provides for such measures, they do not seem sufficiently effective within the meaning of Article 10 of the Directive.[278]

As regards Article 10 (2) of the Directive, in the scientific literature it is deemed fully implemented by an interpretative judgement adopted in 2002 by the Supreme Court of Cassation concerning the breach of procedural rules, which judgement is binding on the courts.[279] According to it, in case of substantial procedural violations in the collection of

[275] See in this context Decree № 6/1978 (amended in 1987) 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.
[276] See Маргарита Чинова и Георги Митов, Кратък лекционен курс по наказателно-процесуално право. Сиела, 2021, 544-547.
[277] Articles 249, 335, 354 CPC.
[278] See Sect. 11.2. concerning Article 4 (2) of the Directive.
[279] See Маргарита Чинова, Павлина Панова. Новата директива относно правото на достъп до адвокат в наказателното производство в: - Норма, бр. 3/2014.

evidence, the court should exclude the improperly collected piece of evidence from these ones that may be used in sentencing.

12 Concluding remarks

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

Only two of the directives – 2010/64/EU and 2013/48/EU, have been introduced into Bulgarian legislation through explicit changes. As regards Directive 206/800/EU, major amendments to the current law were submitted to the Parliament but have not yet been adopted by the legislator. Such an approach can be interpreted that in the public authority's view Bilgarian legislation largly complies with the requirements of the other Directives and does not need to be changed.

It seems to be true, on the one hand, as far as Bulgarian legal framework even before adoption or entry into force of the six Directives already largely guaranteed the rights as laid down in the latter. 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. Additional changes in the Bulgarian law are needed, through which the requirements of the six Directives to be introduced completely and correctly. It concerns, for instance, public references to guilt, in particular when public authorities refer to a person as being guilty in public statements, and the availability of appropriate measures if this happens.[280] Other shortcomings are identified in relation to some of the standards which guarantee the quality of the ineterpretation and translation[281], the right to have a third person informed of the detention, especially where the accused is a child[282], the lack of the Letter of Rights on arrest.[283] The same also can be said for the implementation of the Directives's requirements applicable in EAW proceedings.

[280] For more details, see Sect. 11.2.
[281] For more details, see Sect. 6.3. and 6.4.
[282] For more details, see Sect. 8.5.
[283] For more details, see Sect. 7.6

The introduction of EU standards into national legislation constitutes in principle a challenge. It is particularly true in the area of the procedural guarantees of the rights of accused persons in the criminal proceedings, respectively of the persons requested in the EAW proceedings. First of all, such implementation should take into account existing national standards, including these that go beyond the Directives's 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 six Directives, and in particular the concept of the so-called "substantial breach of procedural rules", which constitutes safeguard of the right of the accused persons to a fair trial.

However, a literal transposition of the requirements of the Directives is also problematic. As an example, it 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 the natioal law. This legislator's approach was then severely criticized.

In summury, it can be noted that most of the requirements of the Directives already existed in the Bulgarian legislation and were recognized in the settled case law. The guarantees for the procedural rights of the accused persons in the criminal proceedings, respectively of the requested persons in the EAW proceedings as laid down in the Directives were strengthened by the changes made in Bulgarian laws. However, further legal amendments seem to be needed in order to transpose fully and correctly the Directives. This is particularly relevant for Directive (EU) 2016/800 on the procedural safeguards for juvenile defendants.