



## ASSESSMENT OF THE ACCESS TO LEGAL AID IN THE PRE-TRIAL PHASE OF CRIMINAL PROCEEDINGS IN BULGARIA IN 2015

This report summarises the results of a representative survey of legal aid granted by the National Legal Aid Bureau in the pre-trial phase of criminal proceedings in 2015. The survey was carried out by a team of the Law Programme of the Open Society Institute – Sofia, within the framework of Work Stream 2 of the project “Improving Access to Legal Aid in the Pre-trial Phase of Criminal Proceedings in Bulgaria”. The project is being implemented from 1 August 2016 to 31 January 2018 in partnership between the National Legal Aid Bureau and the Open Society Institute – Sofia, with the participation of the Legal Aid Board of the Netherlands as an Associate Partner.

The project is funded by the EU Justice Programme (2014-2020) and seeks to contribute to the proper implementation and monitoring of Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant 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, Directive 2016/1919/EU of

26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, as well as Commission Recommendation 2013/C 378/03 of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings, and Commission Recommendation 2013/C 378/02 of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.

The contents of this publication are the sole responsibility of the authors and can under no circumstances be regarded as reflecting the official position of the Open Society Institute – Sofia, the partner institutions involved in the project, or the European Commission

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## EXECUTIVE SUMMARY

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This report contains the results of a representative survey of lawyers' reports on legal aid granted in the pre-trial phase of criminal proceedings in Bulgaria in 2015. The purpose of the survey was to establish certain quantitative indicators of the scope and efficiency of the legal aid system in pre-trial proceedings in Bulgaria, which in the long term could serve to assess the access of citizens to justice and the efficiency of the legal aid provided.

The survey showed that legal aid was provided in a small share of the total number of pre-trial proceedings (minimum 6% and maximum of 34% of pre-trial proceedings in criminal cases) and was most likely limited to cases in which defence is mandatory and the accused cannot waive his or her right to a lawyer.

The survey outlined several groups of defendants benefitting from legal aid, which comprise different types of vulnerable persons who should receive special protection under the national law and whose defence requires special professional competence of lawyers: 9% of the defendants were children, 16% did not speak Bulgarian, 20% were held in custody; a considerable, albeit undetermined, share of defendants were illiterate and poor. Most of the circumstances that place the defendant in a vulnerable position are not explicitly recorded in the lawyers' reports, which poses certain obstacles to assessing the quality of legal aid granted.

Pre-trial proceedings in which legal aid has been granted, tend to end with indictments or plea agreements more often than the average for all pre-trial proceedings. Plea agreements, in particular, are two or three times more likely than the average for the country in pre-trial proceedings in which legal aid has been granted (depending on whether the average is calculated based on the total number of cases handled by prosecutors or the estimated number of pre-trial proceedings brought against a known perpetrator). Several possible explanations for this finding were tested in a focus groups and interviews. Some experts believed that the primary cause lies in the fact that a large share of legal aid clients have already been convicted. They know what they can expect from the proceedings and prefer to end the case earlier, i.e. ad-

mit their guilt and strike a plea bargain. Other experts, however, rather tend to accept that the quality of defence provided by ex officio lawyers is lower than the one offered by retained lawyers, and cite many cases in which ex officio lawyers have performed their duties in a perfunctory manner.

Therefore, it is advisable that the National Legal Aid Bureau (NLAB) and the local bar associations extend their administrative capacity to monitor and evaluate lawyers' performance, carry out periodic proactive reviews to that effect, and assess the quality of legal aid, taking into consideration also the perspective of the clients, as is the established practice in other EU Member States.

## OVERVIEW OF THE SURVEY

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The purpose of the survey was to establish certain quantitative indicators of the scope and efficiency of the legal aid system in pre-trial proceedings in Bulgaria, which in the long term could serve to assess the access of citizens to justice and the efficiency of the legal aid provided. Identified variables comprise the demographic profile of the defendants, including the share of vulnerable persons who must be represented by a lawyer in all cases (children, persons with physical or mental deficiencies that prevent them from defending themselves, persons who do not speak Bulgarian), the share of detained persons, the profile of defence lawyers, and the type of legal aid granted (the actions in which lawyers are most often involved, the typical actions they perform as participants in the process, the geographical distribution of legal aid cases). At the time of the survey, this information could not be retrieved from the NLAB electronic database, but is of crucial importance for monitoring and assessing the practical implementation of the fair trial standards established by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the requirements of Directives 2013/48/EU and 2016/1919/EU.

The survey was conducted based on a standard questionnaire involving a review of a representative

sample of lawyers' reports for legal aid in the pre-trial phase of criminal proceedings in 2015. The questionnaire was divided into five sections: case identification, information on the lawyer, information on the legal aid granted, information on the defendant, and information on the offence.

The initial plan was to survey the lawyers' reports filed in 2016 but after the sampling was completed, it turned out that the 2016 reports had not been archived yet in their entirety, and hence, their contents could not be searched. Thus, the team compiled a new list of reports filed in 2015 and prepared a new sample.

The lawyers' reports are files with documents, usually submitted on paper, which contain anywhere between 9 and 42 pages and include:

- ▶ a report by the lawyer on the work done (based on a standard form) and the opinion of the respective bar association on the lawyer's report;
- ▶ a copy of the request for appointing a lawyer within the legal aid system (usually prepared by the investigating officer and sent to the relevant local bar association);
- ▶ a copy of the notification letter from the local bar association to the investigating officer, specifying the name of the designated lawyer;
- ▶ a copy of the act certifying the admission of legal act (prepared by the investigating officer in the name of the designated lawyer);
- ▶ a copy of a declaration by the accused (based on a standard form) stating that he or she cannot afford to pay for his or her defence;
- ▶ copies of various documents provided by the lawyer and issued by pre-trial authorities, evidencing the lawyer's participation in individual procedural and investigative actions (copies of arraignment protocols, interrogation protocols, court rulings on the approval of plea bargains, etc.).

The lawyers' reports included in the survey were selected by systematic random sampling of all reports submitted to the NLAB in 2015 in which legal aid was provided in the pre-trial phase of criminal proceedings. The NLAB electronic system registers all lawyers' reports filed and allows for retrieving summaries of the amounts paid to each lawyer, the number and type of reports submitted by each bar association, the com-

pleted stage in the proceedings, etc. Thus, the survey team retrieved a summary of all reports on legal aid granted in the pre-trial phase of criminal proceedings, which had been registered in the electronic system in 2015. Reports filed in previous years, as well as reports on which payment had been refused or had not yet been decided by the NLAB, were excluded from the initial list. The survey team then pulled every 15th report of the remaining nearly 10,000 reports, producing a sample of 815 reports.

Two clarifications need to be made in respect of the sampling process. First, the reports are not sent to the NLAB by the lawyers themselves at the end of each stage of the proceedings but by the local bar associations which collect ten to twenty reports and send them periodically to the NLAB. As a result, the summary of lawyers' reports on legal aid granted in the pre-trial phase of criminal proceedings, which was retrieved from the electronic system, contained bulk reports from one and the same bar association, which recurred periodically, for instance, 4 reports from Pernik, followed by 25 reports from Plovdiv etc. This puts the randomness of the sample at a certain risk. In order to cope with this problem, after completing the 15-step random sampling process, the survey team compared the number of reports from each bar association included in the sample, to the share of this bar association in the total number of reports. It turned out that some of the less busy bar associations were represented in the sample with only one or two reports, while the Sofia Bar Association was over-represented. This was corrected by reducing the number of reports from the Sofia Bar Association and adding reports from less busy bar associations, so that each bar association was represented with at least four reports in the sample.

The second important fact, which needs to be mentioned with regard to the sample, is that the NLAB list of filed reports relating to legal aid in the pre-trial phase of criminal proceedings, does not include cases involving legal aid granted in two forms of expedited criminal proceedings. Such cases are registered under different code names in the NLAB system.

Out of 815 reports included in the planned sample, 761 were located in the archived dossiers kept at the NLAB. The absence of 54 reports included in the sample is due to ongoing checks performed by the

NLAB or the relevant bar associations; in such cases, the reports are removed from the archive dossiers and are returned to the respective bar association or are transferred to the relevant department at the NLAB.

The examined 761 reports of the sample have been filed by 582 lawyers, which means that some lawyers have been represented in the sample with more than one report. The sample includes lawyers from all 27 local bar associations, no less than 4 and no more than 116 reports per bar association. With 50% of the questionnaire answered, the statistical error is approximately 3.4%.

In order to discuss the results of the quantitative survey, on 3 November 2017, the team conducted a focus group with five lawyers from Veliko Turnovo listed in the National Legal Aid Register, and held 10 semi-structured interviews with experts (lawyers and judges working on criminal cases) in November 2017 and January 2018.

