LETTERS OF RIGHTS OF DETAINED PERSONS IN BULGARIA

National Report
The Bulgarian Helsinki Committee is an independent non-governmental organisation for the protection of human rights. It was established on 14 July 1992.

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OF DETAINED PERSONS IN BULGARIA

This publication was written with the financial support of the Justice Programme of the European Union. The responsibility for its content shall be borne by the Bulgarian Helsinki Committee and it shall not in any way be considered to reflect the position of the European Commission.

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CONTENTS

Preface ................................................................. 5
On the Study ......................................................... 6
Directive 2012/13/EU and Its Transposition in Bulgaria .......... 9
  Directive 2012/13/EU – general provisions ......................... 9
  Principal requirements to the transposition of EU directives ...... 11
Initial assessment of the measures needed for the transposition of Directive 2012/13/EU in Bulgaria .......... 11
Measures implemented on the transposition of Directive 2012/13/EU ....................................................... 12
Problems in defining the principal concepts in Directive 2012/13/EU in Bulgaria ........................................... 13
  “Criminal proceedings” ............................................... 13
  “Criminal charge” .................................................... 15
  “Arrest” and “detention” in criminal proceedings .................. 18
Compliance of the national legislative framework with the standards of Directive 2012/13/EU ........................................... 21
Study of the Case Law .................................................. 42
Linguistic analysis of the written information on the rights of the detained suspects and accused persons, provided to the detainees under MoIA and CCP ....................................................... 50
Principal findings of the study .......................................... 54
Recommendations ....................................................... 57
Bibliography .............................................................. 60
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>BHC</td>
<td>Bulgarian Helsinki Committee</td>
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<td>SAC</td>
<td>Supreme Administrative Court</td>
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<td>SCC</td>
<td>Supreme Court of Cassation</td>
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<td>DGES</td>
<td>Directorate General “Execution of Sentences”</td>
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<td>State Agency for National Security</td>
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<td>Law on Extradition and European Arrest Warrant</td>
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<td>ESDOA</td>
<td>Execution of Sentences and Detention Order Act</td>
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<td>Ministry of Interior Act</td>
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<td>Law on the Liability of the State and Municipalities for Damages</td>
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<td>CPT</td>
<td>European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</td>
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<td>General Assembly of the Criminal Divisions</td>
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The initial arrest on suspicion or on criminal charge is among the most critical situations for suspects and accused persons in criminal proceedings. This is often the moment when the arrested individuals learn for the first time about the suspicions against them for having committed a criminal offence and they are about to be questioned about their involvement in the offence before they had organised their defence. The time of the initial arrest is also characterised by the high risk of psychological and physical ill-treatment of the detained persons. Local and international human rights observers have noted repeatedly that this risk is particularly high for detainees in Bulgaria. Suspects and accused persons usually benefit from legally recognised rights, but the effectiveness and the enforcement of these rights depends on the knowledge about them. At the same time, due to conflict of interests, it would be difficult to assume that the institution that had ordered the arrest is to be the only source of information on the rights of the detainees. One possible solution for overcoming the subjective element in providing information is to render it objective in comprehensible language in a written document. This is the approach adopted also in Directive 2012/13/EU with respect to the right to information in criminal proceedings, which stipulates the obligation for the so-called Letters of Rights to be made available to all suspects and accused persons who have been detained in criminal proceedings.
ON THE STUDY

The present publication contains the results of a study conducted by the Bulgarian Helsinki Committee (BHC) on the right of arrested suspects and accused persons in Bulgaria to receive information in writing on their rights in criminal proceedings, formulated in Article 4 of Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings (Directive 2012/13/EU).\(^1\) The study was conducted within the Accessible Letters of Rights for detained suspects and accused persons in Europe Project.

The study has set itself the following objectives:

- to clarify the object and personal scope of the right of access to written information on the rights of the suspects and accused persons arrested or detained in criminal proceedings, formulated in Article 3 and Article 4 of Directive 2012/13/EU;
- to identify the degree of synchronisation of the national legislation and practice with the requirement under Directive 2012/13/EU for written information on the rights to be made available;
- to analyse the extent to which the written information provided meets the requirements for accessible and easy to read language;
- to formulate recommendations for overcoming the problems observed and the lack of compliance with the European standards.

\(^1\) Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings (Directive 2012/13/EU).
The scope of the study does not comprise the other two principal manifestations of the right of access to information in criminal proceedings, enshrined in Directive 2012/13/EU: the right to information on the charges and the right of access to the documents of the case. The access to written information with respect to detainees in connection with proceedings under the European arrest warrant is likewise not included in the scope of the study.

From a methodological point of view, the study comprises three elements: 1) survey and analysis of the legislation; 2) exploration of the practical experience; 3) linguistic analysis of the written information on the rights, provided to detained suspects and accused persons under the Ministry of Interior Act (MoIA) and the Code of Criminal Procedure (CPP).

1) Survey and analysis of the legislation

The survey and the analysis of the legislation were made based on the current regulatory framework concerning the arrest and the providing of information on the rights of arrested and detained suspects and accused persons in criminal proceedings through the prism of the standards of Directive 2012/13/EU. National primary and secondary legislation was used in drafting the analysis, as well as sources of international and European law, the practice of the European Court of Human Rights (ECtHR, the Court), academic papers, and monographs, other theoretical and analytical materials, and official positions of state institutions.

2) Exploration of the practical experience

Practical experience was explored using several methodological approaches. First, between October and November 2016 we conducted 26 thematic semi-structured interviews with adult men in custody, 23 of whom were convicted and were serving sentences in the prisons in Bobov Dol, Plovdiv and Pazardzhik, and three accused persons remanded in custody in the pre-trial detention facility in the town of Haskovo. The interviews studied various practical aspects connected with the obtaining of written information on the rights of the detainees in criminal proceedings, with emphasis on detention in police premises.

Second, an online survey among attorneys was conducted in December 2016. The questionnaire was drafted using the Google Forms system and it contained 13 closed and open questions. It was sent directly by e-mail to

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2 Nine interviews were conducted in the prison in the town of Bobov Dol on 7 November 2016.
3 Nine interviews were conducted in the prison in the town of Plovdiv on 9 November 2016.
4 Five interviews were conducted in the prison in the town of Pazardzhik on 16 November 2016.
5 Three interviews were conducted in the detention facility in the town of Haskovo on 24 October 2016.
256 attorneys from all over the country; nine responses were received for three weeks.

Third, the analysis of the practical experience also took into account the findings from earlier studies and observations, reports from the visits to Bulgaria by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), national jurisprudence, information obtained under the law on access to public information, examination of documents issued by MoI bodies and investigating bodies, etc.

3) Linguistic analysis of the written information on the rights provided to detained suspects and accused persons

The accessibility and readability of the written information on the rights, provided to the detained suspects and accused persons under the MoIA and the CCP, are analysed using the guidelines of the Plain Language Association International\(^6\) and elements of the theoretical model of “plain English language” adopted by Martin Cutts,\(^7\) in the variant proposed in the academic paper On Some Linguistic Specificities of Two Laws on Education by Todor Shopov and Dimitar Tomov.\(^8\) The concept of plain language is based on the following definition:

“Written communication is created in plain language if its lexical material, structure and design are so clear that the readers for whom it is intended can easily find what is of interest to them, understand it and use it.”\(^9\)


\(^9\) The definition is of Plain Language Association International. For more information, see: [http://plainlanguagenetwork.org/plain-language/what-is-plain-language/](http://plainlanguagenetwork.org/plain-language/what-is-plain-language/).
On 30 November 2009, the European Council adopted a Resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (the Roadmap). In December 2009 it became part of another important strategic document: the Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, approved by the European Council. The Roadmap is a manifestation of the wish of the Member States to increase their trust in their criminal law systems by introducing detailed common minimum rules for enforcing the right to freedom and security of the citizens, the right to a fair trial and other related rights enshrined in the EU Charter on Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, the Convention). Directive 2012/13/EU, adopted on 22 May 2012 is related to measure B of the Roadmap and is aimed at harmonising the legislations of the Member States with respect to the right to information of accused persons and suspects in criminal proceedings.

Directive 2012/13/EU is based on rights and freedoms of the citizens endorsed by the European legislation – notably Article 6, Article 47 and Article 48 of the Charter and Article 5 and Article 6 of ECHR, as they are interpreted by the ECtHR. In other words, essentially it pursues two principal goals: protection against illegal and arbitrary deprivation of liberty and guaranteeing a fair trial. Parallel with this, the right of detainees to obtain access to the materials under the case and sufficient time for the preparation of the defence prior to the court ruling on the legality of the detention, guarantees the principle of equality of the parties and competitiveness of the
criminal proceedings. Last but not least, the obligation to provide written information on the rights of the detainees is also one of the key guarantees for prevention of torture, inhuman or degrading treatment of persons in custody, endorsed by the bodies of the Council of Europe.

The rights contained in Directive 2012/13/EU, corresponding to the rights guaranteed by the ECHR, should be interpreted and enforced in compliance with the ECtHR case law. The restrictions of the rights proclaimed in it, insofar as they are admissible, may not lower the level of protection below the ECHR standards. Another important clarification is that the concepts of “accusation” and “arrested detained suspects and accused persons” should be understood in their meaning established in ECtHR case law. However, Directive 2012/13/EU not only brings established standards in the ECtHR practice to legislative level, but it also proposes in some respects a new, higher protection of the rights of the suspects and accused persons in criminal proceedings. This is also the case of the right to written information on the rights upon arrest, although such a standard is not generated in the practice of the Court in Strasbourg.

Directive 2012/13/EU essentially introduces three varieties of the right of access to information of the suspects and the accused persons in criminal proceedings:

- right of access to information on the rights;
- right to information on the charges;
- right of access to the materials of the case.

It also introduces rules on the right to information on the rights of the persons for whom a European arrest warrant has been issued.

The present study focused on the first of these three rights: the right of access to information on the rights. With respect to the arrested or detained suspects and accused persons, Directive 2012/13/EU obliges the Member States to guarantee that the information on the rights will be provided immediately after the arrest in writing and in an easily comprehensible language. The so-called Letter of Rights comprises two groups of rights: general procedural rights to which all suspects and accused persons are entitled, irrespective of whether they are in custody or not (right of access to a lawyer, legal assistance, right to translation and interpretation, etc.) and special procedural rights, which arise only in the event of arrest and detention of the suspects and accused persons (right to urgent medical assistance, right of access to the materials of the case, right to inform the consular authorities and another person, etc.). The Letter of Rights should also contain

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information on all options under the national law for appealing the lawfulness of the arrest and revision of the arrest. With a view to helping the Member States in drafting such a Letter of Rights, Annex No. 1 of Directive 2012/13/EU gives an indicative model that can be complemented with other procedural rights applicable in the Member States, or with rights ensuing from other directives of the Roadmap. Annex No. 2 also gives an indicative model of the Letter of Rights of the persons detained in connection with proceedings under a European arrest warrant.

