

Bulgarian legal aid and Roma women

Jon T. Johnsen

Collaborators:

Rada Elenkova and Cathrine Moksness

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SUMMARY



Outside Juristenes Hus in Oslo, Norway.

The present report has the need for and use of legal aid by Bulgarian *Roma women* as its main subject. It analyses the Bulgarian legal aid schemes that cover Roma women, and map their strengths and weaknesses with suggestions for improvements. The analysis includes both general legal aid schemes and special schemes like test schemes in Roma settlements, as long as they might be useful to Roma women. We only analyse *a selection* of legal aid challenges that we think important for Bulgaria to solve.

Stakeholders have asked for an *objective* overview of the system for delivering legal aid to vulnerable groups in Bulgaria. They wanted an *outsider's* view, since such perspectives might easier identify reform issues and be helpful to national experts in their analyses. Therefore, the Norwegian experts should independently establish a reasonably accurate picture of how Bulgarian legal aid to vulnerable people as Roma women works at present.

According to the stakeholders' guidelines, the report should evaluate Bulgarian legal aid schemes from European and international standards.

Our main purpose, however, is to produce *recommendations* about how Bulgaria might develop legal aid in ways that serve Roma's legal need well, and especially the legal need of Roma women. In our analyses we summarize the legal and social circumstances that justify the need for reforms followed by our recommendations at the end of the discussions. Readers therefore find recommendations as part of the running text. Additionally, we have gathered all recommendations in our final chapter, with references to the text that contains the justification for each of them.

We have made our recommendations short. They mainly consist of *principles* for reform that must be further adapted to the Bulgarian setting by Bulgarian experts and authorities.

Our recommendations come in chapters 4–7.

Chap. 4 analyses the Bulgarian Civil scheme and evaluates the poverty criteria, the problem or case type criteria and also the merits criteria – the additionally discretionary criteria of the civil scheme. Additionally, we handle lawyer costs and other costs, the delivery system and the actual use of civil legal aid, especially by Roma women. Lastly, we look into the lawyers' access to and work with legal aid commissions. A lack of reliable statistics has significantly hampered our work, and we have used estimates instead to some extent. We think that the lack of reliable statistics is a serious problem also for fact based government and management of Bulgarian legal aid. All together chap. 4 on civil schemes forwards 13 recommendations.

Chap. 5 analyses criminal legal aid and have two major sections – one on defenders and one on victims' lawyers. For defenders our analysis focuses on their role in police interrogations and the use of evidence from such interrogations in court. The part on victims' lawyers looks into the victim's position in criminal investigation and prosecution of trafficking for sexual exploitation and of domestic and sexual violence. Our analysis compares the challenges mainly female victims meet, compared to what the victims' lawyers service provides. Chap. 5 contains 11 recommendations on defenders and 13 recommendations on victims' lawyers.

Chap. 6 evaluates innovative legal aid projects that might serve as development models for legal aid service to the Roma population, and especially to Roma women. We consider the National Telephone for Legal Aid and the Regional Consultation Centres of the Bar Associations as established services. The chapter also considers *outreach* legal aid services in Roma neighbourhoods and their use of Roma mediators. We include a short evaluation of the present limited digitalization of the services. We also consider the use of *impact work* – for example principled litigation – as part of legal aid. The chapter ends with a description of *Contracting* as a flexible alternative to the single case remuneration system used in Bulgaria at present.

Chapter 6 contains 8 recommendations.

Chap. 7 evaluates access to legal aid in selected Roma discrimination cases. We include legal aid in cases before the Commission for the Protection Against Discrimination, employment cases, housing demolition cases and cases about the health services provided to Roma women by hospitals.

The chapter includes 6 recommendations.

Chap. 8 lists all 51 recommendations in the report, ordered per chapter.

CONTENT

SUMMARY	1
CONTENT	3
PREFACE	6
ABBREVIATIONS	7
1 INTRODUCTION	8
1.1 Issue and working method. Perspective	8
1.2 Legal service and legal aid schemes. Introduction and overview	10
1.3 Goals and limitations	11
2 ROMA WOMEN’S NEED AND CAPACITY FOR UTILIZING LEGAL AID	13
2.1 Roma minority in Bulgaria and Roma women’s need for legal aid	13
2.2 Barriers to legal aid for Roma women	14
3 MAIN FEATURES OF BULGARIAN LEGAL AID	16
3.1 Introduction	16
3.2 Legal aid provisions and organization	16
4 CIVIL SCHEME	19
4.1 Introduction	19
4.2 Poverty criteria	19
4.2.1 Main provisions	19
4.2.2 Evaluations	21
4.2.3 Poverty standards in human rights	23
4.2.4 Poverty standards in the legal aid schemes of Northern and Western Europe	24
4.3 Problem criteria	25
4.3.1 Content	25
4.3.2 Evaluation	26
4.4 Merits criteria	27
4.5 Other costs	28
4.6 Delivery	28
4.6.1 Information about legal aid	28
4.6.2 Service content	30
4.7 Actual use of civil legal aid by the people covered	30
4.7.1 Limited statistics	30
4.7.2 Number of grants	30
4.7.3 Roma usage	32
4.8 Legal aid lawyers	33
4.8.1 Registration and qualifications	33
4.8.2 Lawyers’ work with civil legal aid	33
4.8.3 Some conclusions	35
5 CRIMINAL LEGAL AID	38
5.1 Introduction	38

