



THE IMPACT OF THE NEW LEGAL AID REGIME ON CRIMINAL PROCEEDINGS IN BULGARIA.



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**DIRECTIVE 2016/1919/ EU ON LEGAL AID
FOR SUSPECTS AND ACCUSED PERSONS IN CRIMINAL PROCEEDINGS
AND FOR REQUESTED PERSONS
IN EUROPEAN ARREST WARRANT PROCEEDINGS.**

- Done on 26 October 2016.**
- Transposition - by 25 May 2019.**
- In Bulgaria it has not been implemented yet.**

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- ▶ The purpose of this Directive- to ensure the effectiveness of the right of access to a lawyer as provided for under Directive 2013/48/EU.
- ▶ This Directive complements Directives 2013/48/EU and (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.
- ▶ It establishes common minimum rules, concerning the right to legal aid for suspects, accused persons and requested persons.

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- ▶ On 30 November 2009 - Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings
 - right to translation and interpretation (measure A),
 - the right to information on rights and information about the charges (measure B),
 - the right to legal advice and legal aid (measure C),
 - the right to communicate with relatives, employers and consular authorities (measure D),
 - and special safeguards for suspects or accused persons who are vulnerable (measure E).

- ▶ This Directive relates to the second part of measure C of the Roadmap, regarding legal aid.

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Article 3 of the Directive - definition of the term
‘legal aid’:

Funding by a Member State of the **assistance of a lawyer**,
enabling the exercise of the right of access to a lawyer.

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The Bulgarian LEGAL AID ACT regulates the **legal assistance** in criminal, civil and administrative cases before all courts. According to it:

The legal assistance shall be exercised by lawyers and funded by the state.

The purpose of the law is to ensure equal access to justice by ensuring and providing effective legal assistance.

The funds for legal assistance shall be provided from the state budget.

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ARTICLE 4 “LEGAL AID IN CRIMINAL PROCEEDING”.

Bulgarian law ensures that accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require.

1. One of the fundamental rights of the accused persons/defendants is the right to have a defender /Article 55 of Bulgarian Penal Procedure Code/.

2. There are several cases when participation of a defender in criminal proceedings is obligatory /Article 55 of Bulgarian Penal Procedure Code/:

1. the defendant is of minor age;
2. the defendant suffers physical or mental disabilities, which establish obstacle to defend him/herself;
3. the case is for a crime, for which a punishment of imprisonment not less than 10 years or another, more severe punishment is provided;

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4. the defendant does not speak the Bulgarian language;
5. the interests of the defendants are contradictory and one of them has a defender;
6. (amend. – SG 109/08) where a request under Art. 64 is made or the defendant has been arrested;
7. (revoked - SG 32/10, in force from 28.05.2010)
8. the case shall be heard in the absence of the defendant;
- 9. the defendant is not able to pay attorney-fee, wants to have a defender and the interests of the jurisdiction demand so.**

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In practice Bulgarian competent authorities apply both a means test and a merit test to determine whether legal aids is to be granted.

MEANS TEST.

According to Article 23 of Bulgarian Legal Aid Act in criminal matters, the determination that the accused or the defendant have no funds to pay an attorney's fee shall be made on the basis of the property status of the person ascertained ex officio in the specific matter and of the following circumstances:

1. the income of the person or of their family;
2. the property status, certified by affidavit;
3. the family status
4. the health status;
5. employment status;
6. the age;
7. other circumstances.

MERITS TEST.

Because of the absence of a legal definition in the national legislation, Bulgarian courts in their practice have accepted the following criteria established by the European Court of Human Rights:

1. the seriousness of the criminal offence;
2. the complexity of the case;
3. the severity of the sanction.

Exactly the same criteria are adopted in Directive 2016/1919/ EU.

Bulgaria has also fulfilled the requirement of the Directive that in any event the merits test shall be deemed to have been met in the following situations:

- where an accused person is brought before a competent court or judge in order to decide on detention at any stage of the proceedings;
- during detention.

These are absolute grounds for obligatory defence /Article 94 and Article 64 of Bulgarian Penal Procedure Code/.

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Article 5 deals with the **Legal aid in EAW proceedings**

- requested persons, who are the subject of EAW proceedings, should have the right to legal aid in the executing MS, until they are surrendered, or until the decision not to surrender them becomes final.
- requested persons who are the subject of EAW proceedings for the purpose of conducting a criminal prosecution and who exercise their right to appoint a lawyer in the issuing MS in accordance with Directive 2013/48/EU should have the right to legal aid in that MS for the purpose of such proceedings in the executing MS.

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According to the Bulgarian

Law on Extradition and European Arrest Warrant:

- in the procedure, where the preliminary detention of the requested person is decided, the court shall appoint a defense lawyer and an interpreter if the requested person does not speak Bulgarian.
- in the trial phase, when the actual surrender is decided, the court again shall appoint a defense lawyer and an interpreter if the requested person does not speak Bulgarian.

ARTICLE 6 “DECISIONS REGARDING THE GRANTING OF LEGAL AID”.

Decisions on whether or not to grant legal aid and on the assignment of lawyers shall be made, without undue delay, by a competent authority.

The determination that the accused or the defendant needs legal aid shall be made by the authority directing the procedural actions /Article 23, Paragraph 4 of Bulgarian Legal Aid Act/. This is either an investigating body /investigating police officer, investigating magistrate/, or prosecutor, or judge.

In all cases the competent authority is bound and obliged to react whenever the grounds for granting of legal aid are present.

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According to **Article 7** of the Directive, Member States shall take necessary measures, including with regard to funding, to ensure that:

- there is an effective legal aid system that is of an **adequate quality**,
- and that legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the **independence** of the legal profession.

MSs shall ensure that adequate **training** is provided to lawyers, giving legal aid services, and to the staff, involved in the decision-making on legal aid.

According to the Bulgarian **Attorney Law**

- The lawyers are obliged to maintain and improve their skills.
- The Supreme Bar Council organizes training center for lawyers, which:
 1. organizes and conducts workshops, lectures and other forms of training;
 2. organizes and supports the publication and distribution of specialized legal literature;
 3. cooperates and participates in similar Bulgarian, foreign and international organizations and institutions;

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According to the Bulgarian **Attorney Law**

- the lawyer is **equated with the judge** regarding the due respect, and all bodies are obliged to give him assistance as to a judge.
- the lawyer is **bound to be independent** in the performance of their professional duties.
- the lawyer **must not allow impact and influence** in carrying out his activities

**THANK YOU FOR YOUR
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