**Principal requirements to the transposition of EU directives**

Member States basically possess a certain freedom of action with respect to the choice of legal measures through which to introduce the directives in their national legislations. It is also true that the transposition of a directive in the national legislation does not require necessarily the introduction of its provisions formally and literally through special legislation; depending on the content of the Directive, a certain legal context can attain the goal set, provided that it indeed guarantees full enforcement of the Directive in a sufficiently clear and accurate way, so that when the Directive generates rights for individuals, the interested persons can establish their rights in full and, if necessary, cite them before the national courts.14

**Initial assessment of the measures needed for the transposition of Directive 2012/13/EU in Bulgaria**

The adoption of Directive 201/13/EU does not evoke a strong response among the Bulgarian legal community. Nevertheless, legal analyses before the transposition deadline defend the position that partial regulatory changes aimed at synchronisation of the national legislation with the standards of Directive 2012/13/EU are necessary. For example, Prof. Margarita Chinova recommends the Letters of Rights of accused persons in criminal proceedings and detainees in European arrest warrant proceedings, contained accordingly in Annexes Nos 1 and 2 of Directive 2012/13/EU, to be adapted to the Bulgarian criminal proceedings and introduced in the legislation.15 Other authors, e.g., Dinko Kanchev, defend the view that the personal scope of Directive 2012/13/EU also comprises the suspects detained in the police. He/she points out that this category of persons should receive, in addition to written information on their rights as detainees under the MoIA, also information con-

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nected with their rights in criminal proceedings. Dinko Kanchev stresses the importance of informing detained suspects about their right to remain silent in view of the widespread practice in criminal proceedings for police officers, in their capacity of witnesses, to retell explanations given before them by the detainees.16

**Measures implemented on the transposition of Directive 2012/13/EU**

The deadline for the transposition of Directive 2012/13/EU expired on 2 June 2014, but the Bulgarian government had not adopt special measures on its transposition from its adoption as of May 2017. In this connection, the Ministry of Justice explains that the introduction of the provisions of Directive 2012/13/EU in the Bulgarian legislation does not involve “substantial amendments to the existing regulatory framework.”17 The claim is that the regulatory acts contain already the standards enshrined in Directive 2012/13/EU and that it is not necessary to amend them additionally, notably: CCP, the Law on Extradition and European Arrest Warrant, the Judicial System Act, MoIA, Instruction No. 8121з-78 of 24 January 2015 on the procedure of effecting an arrest, the furnishing of the premises for accommodating the detainees and the order in them at the Ministry of Interior (Instruction on Arrests at MoI). The extent to which this assertion corresponds to the actual situation, especially with respect to the requirement to provide easily understandable written information on the rights in criminal proceedings of arrested or detained suspects and accused persons, will be examined in the present study.

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16 Kanchev, D. The right to information for suspects and accused persons. // Society and Law, 2013, No. 3, p. 56 (in Bulgarian).
17 Ministry of Justice, Letter No. 95-00-1/23.01.2017 on providing public information requested by the BHC with a letter of 9 January 2017.
The Bulgarian legislation and case law, on the one hand, and the European standards and jurisprudence, on the other, do not always invest the same meaning when using the same legal concepts. Precisely such a problem emerges also in the interpretation of the principal concepts of the directives in the Roadmap, including Directive 2012/13/EU – “criminal proceedings,” “criminal charge” and “arrest or detention of a suspected or accused person in criminal proceedings.” The strict adherence to the national definitions of these concepts constitutes an obstacle to the complete transposition of the secondary European legislation, which in turn leads to serious restriction of the personal enforcing of its standards. The narrow understanding of “criminal proceedings” and “criminal charge” places outside its scope the minimum safeguards for the protection of individuals detained on suspicion of having committed a criminal offence or of being substantially affected in some other way by an investigation conducted against them, but who have not been involved as accused persons under the criminal procedure law. An attempt will be made here to clarify this problem by consistent highlighting of the discrepancies in the content and use of the above-mentioned concepts in the national and European legislation.

“Criminal proceedings”

Bulgarian legislation defines as criminal proceedings only proceedings initiated or conducted under the CCP. It stipulates two main phases of the criminal proceedings: pre-trial and trial phases. On the other hand, actions on investigating a criminal offence, conducted against a certain person, including that person’s detention before he/she has been formally recognised as

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18 Code of Criminal Procedure (CCP), Article 1, Paragraph 1.
accused, are not considered to be part of the criminal proceedings. Such actions are regulated in the MoIA and in other regulatory acts.

National case law also makes a distinction between administrative and criminal proceedings in investigating criminal offences, whereby police proceedings are defined as “administrative.” Following this line of thought, Bulgarian courts reject the applicability of European legislation to the situation of persons detained on suspicion of having committed a crime, citing only the title of Directive 2012/13/EU.19

“It is likewise evident from the very title of the cited regulative act [Directive 2012/13/EU] that it finds application only in criminal proceedings, whereas the proceedings for detention for 24 hours are administrative in character, aimed at imposing coercive administrative measures, and not at attaining criminal liability.”

Similarly, academic literature insists on drawing a clear and categorical dividing line between the actions for investigating crimes of the police and those of the competent authorities under CCP. Prof. Vesselin Vuchkov explains the division with the different regulatory acts regulating the two types of activities; the bodies exercising the respective legal powers; the different methods used; the different legal character of the factual data collected using those methods.20

However, this approach does not correspond to the requirements of the directives in the Roadmap. With a view to the correct introduction of the European standards in the national legislation, Directive 2012/13/EU clarifies that it is necessary to take into account the meaning of the concept “criminal” in the sense of the Convention and established in the ECtHR case law.21

Interpretative ruling No. 3/2015 on the competition between criminal and administrative-criminal liability, the Bulgarian court has already had the opportunity once to analyse and surmount the discrepancy between the national definition of “criminal proceedings” and the one introduced by the Convention. Based on the established ECtHR practice, including in cases against Bulgaria, the Supreme Court of Cassation ruled that although minor hooliganism is not qualified as administrative offence in the national legislation, and the procedure of its sanctioning – as administrative-penal, according to the criteria of the Convention, the sanctioning of the offender under Decree No. 904 of 28 December 1968 on Combating Minor Hooliganism is based on charges that are criminal in nature, examined in criminal proceedings.

19 Administrative Court – Burgas, Judgement No. 575 on administrative case 137/2016.
The legal concepts of “criminal charge” and “criminal proceedings” used in the Convention do not refer to their strict meaning under the national legislation, but have their own autonomous meaning (Harris, O’Boyle, Warbrick, Bates, Buckley, Law of the European Convention on Human Rights, 2015, Sofia, p. 22 – in Bulgarian). These terms should be understood in the context of the principles endorsed in ECtHR case law and in accordance with the interpretation accepted by the Court, irrespective of the meaning invested in them under the national law, which may be different (the Republic of Bulgaria has not submitted a reservation on the enforcement of Article 4, § 1 of Protocol No. 7 to ECHR). The expressions “criminal offence”, “punishment” and “criminal proceedings” in the text of the provisions of Articles 2–4 of Protocol No. 7 should be perceived in correspondence with the concept of “criminal charge” and “punishment” in Article 6 and Article 7 of the Convention. In its judgements the Court has repeatedly and consistently emphasised that the defining of the legal nature of the offence on the discretion of the negotiating states would lead to results that are incompatible with the essence and goals of the Convention. The possibility to define the offences in accordance with the national legislation as administrative, disciplinary, fiscal or “mixed” – instead of as criminal, and the offenders to be prosecuted under the applicable procedure in the respective states, would subordinate the action of the fundamental requirements of Article 6 of the Convention to their sovereign will (Ezeh and Connors v. the UK, Sergey Zolotukhin v. Russia, Muslija v. Bosnia and Herzegovina, Nilsson v. Sweden, Nykanen v. Finland, Hakka v. Finland, etc.). Therefore, irrespective of the assessment of the negotiating states, the ECtHR always conducts its own check whether the procedures are of a criminal character under Article 6, § 1 of ECHR.22

“Criminal charge”

CCP introduces the figure of the accused person, defining it as “the person brought to court in that capacity in compliance with the conditions and procedure envisaged in [CCP].”23 Depending on the concrete phase of the criminal proceedings, CCP uses two terms: “accused” and “defendant,” but the concept “accused” is also used as a generic concept denoting every person against whom charges have been formally brought.24 The accused person has legal rights connected with his/her involvement and defence in criminal proceedings, which arise as of the moment when charges are brought against him/her.

The persons about whom there is evidence that they had committed a criminal offence and against whom actions for investigation and/or arrest

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22 Supreme Court of Cassation, Interpretative ruling No. 3 of 22 December 2015 under case No. 3/2015.
23 CCP, Article 54.
have been undertaken, are designated as “suspects.” This is not a legal concept, but is extensively used in the practice of the police and of the judicial bodies.25 In the course of the police investigation, the suspected person may be detained for a period of up to 24 hours in the police and questioned. Although the testimony of the suspects cannot be used directly as evidence in criminal proceedings, there is stable practice for police officers who had conducted an “operational talk” with the suspects to reproduce at a later stage the explanations given to them in the form of witness evidence in court.26 The detained suspects have certain rights, but they are more limited in type and volume compared to the rights of the accused person in criminal proceedings.

The formal absence of the procedural figure of the suspect in the national legislation is used as yet another reason to insist that the transposition of the standards from the European directives should be done only with respect to the accused person in criminal proceedings and in proceedings under the LEEAW.27 However, the approach in the directives from the Roadmap with respect to their personal scope is different. Article 2 of Directive 2012/13/EU defines the initial moment of enforcement “from the time persons are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence.” This construction is derived from the ECtHR case law, where it is used to determine the initial moment after which there is a criminal charge. Similarly, recital 14 of Directive 2012/13/EU indicates that the term “accusation” is used to describe the same concept as the term “charge” used in Article 6 § 1 of ECHR. Hence the correct approach in determining the personal scope of Directive 2012/13/EU necessitates knowledge of the concept “criminal charge” according to the ECtHR case law.

In the case of Deweer v. Belgium, citing the right to a fair trial, which is a fundamental right in a democratic society, the Court indicates that under Article 6 § 1 the concept “accusation” is to be understood in its “substantive” and not “formal” meaning.28 It emphasises the necessity to look beyond the external characteristics of a procedure, investigating its nature. In this way,

26 See SAC, Judgement No. 5360/2017 in administrative case No. 6899/2016; SAC, Judgement No. 3562/2017 in administrative case No. 10047/2016; SAC, Judgement No. 1164/2015 in administrative case No. 6741/2014. The ECtHR is currently examining a complaint against Bulgaria, which addresses precisely that issue. See Mitov v. Bulgaria, No. 34799/09, communicated on 16 November 2016.
27 Prosecution of the Republic of Bulgaria. Opinion on a draft of the law amending and complementing the Code of Criminal Procedure, 2016, at: http://www.prb.bg/media/cms_page_media/5580/%D0%A1%D1%82%D0%B0%D0%BD%D0%BE%D0%B2%D0%88%D1%89%D0%B5.pdf.
28 European Court of Human Rights (ECtHR), Deweer v. Belgium, No. 6903/75, Judgement of 27 February 1980, §46.
the Court accepts in principle that the concept of “accusation” can be defined most generally as “official notification handed to a person by the competent body on charges of a criminal offence.” At the same time, the Court defends the view that other measures may also exist, suggesting such an accusation indirectly and at the same time “substantially affects the situation of the implicated person.”

In its case law against Bulgaria the Court has had an opportunity to study and to rule on the question whether concrete actions of the police in investigating crimes, directed against the suspected person before that person is formally constituted as accused, can be referred to under the hypothesis of “criminal charge” in terms of the Convention.

In the cases of Yankov and others v. Bulgaria, Yankov and Mantchev v. Bulgaria, Stefanov and Yurukov v. Bulgaria, Dimitrov and Hamanov v. Bulgaria, the ECtHR finds that the applicants were the object of “accusation” from the moment when they were questioned at the police and they gave evidence that they had participated in the committing of a criminal offence, rejecting the government’s arguments that this moment occurred only a year later, when the charges were officially brought. Similarly, in the case of Yovchev v. Bulgaria the Court stipulated as the initial moment of the criminal proceedings against the applicant the day when he/she was arrested, not the day when charges were brought against him/her, and in the case of Kalpachka v. Bulgaria – the moment when the applicant was questioned in the course of the preliminary check against her, a month before she was formally involved as accused. In the four cases the initial moment of the accusation is discussed in connection with the guarantee that the cases would be heard within a reasonable time period.