5.2	Defender	38
5.2.1	Legislation	38
5.2.2	Volume	40
5.2.3	Access to legal aid during police interrogations and custody	41
5.2.4	Use of evidence from police interrogations in criminal trials	41
5.2.5	Police use of coercive methods	42
5.3	Evaluation	42
5.3.1	Case law of the European Court of Human Rights	42
5.3.1.1	<i>Costs</i>	42
5.3.1.2	<i>Right to a defender</i>	43
5.3.1.3	<i>Coercive means</i>	44
5.3.2	Police abuse complaints	45
5.3.3	Quality and use of defender	46
5.4	Victims of trafficking for sexual exploitation and of domestic and sexual violence	48
5.4.1	Introduction	48
5.4.1.1	<i>Legal aid provisions</i>	48
5.4.1.2	<i>Functions of legal aid</i>	49
5.4.2	Victims of trafficking in human beings (THB) for sexual exploitation	49
5.4.2.1	<i>Statistics</i>	49
5.4.2.2	<i>Barriers to leaving prostitution</i>	50
5.4.2.3	<i>Victims' experiences with investigation, prosecution and courts</i>	51
5.4.2.4	<i>Information to victims</i>	53
5.4.2.5	<i>Victim's lawyer reforms</i>	56
5.4.2.6	<i>Victims' limited use of legal aid</i>	56
5.4.2.7	<i>Compensation for loss of "immoral earnings"</i>	57
5.4.2.8	<i>Concluding comments</i>	58
5.4.3	Victims of domestic or sexual violence	60
5.4.3.1	<i>Weaknesses of the present scheme</i>	60
5.4.3.2	<i>Experiences by Wings on victims of sexual and domestic violence</i>	61
5.4.3.3	<i>The Ombudsman of Bulgaria</i>	63
5.4.4	Two general reforms in legal aid service to victims	64
5.4.4.1	<i>Lawyer qualifications</i>	64
5.4.4.2	<i>Outline of the Norwegian victim's lawyer model</i>	67
6	NEW SERVICES AND TEST PROJECTS	69
6.1	Established projects. National Telephone for Legal Aid and Regional Consultation Centres	69
6.2	Test projects. Outreach	71
6.2.1	Outreach projects in Stara Zagora, Varna and Veliko Tarnovo	71
6.2.1.1	<i>NLAB's motivation for organising outreach projects</i>	71
6.2.1.2	<i>Outreach experiences in Stara Zagora and Veliko Tarnovo</i>	73
6.2.1.3	<i>Outreach project of Mission Wings Stara Zagora</i>	75
6.2.1.4	<i>Conclusions</i>	76
6.3	Mediator	77
6.3.1	Introduction	77
6.3.2	Working method	78
6.3.3	Formal requirements	79

6.3.4	The mediator's importance	79
6.3.5	Evaluations	80
6.3.5.1	<i>Ministry of Justice's development ideas</i>	80
6.3.5.2	<i>Evaluations from the Supreme Bar Council</i>	81
6.3.5.3	<i>Our evaluations</i>	82
6.4	Data challenge	83
6.5	Impact work	83
6.5.1	Introduction	83
6.5.2	Experiences with impact litigation	85
6.5.3	Ombudsman of Bulgaria	86
6.5.4	Conclusion	87
6.6	Contracting	88
7	OTHER ROMA DISCRIMINATION EXAMPLES	90
7.1	Introduction	90
7.2	Commission for Protection against Discrimination	90
7.2.1	Structure and tasks	90
7.2.2	Amalipe's assessment of CPD	92
7.2.3	Conclusions	93
7.3	Employment	94
7.4	Housing demolition	95
7.4.1	Roma housing conditions	95
7.4.2	Demolition orders and legal aid	97
7.4.3	Human rights. Dimitrova and others v. Bulgaria	99
7.4.4	Comments	102
7.4.5	Conclusions	102
7.4.6	Address and identity documentation	103
7.5	Health care. Reproductive rights of Roma women	104
7.5.1	Introduction	104
7.5.2	Bulgarian birth rights	105
7.5.3	Might legal aid help?	106
8	LIST OF RECOMMENDATIONS	108
8.1	Civil legal aid	108
8.2	Criminal legal aid	109
8.2.1	Defender	109
8.2.2	Victims	111
8.3	New services and test projects	112
8.4	Other Roma discrimination examples	113
	LITTERATURE	115
	LIST OF INTERVIEWS	118

PREFACE

The present report analyses Bulgarian legal aid with focus on the coverage of Roma people.

The project group consists of

- Dilyana Giteva, Bulgaria
- Rada Elenkova, Bulgaria
- Cathrine Moksness, Lawyer and head of the NGO Rettssenteret (Law Centre) in Oslo, Norway
- Jon T. Johnsen, professor emeritus, Faculty of Law, University of Oslo, Norway

Jon T. Johnsen has authored the report.

The report has been produced through desk research of the reports shown in the references, and twelve interviews with Bulgarian legal aid actors conducted in the period of May 9–13.2022 by Cathrine Moksness and Jon T. Johnsen, assisted by Dilyana Giteva, Rada Elenkova and interpreters when necessary. Interviews took place in Sofia, Stara Zagora and Veliko Tarnovo.

Unfortunate circumstances delayed my further work with the report for half a year, and the first complete draft was ready in the middle of June 2023. Then the Legal Aid Act had underwent significant changes in force from May 4, 2023. Additionally, the analysis should consider the new Roma inclusion strategy 2021–2030.

The National Legal Aid Bureau, Bulgaria and Norwegian Court Administration have commissioned the report under the Norwegian Financial Mechanism 2014–2021 – later prolonged until the end of 2023.

Oslo 15.09.2023
Jon T. Johnsen



*Jon T. Johnsen and
Cathrine Moksness in Bulgaria.*

ABBREVIATIONS

- BCPC** Bulgarian Criminal Procedure Code
- BLAA** Bulgarian Legal Aid Act 2006 with later amendments
- CCPR** International Covenant on Civil and Political Rights December 1966
- CEPEJ** European Commission for the Efficiency of Justice at the Council of Europe
- CPD** Commission for the Protection against Discrimination
- ECHR** Convention for the Protection of Human Rights and Fundamental Freedoms
4 November 1950
- ECtHR** European Court of Human Rights
- ERRC** Roma Rights Centre
- MWO** Mission Wings Office in Stara Zagora
- NLAB** National Legal Aid Bureau
- NRL** National Register of Legal Aid Lawyers
- SAC** Bulgarian Supreme Administrative Court
- THB** Trafficking in Human Beings
- THB Convention** Council of Europe Convention on Actions against Trafficking
in Human Beings in force from 2008

1 INTRODUCTION

1.1 Issue and working method. Perspective

The present report has the need for and use of legal aid by Bulgarian *Roma women* as its main subject. It analyses the Bulgarian legal aid schemes that cover Roma women, and map their strengths and weaknesses with suggestions for improvements. The analysis includes both general legal aid schemes and special schemes like test schemes in Roma settlements, as long as they might be useful to Roma women.

