



IMPROVING PROTECTION OF VICTIMS' RIGHTS: ACCESS TO LEGAL AID

Research paper on legal framework and best practices

COUNTRY REPORT – BULGARIA

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The present country report on the legal framework and best practices in relation to providing legal aid to victims of crime was prepared as part of the initiative *Improving Protection of Victims' Rights: Access to Legal Aid*, where the Center for the Study of Democracy takes part together with universities, NGOs and experts from Poland, Italy, Latvia and Spain. The initiative looks at the legal framework in the partner Member States to discover functional legislative and practical models, as well as flaws on legal and policy level. The initiative aims at contributing to the further development of minimum standards in the protection and assistance to victims, especially in the area of access to free legal aid by the state or civil society organisations.

The report used two main methods: **desk research** of primary and secondary legislation, as well as the reports of relevant institutions, and **a questionnaire** to relevant stakeholders. The closed type questionnaire used was sent via electronic and ground mail to fifty institutions, organisations and their representatives, including the 28 regional bar associations in the country, the Supreme Bar Council, NGOs, including magistrates' professional associations, as well as other state authorities concerned. Answers were received by thirty-three representatives of institutions, NGOs and attorneys.

1. Definitions and legislative history

1.1. Definition of victim in Bulgarian legislation; notions of direct and indirect victims

Bulgarian Criminal Procedure Code (hereinafter, *CPC*)¹ defines the direct victim as the physical person, having sustained material or moral damage from the crime. In case of death of the direct victim, the victim capacity passes on to the indirect victims – his/her heirs (Art. 74, *CPC*).

The Law on Assistance and Financial Compensation to Victims of Crime (hereinafter, *Law on Victims' Assistance*)² is a specific law with a narrower scope, regulating the assistance and compensation to victims of terrorism, premeditated murder, premeditated grave bodily injury, carnal abuse and rape, out of which grave injuries have ensued, human trafficking, crimes, committed by order or in execution of a decision of an organised criminal group, as well as other serious (carrying a punishment of more than 5 years of imprisonment) premeditated crimes as a legally stipulated result of which death or grave bodily injury have occurred (Art. 3, *Law on Victims' Assistance*). It defines explicitly the category of indirect victims of such crimes by including in it, in case of the direct victim's death, his/her children, parents, spouse or the person, with whom he/she co-habited (Art. 3, *Law on Victims' Assistance*). As will be seen below, the Law, carrying a specific legal framework on the status of victims of specific crimes, is a document, attempting to follow international and EU standards in the area more closely than

¹ **National Assembly of the Republic of Bulgaria** (2006): Наказателно-процесуален кодекс [Criminal Procedure Code] (State Gazette 86/28.10.2005), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135512224> (12 November 2013)

² **National Assembly of the Republic of Bulgaria** (2007): Закон за подпомагане и финансова компенсация на пострадали от престъпления [Law on Assistance and Financial Compensation to Victims of Crime] (State Gazette 105/22.12.2006), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135540550> (12 November 2013)

the CPC. However, both the assistance and the financial compensation it regulates are applicable only to its specific circle of victims, which, partly due to harsh financial realities, is fairly narrow.

1.2. Definition of legal aid in domestic legislation

Legal aid under Bulgaria's specific *Law on Legal Aid*³ does not have an explicit definition, but the concept can be delineated by its scope, as reflected in different norms of the Law. It covers criminal, civil and administrative cases before all court instances, i.e. regarding criminal cases, a strong emphasis is put already by definition on the trial phase. It is provided by attorneys-at-law and is financed by the state budget with the aim of guaranteeing equal access to justice to physical persons (Art. 1-5, *Law on Legal Aid*). It covers, inter alia: consultation in view of reaching an agreement before court proceedings or of instituting proceedings; preparation of documents for instituting proceedings and procedural representation (Art. 21, *Law on Legal Aid*). It is organised by the National Legal Aid Bureau and the bar councils.

1.3. Legal aid to victims of crime – brief legislative history

Chronologically, the current CPC and the two laws, on which the report will mainly be based – *the Law on Legal Aid* and the *Law on Victims' Assistance* – were adopted and entered into force within a short period of time between 2006 and 2007. The *CPC* talks about legal representation of victims only in terms of who can represent them, while the *Law on Victims' Assistance* stipulates state-provided legal aid for its specific circle of victims by reference to the *Law on Legal Aid*. The latter's scope was notably widened in 2013 in accordance with Bulgaria's international commitments and in harmonisation with a number of other domestic legislative acts.

2. Right to information about victims' legal situation

According to the CPC (Art. 75), during the pre-trial stage the victim has the right to, inter alia, be informed about his/her rights in criminal proceedings and about the progress of proceedings. He/she is entitled to that information, if he/she has specifically requested to participate in the pre-trial proceedings and has specified an address for summoning in the country. Also, he/she is immediately informed of the institution of pre-trial proceedings, if he has specified an address for summoning in the country.

In line with the approach of *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*

³ **National Assembly of the Republic of Bulgaria** (2006): Закон за правната помощ [Law on Legal Aid] (State Gazette 79/4.10.2005), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135511185> (12 November 2013)

(hereinafter, the 2012 Directive)⁴ and preceding documents, the *Law on Victims' Assistance* specifies explicitly many of the instances, where the limited circle of victims it covers should get information (Art. 6, *Law on Victims' Assistance*, please see below).