In the Grand Chamber judgement of 12 May 2017 on the case Simeonovi v. Bulgaria, surveying its earlier case law, the Court reiterated its position on the question of the moment after which there is a “criminal charge” and Article 6 of the Convention is invoked in its criminal law aspect. According to the Court’s interpretation, a “criminal charge” exists as of the moment when the person is officially notified by the competent authorities about the assumption that a criminal offence had been committed, or as of the moment when his/her position has been substantially affected by the actions of the authorities, undertaken as a result of the assumption that a criminal offence

29 Ibid.
30 Ibid.
31 ECtHR, Yankov and others v. Bulgaria, No. 4570/05, Judgement of 23 September 2010, §23.
32 ECtHR, Yankov and Mantchev v. Bulgaria, Nos.27207/04 and 15614/05, Judgement of 22 October 2009, §18.
33 ECtHR, Stefanov and Yurukov, No.25382/04, Judgement of 1 April 2010, §14.
34 ECtHR, Dimitrov and Hamanov, Nos. 48059/06 and 2708/09, Judgement of 11 May 2011, §§74, 79.
had been committed. More specifically, Article 6 of the Convention is invoked as of the moment of the occurrence of the first among (e.g.) the following listed events, irrespective of their chronological order:

- arrest in connection with suspicion of criminal offence committed;
- questioning of a suspect on his/her involvement in a criminal offence committed;
- formal invoking of criminal liability under the national legislation.\(^{37}\)

The categorical conclusion of the examination of the ECtHR case law is that the measure of police detention covers the criterion of “considerable affecting” of the situation of the person suspected of having committed a criminal offence and is always a sign of the existence of a “criminal charge” under Article 6 of the Convention.

**“Arrest“ and “detention“ in criminal proceedings**

CCP regulates two hypotheses on detention of accused persons in criminal proceedings: with an order from the Prosecution for up to 72 hours with the aim of securing their appearance before the court and with a Court order imposing a custody measure on remand. Detention under CCP is defined as a measure of procedural coercion.

A person suspected of having committed a criminal offence may be detained for a period of up to 24 hours based on an administrative order from the police bodies or another competent authority. The detention measure is defined as coercive administrative measure under the Law on Administrative Offenses and Penalties (LAOP), its imposition being within the operational autonomy of the respective body. It is possible always when that body possesses information that the person in question had committed a criminal offence. According to the case law, “the imposition of the administrative sanction is not a means of proving criminal liability. It is a detention of operational nature, not remand in custody under CCP.”\(^{38}\)

The Bulgarian legislation also offers another, broader definition of the concept of “detention“ in criminal proceedings, whose scope comprises also the detention of suspects. Under Article 59 of the Criminal Code (CC) the duration of the preliminary detention is deducted for persons serving prison sentences or probation. For the purposes of this provision, detention is – in addition to being a remand measure – any other detention under CCP, MoIA and other laws connected with the criminal offence for which the person had been convicted or is detained to serve the sentence. Citing that provision, the national courts treat as equivalent the detention under CCP and under MoIA,

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also with a view to determining the compensations due for damages inflicted upon citizens by the investigating bodies, the prosecution or the court in the event of unlawful deprivation of liberty, under Article 2 of the Law on the Liability of the State and Municipalities for Damages (LLSMD).

Directive 2012/13/EU refers to the Convention and the case law related to its enforcing by the ECtHR also with respect to clarifying the meaning of the concept of “suspects or accused persons who have been arrested or detained” and for whom the right had been introduced to receive a Letter of Rights in criminal proceedings immediately after their arrest. According to recital 21, such persons shall be those who in the course of criminal proceedings have been deprived of liberty within the meaning of Article 5 § 1 (c) of ECHR. Based on that provision, deprivation of liberty is admissible only in connection with criminal proceedings. There are three grounds for detention under Article 5 § 1 (c): a well-grounded assumption that a criminal offence had been committed, prevention of a criminal offence or hiding after a criminal offence had been committed. The aim of the detention is always one: to secure the appearance of the detainee before the “competent body under the law” – i.e., judge officially authorised by the law to perform judiciary functions as per Article 5 § 4 of ECHR.

According to the established ECtHR case law in cases against Bulgaria, the legitimate grounds for deprivation of liberty with a detention measure as for accused persons under CCP and of suspects under MoIA are set out in Article 5 § 1 (c) of the Convention. In the case Kandzhov v. Bulgaria the applicant was arrested and detained by the police on suspicion of having committed a criminal offence. In this connection the Court ruled that “his deprivation of liberty” is “arrest or detention” done “with the aim of guaranteeing his/her appearance before the competent authority under the law on well grounded suspicion that a criminal offence had been committed” within the meaning of point (c) of Article 5 § 1.” In the case of Petkov and Profirov v. Bulgaria the two applicants were arrested by the police on suspicion of involvement in a robbery. Here the Bulgarian government cites the provision of Article 5 § 1 (c) of the Convention as applicable to the case of the applicants, claiming that they were detained for the purposes of their appearance before a competent judiciary authority on the grounds of a reasonable suspicion of a criminal offence committed. The Court applied Article 5 § 1 (c) also with respect to the arrest of the three applicants in the case of Dzhabarov and others v. Bulgaria, one of whom was not even formally arrested, but was “brought” and inter-

41 Ibid., § 54.
42 ECtHR, Petkov and Profirov, Nos. 50027/08 and 50781/09, Judgement of 24 June 2014, §6.
43 Ibid., §44.
rogated for more than four hours in the police on suspicion of having com-
mitted a criminal offence.44

The survey presented above of the concepts of “criminal proceedings,” 
“criminal charge”, “detention” and “arrest” in criminal proceedings in accord-
ance with their interpretation in the ECtHR case law clearly shows that the 
exclusion from the personal scope of Directive 2012/13/EU of persons sus-
ppected of having committed a criminal offence, who were detained under 
the MoIA or had been subjected to other coercive police measures, should 
be rejected as incompatible with the goal of introducing the European stand-
ards. In this connection, the authors of the present report will examine the 
Bulgarian legislation and practice in providing written information to the de-
tainees in criminal proceedings, both accused and suspected persons, about 
compliance with the provisions of Directive 2012/13/EU.

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44 ECtHR, Dzhabarov v. Bulgaria, Nos. 6095/11, 74091/11 and 75583/11, Judgement of 31 March 2016, 
This section will make a survey of the existing regulatory framework with respect to providing written information on the rights of detained suspects and accused persons in criminal proceedings and its conformity to the standards of Directive 2012/13/EU. Before that a brief analysis will be made of the regulation of the arrest on suspicion/charges of criminal offence, whereby that arrest is a prerequisite for the ensuing obligation on the part of the authorities to present written information to the detainees.

**Legal grounds for arrest and detention on suspicion of criminal offence**

In the Bulgarian legislation all forms of deprivation of liberty of suspected or accused persons of having committed a criminal offence are designated as “detention.” “Arrest” is also a legal term, but with a different meaning. At the same time, in several regulatory acts the legislator defines “detention” as “restriction of the right to free movement” and avoids the use of the expression “deprivation of liberty.” However, the right to free movement is another human right subjected to restrictions that are broader than the admissible restrictions in the event of deprivation of liberty. The Convention, as well as international law in general, provide for much stricter guarantees of lawfulness and protection against arbitrary acts during detention than in the case of free movement.

45 The concept of “arrest” is used to name the place for deprivation of liberty with the Execution of Punishment Division, and it is also involved in the composition of the legal term for court judgement issued by another EU Member State with a view to detention and transfer of a requested person for the purposes of the criminal prosecution – “European arrest warrant.”

46 Instruction No. 81213-78 of 24 January 2015 on the procedure of conducting an arrest, the furnishing and equipment in the premises where the detainees are kept and the order in them at the Ministry of Interior (Instruction on Arrest at Mol), Article 4; Customs Act, Article 16a, Paragraph 2.
**Principles**

The Constitution proclaims the right to individual freedom and inviolability of the citizens, as well as the conditions in which it may be restricted. In this connection, Article 30, Paragraph 3 of the Constitution allows bodies, different than the Court, to arrest citizens, while observing strictly defined safeguards against unlawfulness and arbitrariness of the detention:

“In urgent cases specifically cited in the law, the competent state bodies may detain a citizen and inform immediately the judiciary bodies. Within 24 hours of the arrest the judiciary body shall decide on its legality.”

The right to inviolability of the individual has been transferred as a fundamental principle in the entire Criminal Code. The CCP reproduces the constitutionally stipulated procedure for arrest by a non-judiciary body, adding also powers of the prosecutor to order the arrest of the accused so as to be brought before the court. The Court, the prosecutor and the investigating bodies are obliged to free every citizen who had been unlawfully deprived of freedom. According to Nikola Manev, “[t]he state procedural bodies must discharge their duties [to free the detainees] also without being seized by the respective statutory persons.”

**Detention of suspects**

The measure of detaining persons about whom there is information that they had committed a criminal offence may be imposed under the MoIA, the Customs Act, the Law on the State Agency for National Security (LSANS), Law on the Military Police, the Anti-Terrorism Act and the Law on Private Security Activities. It is examined as a coercive administrative measure. Under Article 22 of LAOP, coercive administrative measures may be imposed with the aim of “preventing and stopping administrative offences, as well as for preventing and eliminating their harmful consequences.” LAOP does not refer to a hypothesis for imposing a coercive administrative measure when there is “information that the respective person had committed a criminal offence.”

The detention under the MoIA is for a period of up to 24 hours. The law does not define specifically the purpose of the detention. In part of the case law it is assumed that the detention has a preventive or suspensive function. Parallel with that, other views are also defended, e.g., that the detention of the suspected person is necessary for “clarifying the facts” that link the detained person to the committing of a criminal offence; for “performing urgent actions with which to collect sufficient data for launching criminal proceedings or for disproving the available data on involvement of the detained

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47 CCP, Article 17, Paragraph 2.
48 CCP, Article 17, Paragraph 4.
50 SAC, Judgement No. 6138/2016 in administrative case No. 13194/2015.
51 SAC, Judgement No. 13288/2015 in administrative case No. 11501/2015.
person in the committing of a criminal offence” and to secure the participation of the detained person in actions related to the investigation and not to prevent the clarification of the circumstances connected with the case.52 The case law of the Supreme Administrative Court (SAC) reveals the argument that the detention is “aimed at securing the appearance [of the detainee] before the bodies of the pre-trial investigation in the event of reasonable suspicion that a criminal offence had been committed.”53

Under the Customs Act the power of the customs authorities to arrest people are limited and are used only with respect to those about whom there is evidence that they had committed some of the crimes against the customs regime specifically indicated in the law and for whom there is a real danger that they might hide or commit a new criminal offence.54

Under the Law on the Military Police, the structures of the military police are competent to detain for a maximum period of 24 hours military, civilian staff of the Ministry of Defence, as well as other persons in the hypotheses specifically listed in the law.55 In addition, until the arrival of the MoI bodies, they may arrest also all kinds of other categories of persons about whom there is information that they had committed criminal offences.56

The most recent grounds for detention of suspects were introduced in the Anti-Terrorism Act and in the LSANS. Enforcing the provisions of the Anti-Terrorism Act, until the arrival of the MoI bodies the military from the armed forces may detain a person about whom there is information of connection with the preparations for or the committing of a terrorist act.”57 Under Article 1246, Paragraph 1 of LSANS, the bodies of the Agency, authorised with an order by the Director of the Agency, may detain for up to 24 hours a person about whom there is information of having committed a criminal offence connected with international terrorism and extremism, as well as their financing, and with activities assisting foreign services, terrorist or extremist organisations. Similarly, private security guards have powers to arrest a person “who has committed a criminal offence”58 at the site guarded by them, about which they notify the police authorities and transfer the person to them. The persons suspected of having committed a criminal offence, who have been arrested in compliance with the provisions of those three laws, may be detained on general grounds at police premises under the MoIA.