## OVERVIEW OF THE LEGAL AID SYSTEM IN THE PRE-TRIAL PHASE OF CRIMINAL PROCEEDINGS

A major reform of the legal aid system on criminal cases took place in the period 1999-2006, in view of Bulgaria's forthcoming membership in the European Union. In particular, a Legal Aid Act (LAA) was adopted, establishing a separate body to control public spending on legal aid (the NLAB). A new Criminal Procedure Code (CPC) was also adopted.

This reform was necessitated by the serious limitations established at that time with regard to the access of citizens to justice. There are no surveys on the access to legal aid in pre-trial proceedings from this period, but two surveys were conducted on the access to justice in the court phase of criminal proceedings. They were performed in 2001 and 2004, using the same methodology, and were based on a review of a sample of archived court cases and interviews with prison inmates. The 2001 survey was conducted

by the Bulgarian Helsinki Committee, while the one in 2004 was performed by a team of the Open Society Institute – Sofia.

Data from these two surveys reveal that in 2001, 76% of the defendants in regional courts and 41% of the defendants in first instance proceedings before district courts were not represented by a lawyer. Between 2001 and 2004, the access to justice improved significantly: 44% of the defendants in regional courts and 20% of the defendants in district courts of first instance appeared at the proceedings without a lawyer.<sup>1</sup>

Currently, legal aid in the pre-trial phase of criminal proceedings in Bulgaria is provided by lawyers listed in the National Legal Aid Register kept by the NLAB. At the end of 2015, 5272 lawyers were listed in the register, which is approximately half of all practising lawyers in the country. Contrary to the established practice in other EU Member States, law firms, partnerships of lawyers or legal clinics are not legal aid providers in Bulgaria. When registering in the National Legal Aid Register, lawyers must state their specialisation in any of the three areas of law: civil, criminal or administrative law. Such specialisation is not evidenced by a document and is not subject to verification by the NLAB.

Art. 94, para. 1 of the CPC specifies the cases in which the participation of a defence lawyer in criminal proceedings is mandatory. These include 8 hypotheses; when:

- ▶ the defendant is under 18 years of age (point 1);
- ▶ the defendant suffers from physical or mental deficiencies that prevent them from defending themselves (point 2);
- ▶ the case involves an offence punishable by a term of imprisonment exceeding ten years or by another more severe punishment (point 3);
- ▶ the defendant does not know the Bulgarian language (point 4);
- ▶ the interests of the defendants are contradictory and one of them is represented by a defence lawyer (point 5);
- ▶ a request for preliminary detention has been filed or the defendant is held in custody (point 6);

<sup>1</sup> *Marinova, G. (ed.), Dostap do pravosadie. Sluzhebna zashtita po nakazatelni dela, Institut Otvoreno obshtestvo – Sofia, 2005, p. 119.*

- ▶ the case is heard in the absence of the defendant (point 7);

- ▶ the defendant cannot afford to pay for his or her defence, wants to be represented, and the interests of justice so require (point 8).

In the hypothesis of point 4 and point 5 – when the defendant does not know the Bulgarian language or when the interests of the defendants are contradictory and one of them is represented by a defence lawyer – the defendant may waive his or her right to legal aid and defend themselves. In all other cases, the waiver of the right to defence is inadmissible.

Moreover, Art. 381 of the CPC requires that any prospects for achieving a plea bargain be discussed only in the presence of a lawyer. In such cases, if the defendant has not retained a lawyer, the court appoints an ex officio defender at the expense of the legal aid system. Also, an expedited procedure under Art. 372 of the CPC cannot be held unless the defendant has a lawyer.

The authorities conducting the pre-trial proceedings (usually the investigating police officer) are required to explain to the defendant that he or she is entitled to a defence lawyer and are obliged to allow the granting of legal aid under the LAA, if the defendant cannot afford to pay for his or her defence. In such cases, the pre-trial authorities send a request to the relevant bar association, which appoints a lawyer registered in the National Legal Aid Register kept by the NLAB. After providing the legal aid, the lawyer draws up a standard report, submits it to the relevant bar association for approval, and the bar association sends the approved report to the NLAB.

The payment for the legal aid granted is made by the NLAB. The amount of the fees is laid down in the Ordinance on the Payment of Legal Aid<sup>2</sup>, adopted by the government. The Ordinance sets the minimum and maximum amount of payments for legal aid, while the specific fees depend on the gravity of the offence; for instance, according to Art. 15 of the Ordinance, the lawyer's fee for participation in pre-trial proceedings involving offences punishable by probation or fine only, ranges between BGN 50 (minimum) and BGN 100 (maximum).

Several grounds have been envisaged on which the actual fee may exceed the maximum amount specified in the Ordinance: for instance, when legal aid is provided to more than one defendants, outside normal working hours, during official holidays, when different investigative actions have been performed more than once, etc. The specific amount of the fee in each individual case is determined by the NLAB based on a proposal by the relevant bar association.

The legal aid granted under these provisions, though mandatory in many cases, is not free for the accused; if he or she is convicted, they must reimburse the cost of legal aid to the NLAB. In this regard, in 2015, the NLAB has filed 43,460 applications for writs of execution against debtors, while debtors have reimbursed voluntarily to the NLAB the sum of BGN 353,386.

According to Art. 3 of the LAA, publicly funded legal aid should be effective and should ensure equal access of citizens to justice. The authority to control the quality of legal aid is shared between the NLAB and local bar associations. The NLAB manages the provision of legal aid, providing general and methodological guidance, while according to Art. 18, point 5 of the LAA, the bar associations exercise ongoing control over the quality of legal aid granted by the lawyers. Pursuant to Art. 4 of the Ordinance on the Payment of Legal Aid, the NLAB may refuse to pay the lawyer, if it finds that the legal aid has been provided incompetently or negligently.

Lawyers may be removed from the National Legal Aid Register in case they have been subject to disciplinary sanctions or penalties for violations of the LAA. In 2015, a total of 22 lawyers were removed from the National Legal Aid Register due to disciplinary sanctions, 6 of which were imposed for violations of the LAA.<sup>3</sup>

In 2015, the NLAB had 23 staff members and processed more than 48,000 lawyers' reports on legal aid provided in different types of cases. Due to the heavy workload associated with processing lawyers' reports, the NLAB has limited capacity to monitor proactively the efficiency of legal aid and to ensure equal access of citizens to justice. In 2015, the NLAB has performed

<sup>3</sup> The information is derived from the Annual Report on the NLAB activity in 2015, last accessed in the Information Section of the NLAB website: [www.nbpp.government.bg](http://www.nbpp.government.bg) on 15 January 2018.

<sup>2</sup> Prom., SG, No 5 of 17.01.2006.

15 checks to investigate violations of the LAA, most of which have been reported by judges. In a limited number of cases, complaints against lawyers regarding legal aid provided in pre-trial proceedings have been filed by defendants. However, such cases are rather the exception.

## MAIN CHARACTERISTICS OF LEGAL AID SERVICES GRANTED

### a. Share of legal aid granted in the pre-trial phase compared to the general parameters of the criminal justice system

In 2015, the NLAB adopted a total of 48,240 decisions on the payment of legal aid, disbursing the sum of BGN 8,838,726. Out of these decisions, 12,653 involved payments for legal aid granted in pre-trial proceedings, amounting to a total of BGN 2,566,026; therefore, legal aid in pre-trial proceedings represents 26% of the payment decisions adopted by the NLAB during the year and 29% of the total funds disbursed.

The average amount of lawyers' fees paid varies depending on the type of proceedings in which the legal aid was granted (see Table 18 below).

As noted earlier, the payment decisions discussed here refer to legal aid registered in the NLAB system as having been granted in "pre-trial proceedings" but do not include decisions on legal aid provided in cases involving two different forms of expedited procedures, which also constitute pre-trial proceedings but are recorded separately in the NLAB system. In 2015, the NLAB has adopted 2132 decisions on the payment of legal aid granted in fast criminal proceedings, disbursing BGN 405,350, while the decisions relating to immediate proceedings totalled 840, amounting to BGN 178,190. Thus, the total number of decisions taken by the NLAB in 2015 with regard to the payment of legal aid granted in pre-trial proceedings (including fast and immediate proceedings) reaches 15,625 (or 32% of all NLAB decisions during the year), amounting to a total of BGN 3,149,666 (or 36% of all funds disbursed on legal aid during the year).