2.1. Information about the procedure for submitting a complaint

The *Law on Victims' Assistance* provides explicitly for the right of victims to be informed about the bodies, before which they can submit a complaint, the procedures after submitting a complaint and the options victims have under those procedures. The *CPC's* general norm about informing victims about their rights in criminal proceedings might theoretically exclude the information on how to submit a complaint,⁵ since criminal proceedings, if any, or preparations thereto would only take place at a later moment, when authorities get the information about the crime committed.

In any case, the victim can report a crime to the police or to the Prosecutor's Office, where, if the victim appears in person, authorities would in practice direct him/her on how to properly file the complaint.

2.2. Information about status of proceedings

The status of criminal proceedings is among the explicit issues, which victims should be informed about according to the *CPC*. The *Law on Victims' Assistance* covers information about status of proceedings implicitly, under the obligation of authorities and NGOs to inform about 'procedures after submitting a complaint and the victims' options under the conditions and order of those procedures' and victims' 'options to participate in criminal proceedings' (Art. 6, *Law on Victims' Assistance*).

2.3. Information about rights during pre-trial proceedings; rights concerning authorities' decision to end investigation/not to prosecute the offender; rights during trial and appeal

Both under the *CPC* and the *Law on Victims' Assistance*, victims have the right to be informed about their rights in criminal proceedings and their opportunities to participate in them.

Under the *Law on Victims' Assistance*, concerning specific crimes, the victim has the right to be informed by police and victim support organisations, in writing or orally, in a language he/she understands, about:

- how and where he/she can obtain counselling, support and legal aid free of charge;

⁴ **European Parliament and Council of the European Union** (2012): Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, pp. 57-73), Strasbourg: European Parliament and Council of the European Union, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:01:EN:HTML> (12 November 2013)

⁵ Somewhat contrary to preambular par. 22 of the 2012 Directive '[t]he moment when a complaint is made should... be considered as falling within the context of criminal proceedings' and Art. 4 of the Directive, providing that victims are offered information 'from their first contact with a competent authority'.

- how and where he/she can receive protection for him/her and his/her relatives and financial compensation;
- how to protect his/her rights and interests, if he/she is a foreigner or if he/she has been victimised abroad.

Besides the victim's general right to information, covering all stages of criminal proceedings until the pronouncement of the final court act, the *CPC* stipulates specific information-related entitlements at various points throughout the regulation of criminal proceedings, among which:

- the right of the victim to obtain information from the court or pre-trial authorities about his/her entitlement to lodge a civil claim (Art. 73);
- the right to maintain requests, notes and objections, as well as appeal acts, infringing his/her rights and lawful interests;
- the right to be notified about the refusal of the prosecutor to institute pre-trial proceedings (Art. 213) or his/her move to terminate or suspend criminal proceedings after receiving the investigation file from investigative authorities (Art. 243-244); the right to appeal accordingly;
- the right to get acquainted with investigation materials after closing the investigation, upon specific request (Art. 227), except in cases of fast-track and immediate proceedings (Art. 356, 362);
- the right to be notified about the termination of proceedings by the judge-rapporteur (Art. 250) and appeal accordingly;
- the right to be notified about the scheduling of the trial (Art. 255);
- the right to be granted by the judge rapporteur the opportunity to get acquainted with trial materials (Art. 257);
- the right to be notified about a plea agreement, closing the proceedings (Art. 382).

2.4. Information about opportunities to obtain legal advice/legal aid

The right to legal aid, the bodies, conditions and order for providing it are among the explicit issues, which the *Law on Victims' Assistance* provides for information on. State-provided legal aid is not mentioned as such in the *Criminal Procedure Code*, but the *Code* postulates the right of private accusers, private complainants and civil claimants as parties to the trial to have counsel appointed by the court, if they present evidence they do not have means to pay an attorney, want to have counsel and the interests of justice so require (Art. 100). In the opinion of legal aid practitioners, relevant authorities give timely information about legal aid, sometimes even over-referring victims to hire an attorney/get legal aid in order to ease their own workload.

2.5. Information about opportunities for reimbursement of expenses, related to proceedings

Although not explicitly regulated, reimbursement of expenses would undoubtedly fall under victims' procedural rights and authorities are bound to provide to them information on how to obtain such.

2.6. Information about opportunities to participate in restorative justice services

Bulgarian legislation does not provide for restorative justice mechanisms within the framework of criminal proceedings.

2.7. Information about opportunities to obtain state compensation

State compensation, and the right to obtain information about it, are explicitly regulated in the *Law on Victims' Assistance*, but fall outside the scope of the *Criminal Procedure Code*.

2.8. Information about any special arrangements available to protect victims' interests, if they are foreigners

The right to information about foreigners' specific entitlements is explicitly provided for in the *Law on Victims' Assistance*. Victims should also be informed about the options for protecting their rights and interests, if they have been victimised on the territory of another country.

The *Criminal Procedure Code* contains a number of special arrangements, regarding foreigners, so criminal justice authorities are bound to inform EU and non-EU residents about their additional rights within their general duty to give information.