52 SAC, Judgement No. 6138/2016 in administrative case No. 13194/2015; SAC, Judgement No. 1380/2016 in administrative case No. 829/2015.
53 SAC, Judgement No. 2317/2017 in administrative case No. 14275/2015.
54 Customs Act, Article 16а, Paragraph 1.
55 Ministry of Interior Act (MoIA), Article 72, Paragraph 1, item 1; Customs Act, Article 16а, Paragraph 1; Law on the Military Police, Article 13, Paragraph 1, item 1.
56 Law on the Military Police, Article 15, Paragraph 1.
57 Anti-Terrorism Act, Article 11, Paragraph 1, item 1.
58 Law on Private Security Activities, Article 31, Paragraph 1, item 1.
In addition to the persons suspected of having committed a criminal offence as per the provisions of the CC, police bodies may also detain for a period of up to 24 hours persons for sports hooliganism under the Law on Public Order when sports events are organised59 and for minor hooliganism under Decree No. 904 of 28 December 1968 on combating minor hooliganism.60 In both cases the aim of the detention is to bring the person to court where the sanctions provided for under the law are to be imposed on him/her. The preliminary detention of persons who had committed sports and minor hooliganism offences is done at the MoI detention facilities.

Under the MoIA, a person detained by the police on suspicion of having committed a criminal offence “may be placed in a premise for accommodating detainees and personal security measures may be adopted with respect to him/her, if his/her conduct and the purposes of the detention necessitate that.”61 The suspects detained by the customs authorities are placed in the same MoI premises, but only “when it is necessary.”62

“The procedure for detention in the MoI structures is regulated in the Instruction on Detention at the MoI. The number of detention premises at the MoI Sofia City and Regional Directorates was 129 in March 2017, and of the border police – 24.63 The persons detained under the Law on the Military Police are placed in special detention premises of the military police, and in March 2017 there were five such premises.64 In addition to suspected persons, other categories of detainees are also accommodated in these premises in accordance with the powers of the respective authority.

**Detention of accused persons**

The detention of accused persons is regulated under the CCP. The person held criminally liable, for whom the prosecutor has demanded a remand measure, may be subjected to pre-trial detention with an order of the Public Prosecutor’s Office for up to 72 hours so as to be brought before court.65 The existence of a reasonable suspicion that the person had committed a criminal offence for which detention is a proportional measure is an inalienable condition for a prosecutor’s detention order, otherwise it would be in violation of Article 5 § 1 (c) of the Convention. The remand measure is stipulated by the Court. It may be imposed only for attaining the goals and in the presence of prerequisites defined under the law, notably when there exists a reasonable

59 Law on Public Order when sports events are organised, Article 30, Paragraph 2.
60 Decree No. 904 of 28 December 1968 on combating petty hooliganism, Article 3, Paragraph 2.
61 MoIA, Article 72, Paragraph 2.
62 Customs Act, Article 16a, Paragraph 1 and 11.
63 Ministry of Interior, Judgement No. 512104-65/29 March 2017 on providing public information on request by the BHC of 16 March 2017 r.
65 CCP, Article 64, Paragraph 2.
assumption that the accused persons has committed a criminal offence that is punishable with deprivation of liberty or with another, more severe punishment, and the evidence in the case indicates the existence of a real danger that the accused persons may hide or commit a criminal offence.

The order and the conditions for the enforcing of the remand measure are provided for in the Law on Execution of Sentences and Detention Order Act (ESDOA). The detainees against whom charges have been brought are placed in detention facilities – places for deprivation of liberty with the Directorate General “Execution of Sentences” (DGES). 66 At the end of 2016 they numbered 33 on the country’s territory, six of which were created at prison facilities. The detention facilities are also used in the event of enforcing the measure of preliminary detention with order of the Public Prosecutor’s Office, as well as for other forms of detention regulated by the CCP. The accused persons may be detained in the MoI structures as well. 67

After completion of the investigation, the accused persons are transferred to the prison in whose region the pre-trial proceedings take place, being accommodated separately from the convicted persons. 68 They remain in the prison until the final completion of the criminal proceedings, unless the Court changes the remand measure. In March 2017, there were 11 men’s prisons, one for women, and two correction facilities for minors – one for boys and one for girls.

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66 Execution of Sentences and Detention Order Act (ESDOA), Article 241, Paragraph 1.
67 Instruction on Detention at the MoI, Article 11, Paragraph 1.
68 ESDOA, Article 244, Article 246 (3).
Standard: The suspected or accused persons who have been arrested or detained are immediately provided with a written Letter of Rights. It should contain information on:

- the right of access to a lawyer;
- the right to legal assistance and the conditions for receiving it;
- the right to information on the charges;
- the right to interpretation and translation;
- the right to remain silent;
- the right of access to the materials in the case;
- the right to have consular authorities and one person informed;
- the right to urgent medical assistance;
- the maximum number of hours or days suspects or accused persons may be deprived of liberty prior to being brought before a judiciary authority;
- any possibility, under national law, of challenging the lawfulness of the arrest, or for obtaining a review of the measure, or making a request for its replacement by a less strict measure;
- other applicable rights under the national law.

Suspects

Ministry of Interior Act

Among all legal procedures for informing suspects about their rights during arrest by an administrative body, the MoIA provisions and the related secondary legislation emerged the earliest and are most detailed.

Police authorities may subpoena citizens to their official premises for exercising their powers under the law, including with respect to discovering and investigating crimes. 69 The summoning is done with a written notification that cites specifically the purpose of the summons, the hour and the place where the person is to appear. In urgent cases the summoning can be done by telephone or fax. There is no requirement for the summoned persons to be informed of their rights in criminal proceedings. When a person who had been summoned or had appeared voluntarily at the police is arrested on some of the grounds stipulated in the MoIA, an arrest warrant is issued, noting as initial time of the detention the moment when the person’s right to free movement was restricted. 70

69 MoIA, Article 69, Paragraph 1., Article 67.
70 Instruction on Detention at the MoI, Article 11, Paragraph 7.
The rule derived from the secondary legislation on police detention is that “without delay” or “immediately” after the arrest the person is to be familiarised orally with the grounds for the arrest, with the liability stipulated under the law and with his/her rights under the MoIA. The Law on Legal Aid also stipulates an obligation on the part of the body that had conducted the arrest to explain to the detainee his/her right to defence by handing him/her against signature a form containing the right to authorised or legal aid attorney.

Two written documents are given to the detainees under the MoIA, which contain information on the rights of the detainees: arrest warrant and Letter of Rights.

The arrest warrant is issued in triplicate, one copy being for the file, one for the archive of the respective MoI structure and one is given to the detained person immediately after it was issued. A part of the statutory elements of the arrest warrant consists of the factual and legal grounds for the arrest and the rights of the detainees. More specifically, the information on the rights should include: the right of the detainee to contest the lawfulness of the detention before the court; the right to defence by a lawyer as of the moment of the arrest; the right to medical assistance; the right to a telephone call with which to inform about his/her arrest; the right to contact the consular authorities of the respective state in the event that the person is not a Bulgarian citizen, and to be entitled to a translator/interpreter if he/she does not understand the Bulgarian language. In view of the requirements under Directive 2012/13/EU, the mandatory content of the arrest warrant does not include the information on the right of the detainee to remain silent, the right of access to the materials in the case and the procedure for receiving legal aid.

The Letter of Rights signed by the detainees in the police was introduced for the first time in 2002 in implementation of the CPT recommendation. Its principal function is to certify that the detainees have been informed about their rights under the MoI Act. As the exercising of most of the rights necessitates the active cooperation of the police bodies, in the Letter of Rights the detainees also indicate their “intention” to exercise or not some or all of their legitimate rights, ensuing from the fact of their deprivation of liberty. Annex No. 1 to the Instruction on detention in MoI provides a model of the Letter of Rights. In addition to the rights listed in the MoIA, the Letter of Rights introduces some additional rights as well, e.g., the right of the detainee to receive dietetic food, if necessary, the right to visits, the right to receive

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71 Instruction on Detention at the MoI, Article 15, Paragraph 1; Annex No.1, item 9.
72 Law on Legal Aid, Article 30, Paragraph 2.
73 MoIA, Article 74, Paragraph 2.
parcels and food. However, information on the right to appeal the lawfulness of the arrest is not included in the Letter of Rights.

The detainees declare certain circumstances of importance for their stay in the police department: whether they have health issues and need of a special diet. At the same time, in the Letter of Rights there is no field for entering information of importance for the exercising of the fundamental rights of the detainees, e.g., the name and the telephone of an attorney, if one has been chosen by the detainee, as well as the telephone number of a close person who is to be informed about the arrest.

**Customs Act**

The persons detained by customs authorities are entitled to an attorney as of the moment of the arrest, the right to appeal the lawfulness of the arrest under the Administrative Procedure Code, while the respective customs authority is obliged to notify immediately the person indicated by the detainee. The persons who do not know Bulgarian should be informed immediately about the grounds for their arrest in a language that they understand. Concerning the detained persons under the Customs Act there is no regulatory framework for the following rights: right to remain silent, right to written translation, right of access to the materials in the case.

Under the Law on Legal Aid, the customs authority is obliged to explain to the detainee his/her right to defence, giving him/her against signature a form indicating his/her right to authorised or legal aid lawyer.

The customs authorities hand a written arrest warrant to the persons detained under Article 16а, Paragraph 1 of the Customs Act, whereby the law does not specify the mandatory elements of the warrant, nor the moment when it is to be handed. It is likewise not specifically indicated that the detainees are to be provided with a declaration that they have been informed about their rights. If the detainees are accommodated in the MoI detention facilities, they should be given the Letter of Rights on general grounds.

**Law on the Military Police**

From the moment of their detention by the military police bodies, the persons are entitled to defence lawyer, they should be informed immediately about the reasons for their arrest in a language that they understand, to appeal in court the lawfulness of their arrest, whereby the court rules immediately on the appeal, and if they are foreign nationals – they have the right to contact the diplomatic mission of their country. The military police authori—

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74 Customs Act, Article 16а, Paragraph 5.
75 Customs Act, Article 16а, Paragraph 6.
76 Customs Act, Article 16а, Paragraph 7.
77 Customs Act, Article 16а, Paragraph 4.
78 Law on Legal Aid, Article 30, Paragraph 2.
79 Law on the Military Police, Article 13, Paragraph 2.
ties are likewise obliged to notify a person indicated by the detainee about the arrest, as well as to release the person immediately, if the grounds for his/her arrest are no longer valid.80 However, the detainees do not have statutory guarantees for their right to remain silent, for their right to interpretation and translation, and right of access to the materials in the case.

The Law on the Military Police does not derive an autonomous right and/or obligation to inform the detained suspected persons about their rights. The authorities issue a written arrest warrant81 to the persons detained for a period of up to 24 hours under Article 13, Paragraph 1, item 1 of the Law on the Military Police, but the moment when the warrant is to be handed is not specified. There is likewise no obligation to present a Letter of Rights.

With the second hypothesis for the arrest of suspects under the Law on the Military Police – until the arrival of the MoI bodies – no written document is issued. If the suspects are subsequently detained under the MoIA, they should be given the arrest warrant and the Letter of Rights on general grounds.

**LSANS**

Arrest of persons under the LSANS involves issuing of a warrant with content that is similar to the one envisaged for the arrest warrant under the MoIA.82 The detainees also fill a declaration that they have been informed about their rights, as well as about their intention to exercise those rights or not.83 The law does not list the mandatory requisites of the Letter of Rights, and it does not propose a model for such Letter. The principal difference from the police arrest is that the suspected persons arrested under the LSANS have no right to attorney under the Law on Legal Aid. Moreover, they do not have a guaranteed statutory right to remain silent, right to written translation, right of access to the materials in the case.