However, legal aid provisions rarely have Roma women as their only subjects. Roma women achieve their entitlements to legal aid as part of larger entities. Poverty and helplessness affect both Roma women, men and other ethnic and social groups.

Outsiders' evaluations. Stakeholders have asked for an *objective* overview of the system for delivering legal aid to vulnerable groups in Bulgaria. They wanted an *outsider's* view, since such perspectives might easier identify reform issues and be helpful to national experts in their analyses. Therefore, the Norwegian experts should independently establish a reasonably accurate picture of how Bulgarian legal aid to vulnerable people as Roma women works at present.

Following stakeholders' guidelines, the authoring, including structure, final analyses, conclusions and recommendations, are to the best independent judgement of the Norwegian experts. So, whenever the report uses words as "we" and "our", they refer to the opinions of the two Norwegian experts, not to the Bulgarian ones. We have not attempted to precisely clarify to what extent our conclusions coincide with the judgements of the Bulgarian experts.

The Bulgarian experts have been indispensable in the fact-finding process – including existing opinions about Bulgarian legal aid and its sufficiency to the target group. They have provided the project with a significant number of useful reports that describe the situation of poor people in Bulgaria.¹

The report has been produced through desk research of the provided reports and from 13 interviews with Bulgarian legal aid actors in the period of May 9–13 2022. Jon T. Johnsen and Cathrine Moksness conducted the interviews, assisted by Dilyana Giteva, Rada Elenkova and interpreters. Interviews took place in Sofia, Stara Zagora and Veliko Tarnovo.² Some additional information has been extracted from other sources, including the Internet.

We think the selection of reports suffices to our purpose. They form the major basis for our analyses, and we cite them frequently through our report.

We use interviews selectively and according to the structure of the report, which is reformative. We do not intend to give a systematic and extensive picture of each interviewed instance and its tasks and role in Bulgarian legal aid. We use most of the information to improve our own understanding of the Bulgarian legal aid system. Neither do we use citations from the interviews, but summarize what we think relevant in our own words. Generally, we accept the answers as truthful about facts and attitudes, and that they express the interviewees' subjective understanding of the issues also when other information might indicate that the objective truth is different.

¹ See the literature list p. 116.

² See the list of interviews p. 119.

The reports mainly relate to the situation of poor Roma. If we should analyse the legal aid situation for other poor groups on an equal footing with Roma women and men, we probably would have needed significant more information.

International standards. According to the stakeholders' guidelines, the report should evaluate Bulgarian legal aid schemes from European and international standards.

However, developed and agreed international standards for national legal aid schemes hardly exist, and the schemes in operation vary significantly in content and coverage.

We therefore use human rights as the main international standard in our evaluations.

We also use European statistics issued by the Council of Europe's Commission for the Efficiency of Justice for evaluations from European standards. Although mainly descriptive, some ideas about the variations between the different schemes in Europe and the placement of the Bulgarian schemes might be extracted.

Additionally, we compare sometimes to Norwegian examples of the more advanced legal aid systems. We chose Norway out of convenience. Both Norwegian experts are most familiar with Norwegian legal aid.

Lastly, we draw upon a recent doctoral thesis that compares the five Nordic legal aid schemes in Iceland, Denmark, Norway, Sweden and Finland with the four common law schemes of Scotland, England and Wales, Northern Ireland (UK schemes) and Ireland.³

Most important, we also apply a welfare standard by comparing the existing coverage to the estimated unmet need for legal services among Roma women.

Recommendations. Our main purpose, however, is to produce recommendations about how Bulgaria might develop legal aid in ways that serve Roma's legal need well, and especially the legal need of Roma women.

Bulgarian legal aid provisions do not distinguish between ethnicity or gender. They bear on other groups than Roma too. We have followed a similar approach in most of our recommendations. They contain proposals that all Bulgarian poor might profit from. However, we have not made any special efforts to collect and analyse materials that do not seem important to legal aid to our target group.

Our analyses are incomplete. We only analyse *a selection* of legal aid challenges that we think important for Bulgaria to solve. We have not evaluated other important need for legal aid that Roma women and men might experience.

In our analyses we summarize the legal and social circumstances that justify our reform proposals, followed by our recommendations at the end of the discussions. Readers therefore find recommendations as part of the running text. Additionally, we have gathered all recommendations in our final chapter, with references to the text that contains the justification for each of them.

One caveat: We are not experts on the Bulgarian legal system nor on Bulgarian legal aid. Our knowledge depends on the reliability of the sources we have used, and our contribution consists of expertise on other legal aid systems and on the international research literature on legal services and legal aid that we think useful in Bulgaria. Therefore, we have made our recommendations short. They mainly consist of *principles* for reform that must be further

³ Anna Barlow *The Machinery of Legal Aid*. A critical comparison from a public law perspective of the United Kingdom, the Republic of Ireland and the Nordic countries. 2019 ISBN 978-951-765-919-2 ISBN 978-951-965-920-8 (digital) (Barlow 2019)

adapted to the Bulgarian setting by Bulgarian experts and authorities. We hope that readers will focus on the intention and purpose of our proposals, and show tolerance to our mistakes.

1.2 Legal service and legal aid schemes. Introduction and overview

Legal aid schemes have many features. In this overview, we define the ones most central to our analyses, and explain others when they occur in the text.

Legal service. The model example of legal service is the service sold to users on market conditions by lawyers in private practice. The content of the service is to map and utilize the user's legal positions in client's best interest. Services might consist of legal analyses and advice, formulation of legal and other documents concerning the user's legal positions, like applications and complaints, wills and contracts and representing the user before public administration bodies, complaint boards, in ADR and before the courts, etc.

Legal services sold by practicing lawyers are supposed to be independent in the sense that the lawyer's loyalty stays with the client. The point is to help in utilizing the user's legal position without influence of any other interest. Such independence is a major part of the private practitioners' professional ethics.