2.9. Right not to receive information

Since under the *Criminal Procedure Code* the rights of a victim emerge when he/she explicitly requests to participate in pre-trial proceedings and states a summonsing address in Bulgaria, it is only conceivable that the victim would not receive information if he/she does not participate in proceedings. An explicit option not to receive information is not present in the *Law on Victims' Assistance* either.

2.10. Ethical issues in providing information to victims of crime

Apart from some ethical aspects of the general principles of the *Criminal Procedure Code*, an attempt to regulate part of the ethical issues, related to, inter alia, providing information to victims of crime, is reflected in a special *Instruction of the Ministry of Interior on Receiving Citizens and Assisting Victims of Crime*.⁶ It defines 'reception' as the timely hearing, registering or assisting citizens upon each signal for a crime or a violation of order, a problem or a request for assistance from police authorities (Art. 2). The *Instruction* stipulates that receiving citizens and assisting victims of crime is done, following the principles of, inter alia, upholding fundamental rights and freedoms and police professional standards in the area (Art. 3). Police

⁶ **Ministry of Interior of the Republic of Bulgaria** (2008): ИНСТРУКЦИЯ № 13-507 от 26 март 2008 г. за осъществяване на прием на граждани и подкрепа на жертви на престъпления в структурните звена на Национална служба "Полиция" [Instruction № 13-507 of 26 March 2008 on Receiving Citizens and Supporting Victims of Crime in the Structural Units of the National Police Service] (State Gazette 38/11.04.2008), Sofia: Ministry of Interior of the Republic of Bulgaria, available only in Bulgarian at: www.compensation.bg/Documents/iiz-507.doc (12 November 2013)

officers, receiving and assisting victims of crime should hear each citizen, regardless of the problem he/she poses (Art. 9, par. 1). For hearing citizens and follow-up action within the competence of the receiving police structure, citizens are not to be referred to other police services. If the case is within the competence of other police authorities, the case is referred to them *ex officio*. If the case is not within the competence of police at all, police officers refer citizens to the respective other institutions and organisations (Art. 9, paras. 2-4). Police officers receiving citizens and assisting victims of crime should, *inter alia* (Art. 12):

- hear citizens with sufficient consideration,
- report on the necessity of providing an interpreter, teacher, psychologist, a person of medical background, etc.,
- guarantee the confidentiality of facts and circumstances, established while hearing the citizen;
- show the necessary attention, patience and courtesy and not make improper comments;
- not allow discrimination or privileges;
- keep neutrality and impartiality.

Ethics rules for magistrates, however, deal with victims of crime and their position only very indirectly.

2.11. Sufficiency of information and problems in obtaining it – opinions of stakeholders

The few practitioners, having elaborated in more detail on the problems victims face in obtaining information, express general criticism towards the capacity and commitment of institutions involved towards informing victims about their rights.

On an overall level, an NGO representative states that authorities and organisations involved do not allocate enough time for providing adequate information, while a judge points among the reasons the excessive workload of those involved. Another NGO representative is of the opinion that only the court during trial meets in full the obligation to inform victims about their rights, while information by police is often not sufficient or competent enough, when citizens submit complaints, and the Prosecutor's Office is sometimes overly formalistic, informing only about the right to appeal. The NGO representative thinks highly of the publicisation of the role of the Ministry of Justice and the website of the National Council for Assistance and Compensation of Victims of Crime (the body co-ordinating the activities under the Law on Victims' Assistance and deciding on and administering financial compensations), but fears it is only useful to citizens regularly using the Internet and states there is lack of preliminary (before any victimisation occurs) provision of information throughout society.

On the contrary, a judge considers the *Law on Victims' Assistance* generally unknown to citizens and competent institutions, victims are allegedly informed about their options under this *Law* rather by exception and the National Council is not very active in publicising forms of assistance.

3. Legal aid to victims of crime – general considerations

3.1. Characteristics and selection criteria for a victim to be entitled to legal aid

Bulgarian *Law on Legal Aid* delineates two main groups of physical persons, who can benefit from state-provided legal aid, in accordance with the stage it is provided for – and each group comprises several categories.

State-provided legal aid for consultation in view of reaching an agreement before court proceedings or of instituting proceedings and for preparation of documents for instituting proceedings (Art. 22), so called ‘primary legal aid’, as regards victims of crime, is given to the following recipients, for whom it is free:

- persons and families eligible for monthly or targeted support under the social support legislation;
- persons, accommodated in specialised social institutions or using other social accommodation;
- children, accommodated in foster families or families of relatives;
- the 2013 amendments, apart from expanding the other categories, significantly add children at risk and victims of domestic or sexual violence, or human trafficking, who do not have means, but wish to be defended by an attorney.

Those facts about the persons eligible are certified by court decisions, documents, issued by relevant competent authorities and declarations on persons’ family and property situation.

Although not explicitly stipulated in the *Criminal Procedure Code* or the *Law on Legal Aid*, based on the right under the *Code* (Art. 75) of the victim to have counsel, in practice pre-trial authorities can and do receive, as well as rule on, requests from the above groups for procedural representation during the pre-trial phase.