At the same time, the SANS has introduced and is using a model of such a Letter of Rights. It mentions information on the rights of the detainees provided for under Article 1246, Paragraph 2, item 6, sub-items “а” – “е” of the LSANS, namely: the right of the persons who do not know the Bulgarian language to be informed about the grounds for their arrest in a language that they understand, and to use a translator/interpreter; the right of the persons who are not Bulgarian citizens to contact their consular authorities; the right to appeal in court the lawfulness of the arrest; the right to a lawyer as of the moment of the arrest; the right to inform a person indicated by the detainee about the arrest; the right to a telephone call with which the detainee to inform about his/her arrest. In addition, the Letter of Rights stipulates the

80 Law on the Military Police, Article 13, Paragraph 3.
81 Law on the Military Police, Article 13, Paragraph 5.
82 Law on the State Agency for National Security (LSANS), Article 124б, Paragraph 2.
83 LSANS, Article 124б, Paragraphs 2 and 3.
rights of the detainees to visits, parcels and food, the right to a medical examination and to a medical examination of their choice and at their expense. In the Letter of Rights it is noted whether the detainees wish or do not wish to exercise their rights to legal defence, medical examination, notification of a family member or another person about the arrest, contact with the consular authorities, if they are foreign nationals. Besides, the detainees declare other circumstances as well, which could be of importance for the conditions and duration of the detention, e.g., the existence of health issues and the need of diet food.

The moment when the detainees need to be given the arrest warrant and the Letter of Rights is not specified.

**Anti-Terrorism Act and Law on Private Security Activities**

These two laws do not envisage special legal guarantees applicable to the detained suspected persons. Until the arrival of the MoI bodies, the detainees are not given any written documents informing them about their rights. And here, under the general MoIA hypothesis, the suspects detained by the police are handed an arrest warrant and a declaration that they have been informed about their rights.

**Decree No. 904 of 28 December 1963 on combating minor hooliganism and the Law on Public Order during sports events**

These two regulatory acts likewise do not generate a special regulation of the rights of persons detained by the MoI bodies on suspicion of having committed sports or minor hooliganism. The detainees should be given on general grounds the arrest warrant and Letter of Rights stipulated under the MoIA.

**Accused persons**

The right to defence of accused persons is highlighted as a guiding principle in criminal proceedings. It has various procedural guarantees, among which there is the obligation of the court, the prosecutor and the investigating bodies to clarify the rights of the accused persons and the other participants in criminal proceedings and to guarantee to them the possibility to exercise those rights. The obligation to clarify the rights is not eliminated even when the accused person has authorised a defence attorney or one has been assigned to him/her. Another fundamental principle is the oral conducting of criminal proceedings, except in the cases when there are other provisions under the CCP.

Article 55 of the CCP stipulates the procedural rights of accused persons, which are applicable both in the pre-trial and in the trial phases of the

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84 CCP, Article 15, Paragraph 1.
86 CCP, Article 19.
criminal proceedings, irrespective of whether the accused persons has been detained or not.

The rights of the accused persons are the following: to learn for what criminal offence they have been brought to justice in that capacity and on the grounds of what evidence; to give or to refuse to give explanations on the charges; to become familiar with the case, including with the information obtained by using special investigative means, and to make the necessary excerpts; to present evidence; to participate in criminal proceedings; to make demands, notes and objections; to be the last to speak; to appeal the acts violating his/her rights and legitimate interests, and to have an attorney. The accused person has the right his/her attorney to participate in acts connected with the investigation and in other procedural actions with his/her participation, except in the cases when he/she specifically waives that right. When the accused person does not know Bulgarian, he/she has the right to interpretation and translation.

As was mentioned already, only persons with criminal liability may be arrested under the CCP. A person is brought to face charges when enough evidence of his/her guilt in committing a certain criminal offence of a general nature is gathered against him/her with the drafting of the respective order of the Prosecutor's Office. Bringing the person to face charges may also be done with the protocol of the first investigative action against the accused person.

The subpoena with which a person is summoned for charges to be brought against him/her contains also the right of the accused persons to appear with an attorney, and the possibility for a court-appointed layer to be provided to them in cases stipulated in the law, as well as the possibility of coercive bringing if they fail to appear without a valid reason.

Next, the necessary requisites of the order for summoning the accused persons are exhaustively listed in Article 219, Paragraph 3. It mandatorily indicates the rights of the accused person in criminal proceedings, listed in Article 55 of CCP, including his/her right to refuse to give explanations, as well as his/her right to have an authorised or court-appointed attorney, but there is no information on rights relevant to the arrest.

A person may be summoned as accused also with the drafting of the protocol of the first action in the investigation against him/her. Apart from a description of the procedural action, the protocol must have all mandatory requisites cited in Article 219, Paragraph 3 of CCP, identical with those of the

87 CCP, Article 219, Paragraph 1.
88 CCP, Article 219, Paragraph 2.
89 CCP, Article 219, Paragraph 4.
90 On the issue of the mandatory requisites of the order for summoning an accused person, see Interpretative ruling No. 2 of 7 October 2002 in criminal case 2/2002 of the GACD of the SCC.
91 CCP, Article 219, Paragraph 3, item 6.
order for bringing the accused person to justice. As was emphasised earlier, these requisites also include the rights of the accused person in criminal proceedings.

With fast-track and immediate proceedings, the person on whom there is a justified assumption that he/she had committed a criminal offence is considered to be accused as of the moment of the drafting of the act of the first action of the investigation against him/her. Bringing the person to justice is done following the rules set out in Article 219, Paragraph 2 CCP – with a protocol of the first action against the accused person.

CCP provides for some special procedural rights of the detainees. These are: the right to mandatory defence, the right to appeal and revision of the remand measure. Concrete obligations ensue also for the bodies that had ordered the arrest, notably to notify immediately a person indicated by the detainee, and in the event that the detainee is a foreign citizen, to inform immediately the Ministry of Foreign Affairs. However, these rights are not mandatory requisites either of the prosecutor’s order for detention of accused persons for up to 72 hours in order to appear before court, or for the ruling of the court with which special remand measures are imposed.

Separately, the Law on Legal Aid obliges the body performing the procedural actions “immediately after the arrest or the bringing of the accused to justice to explain to the detainee his/her right to defence, giving him/her against signature a form containing his/her right to authorised or court-appointed attorney.”

The persons arrested, including the accused persons with remand measure, immediately receive explanations on their visitation rights, telephone communications, correspondence, food parcels and the allowed sums for personal needs. They are also informed against signature about the rules of the internal order and discipline. The document that they sign is referred to as “declaration.”

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93 CCP, Article 94, Paragraph 1, item 6.
94 CCP, Article 64, Paragraph 6.
95 CCP, Article 65, Paragraph 1.
96 CCP, Article 17, Paragraph 3.
97 CCP, Article 63, Paragraph 7, item 3.
98 According to the general provision of Article 199, Paragraph 2, “[e]very order shall contain: data on the time and place of its issuance, on the issuing body, on the case for which it is issued; motives; operative part and signature of the issuing body.”
99 The content of the ruling is to meet the requirements concerning the court acts indicated in Article 34 of CCP, namely: to contain data on the time and place of its issuance; the name of the court issuing it; the number of the case in connection with which it is issued; the names of the members of the court panel, of the prosecutor and of the court secretary; motives; operative part and signatures of the panel members.
100 Law on Legal Aid, Article 30, Paragraph 2.
101 ESDOA, Article 243, Paragraph 2.
102 ESDOA, Article 243, Paragraph 4.
**Standard:** The persons are given the opportunity to read the Letter of Rights and are allowed to keep it for the entire duration of their detention.

**Suspected persons**

The persons detained on suspicion of having committed a criminal offence under MoIA and LSANS, and the persons arrested by the police for sports or minor hooliganism are given copies of the arrest warrants. In these hypotheses the detainees also fill a declaration that they have been informed about their rights, but the time given to them to become familiar with the content of the two documents, before they have to ascertain that they had been informed about their rights and before they declare whether they wish to exercise them, is not stipulated in the regulatory framework. The detainees in the MoI structures are allowed to keep both documents during their detention.

The Customs Act and the Law on the Military Police do not stipulate explicitly that the detainees are to be given a copy of the arrest warrant, while no arrest warrants are issued at all for detainees under the Anti-Terrorism Act and the Law on Private Security Activities.

**Accused persons**

The investigating body hands a copy of the prosecutor’s arrest warrant to the accused person and to his/her attorney, giving them an opportunity to become familiar with its entire content, and – whenever necessary – provides additional clarifications. The investigating body may not perform actions of the investigation with the participation of the accused person until it had discharged its obligations set out in Article 219, Paragraphs 1–7, including to hand a copy of the arrest warrant to the accused person and to explain to him/her its content, whenever necessary.

In the hypothesis of bringing the accused person to court with the protocol of the first action of the investigation against him/her, the CCP does not imply an express obligation of the body to hand a copy of the act to the accused person. Theoretically the opinion is substantiated that the concrete case constitutes a “technical omission” or an “incompleteness” that “can be filled with a more exhaustive interpretation of the provisions on the presentation of the arrest warrant to the accused person.”

Concerning the prosecutor’s order with which the accused persons are detained for up to 72 hours, and the court ruling that imposes a remand

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103 CCP, Article 219, Paragraph 4.
104 CCP, Article 219, Paragraph 8.
measure, there does not exist an obligation for it to contain information on the rights of the detainees, nor is there a requirement for copies of them to be handed to the detainees.

There is no specific provision guaranteeing the right of the detained accused persons to keep a copy of the Letter of Rights, with which they ascertain that they have become familiar with their rights and with the internal rules in the place of their detention.
Standard: The detained suspects or accused persons receive the Letter of Rights in a language that they understand. In the event that there is no Letter of Rights in the respective language, they are informed orally about their rights and are promptly provided with a translation of the Letter of Rights in writing.

Suspected persons

MoIA contains a special provision according to which a detained person who does not know the Bulgarian language or is “deaf-mute, deaf, mute or blind” is to be informed immediately of the grounds for his/her arrest in a language that he/she understands.\(^{106}\) The police body secures a translator/interpreter with whose help the detainees are familiarised in a language that they understand with the grounds for their arrest and with their liability under the law.\(^ {107}\) It is specifically indicated that with the help of a translator/interpreter the following rights are explained to the detainees: to appeal before a court the lawfulness of the arrest; access to a lawyer; medical assistance; telephone call with which to inform about his/her arrest; contact with the consular authorities of the respective state in the case of non-Bulgarian citizens; use of a translator/interpreter if they do not understand Bulgarian.\(^ {108}\) However, the provision does not give an explanation of the person’s right to remain silent. Participation of a translator/interpreter in the filling of the Letter of Rights is ascertained by entering his/her personal data in the Letter of Rights and with his/her signature.

The persons detained by the SANS and customs authorities, who do not understand Bulgarian, are immediately informed about the grounds for their arrest in a language that they understand.\(^ {109}\) No such obligations have been introduced in the remaining laws generating powers for detention of suspects of criminal offence.

Providing written translation of the arrest warrant or of the Letter of Rights is not envisaged at any stage of the detention by the police or by the remaining bodies with competence to arrest suspected persons.

Accused persons

The respective amendments and additions were introduced in the CCP in 2014 for the purposes of the transposition of Directive 2010/64/EC concerning the right to interpretation and translation in criminal proceedings. The standards of this Directive have been introduced only with respect to accused persons in criminal proceedings filed and conducted under the CCP.

\(^{106}\) MoIA, Article 72, Paragraph 3.
\(^{107}\) Instruction on Detention at the MoI, Article 16, Paragraph 1 and 2.
\(^{108}\) Instruction on Detention at the MoI, Article 16, Paragraph 1.
\(^{109}\) LSANS, Article 124б, Paragraph 7; Customs Act, Article 16a, Paragraph 4.
Under Article 55, Paragraph 3, the accused persons who do not know the Bulgarian language are entitled to interpretation and translation in criminal proceedings into a language that they understand. They are provided written translation of certain types of acts, among which the order for bringing the accused before justice and the court rulings on remand measures to be taken against them, which mandatorily contain also their rights in criminal proceedings. The accused person has the right to refuse written translation when he/she has a defence attorney and when his/her procedural rights are not violated. A separate CCP chapter is devoted to special rules for examining cases concerning crimes committed by persons who do not understand Bulgarian.¹¹⁰ The same rules are also applicable to accused persons who are “deaf” or “mute” and to whom an interpreter is appointed.¹¹¹

¹¹⁰ CCP, Article 395а – 395з.
¹¹¹ CCP, Article 395а.
Suspected persons

MoIA does not contain special rules on providing information about the rights of minors detained in the police, which would take into account their ability to understand the proceedings and to participate in them. The form, the language and the content of the arrest warrant and the Letter of Rights, provided for in the MoIA, are the same both for adult detainees and for children. Minors are accommodated separately from the adults in special premises separated for the purpose in the MoI structures.\(^{112}\)

Suspected persons suffering from mental or psychological problems are not entitled to additional procedural guarantees in police proceedings and during police detention. These groups of vulnerable persons follow the general rules on providing information on the rights of the detainees under MoIA.