For the sake of comparison, the largest share of the NLAB budget in 2015 was spent on payments for legal aid granted in the trial phase of criminal cases of general nature; the lawyers' reports for legal aid granted in such cases add up to 17,930, amounting to a total of BGN 3,254,010, which means that the legal aid provided in the trial phase of criminal proceedings repre-

**Table 1. Total number of cases in which legal aid was granted, by type of proceedings**

Indicator	Number	Amount in BGN
Legal aid in criminal court cases of general nature	17,930	3,254,010
Legal aid in pre-trial proceedings	12,653	2,566,026
Legal aid in private criminal cases	6,850	796,740
Legal aid in civil cases	2,339	358,540
Legal aid in fast criminal proceedings	2,132	405,350
Legal aid in appeals on criminal cases of general nature	1,881	606,190
Legal aid in immediate criminal proceedings	840	178,190
Legal aid in appeals on private criminal cases	801	93,140
Legal aid in cassation proceedings	645	238,090
Legal aid in criminal court cases under administrative law	504	82,500
Legal aid in other types of cases	1,665	259,850
Total legal aid decisions (2015)	48,240	8,838,726

**Table 2. Total number of pre-trial proceedings and prosecutorial acts filed in court**

Year	Newly initiated pre-trial proceedings	Prosecutorial acts filed in court
2008	131,757	43,418
2009	139,894	45,147
2010	146,588	45,598
2011	139,049	46,511
2012	128,722	41,155
2013	132,860	39,372
2014	123,751	35,524
2015	121,541	33,411

sented 37% of all payment decisions and 37% of the total spending on legal aid.

The legal aid in 2015 is provided within the context of a downward trend in the overall workload of law enforcement authorities. After 2010, the total number of newly initiated pre-trial proceedings decreased significantly, while after 2011, the number of prosecutorial acts filed in court also declined. A total of 121,541 new pre-trial proceedings were initiated in 2015, which is 17% less than in 2010, while the prosecutorial acts filed in court totalled 33,411, marking a decrease of 27% compared to 2010.

One can hardly come up with an accurate assessment of the scope of legal aid granted, taking into account the indicators by which the Prosecutor's Office of the Republic of Bulgaria monitors the efficiency of the authorities involved in the pre-trial phase of the process. The problem arises due to the pre-trial proceedings against an unknown perpetrator, which make up much of the workload of the prosecution and the police. Out of the total number of cases dealt with by prosecutors in 2015 (128,893), about one quarter (31,678) were terminated and about half (60,718) were suspended, with 95% of suspended cases being brought against an unknown perpetrator. It is unclear what proportion of the terminated prosecutions have been initiated against an unknown perpetrator. Assuming that all terminated proceedings were initiated against an unknown perpetrator, this means that in 2015, the pre-trial proceedings in which the Prosecutor's Office had issued an act and which presumably

had been conducted against a known perpetrator, were 36,478. In this case, it may be assumed that the legal aid provided at the pre-trial phase in 2015, involved maximum 34% of the proceedings against an established perpetrator.

However, the Prosecutor's Office reported handling 213,781 pre-trial proceedings in 2015. A comparison between this number and the known cases of legal aid granted in pre-trial proceedings (12,653) suggests that legal aid probably concerned only 6% of the total workload of the prosecution service during that year. Therefore, one can assume that the legal aid granted in pre-trial proceedings in 2015 involved between 6% (conservative assessment) and 34% (optimistic assessment) of the total number of pending pre-trial proceedings.

One can conclude that despite the tendency towards a decrease in the total number of pre-trial proceedings and prosecutorial acts brought to court, legal aid in the pre-trial phase actually concerns a relatively small share of proceedings and therefore, has considerable room for development. One can hardly assume that in the remaining 94% of all pre-trial proceedings (conservative assessment) and 66% of the proceedings against a known perpetrator resolved during the year (optimistic assessment), the defendant had a lawyer whom he or she paid with their own means.

It is difficult to estimate why the provision of legal aid affects such a small proportion of the total number of pending and completed pre-trial proceedings. The methods of this survey do not provide for assessing whether and to what extent pre-trial authorities fulfil effectively their obligation to make detained persons/defendants aware of their rights. A recent study by the Bulgarian Helsinki Committee identified a number of problems in informing persons held in custody by the police of their fundamental rights, especially in the case of illiterate persons.<sup>4</sup>

Moreover, the standard declaration with which the defendant states that he or she cannot afford to pay for his or her defence and would like to benefit from legal aid under the LAA, contains an explicit warning that legal aid is not free of charge and in case of conviction, should be reimbursed by the convicted per-

<sup>4</sup> Angelova, D., Kanev, K., Stanev, K., Deklarazii za pravata na zadarjanite v Bulgaria, Bulgarski Helsinski Komitet, 2017, p. 49 et seq. The study is available online at: [www.bghelsinki.org](http://www.bghelsinki.org)

son regardless of his or her property status. This information is also provided to the defendant orally by the investigating authorities in the context of the obligation to inform them about their right to legal aid. One can assume that this acts as a serious deterring factor and detained persons/defendants waive their right to a lawyer in the majority of cases in which the defence is not mandatory.

## b. Distribution of lawyers' reports by time and place of submission

The review of the representative sample of reports on legal aid provided in pre-trial proceedings shows that the reports are being submitted to the NLAB at relatively even intervals during the year, with the most reports being filed in the months of November, December and July. This finding does not necessarily reflect the time of legal aid provision and is not indicative of the actual time in which the pre-trial proceedings took place, but rather depends on the periodicity with which the bar associations submit their payment claims to the NLAB.

There are considerable differences in the workload of lawyers from different bar associations across the country. The greatest number of reports/claims

for payment of legal aid services granted in pre-trial proceedings have been filed by the Sofia Bar Association: 2754 reports, or 22% of the total, which is almost 53 times more than the reports filed by the Smolyan Bar Association, which has submitted the fewest reports on legal aid in pre-trial proceedings (52 reports, or less than 0.5% of the total number of reports filed in 2015).

The distribution of lawyers' reports obviously depends on the population density in the different regions, but only to a certain extent, i.e. the "geography" of legal aid provision does not fully coincide with the "geography" of the population. The total population of the city of Sofia and the region of Sofia accounts for 22% of the country's population and 22% of the reports/claims for payment of legal aid services granted in pre-trial proceedings have been filed by the Sofia Bar Association. However, the reports received from the bar associations in Stara Zagora, Vratsa, Plevan and Haskovo are more than the reports received from the Varna Bar Association, although the population of the Varna Region is twice as high as the population in the Haskovo Region and more than twice higher than the population of the Vratsa Region. One can assume that the population is an important factor for the geographic distribution of legal aid cases across regions

**Table 3. Periodicity in filing reports to the NLAB on the legal aid provided in the pre-trial phase of criminal proceedings in 2015**

Month	Number	Share in %
January	60	8
February	69	9
March	64	8
April	67	9
May	56	7
June	66	9
July	76	10
August	32	4
September	49	6
October	49	6
November	89	12
December	84	11

**Table 4. Geographic distribution of all reports filed to the NLAB for legal aid provided in pre-trial proceedings**

Bar association/number of reports	Share in %
Sofia (2754)	22.0
Plovdiv (909)	8.0
Bourgas (825)	7.0
Stara Zagora (672), Vratsa (621), Plevan (599), Haskovo (586), Varna (576), Sliven (518)	4.0–5.3
Blagoevgrad (495), Yambol (447), Lovech (431)	3.4–3.9
Rouse (376), Veliko Turnovo (352)	2.8–3.0
Pazardzhik (271), Dobrich (261), Kyustendil (235), Montana (213), Shoumen (209), Vidin (191)	1.5–2.1
Gabrovo (159), Silistra (122), Razgrad (115), Targovishte (116), Kardzhali (102), Pernik (87), Smolyan (52)	0.4–1.2

but is certainly not the only determining factor. Important determinants of the “geography” of legal aid are also poverty, education, the presence of a higher share of young people in the general population, and possibly other demographic factors. In particular, the fact that in 2015, the share of legal aid reports filed by the bar associations in Haskovo, Yambol and Bourgas in the total number of reports submitted for legal aid in the pre-trial phase was higher than the share of the population of these regions in the overall population of the country, was most likely due to the influx of refugees and migrants through the southern border of the country, which in 2015 was significantly higher than usual.

### c. Authority submitting the application for legal aid

In most cases, the request for appointing a lawyer from the National Legal Aid Register is submitted by the investigating police officer (96% of the cases). Such request has been filed by the prosecutor in only 1% of the cases (8 reports included in the sample). In individual cases, requests for the appointment of an ex officio lawyer are made by a judge or an investigator.

**Table 5. Authority submitting the application for legal aid**

Authority	Number	Share in %
Investigating police officer	733	96.0
Not specified/Not applicable	11	1.4
Prosecutor	8	1.0
Judge	5	0.5
Investigating judge	4	0.5

### d. Grounds for granting legal aid

The most common reason for granting legal aid is that the defendant cannot afford to pay for his or her defence, wants to be represented, and the interests of justice so require (Art. 94, Para. 1, point 9 of the CPC) – this ground has been stated in 40% of the reports on legal aid granted in pre-trial proceedings.