Legal aid for procedural representation (Art. 23), as regards victims of crime, concerns the parties to the criminal proceedings, who do not have means for paying an attorney, wish to have one and the interests of justice so require. Practically, this hypothesis covers victims, who have entered trial proceedings as civil claimants or private accusers. Victims of lesser crimes, triable by a ‘private complaint’, submitted directly to court, or the so called ‘crimes of private nature’, are also eligible for legal aid under this provision. The assessment of eligibility is done by the court, based on the person’s income, a declaration on property situation, the person’s family, health and employment status, age and other circumstances.

Legal aid can be refused if, inter alia, it would not be justifiable with regard to the benefit, which it would bring to the person applying for it (Art. 24), but legal aid practitioners state it has never been refused to victims of crime.

Legal aid for consultation in view of reaching an agreement before court proceedings or of instituting proceedings and for preparation of documents for instituting proceedings is decided

upon, after a request by the person concerned, by the Chair of the National Legal Aid Bureau within 14 days after presenting the relevant documents, concerning material status. Legal aid for procedural representation is decided upon, depending on the stage of proceedings, by pre-trial authorities or by the court after a request by the person concerned and the submission of relevant documents, concerning material status. A refusal thereto is subject to appeal, respectively, under the *Administrative Procedure Code*⁷ or the *Criminal Procedure Code*. The written act for providing legal aid is sent immediately to the bar council in the relevant region for appointing an attorney from the National Legal Aid Register – if possible, the attorney of the person’s choice, if the legal aid applicant has pointed to one (Art. 25, *Law on Legal Aid*). The attorney appointed covers legal aid at all phases and court instances, unless there is an objection for that, can re-authorise another attorney from the national register and can be replaced upon request of the deciding authority (Art. 26, *Law on Legal Aid*).

The person, to whom legal aid is provided, should notify the deciding authority about any change in the circumstances, based on which legal aid was provided and the deciding authority may terminate it. If the person does not notify the authority on time, he/she should reimburse the expenses made as of the moment of change (Art. 27, *Law on Legal Aid*).

3.2. Special conditions for foreigners

EU residents certify their material status with relevant documents from the Member States they come from. Legal aid practice has not yet come across non-EU resident victims.

3.3. Restrictiveness of conditions for granting legal aid to victims and balance with legal aid to offenders – opinions of stakeholders and researchers’ conclusions

Legal aid practitioners deem the conditions for granting legal aid fairly restrictive because of the fairly low threshold of indigence, set by referral to the social assistance legislation. There has been an idea to set the threshold of indigence at the level of the minimum monthly wage, but it has not been implemented yet in legislation.

Elaborating on the general concept of balance between legal aid to victims and offenders, an NGO representative claims they are not ‘communicating vessels’ and there cannot be a balance between them.

Legal aid practitioners claim that, in terms of access to an attorney, defendants receive more aid and advice, one of the reasons being that legal aid is relatively not well known, especially among victims of crime.

⁷ **National Assembly of the Republic of Bulgaria** (2006): Административнопроцесуален кодекс [Administrative Procedure Code] (State Gazette 30/11.04.2006), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135521015> (12 November 2013)

Before the expansion in 2013 of the circle of victims, who can obtain legal aid before trial has started, scholars argue⁸ that, during the pre-trial phase, victims should get adequate means of defence, like the ones the defendant has, because oftentimes they do not have sufficient means to hire an attorney, which demotivates them from further participation to the trial. This argument is still valid, since there are still a number of categories of serious crimes, whose victims, if not falling under the coverage of social assistance legislation, fall outside the scope of the *Law on Legal Aid*. Legal aid practitioners claim that the intention behind the 2013 amendments was to make legal aid at least for trafficking, sexual and domestic violence victims absolutely free, without them needing to prove indigence, but this idea was abolished.

An NGO representative contacted further relays that victims rarely hire an attorney and participate in proceedings also when the crime was committed within their own family/relationship for fear punishment will be sought for people they co-habit with. On the contrary, offenders are informed about their rights by investigation and prosecution authorities, because they often have their own attorneys, who check, inter alia, whether their rights under international standards have been complied with.

Notably, in the *Regulation on Remunerating Legal Aid*,⁹ the remuneration for aiding a civil claimant, private accuser or private complainant during trial is practically equated to the remuneration for defending offenders, since it follows one and the same classification in accordance with the seriousness of the crime (Art. 22). There would be equation again if a victim receives aid for procedural representation pre-trial. There would only be relative imbalance as concerns primary legal aid (legal aid before proceedings) if the victim only benefits from such legal aid, as it carries a relatively low remuneration for attorneys.

4. Scope and extent of legal aid, granted to victims of crime

4.1. First moment when victims can use legal aid

Under the *Law on Legal Aid*, indigent victims, children in institutions/foster families and children at risk, as well as victims of domestic or sexual violence, or human trafficking, who do not have means and wish to be defended by an attorney, can use legal aid already at the stage of 'consultation... in view of instituting proceedings', which, translated into the system of the *Criminal Procedure Code*, would mean from the moment of submitting a complaint or the institution of proceedings ex officio, when authorities have themselves come across information about a crime committed. For procedural representation pre-trial, however, they

⁸ **Doichinova, Vladislava** (2010): Правото на защита на пострадалия на досъдебното производство според българския НПК и според минималните международни стандарти [The right of defense of the victim at pre-trial proceedings according to the Bulgarian Criminal Procedure Code and international minimum standards]. In: Правна мисъл [Legal Thought], volume 1, 2010. Sofia: Bulgarian Academy of Sciences

⁹ **Council of Ministers of the Republic of Bulgaria** (2006): Наредба за заплащането на правната помощ [Regulation on Remunerating Legal Aid] (State Gazette 5/17.01.2006), Sofia: Council of Ministers of the Republic of Bulgaria, available only in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135515376> (12 November 2013)

would have to apply again to pre-trial authorities. All other eligible victims, including private complainants in cases of 'crimes of private nature', triable directly by court, can use legal aid from the moment they are constituted as parties to the trial.