The remaining regulatory acts introducing grounds for detention of suspected persons do not regulate in a special way the cases concerning minors or persons who are unable to understand the content of the information due to their mental or psychological state.

Accused persons

Minors

From the point of view of age, CC defines adult persons (18 years old) as criminally liable having committed a criminal offence in a state of sanity. Minors – aged above 14 years but below 18 – are criminally liable if they are capable of understanding the essence and the meaning of their act and of controlling their conduct. Persons aged below 14 years are not criminally liable.

CCP contains special rules for examining cases of crimes committed by minors. They create higher safeguards for protection of the rights of accused minors during the pre-trial and trial phases of the criminal proceedings. Such a higher safeguard is the absolutely mandatory participation of an attorney in cases with accused minors and defendants. The body in charge of the procedural action is obliged to appoint an attorney to the minor if he/she fails to authorise one.\(^{113}\) Parallel with the defence attorney, the minor may also

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\(^{112}\) Instruction on Detention at the MoI, Article 25, Paragraph 2, item 2.
\(^{113}\) CCP, Article 94, Paragraph 3.
appoint his/her parents to defend him/her.\textsuperscript{114} However, the special rules do not affect the procedure of determining criminal liability of minors and the content of the acts on the basis of which the person is brought before court. In this sense, accused minors continue to obey the general CCP provisions. The legal grounds and the procedure for ordering preliminary arrest by the prosecutor, as well as the imposition of remand measures for minor accused persons are also identical to those for adults.

On the other hand, some of the specific rules are related to creating a more favourable regime of informing accused minors about their rights, without that being formulated expressly as a goal in the law. They comprise: the requirement for the investigating bodies in pre-trial proceedings to have special training;\textsuperscript{115} the possibility of participation of an educator or psychologist in the questioning of accused minors;\textsuperscript{116} the obligation to notify the parents or guardians of the start of the investigation, who may also be present at the actual presentation of the charges.\textsuperscript{117}

\textbf{Vulnerable adults}

CCP contains some additional guarantees for hearing cases involving crimes committed by persons with mental or psychological problems. For example, such a guarantee is the mandatory participation of defence lawyer when “the accused person has physical or mental deficiencies that prevent him/her from defending him/herself unaided.”\textsuperscript{118} However, the procedure of informing and clarifying the rights of the accused detainee follows the general rules. No special rules have been introduced for presenting the information in a format accessible to the detained vulnerable persons, nor an obligation for the authorities to provide information on the arrest and on the rights at the time of the arrest of the legal representative or a third appropriate person, like the standard in the Commission Recommendation of 27 November 2013 on the procedural guarantees for vulnerable persons suspected or accused in criminal proceedings.\textsuperscript{119}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{114} CCP, Article 91, Paragraph 2.
\item \textsuperscript{115} CCP, Article 385.
\item \textsuperscript{116} CCP, Article 388.
\item \textsuperscript{117} CCP, Article 389, Paragraph 2.
\item \textsuperscript{118} CCP, Article 94, Paragraph 1, item 2.
\item \textsuperscript{119} European Commission, Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, 2013/C 378/02, 27 November 2013.
\end{itemize}
\end{footnotesize}
**Standard:** Providing information to suspects or accused persons is noted in accordance with the recording procedure provided for in the law of the respective Member State.

**Suspected persons**

The arrest warrant is handed to the suspected persons against signature.\(^{120}\) The refusal or the inability of the detained person to sign the warrant is certified with the signature of one witness.\(^{121}\) The arrest warrant is recorded in a special register.\(^{122}\)

Providing information to the detainees in MoI detention facilities is also attested with a special declaration, for which the detained person must sign below each right listed in the Letter of Rights right. The Letter of Rights is signed in duplicate, the first copy being given to the detained person, and the second being attached to the arrest warrant.\(^{123}\) When the detainees are illiterate or incapable of filling the Letter of Rights unaided, it is filled by an official, the person’s wishes are expressed by him/her personally in the presence of a witness who attests their authenticity with his/her signature.\(^{124}\) The detainee’s refusal to sign the Letter of Rights is also attested with the signature of a witness.\(^{125}\) There are no restrictions in the law on what persons may witness the refusal of the detained person to sign the Letter of Rights.

The presentation of the Letter of Rights concerning the rights of detainees by the SANS bodies is noted in an identical way.

**Accused persons**

A copy of the order for prosecution for criminal liability is given to the accused person against signature.\(^{126}\) The minutes of investigative actions are signed by the participants in them, including by the accused person, when the respective action was against him/her.\(^{127}\)

The prosecutor’s order on detaining accused persons for up to 72 hours and the court ruling on remand measures do not contain information on the rights of the accused persons. They are signed by their issuers, but not by the persons whose detention is ordered with them.

In the detention facilities of the investigation the accused persons sign a declaration that they are familiar with the internal rules and with some of the rights they have as detainees.

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120 MoIA, Article 74, Paragraph 3.
121 MoIA, Article 74, Paragraph 4.
122 MoIA, Article 74, Paragraph 5.
123 Instruction on Detention at the MoI, Article 15, Paragraph 2.
124 Instruction on Detention at the MoI, Article 15, Paragraph 3.
125 Instruction on Detention at the MoI, Article 15, Paragraph 2.
126 CCP, Article 219, Paragraph 4.
127 CCP, Article 129, Paragraph 2.
**Standard:** The suspected or accused persons or their attorneys have the right to challenge, in compliance with the procedures under the national law, a possible omission or refusal by the competent authorities to make available to them the information in compliance with the present Directive.

**Suspected persons**

Due to the administrative character of the measure for arresting suspects, the failure to comply with the regulatory procedure for its imposition and enforcement is not examined as restriction of the right to defence of the suspects in criminal proceedings. This also refers to the omission or refusal by the competent authorities to provide written information on the rights of the suspects in the event of arrest.

Following the administrative legal procedure, the detained suspected persons have the right to appeal the lawfulness of the arrest in court, whereby the court rules on the complaint immediately. Non-compliance with the established form is among the grounds for contesting the arrest warrant. If the written form of the arrest warrant is not complied with, the court should declare the arrest unlawful. The absence of the mandatory requisites of the arrest warrant, as stipulated in the MoIA, and the other special legal rights of the detainees, should also lead to revoking the arrest warrant as null and void.

The Code of Administrative Procedure also provides for a general means of protection against inaction on the part of the administrative bodies in discharging their obligation directly ensuing from a regulatory act. Such inaction may be contested during an indefinite period, applying accordingly the provisions for contesting individual administrative acts. With its decision the court rules that the administrative body is to perform the action, specifying the deadline for that, or rejects the demand.

**Accused persons**

Failure by the investigating bodies or by the prosecutor to provide information on the rights of the accused persons by indicating them in the detention order or the protocol with which they are brought to justice as accused persons, constitutes a major procedural violation. It is a reason for terminating the court proceedings and for referring the case back for reexamination by the prosecutor. The consequences are the same also when no translation of the respective acts are provided to persons who do not understand the Bulgarian language and who have not specifically waived that right and/or have no attorney.

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128 MoIA, Article 72, Paragraph 4.
Failure to provide the Letter of Rights to accused persons detained during arrest is not a procedural violation and does not have negative consequences for the criminal proceedings.
Findings and observations of international and national organisations

Over the years, the practical aspects of exercising in Bulgaria the right of access to written information of the persons detained in the police, including the suspects of having committed a criminal offence, fall within the scope of various international and national observations and analyses. An attempt is made below to present a brief survey of the most important ones among them.

CPT

Observation of the detention facilities at the MoI structures is an invariable element of the CPT missions in Bulgaria, the first of which was in 1992. Since then the CPT has repeatedly addressed recommendations to Bulgaria to introduce effective legal safeguards against police violence over the detainees, notably: the right to notify a third person about the arrest, the right of access to a lawyer and the right of access to a physician. CPT attributes equal importance also to the right of the detainees to be immediately informed about their rights in a language that they understand as a prerequisite for the practical implementation of the remaining safeguards.

In March 2015, the CPT made a public statement about Bulgaria. The principal reason for that sharpest reaction came from the bad conditions and the treatment of the individuals deprived of liberty, especially of those detained in the police and in the prisons. According to the CPT, the men, women and minors detained by the police authorities continue to be exposed to considerable risk of ill-treatment both at the moment of the arrest and during

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subsequent questioning. One issue specifically highlighted by the CPT is that the arrested persons are not systematically informed about their rights from the very beginning of their detention, and they recommend resolute actions aimed at securing real and meaningful functioning of the principal safeguards against ill-treatment.

**ECtHR**

ECtHR has accumulated solid case law identifying the most severe and systematically committed human rights violations under the conditions of arrest and police detention in Bulgaria, e.g., death, torture, ill treatment, excessive use of force, no access to medical assistance, as well as ineffective investigation of such violations. One of the Court’s criticisms concerned precisely the ineffectiveness of the procedural guarantees during police detention. By April 2017, the non-executed rulings against Bulgaria, connected with death or ill treatment in police detention, exceeded 30 in number, some of which remained non-executed for more than 17 years. All rulings have been placed under the enhanced observation by the Committee of Ministers of the Council of Europe within the group of “Velikova” cases.131

**National Preventive Mechanism**

Since 2012, the Ombudsman performing the functions of National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment performs periodic monitoring of the places for deprivation of liberty in Bulgaria. As a result of its work, the NPM observes that the information of the detainees about their rights is among the recurrent weaknesses in the system of 24-hour detention.132

**Open Society Institute – Sofia**

The Open Society Institute – Sofia is a non-governmental organisation working to promote the development of civil society and for the protection of the fundamental human rights. In 2004–2011, the Open Society Institute – Sofia implemented several projects on civil monitoring in police detention facilities.133 One of the problem areas reported by the observers in 2011 is the insufficiently clear oral informing about the rights of the detainees by the police officers in the district police departments. This problem is most frequent among the persons who are illiterate, with low education, under the influence

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131 For more information, see: [http://hudoc.exec.coe.int/eng?i=004-3593](http://hudoc.exec.coe.int/eng?i=004-3593).


of alcohol or drugs, or among those who – due to agitation and stress caused by the arrest – are unable to understand fully the information given to them, although they sign a declaration that they have been informed about their rights.134

**Bulgarian Helsinki Committee**

A significant part of the work of the Bulgarian Helsinki Committee is connected with observation of the places for deprivation of liberty and studies on different aspects of the access to justice in criminal proceedings. The respect for human rights in the conditions of police detention is a topic that is invariably present in the annual reports of the organisation.135 In 2016, the BHC published a special report on the regulatory and practical challenges before the effective investigation of police violence in Bulgaria.136

**Principal problems in providing information on the rights of the detainees – results of the empirical study**

**Detention**

100 % of the persons serving sentences of deprivation of liberty, interviewed in the course of the study, share that before charges were officially brought before them, they had been detained and questioned by the police in the capacity of suspects of having committed a criminal offence. In a number of the cases described the suspects were orally invited to appear at the police for “questioning”, “inquiry”, “talk”, “identification” or another action, but without being handed a subpoena or another written document containing the concrete grounds for the summons. A part of these persons were formally detained immediately after they appeared in the police, which suggests that for the police authorities they were in the capacity of suspects even at the moment of the summons. In other cases, the suspected persons were detained with arrest warrant only after performing the operational action for which they were subpoenaed.