Although other bodies – for example ombudsmen, consumer boards and tribunals – might analyse and advice users on their legal positions, they usually apply an objective approach. They do not focus solely on the users' interest as the lawyers' ethics prescribe. If the body also possesses decision-making powers – meaning capacity to decide the content of the user's legal positions – the user's trust in such advice might be limited. Also the willingness to provide information that the user fear will be used in a way detrimental to the user's interests, might be absent.

Legal aid schemes. “Legal aid” signifies legal service delivered non commercially to the user – usually through public schemes. Public legal aid schemes usually provide the lawyer type of user centred legal services also when the providers are salaried. We might distinguish between two major types of legal aid schemes.

Judicare schemes means that the public purse pays private practitioners for delivering legal service to users without sufficient means. In *law centre schemes* government or other public entities or private entities like NGOs, organize the delivery and hire lawyers or other competent providers on a salaried basis to deliver such non-commercial service. The Bulgarian schemes are of the *judicare* kind.

Contracting. Payment for legal aid work might either be per case or through contracting of larger quantities of service. Traditionally, governments have paid per case according to standardized fees, like Bulgaria does. Fees often are lower than for private commissions, which sometimes creates tensions between government and lawyers' associations.

Contracting is well known from the private sector. Business firms enter into differentiated contracts with law firms on services for legal problems that arise from their commercial services. Professional and labour organisations contract law firms to help their members with legal problems that connect to their work activities, etc. Contracting in a legal aid setting means that governments buy larger quantities of services from law firms on terms specified in a contract.

Monopoly. In several jurisdictions, private practitioners enjoy a commercial monopoly on delivering legal services. Monopoly provisions might differentiate between the handling of court cases and other sorts of service. Some jurisdictions also allow paralegals to carry out selected types of legal services and some do not have monopoly provisions on commercial

delivery of legal services at all.

Judicare schemes might contain a monopoly provision for private practitioners on delivery, and public law centre schemes similar monopolies for salaried providers. Finland, for example, only uses lawyers salaried by the public to deliver legal aid in non-court matters, while court commissions are distributed to both salaried public lawyers and to private practitioners.

Access to justice. “Access to justice” appears as a broad label with some ambiguity. Generally, the concept signifies the possibility for the individual to bring a claim before a court and have a court to adjudicate it. A wider meaning is to include access to all types of institutions or arrangements that citizens might use to have their legal positions decided and enforced, like tribunals, boards, etc. We use the term in its broadest meaning.

An interdependence exists between the necessity of legal aid schemes and other “access to justice” vehicles. Often legal aid appears important not only to efficient use of courts, which human rights provisions protect, but also to other “access to justice” institutions like immigration boards, consumer arbitration and complaint boards, anti-discrimination tribunals, etc. Opposite, making “access to justice” institutions more easily available and efficient might reduce the need for legal aid to make them work.

Impact work. Legal aid schemes’ focus is to help users to enforce their interests according to their rights, duties and competences in existing law and regulations. Legal aid schemes usually handle such problems individually – according to the characteristics of each user.

However, the individual problems of the target groups for legal aid often appear similar and related to structural features of the law and/or the judicial decision-making and enforcement system. Delivering individual legal services to a significant number of members of vulnerable groups for similar problems, often results in essential insights in dysfunctional elements of the legal system and foster ideas about how to remedy them collectively. A spectre of impact strategies might be used to pressuring the system to change and remedy the problem for the group as such. Some legal aid schemes open for impact work to some extent.

1.3 Goals and limitations

The report focuses on Bulgaria’s legal aid schemes; the schemes that exist at present, how they actually work for Roma women and the need to expand and develop them. Our goal coincided with the National Strategy of the Republic of Bulgaria for equality, inclusion and participation of the Roma (2021–2030) that includes “improving access of Roma women to legal aid and justice” as one of its operational objectives.⁴ The strategy appears wide reaching and contains a large spectre of objectives and means on an overall level. It does not detail the legal aid measures. The present report with its 51 recommendations provides a wide spectre of such measures that Bulgaria might use in implementing the legal aid part of the strategy.

We perceive suggestions about reforms in Bulgarian individual legal aid as our main task. We recommend changes in other “access to justice” vehicles when they might substitute legal

⁴ Operational Objective: Guaranteeing the rights of citizens, with an emphasis on women and children, protection of public order, prevention and counteraction to the manifestations of intolerance and “hate speech”. *National Strategy of the republic of Bulgaria for equality, inclusion and participation of the Roma (2021–2030)* part VII 5.4. Ref Ares (2021)/775351 – 15/12/21 (without page numbering). (Roma inclusion strategy 2021–2030).

aid or improve the efficiency of legal aid. At least nine of our recommendations concern such changes.⁵ An independent analysis of other “access to justice” institutions than legal aid as suggested in the project documents seems too demanding, given the ramifications for the Norwegian contribution. We have not collected or analysed such data independent of legal aid, and we only have considered a limited selection of such reforms.

We have made some limitations. The resources available for the project are limited and influence the issues we have focused on. The Norwegian participants do not master Bulgarian, so their contribution depends on material available in English either in written reports or from interviews in English or with translation from Bulgarian. Limited statistics on legal aid is another important challenge. We often must rely on assumptions when analysing occurrences.

Legal aid systems are complex. Both the availability of data and our capacity to analyse them have been important to our priorities. We still hope that the report provides a useful analysis of important functions and reform issues in Bulgarian legal aid to Roma women.

⁵ See recommendation 6, 16, 19, 20, 28, 47 and 48.

2 ROMA WOMEN'S NEED AND CAPACITY FOR UTILIZING LEGAL AID

2.1 Roma minority in Bulgaria⁶ and Roma women's need for legal aid

Before we start analysing how well Bulgarian legal aid covers Roma women's need for legal services, a short summary of background information about the Roma population in Bulgaria might be useful for the understanding of the report. The short information provided here, will be further elaborated later in the report, with references to the sources used.