4.2. Stages of criminal proceedings, where victim can receive legal aid

Indigent victims, children in institutions/foster families and children at risk, as well as victims of domestic or sexual violence, or human trafficking, who do not have means and wish to be defended by an attorney, can receive legal aid, upon relevant applications, all throughout criminal proceedings, until the court pronounces its final judgement. All other eligible victims can benefit from legal aid only during trial, also until court's final judgement. The execution of the offender's sentence, the enforcement of the court's final ruling and the decision to release the offender are stages, where the victim's procedural role is basically over. In this line, the law does not provide the victim with the right to get information about the release of the perpetrator or to participate in the work of the authorities involved in the early release or amnesty procedures.

4.3. Legal aid in obtaining state compensation

State provided legal aid in obtaining state compensation is not provided for by Bulgarian legislation.

4.4. Legal aid to participating in restorative justice mechanisms

Bulgarian legislation does not provide for restorative justice mechanisms within the framework of criminal proceedings.

4.5. Length of period legal aid covers

The *Regulation on Remunerating Legal Aid* separates the sums, due for legal aid on criminal cases, into sums for the pre-trial and sums for each court instance in the trial phase. They all have a minimum and a maximum amount, the maximum being mostly double the minimum amount. There are also legally regulated supplements, if the attorney aids more than one person or works nights, weekends or holidays, but the length of proceedings is not among the pre-requisites for the fee to be supplemented. In sum, according to Bulgarian legislation on legal aid, the length of period legal aid covers in criminal proceedings is measured by the concepts of pre-trial phase and (each) court instance and the actual length of proceedings may only be taken into account when determining the remuneration within the range, provided for by the Regulation. In cases, lasting more than 6 months, the attorney may also ask for an advance payment.

4.6. Language(s) in which legal aid is provided

The *Law on Legal Aid* does not have a specific provision about provision of legal aid in a language, different from Bulgarian, so it is all left to the language capacities of the appointed attorneys, as regards consultations and preparation of documents. As for procedural

representation, the general principle of the Criminal Procedure Code is applicable: criminal proceedings take place in the Bulgarian language and persons, who do not speak Bulgarian, can use their native or another language and an interpreter is appointed in those cases.

4.7. Legal representation of victims and their participation in proceedings in person

According to Art. 56 of the *Constitution of the Republic of Bulgaria*,¹⁰ each citizen has right of defence, when his/her rights or legitimate interests are infringed upon or threatened, and may appear before state authorities with counsel. Constitutional provisions have direct application, so the victim may be accompanied by an attorney at each procedural action he/she takes part of and is obligated to act in person only when it concerns his/her testimony as a witness, as the testimony should reflect his/her direct impressions of what happened.

4.8. Payments for legal aid

Legal aid is paid for by the National Legal Aid Bureau, based on the attorney's report and a decision by the Chair of the Bureau (Art. 39, *Law on Legal Aid*). The attorney does not get remuneration, if he/she does not provide the legal aid conscientiously and competently, and may have to reimburse the remuneration already received in such a case (Art. 37, *Law on Legal Aid*). The attorney providing legal aid does not have the right to obtain from the legal aid recipient remuneration or funds for covering expenses (Art. 40, *Law on Legal Aid*), so in cases of state-provided legal aid victims do not pay for any legal fees to be reimbursed later. The attorney's business trip expenses, when he/she has to visit detention places or other locations to provide aid, are reimbursed separately (Art. 38, *Law on Legal Aid*).

The person, to whom legal aid is provided, should notify the deciding authority about any change in the circumstances based on which legal aid was provided, and the deciding authority may terminate it. If the person does not notify the authority on time, he/she should reimburse the expenses made as of the moment of change (Art. 27, *Law on Legal Aid*). In cases, determined by the law, legal aid beneficiaries reimburse to the National Legal Aid Bureau the expenses made (Art. 27a, *Law on Legal Aid*).

4.9. Sufficiency and accessibility of legal aid for victims – opinions of stakeholders and research conclusions

One NGO representative deliberates that no institution in the strict sense delivers legal aid - it is done by specific lawyers. NGOs provide little, sporadic and small scale legal aid in terms of types of crimes – and their services are free for their clients, but involve the costs for expensive projects, which are limited in time.