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Providing (written) information on the rights

The results of the study indicate that the obligation to provide information on the rights of the detained suspects is fulfilled in an unsatisfactory manner or not at all. Six of the nine surveyed attorneys think that the detainees rarely receive information on their rights prior to the first interrogation. One of the respondents in the online survey summarises the practice of familiarising the detainees with their rights as follows:

“They are informed briefly, without explanations, just to obey the law formally.”

As was pointed out earlier, the Letter of Rights concerning the rights of detainees in the police was first introduced in 2002 on the recommendation of the CPT. Since then the Committee has noted that the majority of the detainees are really given such a document. Similar observations are reported by the Open Society Institute – Bulgaria during a project of civilian monitoring of the police detention facilities in 2009–2010. However, within the present study, six of the 26 interviewed detainees shared that they had not received the Letter of Rights during their police detention. More than half of the attorneys who took part in the online survey are also of the opinion that the Letter of Rights is not provided or is rarely provided to the detainees.

Another registered problem is that when the Letter of Rights is provided after all, it is not given at the very beginning of the detention, as required by Directive 2012/13/EU and the national legislation, but at a later moment, including at the end of the detention period, but in all cases – after the first questioning. Some of the interviewed persons also complained that the Letter of Rights was filled by police officers, without being given the chance to familiarise themselves with its content.

An attorney, respondent in the online survey, shares:

“According to my observations, even with the Letter of Rights thus provided, the detained person gives explanations, because the operational [officers] are simply used to the fact that this is how it should be.”

Comprehensibility of the information on the rights

Those of the interviewed persons who had really received the Letter of Rights during police detention inform that they were unable to understand its content. The most frequently cited reasons for this are illiteracy, lack of time to become familiar with the Letter of Rights, anxiety, fear and confusion connected with the detention, but frequently also with the violence exercised by police officers during the arrest. Asked whether they had benefited from their rights to visitation or food parcel, most of the persons interviewed replied

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137 See CPT, Report to the Bulgarian Government on the visit to Bulgaria, carried out by the CPT from 18 to 29 October 2010, CPT/Inf (2012) 9.

that they did not even know that such rights existed. In rare cases the police officers read aloud the Letter of Rights to the detainees. The interviewed persons do not report another form of assisting the understanding of their rights or of testing the extent to which the detainees have understood what their rights are and how to exercise them. CPT also notes in its reports that the detainees in police departments sign the Letters of Rights without understanding their content, which is due to lack of time to become familiar with them.

The Table below presents the views of the surveyed attorneys on the factors which, according to them, have a negative effect on the access to rights for persons arrested by the police. The two most frequently cited factors are “lack of information on the rights” and “illiteracy.” The distribution of the answers shows that according to the attorneys surveyed, voluntary and conscious waiving of rights by the detainees is a highly improbable hypothesis.

<table>
<thead>
<tr>
<th>Factors limiting the access to the rights of detainees in the police</th>
<th>Yes</th>
<th>No</th>
<th>Without opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illiteracy</td>
<td>7</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Stress</td>
<td>6</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Ill treatment/treats of ill treatment</td>
<td>4</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Active dissuasion by police officers</td>
<td>5</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Ethnicity</td>
<td>5</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Vulnerability (age, health condition, no knowledge of the Bulgarian language, etc.)</td>
<td>5</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Lack of information on the rights</td>
<td>8</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Lack of cooperation by the police officers</td>
<td>5</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Unwillingness to exercise their rights</td>
<td>1</td>
<td>8</td>
<td>0</td>
</tr>
</tbody>
</table>

According to NPM data, some police departments in the country have available translations of the Letter of Rights into different foreign languages (Russian, English, German, Turkish, Romanian and Spanish). However, this is not the prevalent practice in the country, and there likewise does not exist a statutory obligation for translation of any document connected with police arrest.
Right to remain silent and not to witness against oneself

The right of a person to remain silent and the right not to witness against oneself underlie the concept of fair trial, the aim being to avoid the risk of using evidence obtained through coercion. However, the study of the practice in Bulgaria shows unambiguously that the persons suspected and detained at the police are not informed about those fundamental rights of theirs and all interviewed detainees deny having received such information. The reason is that the right of the person to remain silent and the right not to witness against oneself are not listed among the rights of detainees under MoIA; information about them is not included in the arrest warrant, or in the Letter of Rights of the detainees.

As a result, 10 of 26 interviewed persons deprived of freedom share that they gave evidence against themselves during a “conversation” or “preliminary talk” with police officers during the detention and in none of the cases the confessions were made in the presence of or after consultations with an attorney.

On the other hand, within criminal proceedings filed under CCP, the persons constituted as accused for having committed a criminal offence have the right to remain silent and are warned about that right in writing when charged. Without discharging that obligation, the investigating body may not proceed to the first questioning of the accused person. Similarly, under one of the key CCP principles, the Court, the prosecutor and the investigating bodies have the obligation to explain to the accused persons their rights in criminal proceedings and to secure to them an opportunity to practise them. One of its concrete manifestations is also the obligation of the investigating body to provide additional clarifications when arresting the accused, whenever necessary.

The suspected persons detained at or “brought” to the police may be questioned and/or instructed to give written explanations. Formally, these testimonies/explanations do not qualify as valid evidence in criminal proceedings, because they have not been gathered following the procedure provided for in the CCP and they should not be submitted in court. Nevertheless, the BHC study conducted between November 2016 and February 2017, based on closed criminal cases, found written explanations in the case records, including confessions of the defendants, made in their capacity of suspects, before the criminal prosecution against them had formally started. These written

140 Ibid., p. 143.
141 CCP, Article 219(3) – (8).
142 CCP, Article 15, Paragraph 3.
143 The study was conducted within the frameworks of the project on Promoting the Procedural Rights in Criminal Proceedings: Effective Access to Attorney/Legal Aid under the Stockholm Programme, co-financed by the European Union.
documents were submitted by the prosecutor and remain at the disposal of the court until the case is closed. The court does not examine the circumstances of the presenting of the explanations, whether fundamental procedural safeguards for protecting the suspect were respected and whether the police bodies did not use some form of coercion or provocation with respect to the suspect for extracting the explanations.

**Waiving of rights**

All 26 interviewed persons deprived of freedom declare that their first interrogation during their police detention was conducted without the participation of or preliminary consultation with an attorney. A part of the interviewed persons confirmed that they had voluntarily and consciously waived their right to an attorney. However, others claimed that they had not sought an attorney because the police bodies actively dissuaded them not to do it or directly refused them access to one. Some of the interviewed people said that they had been manipulated to believe that they did not need an attorney or that the intervention of an attorney in the case would only aggravate their situation, whereas waiving legal defence could allegedly lead to mitigation of the penal repression. At the same time, under the CCP, an accused person who has been detained may not waive his/her right to attorney defence, based on the assumption that the participation of an attorney in the hypothesis of detention is absolutely obligatory.

**Quotes from interviews with persons deprived of liberty on their detention in the police:**

“I asked for an attorney already during the arrest, but the policemen told me: ‘What attorney, you scum?’ Then I asked again 3–4 times more, but they didn’t provide one.”

“I asked for an attorney, but they said: ‘Tomorrow!’”

“They gave me a Letter of Rights, but didn’t let me read it, they just ordered me to sign it right away. I didn’t have an attorney because I didn’t know that things would come to a trial.”

“They told me that they would appoint me an attorney later. First I made an identification and was questioned, and then they detained me for 24 hours.”

“The policeman told me: ‘There’s no point in [the attorney] taking your money, we’ll put you in jail.’”
**Ill treatment of the detainees**

As was mentioned earlier, police violence on the detainees is a widespread and sustainable practice in Bulgaria. Its existence is in itself a clear sign of the inefficiency of the procedural guarantees in favour of the detainees. A considerable number of claims of instances of police ill treatment were registered within the present study. Half of the interviewed persons indicated that they had been subjected to physical and/or psychological violence as a method of extracting incriminating confessions, whereby that happened most frequently during the arrest or immediately after the arrest in the police department. Some interviewed persons describe extreme forms of physical violence. At the same time, confessions made under pressure, although they had not been collected in compliance with the CCP, become known to the court as part of the documents in the case, submitted by the prosecution. In one of the interviews a detainee who claims to be a victim of beating in the police narrates that in his/her capacity of defendant he/she showed the injuries on his/her body to the court during a hearing and explained how he/she got them. Instead of appointing a medical expert assessment or of referring the signal to the prosecution, the Court wished the defendant “speedy recovery.”

A similar picture of mass police violence was also revealed with the results of another large-scale study conducted by the BHC from November 2016 until 2017 involving 1,357 persons deprived of freedom whose criminal proceedings had started after 1 January 2015. The study raises two principal questions: on the access to attorney in criminal proceedings and on physical violence over the detainees. The results show that 71.9 %, i.e., more than two-thirds of the respondents did not have an attorney (court-appointed or authorised) from the very beginning of the criminal proceedings or that they did not have an attorney at all, and one-third of the respondents, who were detained in the police, reported that force or auxiliary means were used against them during the arrest or at the detention facility.\(^{144}\)

Linguistic analysis of the written information on the rights of the detained suspects and accused persons, provided to the detainees under MoIA and CCP

Directive 2012/13/EU sets out the requirement for the Letter of Rights to be drafted in “simple and non-technical language so as to be easily understood by a lay person without any knowledge of criminal procedural law.”

A survey will be made below of the existence of these characteristics in the documents with which information is provided on the rights of the suspects and accused persons. The analysis is based on the guidelines for simplifying the language in the written communication given by the Plain Language Association International and on elements of the theoretical model of “plain English” adopted by Martin Cutts in the variant proposed in the specialised paper “On Some Linguistic Specificities of Two Laws on Education” by Todor Shopov and Dimitar Tomov.

The following definition can be found behind the concept of plain language:

“A communication is in plain language if its wording, structure, and design are so clear that the intended audience can easily find what they need, understand what they find, and use that information.”

146 See more on the concept of simplifying the language at: http://plainlanguagenetwork.org/plain-language/what-is-plain-language/.
148 Shopov, Т., Tomov, D. On Some Linguistic Specificities of Two Laws on Education. – In: Law and Language. Sofia, 2012, p. 198-209 (in Bulgarian). The proposed theoretical model comprises the following 20 elements: syntax, wording, verbosity, voice of the verb, verbs, enumeration, negation, references, language word order, punctuation, specific language rules, morphology, coherence, cohesion, tables, graphs and so on, completeness, meta-text, terminology, layout.
149 The definition is of the International Plain Language Federation. For more information see: http://plainlanguagenetwork.org/plain-language/what-is-plain-language/.
Suspected persons

The Letters of Rights of the suspects, insofar as their providing has been introduced in the national legislation, do not comprise requirements for clarity and accessibility of the language. A model of the Letter of Rights, which is handed to all detainees in the police, irrespective of the grounds for the detention: in the event of evidence of a criminal offence, for identification, etc., was adopted with the Instruction on Detention at the MoI. It is not known whether language specialists had been consulted during its drafting, or organisations of vulnerable groups, which would contribute to the clearer and comprehensible formulation of the rights.

From the point of view of the requirements for a “non-technical language so as to be easily understood by a lay person” the examination of the existing model can lead to the following conclusions:

- On the whole, no legal and other technical terms are used, whose meaning would be difficult to understand by persons without legal background.
- Most sentences are short.
- The information on the rights is presented in the first person singular, which helps the reader identify with the target of the information.

Example: I wish/I don’t wish medical examination by a physician.

- The rights in the Letter of Rights are listed without explaining the respective procedure for their exercising.

Example: I wish/I don’t wish to use a defence attorney of my choice and at my expense.

