THE RIGHT OF ACCESS TO A LAWYER AND LEGAL AID IN CRIMINAL PROCEEDINGS

PRACTICAL ISSUES OF NATIONAL IMPLEMENTATION

IMPACT ON THE WORK OF THE POLICE

SVETLA IVANOVA – Bulgarian PPO
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THE RIGHT OF ACCESS TO A LAWYER AND LEGAL AID IN CRIMINAL PROCEEDINGS

DIRECTIVE 2013/48/EU
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in EAW proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

This Directive lays down minimum rules concerning the rights of suspects and accused persons.
THE RIGHT OF ACCESS TO A LAWYER AND LEGAL AID IN CRIMINAL PROCEEDINGS

- **TRANSPOSITION** - article 15 - by 27 November 2016.

- In Bulgaria – the Directive has not yet been transposed!

- There is a **draft law**, published on the website of the Ministry of Justice.
Some clarifications about the procedural figures:

NO “suspect”
“accused person” – in the pretrial phase
“defendant” – in the trial one.
Some clarifications about the detention:

**By a police officer** - for no longer than 24 hours.

**By a prosecutor** - for no longer than 72 hours, but only after the person has acquired the status of an accused person.

**By the court** - for a longer period.
What changes in the BG laws are foreseen:

The transposition of the provisions of Directive 2013/48 / EC will be done through the amendment of the Bulgarian Criminal Procedure Code.

Even now – before the transposition, the Bulgarian PPC corresponds substantially with the requirements of Directive 2013/48/EU.
The full transposition of the Directive requires the following changes to the PP Code:

The accused has the right to a lawyer from the moment of his involvement as a defendant. It is envisaged that the accused has the right to liaise freely with his defender, to meet privately with him, to receive advice and other legal assistance, including prior to and during the conduct of questioning and any other procedural action involving the accused.

At present, the Bulgarian PPC provides for the right of a defender to meet privately with the accused, but does not expressly provide for this right as a right of the accused. In this context is one of the proposed amendments in the PPC.
- when holding in custody the accused, to give him general background information, which should facilitate him in his choice of a lawyer.

- when detaining the accused in custody, at his request immediately at least one person named by him, should be notified.
- **Temporary derogation** of the right to inform a concrete person for the detention: the procedure for notification of a particular person is expected to be delayed **up to 48 hours**, when there is an urgent need to prevent the occurrence of severe adverse consequences for:
  - the life, the liberty or physical integrity of a person, or
  - to prevent a situation in which the criminal proceedings could be seriously hindered.

- Decision - taken by the pre-trial authority, with a motivated decree. Subject to appeal before the court of first instance. The court ruling is final.
In case the detainee is a citizen of two or more states, he can choose the consular authorities of which state to be informed of his detention and he wishes to get in touch with.
- The accused will have the right to waive his right to a counsel, except in cases where the participation of a defense counsel is mandatory (Art. 9 of the Directive).

- The accused shall also have the right to decide to withdraw the waiver of the right to a counsel at any time during the proceedings.
New provisions in the Bulgarian Law on Extradition and European Arrest Warrant

- the right of the wanted person to be informed, that he is entitled to have a lawyer, appointed for him, in the country that issued the European arrest warrant.
New provisions in the Bulgarian Law on the Ministry of Interior

- the right of the accused person to waive a defender, and the consequences thereof

- the right to refusal of giving explanations in cases where detention is in connection with resistance or refusal to obey a lawful order of the police officer
With the draft law, new provisions are foreseen also in

- the Law on Legal Aid,
- the Law on Execution of Sentences and Detention, and in
- the Customs Law.
THANK YOU FOR YOUR ATTENTION!
You deserve a treat!
SVETLA IVANOVA

District  Public Prosecutors’ Office of Lovech