Then we present some general assumptions about the need for legal aid among Roma women and their capacity for seeking and utilizing legal services and legal aid. We will provide information that is more specific when we discuss the different legal aid issues.

Roma in Bulgaria form a minority group as they do in several other European countries. Statistical information is limited, because Bulgarian authorities do not register or collect much statistics based on ethnicity. The 2021 census, however, registered 266 720 Roma, which constitutes 4,4 percent of the population. 215 792 – or 88,2 percent – reported Romani as their mother tongue.⁷

Since Roma experience discrimination, they might want to hide their ethnicity, and not expose it unless they must, which results in large underreporting. Estimates therefore vary from 370 000 to 800 000 or between 6 and 12 percent of Bulgaria's population.⁸

Persons from the Roma ethnic group live in all areas of Bulgaria. Based on the official figures, the concentration of Roma is highest in the regions of Montana (12.7%) and Sliven (11.8%), followed by the regions of Dobrich (8.8 %) and Yambol (8.5 %).⁹

Compared the average Bulgarian, Roma as a group appear less educated, poorer and with lower employment rate, and subject to discrimination at a higher rate.

Statistics tell about volume, not necessary about diversity. Roma that are well educated, well off with safe jobs and not subject to much discrimination also inhabit Bulgaria.

When we use statistics – for example showing that a higher proportion of young Roma men are subject to police custody than the youth of other Bulgarian groups, it does not mean that involvement in crime is a characteristic of all Roma youth. Such comparisons do not tell about the share of young male Roma without involvement in the criminal justice system, which might be far larger.

It should be kept in mind that our report focuses on Roma and especially Roma women. Other poor women might experience similar problems, but due to the scope of the analysis, we will only occasionally make such parallels.

This report concerns legal aid. Legal aid addresses the poorest part of the population.

⁶ Roma inclusion strategy 2021–2030) part II and III contains a more detailed, official description of the situation of Roma women and men.

⁷ National Statistical Institute of Bulgaria *Ethno-cultural characteristics of the population as of September 7, 2021. Final data* pp. 1 and 7. https://www.nsi.bg/sites/default/files/files/pressreleases/Census2021-ethnos_en.pdf. Visited 09/09/2023.

⁸ Angelova, Dilyana and Slava Kukova *Guilty by default. Discrimination Against Roma in the Criminal System in Bulgaria*. Bulgarian Helsinki Committee Sofia 2020 p. 18–19 (Guilty by default 2020).

⁹ European Roma Rights Centre *Cause of Action: Reproductive Rights of Romani Women in Bulgaria*. 2020 (ERRC 2020) p. 5.

We assume that a larger part of Roma must depend on the public legal aid schemes for legal services than the rest of the population. The poverty criterion also means that we will focus on the poorest part of the Roma population. The legal need of the better off are outside our analysis.

Cultural traits exist in Roma communities that assign Roma women a subordinate role to men. When imposed, women might experience limited freedom to decide their personal development, reproduction and work. They risk early marriage and pregnancy. Most work as homemakers.

They might experience violence and sexual assaults.

Roma women also risk to be pressured into prostitution, trafficking and other organised crimes. The share of welfare recipients is supposed to be high. Obviously, such conditions impact on their need for legal aid.

Research on poor people's legal problems show that they are vast, and arise in a continuous stream. They connect to and impact on most aspects of poor people's welfare, social benefits, income, debts, consumer transactions, family, housing, education, health, crime etc. The rate of public counterparts is higher than among more affluent parts of the population.

2.2 Barriers to legal aid for Roma women¹⁰

We might summarize the barriers that might hinder poor Roma women from using legal services and legal aid as:¹¹

- Entrenched traditional attitudes and practices that capsule Roma women in their communities and normalise domestic and gender-based violence.
- Long-standing obstacles such as poverty, illiteracy and language barriers, immobility that deprive women of the capacity to voice their concerns and claim their rights.
- Lack of awareness and knowledge on the functioning of the institutional systems and mechanisms for filing complaints and requesting information. Institutions do not present basic information like deadlines for submitting requests for child support, in a user-friendly language, which creates insecurity and fear of asking on part of Roma women. Some Roma women have not reached the point of being able to request information despite clear legal and social problems in their everyday lives because of lack of trust in state institutions and services.
- Economic dependence – pay gap between women and men for the same work or as a result of barriers to women's access to certain forms of work/frequent absence due to child/elderly care; limited time because Roma women often have the burden of sole responsibility of childcare and unpaid domestic work; poverty is feminized¹² and therefore women struggle to have the resources necessary to access information and justice.

¹⁰ See also Roma inclusion strategy (2021–2030) part II and III.

¹¹ Summarized by Rada Elenkova.

¹² Indicators for poverty and social inclusion in Bulgaria, National Statistical Institute (2020–2021)

- <https://bit.ly/3MBJen3>

- Discrimination at the workplace – signals over discrimination based on ethnicity that prevents Roma women to access/be appointed to work.
- Technical barriers - power and economic disparities leading to a gender digital divide, impeding women's ability to access technology and the Internet compared to men; women own less technology and lack support in understanding how it works.
- COVID-19 and the spread of the pandemic further locked women and children in their homes, contributing to rise of domestic violence and increasing the need for seeking support.

As a group Roma women are among the poorest and most vulnerable in the Bulgarian society. It seems safe to assume that their need for legal services to solve legal problems are huge, due to a high occurrence of legal problems and a general legal impotence due to illiteracy and insufficient capacity in Bulgarian. Social factors also confine them to the Roma neighbourhoods, which provide them with limited experience in communicating with public authorities and services provided by ethnic Bulgarians.

In our analyses, we apply a practical approach. Given the present living conditions of Roma women, to what extent might they profit from using public legal aid? Might reforms improve the functioning of the schemes?

Of course, the barriers described above will impact. We will primarily look into the schemes operating today and into reform projects planned and under execution. -We also will discuss some features of legal aid in other jurisdictions that seem transferrable to the Bulgarian setting.

3 MAIN FEATURES OF BULGARIAN LEGAL AID

3.1 Introduction

Our next step is to summarize the main features of Bulgarian legal aid – *the legal aid machinery*. In the following chapter, we estimate how well it covers the need of Roma women and men for legal services.