The second most common reason (32%) is that a request for preliminary detention has been filed. In 16% of the cases, legal aid was provided because the defendant did not know Bulgarian. In 11% of the cases, legal aid was granted because the defendant suffered from physical or mental deficiencies that prevented

**Table 6. Grounds for granting legal aid (Art. 94, Para. 1 of the CPC)**

Ground	Ground	Share in %
The defendant cannot afford to pay for his or her defence, wants to be represented, and the interests of justice so require (Art. 94, Para. 1, point 8 of the CPC)	308	40.0
A request for preliminary detention has been filed or the defendant is held in custody (Art. 94, Para. 1, point 6 of the CPC)	246	32.0
The defendant does not know the Bulgarian language (Art. 94, Para. 1, point 4 of the CPC)	120	16.0
The defendant suffers from physical or mental deficiencies that prevent him from defending himself (Art. 94, Para. 1, point 2 of the CPC)	81	11.0
The defendant is under 18 years of age (Art. 94, Para. 1, point 1 of the CPC)	66	9.0
The case is heard in the absence of the defendant (Art. 94, Para. 1, point 7 of the CPC)	36	5.0
The interests of the defendants are contradictory and one of them is represented by a defence lawyer (Art. 94, Para. 1, point 5 of the CPC)	32	4.0
No grounds have been specified	14	1.8
The case involves an offence punishable by a term of imprisonment exceeding ten years or by another more severe punishment (Art. 94, Para. 1, point 3 of the CPC)	13	1.7
Special representative (Art. 101 of the CPC)	10	1.3
Trustee	4	0.5
The defendant is held in custody (Art. 94, Para. 1, point 6 of the CPC)	3	0.4
Alternate defence lawyer (Art. 94, Para. 4 of the CPC)	2	0.2

them from defending themselves, while in 9% of the cases, the application was approved because the defendant was below 18 years of age.

The share of cases in which legal aid was granted on the account that the defendant suffered from physical or mental deficiencies that prevented them from defending themselves, probably does not reflect the actual share of defendants having such disabilities. The additional interviews with experts revealed that there were a number of cases in which the defendant was illiterate; however, under the law, illiteracy does not constitute a separate ground for mandatory defence, although it undoubtedly puts the defendant in a vulnerable position. There was a difference of opinion as to the legal grounds for providing legal aid to illiterate defendants. According to some of the experts interviewed, such defendants should be granted legal aid under Art. 94, Para. 1, point 4 of the CPC – the defendant does not know the Bulgarian language – since it is assumed that “knowing” requires the defendant to be able to use the Bulgarian language in both spoken and written form. Other experts, however, point out that in the case of illiterate defendants, investigating police officers most often request legal aid on the grounds that defendant suffers from physical or mental deficiencies that prevent them from defending themselves or on the grounds laid down in Art. 94, Para. 1, point 9 of the CPC, since illiterate defendants are also poor.

This controversial practice distorts the data on the actual number of defendants suffering from physical or mental disabilities. On the other hand, however, it is unclear whether and to what extent all pre-trial authorities tend to consider the illiteracy of the defendant as a specific circumstance that puts him/her in a vulnerable position, and hence, calls for mandatory defence.

### e. Characteristics of the legal aid granted by lawyers in pre-trial proceedings

The standardised lawyers’ report and the legal aid payroll system are organised so as to document the lawyers’ participation in specific procedural or investigative actions, not the actual work done on providing defence. The “type of legal aid” section in the standard lawyers’ reports includes boxes such as “consultation” and “drafting of documents for filing a case”, while

the “procedural representation and defence” section in fact lists the details of the pre-trial proceedings: case number, competent court, classification of the offence, “types of procedural actions taken by the lawyer”, concluding act at the pre-trial or the trial phase.

Under “types of procedural actions taken by the lawyer”, lawyers list the procedural or investigative actions they have participated in, while by way of “documents certifying the volume of legal aid granted” they usually provide copies of protocols from pre-trial proceedings or judicial acts. Activities such as “preliminary meeting with the defendant”, “informing the defendant about his rights”, “visiting a defendant held in custody” or “reviewing the case file” are not included in the report form; it is assumed by default that they have been performed. In the rare cases in which such activities are listed in the report and are specifically taken into consideration, when calculating the billable hours reported to the NLAB, they are added by the lawyer at his or her own initiative.

In the vast majority of cases, included in the sample, the involvement of the lawyer in pre-trial proceedings concerns him or her being present at the formal act of involving a person as a defendant and participating in the subsequent interrogation of the defendant: participating in the formal act of involving a person as defendant was listed in 94% of the reports for legal aid granted in pre-trial proceedings, while participating in the interrogation of the defendant was reported in 84% of the cases. In nearly 60% of the cases, lawyers reported being present during the disclosure of evidence, while in 30% of the pre-trial proceedings in which legal aid was provided the lawyers participated in a court hearing on the approval of plea bargains. Representation in custody proceedings was reported in 8% of the cases, while only individual cases involved the provision of legal aid in proceedings relating to the cumulation of penalties or to the execution of European Arrest Warrants.

It should be noted that in some of the cases included in the sample, the procedural and investigative actions referred to above were repeated several times within the same proceedings: 15% of all lawyers whose reports were surveyed, have participated more than once in the same procedural and investigative actions. For instance, at least three lawyers have attended the formal act of involving a person as a defen-

**Table 7. Participation of lawyers in procedural and investigative actions**

Action	Number	Share in %
Formal act of involving a person as a defendant	712	94.0
Interrogation of a defendant	638	84.0
Disclosure of evidence	452	59.0
Court hearing on the approval of plea bargain	231	30.0
Custody proceedings	61	8.0
Cross-examination	18	2.4
Informing the defendant about the motion by the prosecutor for pre-trial detention up to 72 hours	11	1.4
Witness interrogation	6	0.7
Recognition procedure	4	0.5
Participation in any of the above actions two or more times	111	15.0

dant and interrogation of the same defendant on four different occasions. Another lawyer has participated three times in the disclosure of evidence (for the same defendant and the same offence).

The sample did not register any cases of lawyers having participated in crime scene re-enactments (investigative experiment), 18 cases of participation of lawyer in cross-examinations and 4 cases of participation of lawyer in recognition procedures.

It cannot be inferred from the lawyers' reports what are the precise defence actions taken by the defenders in cases where they have participated personally in procedural or investigative actions. Most often, the defenders report having conferred with the prosecutor to reach a plea bargain (in 115 cases, or 15% of the sample), appealed a custody order (in 64 cases, or about 8% of the sample) or prepared personally a draft plea agreement (in 59 cases, or about 8% of the sample).

A review of the protocols attached to the reports revealed that in only 5 of the cases the defenders had made requests, comments or objections on the conduct of the procedural and investigative actions in which they participated. Where reports covered both pre-trial and trial proceedings, the number of the reported requests, comments and objections filed by the defence lawyers is slightly higher (in 25 cases out

of the 320 reports that include data about the pre-trial and the trial phase).

As a rule, the lawyers' reports do not provide reliable information on the preliminary actions taken by lawyers to prepare the defence; the standard report form does not contain a designated section for such data and inasmuch as anything is noted, the information is reported at the initiative of the lawyers and described in their own words. In the majority of cases (65% of the reports) no mention is made as to whether the lawyer had taken any preliminary actions to prepare the defence. In 236 reports (about 1/3 of the sample), lawyers have explicitly stated that they had reviewed the case file and this is the most commonly reported preparatory work done by legal aid lawyers. In 51 reports (7% of the sample), lawyers have explicitly stated that they had informed the defendant of their rights. 11 reports specify that the lawyer has gotten to know the defendant, 15 reports state that the lawyer has conducted a preliminary confidential meeting with the defendant, while 18 reports indicate that the lawyer has coordinated the main lines of defence with the defendant.

The ethical standards of the legal profession require that defence lawyers take some further action to ensure the fundamental rights of their clients, in addition to the general work done on preparing the

**Table 8. Preliminary actions\* taken by lawyers to prepare the defence**

Action	Number	Share in %
Not specified	492	65.0
Reviewing the case file	236	31.0
Informing the defendant of their rights	51	6.7
Coordinating the main lines of defence with the defendant	18	2.3
Conducting a preliminary confidential meeting with the defendant	14	1.8
Other	14	1.8
Getting to know the defendant	11	1.4
Travelling to another town to meet the defendant	4	0.5

\* The preliminary actions taken by lawyers to prepare the defence are not explicitly listed in the standard report form. The data provided here have been derived from the information included by the defenders in the report in free text.

defence, especially when the defendants are held in custody or are in a vulnerable position. Such further actions are not explicitly required by the law and are not accounted for in the standard report forms. Nevertheless, in some cases lawyers report such actions as part of the overall preparation of the defence granted under the LAA. Individual reports indicate that the lawyer has assisted a defendant in custody to receive personal items from relatives, or has contacted the consular authorities of a foreign state (where the detained person was a foreign national) or has sought assistance from the relatives of a defendant to secure compensation for the prejudice caused by the offence (with a view to achieving a plea bargain).