¹⁰ **National Assembly of the Republic of Bulgaria** (1991): Конституция на Република България [Constitution of the Republic of Bulgaria] (State Gazette 56/13.07.1991), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/521957377> (12 November 2013)

A representative of a state institution, involved in victim assistance and protection, points out that the requests indigent citizens direct to the Chair of the National Legal Aid Bureau are often not supplemented with all the necessary documents, which delays proceedings, since the Bureau has to return requests with directions for additional evidence. Moreover, people living outside the capital, Sofia, are in considerable difficulty contacting the Bureau, and so are those of low level of literacy, who cannot phrase correctly their request in terms of the law. This slows down the work of the Bureau and leaves citizens with the impression that its work is too slow and bureaucratic. The state institution representative is of the opinion that the present system of financing legal aid guarantees steady increase in the costs, since there is a more or less fixed price per case and it is multiplied by the number of cases. At the same time, there are incentives to have more cases with higher remuneration both for the institutions and the attorneys, while there are few incentives for effectiveness and limitation of expenses.

This sceptical view may find proof in the Bureau's Annual Report for 2012,¹¹ which talks about budget shortages, delays in paying attorneys' remuneration and, finally, about a raise in the Bureau's budget allocations as a way to overcome the problems.

5. Legal aid to particularly vulnerable victims

5.1. Children

According to the *Law on the Protection of Children*,¹² each child (a person under 18 years of age) has the right to legal aid and appeal in all proceedings, concerning his/her rights and interests (Art. 15, par. 8). Social Protection Directorates may represent the child in the cases, provided for in law (Art. 15, par. 7) and provide legal aid to children, their parents, guardians or persons, taking care of them, by offering advice and consultation on issues, related to children's rights. In practice, Social Protection Directorates have a large portfolio of activities and social groups to ensure assistance to, which causes significant overload and insufficiency of human and financial resource. Moreover, there is no information about specialised trainings social workers undergo in order to provide legal aid to children. Thus, the inclusion in 2013 of a significant number of children, especially children at risk (which would practically include all children victims of crime), among the groups to receive legal aid already before the start of any proceedings was a much needed step to subsume children's legal aid explicitly under the general system. Before the 2013 amendments, children were still provided procedural representation by attorneys under the *Law on Legal Aid*, but there were often discussions as to

¹¹ **National Legal Aid Bureau** (2013): Годишен отчетен доклад за дейността на Национално бюро за правна помощ през 2012 година [Annual Report on the Work of the National Legal Aid Bureau in 2012], Sofia: National Legal Aid Bureau, available in Bulgarian at: http://www.nbpp.government.bg/images/Otcheten%20doklad_2012.pdf (12 November 2013)

¹² **National Assembly of the Republic of Bulgaria** (2000): Закон за закрила на детето [Law on the Protection of Children] (State Gazette 48/13.06.2000), Sofia: National Assembly of the Republic of Bulgaria, available only in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2134925825> (12 November 2013)

whether social assistance authorities or the National Legal Aid Bureau should pay for the aid provided.

5.2. Victims of violence in close relationships; victims of gender based violence

A number of victims of violence in close relationships and of gender based violence are likely to fall into the new group of 'victims of domestic or sexual violence who do not have means and wish to be defended by an attorney' and as such will have access to legal aid throughout the whole criminal proceedings.

5.3. Victims of terrorist offences

Victims of terrorist offences are eligible for legal aid under the *Law on Legal Aid* in accordance with the *Law on Victims' Assistance*.

5.4. Victims of human trafficking

Human trafficking entitles its victims to legal aid both under the *Law on Victims' Assistance* and the *Law on Legal Aid*. Legal aid to trafficking victims is also developed in detail in the National Mechanism for Referral and Support to Trafficked Persons,¹³ which is not a legislative, but yet a binding act for all institutions and organisations involved in protecting and assisting those victims. According to anti-trafficking and criminal procedure legislation, if the trafficked person makes an informed and voluntary decision to cooperate with authorities after the so called 'reflection period', he/she becomes a participant in the criminal proceedings. If the trafficked person decides to take part in the criminal proceedings, he/she has the right to choose a legal representative who will represent him/her during investigation and trial, in the latter case if the person is constituted as civil claimant or private accuser. The lawyer appointed can take the following steps:

- File a report about the crime committed;
- Advise the person trafficked to request protection;
- Appeal the decisions to stop or terminate criminal proceedings;
- File requests for constitution as a private accuser or civil claimant;
- Procedural representation in court.

Before, during and after the trial the victim's legal representative works together with his/her individual consultant (psychologist, social worker) in order to avoid further traumatising of the victim.

According to information, provided by the National Commission for Combatting Trafficking in Human Beings, the NGOs, which are the main service providers for trafficking victims, provide

¹³ **National Commission for Combating Human Trafficking, Animus Association Foundation and La Strada International** (2010): Национален механизъм за насочване и подпомагане на жертви на трафик [National Mechanism for Referring and Supporting Victims of Trafficking], Sofia, available at: <http://combattrafficking.eu/sites/default/files/NM.pdf> (12 November 2013)

to victims psychological and social assistance, but also legal aid, including via hotlines. The two shelters for trafficking victims, which the National Commission finances and manages, provide to the victims accommodated also legal advice. The Commission also holds multidisciplinary trainings for police authorities, prosecutors and judges, improving the cooperation among them.

5.5. Other vulnerable groups

A prosecutor approached lists among the other vulnerable groups of victims illiterate persons or persons with low level of literacy, elderly persons and persons with reduced mobility, especially in rural regions, and specifies the types of dependency the victim may have within the context of his/her family and community: moral, religious, practical or financial.