Legal aid is a restricted benefit. Schemes delimit the types of problems covered – called *problem criteria* and the persons who qualify – called *person criteria*. They also have systems for delivery of the service, usually lawyers. A legal aid scheme might not cover all costs for the entitled, even when labelled “free”.

Several countries distinguish between civil and criminal legal aid, but still have, as Bulgaria, features common for the different types of legal aid. We handle civil and administrative legal aid before criminal legal aid, and refer back to the civil part when substantiated. However, we start with an overview of the legal aid law that contains both provisions applicable on both schemes, and provisions that mainly relate either to civil or criminal legal aid. We also outline the legal aid organization, which handle both civil, administrative and criminal legal aid.

3.2 Legal aid provisions and organization

Legal framework. Bulgaria has a civil and administrative legal aid scheme and a criminal scheme contained in a common statute and supplemented by regulations from 2006 with later amendments. (*BLAA*). The latest amendments went into force by 04.05.2023. (*The 2023 reforms*) The right to legal counsel is a constitutional right and therefore the Republic of Bulgaria guarantees compliance with the principle of free legal aid and assistance to the categories of persons from the risk groups listed in the act. Additionally, singular legal aid provisions exist as part of other legislation with different main purposes. Special laws in Bulgaria that contain an explicit access to legal aid:

- Child Protection Act art. 4 /1/ Child protection under this Act shall be implemented through p. 11. Provision of legal aid by the State.
- Assistance and Financial Compensation to Victims of Crime Act - art. 6, par. 1, item 2 - The authorities of the Ministry of the Interior and victim support organizations shall inform the victims of their right to legal aid and the bodies to which they can apply for it, the procedure and conditions for its provision.
- Asylum and Refugees Act - Art. 23 “The State shall provide conditions for foreigners seeking international protection to obtain legal protection.
- Foreigners of the Republic of Bulgaria Act, Regulations for its implementation, of which art. 63 k par. 7 - an unaccompanied foreign child at the time of the interview has the right to legal assistance in cases of imposition of a coercive or precautionary administrative measure.

The two last provisions are of limited interest to our analyses since we focus on Bulgarian Roma, and will not be commented upon in this report.



National Legal Aid Bureau.

International human rights also contain provisions on legal aid that are binding for Bulgaria and superior to possible conflicting domestic provisions and court practices.

Governments are supposed to check their domestic legislation and adapt it to the international provisions in question before they join international treaties and conventions. We assume that a presumption exists in Bulgarian law that domestic rules conform to the human rights provisions that Bulgaria has acceded to, and that domestic law should be interpreted in accordance with such provisions.

Organisation. The aim of the BLAA is to guarantee equal access to justice for persons by ensuring and providing effective legal aid in criminal, civil and administrative cases before all courts carried out by lawyers and financed by the State. The law defines the main institutions responsible for providing legal aid.

The Minister of Justice develops, coordinates and implements state policy on legal aid, and legal aid is organised by the National Legal Aid Bureau and the regional Bar Councils.

The National Legal Aid Bureau (NLAB) was established in 2006 under the Legal Aid Act. NLAB is the central authority in the legal aid system, and it exercises practical control and management of the legal aid system – it provides general and methodological guidance to legal aid activities at the national level. As an independent state body and a legal entity under the Ministry of Justice, NLAB has its own administration.

NLAB maintains a National Register of Lawyers (*NRL*) designated to provide legal aid by the judicial district of the respective district courts. The Register is public and published on the Internet.

NLAB liaises on an ongoing basis with both the Bar Councils and the other bodies relevant to the legal aid system – the courts, the Public Prosecution Service, the Ministry of the

Interior, the Ministry of Finance etc.¹³

Bar councils. At the regional level, legal aid is organised by the Bar Council of the Bar Association in the relevant judicial district, which, upon receiving a request for legal aid, appoints a lawyer from the Bar Association, registered in the National Register for Legal Aid, to carry out the legal aid.

Legal aid providers. The last link in the legal aid system is the lawyers. They provide legal aid directly to the public through oral or written consultations, preparation of documents for filing a lawsuit and legal representation.

To enter NLR, lawyers must provide an application that the Bar Council of the relevant Bar Association reviews and approves. To the citizens, the lawyers that provide legal aid form the ‘face’ of the system, so their conduct and competence are key to its image.

A lawyer providing legal aid cannot receive remuneration or funds for expenses from the principal or client. The lawyer’s remuneration and coverage of costs are limited to the State payment.



¹³ Report “Evaluation of the Application of the Legal Aid Act” under the project „Strategical reforms in the National Legal Aid” financed by Good Governance Operational Program and co-financed by the European Union via the European Social Fund. No publishing year or publisher. No page numbering. Paragraph numbers are used instead. (Evaluation ...)

4 CIVIL SCHEME

4.1 Introduction

The chapter describes and evaluates Bulgarian civil and administrative legal aid. We do not attempt at any detailed dogmatic analysis, but focus on the main principles and evaluate how they might work for Roma. We analyse the eligibility criteria, which we label the poverty criteria, the problem criteria or the types of cases that are covered, the service provided and costs. We do not go into detail about the application procedure.

4.2 Poverty criteria

4.2.1 Main provisions

BLAA article 23 (3) contains a general provision. Applicants “unable to pay a lawyer’s fee” might qualify for legal aid after a discretionary evaluation of

1. the income of the person or family;
2. the financial situation as certified by a declaration;
3. the marital status;
4. state of health;
5. employment;
6. age and
7. other established circumstances.

According to “Evaluation of the Application of the Legal Aid Act” the provision aims at persons that

“...have extremely low incomes (those below the poverty line in the country), are allowed to receive legal aid.”¹⁴

In the following analysis, we assume that Roma living beneath the Bulgarian poverty line will fulfil the poverty criteria of article 23 (3) and have access to civil and administrative legal aid when they fulfil the demands for documentation of the discretionary criteria.