The lawyers' reports do not allow to estimate the average time spent on individual defence actions taken by lawyers in pre-trial proceedings. The total duration of the legal aid granted is specified in most of the reports but since nearly half of them contain informa-

tion on both the pre-trial and the trial phase, one cannot differentiate between the time spent on providing legal aid in the first and in the second case. Three quarters (75%) of the reports included in the sample indicate the total duration of the legal aid granted, with the average reported time being approximately 225 minutes (however, in 42% of the cases, this includes also the trial phase). In the largest number of cases (82 or slightly over 10% of the sample), lawyers reported having spent exactly 120 minutes on legal aid.

**Table 10. Total duration of legal aid granted (most often reported concrete values in the lawyer's reports)**

Time	Number of reports
30 minutes	10
60 minutes	46
90 minutes	20
120 minutes	82
180 minutes	56
240 minutes	57
300 minutes	48
360 minutes	31
420 minutes	11
480 minutes	33
600 minutes	11

**Table 9. Total duration of legal aid granted (consolidated data)**

Duration	Number	Share in %
Below 120 minutes	215	28
From 121 to 480 minutes	303	40
Above 480 minutes	57	8
Not specified	186	24

## MAIN CHARACTERISTICS OF PRE-TRIAL PROCEEDINGS IN WHICH LEGAL AID WAS GRANTED

### a. Types of offences investigated

According to the data of the National Statistics Institute, 27,787 offences committed in Bulgaria in 2015 have resulted in convictions, with the most frequently punished offences being crimes against property (theft, burglary/robbery, embezzlement, larceny, fraud), which represent 29% of all punished crimes, and road traffic offences (driving without a licence, driving under the influence, unlawful appropriation of

a motor vehicle), also accounting for 29% of all punished crimes. The third most often punished offence in the country in 2015 was the illegal border crossing, representing 10% of all punished crimes.

The structure of the most common offences for which legal aid was granted, according to the lawyers' reports, is rather different from the above statistics. One can assume that amongst the defendants benefiting from legal aid there are generally more indigent people compared to the average, i.e. the types of investigated offences for which legal aid was granted show the outlines of the criminality that is associated with poverty and social marginalisation.

Crimes against property represent a significantly higher share among the offences for which legal aid was granted: they represent half of all cases of legal aid against an average of 29% for the country.

Table 11. Types of offences investigated

Offence	Number	Share in %
Theft	324	43.0
Illegal border crossing	66	9.0
Other	62	8.0
Driving without a licence	50	7.0
Burglary/robbery	38	5.0
Acquisition/possession of controlled substances	36	5.0
Use of false/forged document	24	3.0
Driving under the influence of alcohol/drugs	16	2.0
Criminal battery	13	2.0
Embezzlement	13	2.0
Non-payment of child support	12	2.0
Illicit destruction/deterioration of property	12	2.0
Possession of excise goods without check band	11	1.0
Hooliganism	10	1.0
Cohabitation with a person below the age of 16 years without marriage	10	1.0
Sexual abuse or rape	9	1.0
Fraud	9	1.0
Illegal acquisition/possession of firearms	9	1.0
Illegal connection to the power transmission network	7	1.0
Human smuggling	7	1.0
Offences relating to road traffic accidents	7	1.0
Homicide	6	1.0
Illegal logging	5	0.6
Aiding and abetting the illicit cohabitation with a person below the age of 16 years	5	0.6

On the other hand, road traffic offences are far less represented among the cases on which legal aid was provided. In 2015, such offences accounted for 29% of all punished crimes but constituted only 10% of the legal aid cases. Road traffic offences require a motor vehicle to be committed, which excludes the poorest strata of the population.

No such deviations can be discerned with two other groups of offences. Crimes against the person (homicide, violent attacks, rape) accounted for 5% of all punished crimes in 2015 and 3.7% of the crimes for which legal aid was granted. The illegal border crossing is the third most often punished crime in the country for 2015, representing 10% of all punished crimes and it is the second most frequent crime among the legal aid cases with a share of 9%.

Although the reports included in the sample provide too limited data on some types of crimes to allow for a reliable comparison with the average for the country, one can assume that there is also a third peculiarity of the structure of investigated crimes for which legal aid was granted: most probably the offences related to the immediate material survival of the poorest (non-payment of child support, illegal connections to the power transmission network, illegal logging) are more common among the crimes for which legal aid is provided, compared to the average for the country.

## b. Concluding act of the pre-trial phase

Nearly half of the pre-trial proceedings in which legal aid is granted end with an indictment, while 27% of the cases close with a plea agreement. Pre-trial proceedings are terminated in 11% of the cases, while in 5% of the cases the prosecution drops the criminal charges, filing a motion for administrative penalty.

The total number of plea agreements on legal aid cases is probably slightly higher than 27%, if one considers also the agreements reached at the trial phase of the proceedings. Lawyers report having participated in court hearings for the approval of plea agreements in 30% of the cases in which legal aid was granted with respect to the preliminary phase of criminal proceedings. This is consistent with the copies of documents attached to the sampled reports: 236 of them (31% of the sample) include copies of court orders approving plea agreements.

A comparison between the data on the concluding acts of legal aid cases at the pre-trial phase and the data on the concluding acts of all pre-trial proceedings, reported by the prosecution, would provide a tentative answer to the question how does the presence of a lawyer from the legal aid system influence the outcome of the proceedings and would help arrive at some assumptions as to the quality of the legal aid

**Table 12. Concluding act of legal aid cases in the pre-trial phase of criminal proceeding**

Concluding act of the pre-trial phase	Number	Share in %
Indictment	359	47
Plea agreement	206	27
Termination of pre-trial proceedings	82	11
Not specified/not applicable	66	9
Proposal for release from criminal liability with the imposition of administrative penalty (Art. 78a of the Criminal Code)	37	5
Suspension of proceedings <sup>5</sup>	11	1

<sup>5</sup> Suspended proceedings have not been completed per se but "suspension of proceedings" is included in section "Concluding act of the pre-trial phase" of the standard report form of the NLAB because Art. 3, Para. 1, point 3 of the Ordinance on the Payment of Legal Aid authorises the NLAB to pay the lawyer's fees due in advance in case of suspended proceedings.

granted. Such a comparison is very difficult to make because, as mentioned earlier, the annual reports of the Prosecutor's Office include also pre-trial proceedings against an unknown perpetrator. In Table 13 below we provide a comparison between the number of the pre-trial proceedings in which legal aid was granted, the total number of pre-trial proceedings handled by the prosecution in 2015, and the pre-trial proceedings handled by the prosecution, which presumably have been brought against an established perpetrator (i.e. total number of prosecutions minus suspended prosecutions, which are usually brought against an unknown perpetrator).

Pre-trial proceedings in which legal aid was granted tend to result in an indictment much more often than the average for the country. Nearly half of the pre-trial proceedings in which legal aid was provided, have concluded with an indictment compared to one fourth (26%) of the pre-trial proceedings against an established perpetrator handled by the prosecution and only 14% of all pre-trial proceedings handled by the prosecution in 2015.

The share of pre-trial proceedings that have ended with a plea agreement is twice as high among legal aid cases than among all pre-trial proceedings against an established perpetrator, and three times higher compared with all pre-trial proceedings handled by the prosecution. This means that for a defendant who is represented by a lawyer from the legal aid system it is two or three times more likely to be involved in a plea bargain than the average defendant (who has defended himself or herself, or has retained a lawyer at his or her expense).

The reasons for this should be identified by a separate study. The focus group and the interviews with experts conducted in the context of this survey allowed to test several hypotheses, the most important of which is that legal aid is often granted in a perfunctory manner, i.e. the quality of legal aid is lower than the defence provided by a retained lawyer. This hypothesis could not be confirmed definitively but it could not be ruled out either. The respondents were divided in their opinion. The interviewed judges from cities other than Sofia and the lawyers participating in the focus group thought that there was no difference in the quality of legal services provided by lawyers from the legal aid system and the services offered

by retained lawyers. They tend to explain the higher share of indictments and plea agreements in legal aid cases, compared to the average for the country, with the fact that legal aid is granted mainly in criminal proceedings in which the defendant is willing to admit his or her guilt in order to achieve a plea agreement or be tried in an expedited judicial inquiry.