Among the vulnerable groups of victims, who have fallen under research attention, are the groups who are particularly vulnerable due to carrying multiple vulnerabilities. A recent report by the Center for the Study of Democracy, dealing with children victims of trafficking,¹⁴ explored them being at the 'crossroad' of a number of different laws and regulations (on protection of children, protection of victims of trafficking, legal aid, etc.), which may have left those of them with most complex cases into a relative lacuna. Notably, the explicit inclusion of children at risk and victims of trafficking among the groups to receive legal aid before any proceedings have strengthened the normative correspondence, as regards children victims of trafficking, and thus their protection.

5.6. Institutions' efforts to enhance the system of legal aid to vulnerable groups

According to the Annual Report of the National Legal Aid Bureau for 2012, it currently implements a project under the Norwegian Financial Mechanism for a hotline for primary legal aid and regional consulting centres, directed towards society's most vulnerable groups: socially disadvantaged groups and people placed in institutions, minorities, people of special needs or people in remote regions. The project encompasses the creation and pilot approbation of a national hotline of the Bureau for providing citizens with primary legal aid. Vidin and Sliven are the regions, where pilot consulting centres will be opened. According to legal aid practitioners, those regions were chosen for their various specificities, including a relatively large share of minority population. As for the hotline, it is expected to at least sift cases eligible for legal aid, thus optimising the work of entities, responsible for providing it. It is planned that the hotline be serviced by teams of civil and criminal attorneys. The hotline (0700 18 250) and centres were launched at the end of October 2013. The aid, provided by the attorneys servicing the hotline, includes civil, administrative and criminal issues, but excludes commercial and tax cases.

¹⁴ **Center for the Study of Democracy** (2013): Подкрепа и реинтеграция на децата-жертви на трафик в България: законодателство, институционална рамка и политики [Assisting and reintegrating child victims of trafficking in Bulgaria: legal, institutional and policy framework]. Sofia: Center for the Study of Democracy, available at: <http://www.csd.bg/artShow.php?id=16325> (12 November 2013)

6. Institutional structure and capacity of the system of legal aid for victims of crime

6.1. Structure and place within the overall victim support system

The overall state policy in the area of legal aid lies within the responsibilities of the Minister of Justice. Legal aid is organised by the National Legal Aid Bureau and the bar councils (Art. 6, *Law on Legal Aid*).

The National Legal Aid Bureau is an independent state authority, whose maintenance is part of the state budget, with the Minister of Justice (Art. 6, *Law on Legal Aid*). It has its own administration (Art. 7, *Law on Legal Aid*) and, inter alia (Art. 8, *Law on Legal Aid*):

- drafts the annual legal aid budget;
- disposes of the funds in the legal aid budget;
- organises the maintenance of the National Legal Aid Register;
- pays for and controls the legal aid provided.

The National Legal Aid Bureau has a Chair and a Deputy Chair, appointed by the Prime Minister, and three members, appointed by the Supreme Bar Council.

Bar councils organise the provision of legal aid in their respective regions by, inter alia, appointing lawyers from the National Legal Aid Register, exercising operative control over the quality of legal aid, provided by their member attorneys, administering legal aid and assisting persons in obtaining it. In practice, all bar councils have an employee, responsible for the administration of legal aid, and are at least theoretically required to do preliminary sifting of cases as to their eligibility for legal aid.

Bar councils receive funds from the National Legal Aid Bureau budget for administering legal aid in the amount of 10 per cent of the sum, paid to the attorneys from the respective bar council for the previous quarter of the year (Art. 28, *Regulation on Remunerating Legal Aid*).

Legal aid budget is part of the state budget and is adopted as part of the budget of the Ministry of Justice. The draft budget is prepared by the National Legal Aid Bureau.

6.2. Regional specifics and problems in providing legal aid – opinions of stakeholders

An NGO representative notes there are no regional differences in providing legal aid at the trial phase, because this issue is subject to control by the higher court instances. Another region-specific issue the expert sees is that the specific legal aid services NGOs provide usually cover a fairly small geographical region.

A judge considers the region of Vidin, a town in Northwestern Bulgaria with severe economic problems, as a typical example of regional specifics. There are no specialised NGOs in the

regions, to which victims can turn for help, and authorities often neglect their victim capacity and commit procedural violations.

6.3. General and specialised training, further needs – opinions of stakeholders

While NGOs do report on their own efforts to improve their general and specialised training both domestically and internationally, all stakeholders, deliberating on the issue admit that there is lack of adequate training for institutions and organisations involved, following international and EU standards. A legal aid practitioner admits that trainings for working with specific vulnerable groups are still within the realm of future plans, but the Bureau takes every effort to organise regional trainings at least once a year, where information is given, based on attorneys' specific needs and questions.

An NGO representative acknowledges that attorneys, providing legal aid, have only general legal training, but not specific skills for communicating with victims of crime or persons of various ethnic and cultural background. The expert states that there are no specific trainings on those issues and the system relies on the experience of attorneys. Also, according to the expert, lists of attorneys in the National Legal Aid Register are not divided by specialisation or the specialisation is too general. The Attorneys' School with the Supreme Bar Council organises thematic courses for attorneys, but their capacity cannot match the fast pace of amending legislation. The National Register also suffers from a high turnover of incoming and outgoing attorneys with no entry test or training.