BLAA art 22 1. contains a long list of selected groups that qualify for legal aid in civil and administrative cases:

1. persons and families who satisfy the eligibility requirements for receipt of monthly social assistance benefit according to the procedure established by Article 9 and Article 10 of the Regulations for Application of the Social Assistance Act.
2. persons and families who satisfy the eligibility requirements for assistance with a targeted heating allowance for the preceding or current heating season.

¹⁴ Evaluation ... chap 1.1.1 “Amendments to the legal aid act in 2017”.

3. persons who use social or integrated health and social services for residential care, pregnant women and mothers at risk of abandoning their children who use social services to prevent abandoning.
4. children placed with foster families or with immediate or extended family members according to the procedure established by the Child Protection Act.
5. a child at risk within the meaning given by the Child Protection Act.
6. persons referred to in Articles 143 and 144 of the Family Code and to persons under the age of 21 years, as well as persons under the age of 21 years, in relation to maintenance obligations arising before they reached the age of 21 years, in accordance with Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ, L 7/1 of 10 January 2009) and the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (OJ, L 192/51 of 22 July 2011).
7. victims of domestic or sexual violence or of trafficking in human beings, who are unable to pay and wish to avail themselves of the assistance of a lawyer.
8. persons seeking or receiving international protection or enjoying temporary asylum pursuant to the Asylum and Refugees Act, who are not eligible for legal aid on other legal grounds.
9. foreigners in respect of whom a coercive administrative measure has been applied and foreigners accommodated at a special facility for temporary accommodation of foreigners according to the procedure established by the Foreigners in the Republic of Bulgaria Act, who are unable to pay and wish to avail themselves of the assistance of a lawyer.
10. persons who have been refused statelessness status in the Republic of Bulgaria or whose statelessness status has been withdrawn or for whom the procedure for determining statelessness status has been terminated according to the procedure established by the Foreigners in the Republic of Bulgaria Act, who are unable to pay and wish to avail themselves of the assistance of a lawyer.
11. persons for whom interdiction is sought, as well as persons who are under interdiction.
12. disabled persons receiving monthly support pursuant to the Persons with Disabilities Act, the monthly income of whom is insufficient to retain a lawyer.

Article 23 (3) appears as a regulation of poverty criteria for entitlement to civil and administrative legal aid that mostly *consumes* the more specialized provisions in LAA article 22 1. Still, some of the groups listed in article 22 1. might also include applicants living above the poverty line and provide coverage additional to the protection provided by article 23 (3). Roma might be among them.

However, the “unable to pay for a lawyer” criterion applies to group 7. victims of domestic or sexual violence or of trafficking in human beings. Poverty also seems an important condition for the selection of the other groups. We have not further researched to what extent the

specialized criteria of article 22. 1 functions more liberally than the poverty line in some respects. Our focus concerns legal aid to Roma women and men to which the poverty line in article 23 (3) will apply.

4.2.2 Evaluations

How generous is the Bulgarian legal aid scheme compared to the economic situation of its population? Do the poverty criteria need adjustments?

Income compared to legal service costs. Bulgaria is among the poorest states in Europe measured from income per capita. In 2023 the poverty line is an income of 253 euro per month. Around 1,5 million Bulgarian citizens (22 percent of the population) live on and below the poverty line. More than one fifth therefore satisfied the poverty criteria for legal aid.

253 euro per month mean 3 000 euro per year or 8 euro per day. Average salary in Bulgaria in 2022 amounts to 8 500 euro or 23 euro per day. Therefore, the poverty line is one third of that, and means a very limited capacity to pay for legal service.

In 2016, the average costs of a legal aid case amounted to 123 euros and would consume the income of more than two weeks for a person on the poverty line if they had to pay themselves.

However, probably no lawyer would sell their services to paying clients to the remuneration they get from for legal aid work. The essential issue is the market price for legal service in Bulgaria. People, who do not qualify for legal aid, will have to hire a lawyer according to their ordinary fees.

An ordinance from 2004, revised in 2022, sets the minimum fee for cases of a material interest of maximum 1 000 BGN (ca 500 euro) to minimum 400 leva (200 euro) increasing to minimum 2 650 leva (1 325 euro) for a material interest of 25 000 leva (12 500 euro). An additional 8 percent apply for material interests up to 100 000 leva (50 000 euro).¹⁵

It means that the *minimum* commercial fee for clients just over the poverty line -- for example with an average income of 9 euros a day – would consume the income of 25 days or almost one month, and a case with a material interest of 12 500 euro, the income of almost half a year. For people with average income of 23 euro per day, the minimum fee of 200 euros consumes more than week's income and the 1 325-euro fee 58 days or almost 2 months.

Average consumer expenditure for households in Bulgaria in 2021 was 12 000 leva (6 000 euros) for households and 5 800 leva (2600 euros) for individuals. A 400-euro fee amounts to 7 percent of an average household's total consumer expenditures and to 15 percent for Individuals.

Moreover, these are just the minimum fees. Higher fees and other expenses will add.

Roma women. How do Roma and especially Roma women fare from the present poverty criteria?

Given that Roma people as a minority are far poorer than the Bulgarian majority, it seems safe to assume that 60–80 percent satisfy the poverty criteria and that most of the rest are quite close to the poverty line.¹⁶ A 2019 national survey showed that 65 percent of Roma lived

¹⁵ <https://bulgaria.postsen.com/local/78352/What-are-the-new-higher-minimum-attorney-fees.html> (visited 22.11.2022).

¹⁶ Roma inclusion strategy 2021–2030 part II estimates that 80 percent of Roma lived below the poverty line in 2016.

beyond the poverty line compared to 17 percent of ethnic Bulgarians. 84 percent of Roma were exposed to risk of poverty and social exclusion.¹⁷ Most Roma will struggle severely to pay ordinary lawyer's fees.

Since Roma women are poorer than Roma men, we might also assume that the share of women that qualify is even higher and that only a fifth or less falls outside the poverty criteria. We lack information about how the courts calculate the economy of single women and men compared to people who cohabit, live in multi person households, or are single, but have been in cohabitation and recently have split up. However, it seems unlikely that detailed information would significantly change the overall picture.