Another explanation for the higher share of plea agreements, which emerged in the focus group discussion and the interviews with lawyers, was that in most cases legal aid clients have already been convicted: they know what they can expect from the proceedings and prefer to end the case earlier. One of the lawyers (a young male from a district town) noted: "There are a lot of repeat offenders in legal aid. They know that they are guilty and will be punished, and seek a plea bargain on their own. They call me just to sign the papers". Probably this is also the reason for the few cases in which the defendant has been released from criminal liability with the imposition of administrative penalty (Art. 78a of the Criminal Code, it is only possible for first time offenders).

One of the cited reasons for the high share of indictments and plea agreements in legal aid cases was also the assumption that legal aid was granted in criminal proceedings involving more serious crimes, which limits the possibility for the defendant to be released from criminal liability with the imposition of administrative penalty. This explanation can hardly be accepted given that in only 2% of the cases legal aid was provided on the grounds that the offence involved was punishable by a term of imprisonment exceeding ten years or by another more severe punishment. Approximately half of all legal aid cases involve crimes against property, which are hardly the most serious crimes.

Some characteristics of the defendants using the legal aid system may indeed influence the outcome of the criminal proceedings. Apart from the existence of previous convictions, other factors probably also come to play. An interview with a lawyer (a middle-aged woman from Sofia) revealed that almost all criminal prosecutions for illegal border crossings ended with a plea agreement whereby the defendant was punished by probation. The defendants themselves tend to plead guilty and do not want to participate in judicial proceedings because their ultimate goal is to

leave Bulgaria and seek refugee status in one of the countries of Western Europe. At the same time, however, the lawyer noted, many immigrants were not even aware they had been convicted, which means that the defence lawyer had failed to explain the consequences of the plea agreement to his or her clients, including the fact that should they be caught trying to leave the country, they would be tried again for illegal border crossing and having been convicted already, would risk being imprisoned.

Although the gravity of the crime and the profile of the defendants cannot be disregarded as factors influencing the outcome of the case at the pre-trial phase, the interviewed judges from Sofia and lawyers outside the legal aid system tend to agree that the more likely explanation for the high share of plea agreements in legal aid cases at the pre-trial stage has to do with the poor quality of lawyer's work. These respondents shared their observations of the perfunctory work of lawyers from the legal aid system who appear at interrogations and hearings and sign documents but do not actually engage in the defence of the accused. One of the lawyers, a young man from a district town, noted: "To some extent, it is us, lawyers, who abuse the system. A plea agreement puts an end to the criminal proceedings in only two weeks. A court case may also be resolved in one hearing but the lawyer needs to prepare for it". Another lawyer (a middle-aged woman from Sofia) said: "The prevailing mentality [among lawyers in the legal aid system] is that there is nothing

much to be done and you just have to sign some papers. You talk to the defendant mostly to see what is the quickest way to close the case. The colleagues who do their job conscientiously as ex officio lawyers are rather the exception and they mainly come from amongst the young colleagues who are now entering the legal profession and seek to gain experience". One of the judges (a middle-aged woman from Sofia) noted that "regional courts hear mainly cases involving banal crimes and all end with a plea agreement".

Regardless of whether they agree that the quality of legal aid is lower than retained defence, all interviewed judges had reported cases in which ex officio lawyers approached the defence in a superficial manner and appeared in court only to sign the necessary documents. One of the judges (a middle-aged woman from a small town) referred to a ruling of hers in which she refused to credit a confession made by a defendant in the pre-trial phase in the presence of the lawyer, because the defendant who was illiterate claimed before the court that he had not confessed to anything and "only the lawyer spoke", while the interrogation protocol contained a statement by him (and by other defendants) indicating that "the four of [them] conspired" to commit the crime. According to the judge, "the term 'conspiracy' is a criminal law category denoting collective criminal activity; a legal speak, which can hardly be used in an unsolicited statement by any of the defendants" (all the defendants were illiterate Roma who did not speak Bulgarian well).

**Table 13. Concluding act of legal aid cases in the pre-trial phase of criminal proceedings – Comparison with the average for the country**

Type of prosecutor's act	As a share of pre-trial proceedings in which legal aid was granted (%)	As a share of all pre-trial proceedings handled by the prosecution (%)	As a share of the pre-trial proceedings handled by the prosecution, which presumably have been brought against an established perpetrator (%)
Indictment	47	14	26
Plea agreement	31	9	16
Act under Art. 78a of the Criminal Court	5	3	6
Termination	11	25	54
Suspension	1	47	–

Another judge interviewed (a middle-aged woman from a small town) said that she saw no difference between the quality of legal services provided by ex officio lawyers and by retained lawyers. At the same time, however, she admitted that the quality of legal aid may be different in the small towns and in large cities of the country, noting that “[the quality of legal aid] is not an issue in small towns because there are few lawyers and being inactive in the courtroom would not go unnoticed”. The same judge revealed that the administration of the local court had met with the head of the local bar association and the two institutions had agreed that requests for legal aid would not be allocated randomly among the lawyers listed in the National Legal Aid Register but “incompetent” lawyers would be excluded from the allocation. However, this fact alone shows that problems with the quality of legal aid exist in smaller towns, as well.

The defendant pleaded guilty in 64% of the pre-trial proceedings in which legal aid was granted. According to the lawyers participating in the focus group conducted to discuss the results of the quantitative survey, the high share of guilty pleas is due to the fact that most of the defendant are “recurrent clients” of the criminal justice system; they have been convicted before, they know what they can expect from the proceedings and prefer to confess in order to strike a plea bargain and speed up the resolution of the case. A judge (a middle-aged woman from Sofia) interviewed for the purposes of the survey, noted that defendants who have been held in custody for up to 72 hours on a motion by the prosecutor tend to be particularly eager to plead guilty, seeing the confession as a short cut to freedom. This opinion was corroborated by another interviewed lawyer.

**Table 14. Guilty pleas in pre-trial proceedings in which legal aid was granted**

Guilty plea	Number	Share in %
The defendant has pleaded guilty	487	64
Cannot be determined by the case file	151	20
The defendant has pleaded not guilty	123	16

### c. Remand orders

The most frequent remand orders imposed in pre-trial proceedings in which legal aid was granted, is police bail with 43% of all cases included in the sample. The second most common measure is remand in custody, imposed in every fifth legal aid case at the pre-trial phase (21% of the sample). Considered in view of the offences for which legal aid is usually provided, these data indicate a disproportionately harsh punitive repression, since the majority of legal aid cases involve relatively minor offences.

The remand in custody is not the only case when a legal aid client may be held in detention. In some cases included in the sample, the defendants were already serving prison sentences for previous offences, or have been detained by the Border Police after illegal border crossing.

It was also established that in 45 cases (or 6% of the sample) prior to the beginning of the pre-trial proceedings the defendant had been held in custody under Art. 72 of the Ministry of Interior Act (the so-called “police detention”) but no data were found to

**Table 15. Remand orders in pre-trial proceedings where legal aid was granted**

Remand measure	Number	Share in %
Police bail	330	43
Remand in custody	158	21
Not specified	113	15
No remand measure imposed	97	13
Not applicable <sup>6</sup>	48	6
Bail	9	1
House arrest	6	1

<sup>6</sup> The category “Not Applicable” includes cases where the reports contain no information whatsoever on the proceedings (for instance, where the ex officio lawyer has reported for duty but has not been involved in any action because the accused had meanwhile retained a lawyer of their own) or cases where the legal aid client cannot be expected to be held in custody (i.e. where the lawyer has participated in the pre-trial proceedings as a trustee or a special representative).

suggest that they had received any legal aid on these grounds.<sup>7</sup>

## PROFILE AND REMUNERATION OF THE EX OFFICIO LAWYERS

### a. Distribution of reports among lawyers

One of the main objectives of the LAA is to limit the unequal distribution of work load among lawyers providing legal aid. However, the data of the survey show that ten years after the adoption of the Act, this problem is yet to be resolved. The sample included 761 reports filed by 582 lawyers, i.e. an average of 1.3 reports per lawyer. The overwhelming majority of the lawyers (465) are represented in the sample with one report each, 83 lawyers happen to have two reports in the sample, 22 lawyers have 3 reports each, 3 lawyers are represented with 6 reports each, while 2 lawyers have 7 or 9 reports in the sample, respectively.

The unequal distribution of reports among lawyers is primarily due to the unequal distribution of lawyers across the country. Lawyers usually have their offices in towns where the courts are located. However, many towns with regional courts have very few lawyers, while there are also settlements with police precincts but without courts, where there are no lawyers at all. Three out of the five lawyers represented in the sample with six or more reports each, have their offices in such small towns.