A practising attorney is of the opinion that specialised qualification is provided only to mediators and protection from domestic violence and children's rights are areas, where specialised training is lacking. The attorney also points to the difficulties in financing victims' practical assistance.

A judge approached is skeptical about the level of qualifications of the experts of organisations, providing legal aid to victims, especially to vulnerable ones, and emphasises that psychological training is necessary, as well as knowledge about victims' specific rights in different proceedings.

Still, the National Legal Aid Bureau takes considerable effort to keep an equal standard of legal aid throughout all the country's regions. According to legal aid practitioners, attorneys from the National Legal Aid Register have been gathered in larger groups in several regional centres and have been given training and explanations, based on their specific questions and information requests. As a result, the relations between the Bureau, the bar councils and the specific attorneys, providing legal aid, have been strengthened and the attorneys' specific qualification has been improved.

A judge approached concludes that a general procedure needs to be created for assisting and protecting victims from the submission of their complaints to their ultimate resolution.

7. Conclusions and recommendations

Based on the review of relevant legal framework and publicly available information, as well as on the opinions of stakeholders approached, it can be concluded that much effort is taken in striving to provide adequate legal aid to victims of crime as part of the overall process to enhance the position of those harmed by criminal activities. This is witnessed by, inter alia:

- the 2013 amendments in the *Law on Legal Aid*, expanding considerably the circle of victims of crime, eligible to receive state-provided legal aid;
- the efforts of the National Legal Aid Bureau to ensure a qualified pool of attorneys with proper specialisation, to the extent possible, who are part of the National Legal Aid Register and as such are able to provide high quality legal aid to victims;
- the recent launch of a much awaited initiative for a national hotline for primary legal aid and pilot consulting centres in Sliven and Vidin;
- the ongoing strengthening of the institutional and practical framework to support specific, particularly vulnerable, groups of victims, like victims of human trafficking.

Nevertheless, taking into account the current situation and the overall status of victims in Bulgarian criminal procedure, the following recommendations can be made:

- Regarding **legislation**, a full review is to be made of the compliance of Bulgarian legislation with the new *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA* and relevant effort for its timely transposition should be taken, where needed;
- Regarding **research**, a thorough study should be made of relevant legislation, policies and practices of EU Member States, regarding legal aid and advice to victims of crime; relevant policies and practices should be transposed in close cooperation with Member State entities which generated them;
- Regarding **institutional capacity**, the National Legal Aid Bureau is recommended to use all channels via which its knowledge base for working with victims of crime should be expanded, including its cooperation with bar councils and victim protection NGOs;
- Regarding **practical framework**, the experience to be gathered by the newly launched national primary legal aid hotline and pilot consulting centres is to be analysed carefully and replicated via other consulting centres to be opened especially in other vulnerable regions;
- Regarding **general and specialised training**, the existing efforts to give attorneys involved general training on working with victims and specialised legal and psychological knowledge on their particular situation should be strengthened and enhanced.

Annex 1: State authorities involved in providing legal aid to victims of crime

Name of entity	National Council for Assistance and Compensation of Victims of Crime
Postal address	1, Slavyanska Str. 1040 Sofia
Telephone	+359 2 9237359
Fax	-
E-mail	compensation@justice.government.bg
Website	http://www.compensation.bg/default.aspx

Name of entity	Ministry of Interior
Postal address	29, 6 September Str. 1000 Sofia
Telephone	+359 2 9825000
Fax	-
E-mail	-
Website	http://www.mvr.bg/default.htm

Name of entity	National Legal Aid Bureau
Postal address	1, Razvigor Str 1421 Sofia
Telephone	+ 359 2 8193200
Fax	+ 359 2 8654812
E-mail	nbpp@nbpp.government.bg
Website	http://www.nbpp.government.bg/

Annex 2: NGOs involved in providing legal aid to victims of crime

Name of entity	Nadja Centre
Postal address	12A, Georgy Benkovski Str.
Telephone	+359 2 981 93 00
Fax	+359 2 989 41 74
E-mail	office@centrenadja.org ; centrenadja@abv.bg
Website	http://www.centrenadja.org/

Name of entity	Assistance Centre for Torture Survivors-ACET
Postal address	1618 Sofia, Bulgaria Krasno selo, 3, Dechko Yordanov Str, Floor 1, office 4
Telephone	+359 2 423 46 36
Fax	-
E-mail	office@acet-bg.org
Website	www.acet-bg.org

Name of entity	Bulgarian Gender Research Foundation
Postal address	Sofia, 5, Evlogi Georgiev Blvd.
Telephone	+359 2 963 53 57
Fax	+359 2 963 53 57
E-mail	office@bgrf.org
Website	http://www.bgrf.org

Name of entity	Animus Association Foundation
Postal address	85, Ekzarh Yossif Str, Sofia
Telephone	+359 2 983 505; +359 2 983 5305; +359 2 9835 405
Fax	+359 2 983 505; +359 2 983 5305; +359 2 9835 405
E-mail	animus@animusassociation.org
Website	http://www.animusassociation.org/