- The law does not provide for instructions on the way in which the Letter of Rights is formatted, including on letter size and style, on the spacing between the lines, on the use of different colours, underlining or bold for parts of the text.
- The rights in the Letter of Rights are listed using Arabic numerals. No headings and subheadings are used.
- No examples, illustrations, tables and schemes are used in the Letter of Rights.
- There are references to the legislation, without really revealing the content of the norm.

Examples:

2. I wish/I don’t wish a defence attorney by a court-appointed attorney under the Law on Legal Aid.

9. Immediately after my arrest I was promptly familiarised with my rights under Articles 72, 73 and 74 of MoIA.
Accused persons

The drafting of the prosecutor’s orders and the protocols of the first actions of the investigation with which criminal liability of the persons is established and in which their rights are listed is not subordinated to a definite requirement for attaining simplicity and accessibility of expression. The mandatory requisites of these acts are stipulated in the regulatory framework, but no uniform texts or forms have been envisaged. For this reason, the prosecutor and the investigating bodies have a certain freedom in the graphic and language layout of the acts for imputing criminal liability.

The present study examines two orders for bringing accused persons before court in criminal proceedings, issued in 2016 by two different regional prosecutor’s offices. Both orders, in addition to the statutory minimum content of the information on the rights of the accused person, comprise also information on other rights of the accused person, notably the right to demand the replacement of the person conducting the investigation, to give explanations orally and directly before the respective body, etc.

From the perspective of the requirements for non-technical, clear and easily accessible language of the written information, the two orders reveal the following common characteristics:

- The information on the rights is presented through the use of quotes from legal provisions, whereby legal terms are inevitably used as well, e.g., “right to recusal” and “other procedural actions with my participation.” These terms are not additionally explained.
- There is direct reference to legal provisions, but only some of them are explained by citing their content.
- The rights in the Letter of Rights are listed without explaining the respective procedure for their exercising.
- The information on the rights is presented in one or two paragraphs.
- The sentences are long, some of them exceed 1,000 characters.
- No vertical lists are used in the listing to make orientation in the text easier.
- The font used for listing the rights of the accused person is much smaller and more difficult to read than the font with which the remaining text in the order is written.
- No examples, illustrations, tables or schemes are used for easier perception of the information.

As was pointed out earlier, there is no explicit provision in the law that renders mandatory to provide the Letter of Rights in writing to the accused persons detained in the arrests. Nevertheless, there exists a uniform model
of the Letter of Rights, issued by the DGES and adopted in the practice of the arrests, which – in addition to other information – includes some rights of accused persons detained in criminal proceedings. It is not known whether language specialists or organisations of vulnerable groups of persons have been consulted with a view to contributing to the clearer and comprehensible formulation of the rights. From the viewpoint of the requirements of Directive 2012/13/EU for non-technical, clear and easily accessible language of the written information, examination of the Letter of Rights could lead to the following conclusions:

- No legal or other technical terms have been used, whose meaning would be hard to understand by persons without a legal background.

- With few exceptions, instead of concrete information on the rights of the detainees, the document contains abstract references to “my rights and obligations to respect the internal rules,” “international and domestic law” and “the procedure for accepting and filing requests and complaints.”

Examples:

3. I am familiar with the procedure to be followed for seeking medical assistance or for filing a written request or complaint.

4. I am familiar with my rights and obligations with respect to the internal order and discipline, as well as with the sanctions for violations.

5. I am familiar with the general rules in the international and domestic law concerning the rights of the detainees in the detention facilities on the territory of the Republic of Bulgaria.

- Lines are provided for entering data on the person to be informed about the arrest of the accused person.

- The information in the Letter of Rights is presented in separate short sentences, numbered from 1 to 10, which makes the orientation in the text easier.

- The font of the text is sufficiently large so as not to make normal reading difficult.
PRINCIPAL FINDINGS
OF THE STUDY

- The Bulgarian state has not undertaken special measures for transposition of Directive 2012/13/EU in the national legislation. Instead, it assumed that by the deadline for the transposition – 3 June 2014 – the Bulgarian regulatory system and practice were already synchronised with the standards of Directive 2012/13/EU.

- The Bulgarian legislation and practice, on the one hand, and Directive 2012/13/EU, on the other, invest different meaning in using the concepts “criminal proceedings”, “criminal charge” and “arrest or detention of suspected or accused persons in criminal proceedings.” Strict adherence to the national definitions of these concepts bars the way to the transposition of Directive 2012/13/EU with respect to the persons detained on suspicion of having committed a criminal offence or having been affected in another way by investigation conducted against them, but who have not been formally brought to court as accused persons under the criminal-procedural law. At national level police proceedings related to investigation of crimes is defined as administrative; the persons suspected of having committed a criminal offence do not have a formally recognised capacity of participants in criminal proceedings, and the detention is defined as administrative coercion measure. However, the approach of the national legislator contravenes the provisions of Directive 2012/13/EU, which refers the concepts of “criminal proceedings,” “criminal charge” and “arrest or detention of suspects or accused persons” to the norms of the Convention and to their autonomous interpretation given by the ECtHR.

- As the figure of the suspected persons of having committed a criminal offence is not legally recognised, the law does not guarantee criminal-procedural rights to defend the persons about whom there is information of having committed a criminal offence and against whom investigative actions are undertaken outside the criminal proceedings.
All persons detained in the police, irrespective of the grounds for the detention, are guaranteed certain rights ensuing from the fact of the deprivation of freedom: the right of access to a lawyer and legal assistance, the right to medical assistance, the right to inform a close person about the detention, etc. However, there is no other regulatory framework giving to the detainees a possibility of participation and defence in the investigation conducted against them, e.g., the right to remain silent and not to give evidence against themselves, the right to interpretation and translation and the right of access to the materials in the case.

Persons detained on suspicion of having committed a criminal offence by the SANS bodies, the military police or by the law enforcement bodies under the Anti-Terrorism Act and the Law on Private Security Activities, are not entitled to legal aid under the Law on Legal Aid.

The persons detained on suspicion of having committed a criminal offence are informed about their rights of detained persons by means of a Letter of Rights. It lacks information on the rights of the detainees, connected with the criminal prosecution conducted against them.

The same Letter of Rights is given to all persons detained in the police, without being adapted to the needs of minors or to persons who, due to their mental or psychological state, are unable to understand the content or the meaning of the information.

The persons detained in the police, who do not understand Bulgarian, have no right to written translation of the Letter of Rights.

The present study also comprised the documenting of numerous claims connected with untimely providing or failure to provide the Letter of Rights to the detainees; with insufficient time to become familiar with the content of the Letter of Rights and with the lack of support for the detainees who are illiterate or do not understand Bulgarian. Descriptions were also given of a number of practices to dissuade the detainees from familiarising themselves with and exercising the rights set out in the Letter of Rights, including through manipulations and threats.

Failure to provide or providing incomplete information during police detention often leads to unlawful acts on the part of the law enforcement bodies, e.g., physical ill treatment of the detainees, psychological pressure and extracting self-incriminating information that subsequently goes to their criminal cases.

Persons who are not formally detainees, but are escorted to the police and are compelled to remain there for questioning or for some other action in the police investigation conducted against them, receive no written information on their rights.

The Letter of Rights provided in MoI detention facilities does not comply fully with the requirements on the accessibility of the language and the
easy readability of the content. The main issues are: references to the legislation are made without explaining their content, as well as lack of information on the way of exercising the indicated rights.

- The lawfulness of the detention may be appealed before the administrative court, but the violation of the rights of the detained suspects, including the violation of the right to information, does not affect the fairness of the criminal proceedings.

- Under the Anti-Terrorism Act and the Law on Private Security Activities, persons suspected of having committed a criminal offence may be detained until the arrival of the police authorities. These regulatory acts entirely lack provisions on the rights of the detainees in the period prior to the arrival of the police and – accordingly – no Letter of Rights is envisaged.

- The persons with formally established criminal liability obtain written information on their rights in criminal proceedings and on some, but not all, rights and legal opportunities connected with their detention. The information on their rights, connected with the defence and with the participation in criminal proceedings, is incorporated in acts issued by the prosecutor and the investigating bodies, but not in a special Letter of Rights. It reiterates the provisions in the law that fix the respective rights without adapting them to the needs of their readers and without giving additional guidelines on their practical use.

- Non-providing of written information connected with the rights of the accused person in criminal proceedings is a major procedural violation leading to termination of the court proceedings and referring of the case back to the pre-trial phase. However, non-providing of written information on the rights of the accused person, applicable to the period of the detention, does not affect the fairness of the trial.

- The national legislator does not regulate the providing of the Letter of Rights or of some other written information to the detainees in the proceedings under the European arrest warrant, reflecting the specificities of these proceedings.
The authors of the present study have formulated recommendations divided in five categories: (1) suspected persons; (2) providing the Letter of Rights; (3) content of the Letter of Rights; (4) language and format of the Letter of Rights; (5) other.

**Suspected persons**
- To undertake legislative changes in the direction of recognising the capacity of suspects in criminal proceedings to persons not officially charged, but who are detained on suspicion of having committed a criminal offence by the police or by other authorised bodies, as well as to persons whose situation was considerably affected by acts of police investigation conducted against them (search, perquisition, identification, etc.).
- In compliance with Article 3 of Directive 2012/13/EU, all suspected persons are to have recognised and guaranteed rights of participation and defence in police and other proceedings on crime investigation, conducted against them, including the right to remain silent, the right of access to the materials in the case and the right to free legal advice.

**Providing the Letter of Rights**
- To envisage statutory obligation for a written document to be presented – a declaration in criminal proceedings, in all cases of detention in connection with suspicion/accusation of a criminal offence committed, including in the cases under CCP, MoIA, LEEAW, LSANS, Customs Act, Law on the Military Police and Anti-Terrorism Act. This declaration must be different from the Letter of Rights for detainees on other grounds, not connected with a criminal charge.
- To create regulatory guarantees for providing the Letter of Rights immediately after the arrest of the suspect/accused person.
– To secure sufficient time for the detained person to become familiar with the content of the Letter of Rights, to request explanations or additional information on the procedure of exercising the rights.

– To draft a special declaration on the rights of the detainees with a view to implementing the European arrest warrant.

– To draft a special declaration on the rights of detained minors, whose content to correspond to the higher standards of protection formulated in Directive (EC) 2016/800 of the European Parliament and of Council of 11 May 2016 on the procedural safeguards for children suspected or accused in criminal proceedings.

– To develop suitable video-, audio- and/or illustrated materials, as well as to regulate a procedure (place, time, person, settings) to assist the providing of information on the rights of the detained suspects and accused persons with mental and/or psychological disabilities, as well as for illiterate persons and children.

**Content of the Letter of Rights**

– The Letter of Rights provided to detained suspected persons should contain information on all rights listed in Article 4 of Directive 2012/13/EU, including the right of the detainees to remain silent and not to testify against themselves, the right to interpretation and translation, the right of access to the materials in the case, the right to legal assistance under the Law on Legal Aid, the right to information on the charges, as well as information on other rights applicable to the concrete situation according to the national legislation.

– The information on the rights of the detained accused persons should exist in one document: the Letter of Rights. It should contain information on all rights listed in Article 4 of Directive 2012/13/EU, including the right of access to a lawyer, the right to legal assistance, the right to interpretation and translation, the right to inform a third person about the detention, the right to medical assistance, the right to appeal and revision of the detention measure.

**Language and format of the Letter of Rights**

– The Letters of Rights for detained suspects and accused persons should be written in a simple and non-technical language, without references to the legislation, in sufficiently large and easy to read font. They must really be in a position to inform the detainees, who more often have no legal background, they are with low literacy levels, placed in a situation of fear and confusion, what their rights are and how they can exercise them.

– The language and the layout of the Letters of Rights must be consulted
with representatives of different vulnerable groups (children, people
with mental and psychological issues and physical disabilities; ethnic and
language minorities, etc.).

- All detention facilities must have translations of the Letter of Rights into
different languages for the detainees.

Other

- An effective means of protection needs to be provided against refusal or
omission on the part of the detention authorities to provide the Letter of
Rights to the detainees.
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