Another factor influencing the unequal distribution of legal aid cases among lawyers is that until 2013 the filing of reports was not term-bound. Amendment<sup>8</sup> to the LAA adopted in 2013 introduced a provision requiring lawyers to file their reports within one year after completing their involvement with the case. Nevertheless, where specific valid reasons exist, a lawyer may submit his or her reports on legal aid granted over

several consecutive years even after that deadline. For this reason, one of the lawyers was represented with six reports in the sample, which, however, concern legal aid provided over three consecutive years.

These two explanations do not apply to other cases in which lawyers have been overrepresented in the sample. Two of the lawyers who have six and nine reports respectively in the sample, are members of the Sofia Bar Association: one has provided legal aid in pre-trial proceedings in several police precincts in Sofia, while the other has worked exclusively on cases involving offenses committed at the border crossing points of Kalotina and Dragoman. We were not able to establish why in these two particular cases the lawyers have been overrepresented in the sample of reports.

The unequal distribution of workload among lawyers has been identified as a problem by the NLAB. In a letter<sup>9</sup> dated April 2015, the NLAB called upon bar associations to report the rules they use in allocating lawyers for the provision of legal aid. In response to this letter, by the mid 2016 the local bar associations adopted and publicised their internal rules, which envisage criteria for allocating legal aid requests among their members and procedures for exercising internal control over the allocation of cases.

**Table 16. Distribution of reports included in the sample among lawyers**

Number of reports	Number of lawyers
1	465
2	83
3	22
4	7
6	3
7	1
9	1

<sup>7</sup> In 2015 a total of 44,320 persons have been detained under the Ministry of Interior Act. See *Angelova, D., Kanev, K., Stanev, K., Deklaratzii za pravata na zadarjanite v Bulgaria, Bulgarski Helsinski Komitet*, 2017, p. 66. The study is available online at: [www.bghelsinki.org](http://www.bghelsinki.org)

<sup>8</sup> Act amending and supplementing the Legal Aid Act, prom., SG, No 28 of 2013.

<sup>9</sup> NLAB letter to the bar associations in the country, Ref. No 15-12-17/21.04.2015.

## b. Distribution of the ex officio lawyers by gender and age

The lawyers providing legal aid in the pre-trial phase of criminal proceedings are more or less evenly distributed by gender: 51% of them are women and 49% are men.

As a whole, lawyers providing legal aid are middle-aged or older: more than half of them are between 41 and 60 years of age. One third of the lawyers (33%) are between 41 and 50 years of age, while one quarter (25%) are between 51 and 60 years. The youngest lawyer who has provided legal aid in the pre-trial phase of criminal proceedings in 2015 was 26 years old, while the oldest was 82.

## c. Remuneration of ex officio lawyers

In 2015, the average remuneration per report for legal aid in the pre-trial phase of criminal proceedings was BGN 203, which is higher than the average paid by the NLAB in all other types of legal aid cases (BGN 184).

Table 17. Distribution of lawyers by age

Age group	Number	Share in %
Between 26 and 30 years	15	2.6
Between 31 and 40 years	123	21.0
Between 41 and 50 years	192	33.0
Between 51 and 60 years	147	25.0
Between 61 and 70 years	72	12.0
Over 70 years	25	4.3
Not specified	8	1.4

The lowest fee paid on legal aid in pre-trial proceedings included in the sample, was BGN 50, while the highest was BGN 2,600. Usually, the fees paid ranged between BGN 101 and BGN 150 (27% of all cases) or between BGN 151 and BGN 200 (again 27% of all cases).

In most cases, the remuneration determined by the NLAB was within the limits prescribed in the Or-

Table 18. Average remuneration of ex officio lawyers by types of cases

Type of case	Average amount per payment order in BGN
Legal aid in cassation proceedings	370
Legal aid in appeals on criminal cases of general nature	323
Legal aid in fast criminal proceedings	213
Legal aid in pre-trial proceedings	203
Legal aid in immediate proceedings	191
Average on all legal aid decisions	184
Legal aid in criminal court cases of general nature	182
Legal aid in criminal court cases under administrative law	164
Legal aid in other types of cases	158
Legal aid in civil law cases	152
Legal aid in private criminal cases	117
Legal aid in appeals on private criminal cases	117

**Table 19. Remuneration for the provision of legal aid in pre-trial proceedings**

Amount of fee paid	Number	Share in %
Below BGN 100	13	1.5
Between BGN 101 and 150	202	27.0
Between BGN 151 and 200	202	27.0
Between BGN 201 and 250	91	12.0
Between BGN 251 and 300	60	8.0
Between BGN 301 and 350	67	9.0
Between BGN 351 and 400	16	2.0
Between BGN 401 and 450	17	2.0
Between BGN 451 and 500	43	6.0
Between BGN 501 and 600	12	1.5
Between BGN 601 and 700	16	2.0
Between BGN 701 and 800	10	1.3
Between BGN 801 and 1000	1	–
Above BGN 1000	9	1.5

dinance. In only one fifth of the cases (19%), the remuneration determined by the NLAB exceeded the statutory limit for the particular action. Most often, the reasons for exceeding the statutory limits involved provision of legal aid on weekends/holidays (5% of the sample) or to more than one defendant (4% of the sample).

## PROFILE OF THE DEFENDANTS

### a. Distribution of defendants according to the total number of accused persons in pre-trial proceedings

In the majority of legal aid cases (92%), pre-trial proceedings were brought against one defendant, in 5% of cases – against two defendants, in 1.6% of cases – against three defendants, and in 1.5% of cases – against more than three defendants, with one case being brought against 11 defendants.

**Table 20. Distribution of defendants according to the total number of accused persons in pre-trial proceedings**

Total number of defendants	Number	Share in %
One	700	92,0
Two	38	5,0
Three	12	1,6
More than three	11	1,5

### b. Distribution of defendants by gender and age

The main demographic characteristics of the defendants who have received legal aid in the pre-trial phase of criminal proceedings are not included in the forms for the lawyers' reports, while in 15 to 25% of the cases included in the sample, they cannot be established also from the copies of documents lawyers have attached to their reports. A complete demographic profile of the defendants can be established only in cases where the lawyer's report is accompanied by a plea agreement approved by the court or by some other court act. Data on individual demographic indicators (gender, age) are relatively complete, but data on other indicators are missing in approximately 1/4 of the examined reports, i.e. not all the results are representative.

More than 90% of the defendants who have been granted legal aid in pre-trial proceedings were men, which is consistent with the national average: according to National Statistics Institute data in 2015 women accounted for only 8.8% of the total number of convicted persons.

Approximately 10% of all who have received legal aid in pre-trial proceedings were under 18 years

**Table 21. Distribution of defendants by gender**

Gender	Number	Share in %
Male	694	91
Female	67	9

**Table 22. Distribution of defendants by age**

Age	Number	Share in %
Below 18 years	78	10.0
Between 18 and 29 years	339	45.0
Between 30 and 60 years	325	43.0
Above 60 years	15	2.0
No data	4	0.5

of age, while more than half were between 18 and 29 years. The share of minor defendants among the legal aid clients in pre-trial proceedings is three times higher than the share of minors among convicted persons in general (approximately 3% of the persons convicted in 2015 were minors). This finding can be explained by the mandatory nature of defence in such cases. The defendants between the age of 18 and 29 years account for 45% the legal aid clients in pre-trial proceedings and 38% of convicted persons in 2015, i.e. young people are slightly more represented among the clients of the legal aid system.

### c. Distribution of defendants by citizenship and nationality

The predominant share of the defendants (88%) are Bulgarian citizens; 11% are foreign citizens, while one defendant has been listed as stateless.

Data on the nationality of the defendants could be established only where lawyers' reports contained copies of plea agreements or other court acts. Most of the defendants were listed as Bulgarian nationals, 31 defendants (4%) were listed as Roma, while in 15 cases (2% of the total) the accused person was listed as Turkish. The focus group with lawyers conducted to discuss the results of the quantitative survey revealed that investigating authorities in the pre-trial phase do not establish the nationality of the accused; only in the trial phase (if the case enters the court), the judge (sometimes) registers this fact by asking the defendant to state his or her nationality. By general agreement among the lawyers who participated in the focus group, the data suggesting that 4% of the recipients of legal aid were Roma, are not consistent

with their practice. According to the lawyers, 70-90% of their clients were Roma.

In 11% of the legal aid cases, the defendants had a different nationality than the three referred to above: 22 of them were Syrians, 13 – Afghani, 9 – Iraqi, 7 – Algerians, etc.

The considerable share of foreign citizens among the recipients of legal aid in pre-trial proceedings raises the issue of the access to an interpreter. According to Art. 395a et seq. of the CPC, a defendant who does not speak Bulgarian, is entitled to an interpreter and translator in a language he or she understands. The cost of translation/interpretation is covered by the State. The translator/interpreter who provides translation/interpretation in the course of procedural and investigative actions, also does so during the meetings between the defendant and his or her lawyer. The focus group with lawyers did not reveal any problems in this respect but it should be noted that the participants had limited experience in working with foreigners and it is advisable to conduct a separate survey on this matter, especially in the regions of Yambol, Haskovo and Bourgas, which have the most cases of illegal border crossing.

### d. Distribution of defendants by level of education

Some 30% of the legal aid clients in pre-trial criminal cases have primary or lower than primary education, while 26% of them have completed basic education. Every fifth legal aid client (19% of all cases) has secondary education, while approximately 1% have graduated from an university. The prevailing opinion among the lawyers and judges interviewed for

**Table 23. Distribution of defendants by level of education**

Completed level of education	Number	Share in %
Primary or lower	230	30
Basic	197	26
Not specified	179	24
Secondary	145	19
High (University)	10	1

the purposes of the survey is that the existence of a certain level of formal education do not correspond to the actual level of education of defendants, many of whom are illiterate or do not speak Bulgarian well enough to be able to follow the developments in the pre-trial phase.

### e. Distribution of defendants by marital status

About 15% of the reports do not indicate the marital status of the defendants. Most of the legal aid clients in pre-trial criminal cases (64%) have not entered into marriage. Only approximately 11% of them have been listed as married. In the vast majority of cases, the lawyers' reports and the documents attached thereto do not indicate whether the defendants have children, and if yes, how many and at what age. Only 6% of the defendants are known for sure to have children.

**Table 24. Distribution of defendants by marital status**

Marital status	Number	Share in %
Single	486	64
Not specified	117	15
Married	85	11
Divorced	40	5
Cohabiting	23	3
Widowed	10	1

### f. Distribution of defendants by employment status

No data on the employment status of defendants can be found in approximately 20% of the examined reports. Nearly half (49%) of all legal aid clients in pre-trial proceedings are known to be unemployed. Only 8% of the defendants are in employment. The share of unemployed defendants in the legal aid system (49%) is twice as high compared to the share of unemployed persons among the established perpetrators of offences in 2015 (22 %).<sup>10</sup>

<sup>10</sup> The data are obtained from Police Statistics for 2015, accessed at the Mol website: [www.mvr.bg](http://www.mvr.bg) on 22 January 2018.

**Table 25. Distribution of defendants by employment status**

Employment	Number	Share in %
Unemployed	374	49
Not specified	149	20
Not in employment	90	12
In employment	59	8
In education	39	5
Other	39	5
In retirement	11	1

### g. Distribution of defendants by criminal record status

Half of the defendants who have been granted legal aid in pre-trial proceedings have had previous convictions, while in 5% of the cases, the defendant has been convicted twice or more times. The sample included two cases in which the defendant had been convicted nine times, two cases in which the defendant had been convicted eight times, two cases in which the defendant had been convicted seven times, three cases in which the defendant had been convicted six times, four cases in which the defendant had been convicted five times, six cases in which the defendant had been convicted four times, and 21 cases in which the defendant had been convicted already two times.

The share of persons with previous convictions among the legal aid clients is significantly higher than the share of previously convicted persons among the established perpetrators of offences in 2015 (34%).<sup>11</sup>

**Table 26. Distribution of defendants by criminal record status**

Criminal record status	Number	Share in %
Previously convicted	384	50
Not convicted	299	39
Not specified	78	10

<sup>11</sup> Ibid.

## CONCLUSIONS AND RECOMMENDATIONS

Ten years after the adoption of the LAA, legal aid in the pre-trial phase of criminal proceedings continues to affect a relatively limited number of pre-trial proceedings. An accurate assessment can hardly be made because the reports of the prosecution service include also pre-trial proceedings against an unknown perpetrator, while the provision of legal aid involves between 6% (conservative assessment) and 34% (optimistic assessment) of the pre-trial proceedings. The reasons for the limited access to legal aid should be the subject of a separate survey but one of the possible explanations lies in the fact that the NLAB has a statutory obligation to claim reimbursement of the legal aid granted even from the indigent defendants. When the right to defence is explained to defendants, they are also informed that they would be obliged to reimburse the cost of defence, if they are convicted, which most likely limits the provision of legal aid only to cases where the defence is mandatory. It is recommended that this problem be solved by legislation and indigent defendants be exempted from the obligation to reimburse the NLAB for the legal aid they have received.

Pre-trial proceedings, in which legal aid has been granted, tend to result in indictments or plea agreements more often than the average for all pre-trial proceedings. Plea agreements, in particular, are two or three times more likely in pre-trial proceedings in which legal aid has been granted than the average for the country (depending on whether the average is calculated based on the total number of cases handled by prosecutors or the estimated number of pre-trial proceedings brought against a known perpetrator). Several possible explanations for this finding were tested in the focus group and interviews. Some experts believed that the primary cause lies in the fact that a large share of legal aid clients have already been convicted. They know what they can expect from the proceedings and prefer to end the case faster, i.e. admit their guilt and strike a plea bargain. Other experts, however, rather tend to accept that the quality of defence provided by ex officio lawyers is lower than the one offered by retained lawyers, and cite many cases

in which ex officio lawyers have performed their duties in a perfunctory manner.

Therefore, it is advisable that the National Legal Aid Bureau (NLAB) and the local bar associations enhance their administrative capacity to monitor and evaluate lawyers' performance, carry out periodic proactive reviews to that effect, and assess the quality of legal aid, taking into consideration also the opinion of the clients, as is the established practice in other EU Member States. On the other hand, it would be appropriate to re-examine the standard report forms for legal aid, so as to document not only the participation of the lawyer in certain procedural or investigative actions but also the full range of activities performed by the lawyer (reviewing the case file, meeting with the defendant to clarify his or her rights and discuss the main lines of defence) and register the actual billable hours spent on them.

The structure of crimes for which legal aid is granted varies significantly from the general picture of punished crimes in the country. Legal aid is predominantly provided in cases involving offences that have to do with the poverty of the defendants (crimes against property but also characteristic, albeit less represented offenses, such as non-payment of child support, illegal logging, illegal connections to the power transmission network, etc.). These are relatively minor offences but they are often committed repeatedly, which leads to harsher punitive repression against the perpetrators. Repeat offences entail harsher punishments and custodial sentences, as well as remand in custody: 32% of the requests for legal aid involve imposition of custodial remand orders, while every fifth defendant receiving legal aid in pre-trial procedures is held in custody. However, harsher punitive repression does not lead to rehabilitation, considering that half of the defendants in the legal aid system have at least one previous conviction.

The vast majority of the defendants in the legal aid system are men below the age of 29 years; half are unemployed; half have at least one previous conviction; 9% are under 18 years of age; the share of illiterate persons is probably high even among those who have completed some level of formal education. These findings outline several groups of vulnerable defendants in the legal aid system who should receive special protection under the national law and whose defence

requires special professional competence of lawyers. However, the standard report form used by the NLAB to document lawyers' work at the time of the survey did not allow for retrieving data based on criteria relating to the profile of legal aid clients: their main demographic characteristics are not fully registered by the lawyers. Thus, in assessing the quality of legal aid, bar associations and the NLAB have no information on which to estimate whether the defence has taken into account the vulnerable position of legal aid clients. In order to solve this problem, it is recommended that the following measures be taken:

- ▶ adapt the standard report form on legal aid, so as to ensure that lawyers will fill in information that would allow to establish the vulnerable status of their client, as well as the contact details of the defendant;
- ▶ where the defendant is illiterate, this should also be explicitly stated in the lawyers' reports;
- ▶ the specifics of providing defence to vulnerable persons should be prioritised in the continuing professional training programmes for lawyers included in the National Legal Aid Register.

The survey found that 16% of the defendants receiving legal aid in the pre-trial phase of criminal proceedings, do not speak Bulgarian, while 11% are foreign nationals. Translation/interpretation during the

performance of procedural and investigative actions is provided by interpreters appointed by the pre-trial authorities and paid by them. It is recommended that a targeted survey be conducted to establish the actual fulfilment of the right to an interpreter/translator in criminal proceedings, especially in the regions affected by a higher number of pre-trial proceedings involving illegal border crossing (Haskovo, Yambol, Bourgas).

The results of the survey point to the need to develop the system for continuing professional training of lawyers by conducting special courses on the following topics:

- ▶ Fundamental rights of detainees;
- ▶ Specifics of providing defence to minors and other vulnerable defendants;
- ▶ Employing forensic psychiatric and forensic psychological expertise in the defence;
- ▶ Recent developments in the case law of the European Court of Human Rights in respect of the right to defence and the right to a fair trial;
- ▶ Recent developments in European Union law on the protection of fundamental procedural rights, in particular the directives adopted in implementation of the Road map for strengthening the procedural rights of suspected or accused persons in criminal proceedings (2009).

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