For women, an important issue is whether their poverty is calculated together or independently of other members of their household. It might be crucial for their access to legal aid. Roma women, as other women that live in families, might experience that the men control the family's economic resources. If the family income taken together surpasses the poverty line, the woman might still be too poor to pay for legal service herself, and therefore subject to the decisions of the man who controls the economy of the family. In cases of family conflicts and violence, the aspects of making a violent husband pay for the woman suing him for compensation seems bleak. Since the poverty criteria are discretionary, decisions made by district courts around Bulgaria might also differ.

It seems safe to conclude that a large majority of Roma women (and men) are far too poor to pay a lawyer's salary themselves, and very dependent on legal aid when they need legal services.

Extension of the poverty criteria. Contributions. Even if more than one fifth of the Bulgarian population fulfils the poverty criteria, Bulgaria's use of the poverty line as the upper limit still appears restrictive. Also people well above the poverty line might be unable to pay a lawyer's fee in ordinary cases. Research also tells that poor people not seldom experience multiple legal problems and will be short of resources even if they can handle the costs of one of them.

Although the majority of Roma, and a significant majority of Roma women, seem to meet the poverty criteria, a liberalisation of the upper limits obviously would be helpful to most that belong to the poorer part of the population and lack the means necessary to privately hire a lawyer.

Several jurisdictions use *contributions* as a way to adapt the legal aid support provided to the recipients' relative poverty. Contributions might be of different kind. Primary contributions are a set sum that must be paid before the public responsibility to pay starts. Percentage contributions are shares or percentages of the costs that must be carried by the applicant. Maximum contributions are ceilings – upper limits – for the costs that might be carried by the applicant. Contributions might be progressive dependent on the applicant's income and they might be combined in different ways.

BLAA does not contain any provision about contributions. All five Nordic countries and both the United Kingdom and Ireland use contributions in some form although the mix differs.¹⁸

¹⁷ Angelova, Dilyana and Slava Kukova *Guilty by default. Discrimination Against Roma in the Criminal System in Bulgaria*. Bulgarian Helsinki Committee Sofia 2020 p. 19–20. (Guilty by default 2020)

¹⁸ Barlow 2019 p. 244–250, see esp. fig 3 p. 248.

Since the economic criteria provide legal aid only to people on the poverty line and beneath, the entitled anyhow have incomes below any sensible bottom line for contributions. They would just utterly deter people like Roma women from using legal aid.

On the contrary, using contributions to expand legal aid to less poor groups seem like a reform that the entitled will welcome. Bulgaria ought to consider contributions from people just above the poverty line as a way to include them in legal aid, since their capacity to carry the costs of a lawyer also has obvious limitations. Such a system might be helpful for Roma women's access to court if their family possesses resources that bring them over the poverty line, but the family head denies them access to those resources.

4.2.3 Poverty standards in human rights

Do the Bulgarian poverty criteria conform to the demands of human rights?

Article 14 (1) of the CCPR and Article 6 (1) of the ECHR entitle everyone to a fair hearing in both criminal and civil cases. An accused person is explicitly entitled to legal aid "when the interests of justice so require" as a "minimum right" (CCPR article 14 (3) d. and ECHR article 6 (3) c.)

Since the articles demand fair trials for both criminal charges and other suits at law, the "interests of justice"-standard for legal aid cannot be limited to criminal cases. Access to legal aid in criminal cases must be understood as specifications of the general principle of the right to a fair trial. States must also provide legal aid in civil cases, when deemed necessary to make the right to a fair trial effective.¹⁹

The wording of ECHR Article 6 only covers 'civil rights and obligations' and 'criminal charges'. It does not mention rights and duties regulated by administrative law. However, the ECtHR has gradually expanded the scope of Article 6. CCPR article 14 will anyhow oblige European governments to provide legal aid in all suits at law irrespective of the type of law involved.

ECtHR has developed on the poverty criteria in several cases. They contain important requirements for national legal aid schemes. *Airey v. Ireland* from 1979²⁰ set the precedent, which obliges governments to provide sufficient funding for legal aid according to the following discretionary criteria:

- importance of the case to the individual (applicant);
- complexity of the case and the individual's capacity to represent himself;
- costs and the individual's capacity to carry them.

The *Airey* principles have been confirmed in several judgements. ECtHR will establish a violation if costs act as an actual barrier to access to court. Human rights do not lay down a right to *free* trials, but costs must be adjusted to the economic capacity of the individual.

The 'access to justice' principle in ECHR article 6 and CCPR article 14, relates to the actual costs in a particular case. The ECtHR asks if they constitute an unjust barrier to litigation. If they do, public subsidies are justified to the extent necessary to remove the barrier. Therefore, legal aid cannot be limited to the poor as Bulgaria does. If costs become exorbitant,

¹⁹ Barlow 2019 p. 222–223 with reference to ECtHR *A v. UK* 2002. App. No. 35373/97.

²⁰ *Airey v. Ireland* 1979 Application No. 6289/73.

middle income and even high-income people might also be in need of some public support. The human rights consequence is – as spelled out in *Steel and Morris v. UK*²¹ – that they can claim access to legal aid if trial costs exceed what they can reasonably be expected to pay.

A legal aid system that demands that middle-income people pay affordable legal aid costs themselves will not conflict with human rights if it protects against exorbitant costs. For the better-off, contributions might therefore be significant. However, when states like Bulgaria use an upper economic ceiling for cover, their schemes do not fully conform to human rights requirements.

A system with maximum contributions tailored to their economy, might solve the problem, and provide protection to Roma women that live just above the poverty line.

4.2.4 Poverty standards in the legal aid schemes of Northern and Western Europe

Almost all European states have some sort of civil legal aid schemes. According to the European Commission on Efficiency of Justice (CEPEJ)

“comparison of national legal aid schemes shows fundamental differences in the member States’ philosophy, organization, and administration of legal aid systems. In terms of systems philosophy, the general goal in some countries seems to be to make legal services and justice generally more accessible. In contrast, legal aid may only be available to the poorest in others. It seems that the second philosophy prevails in Europe, since the majority of the countries have income and assets evaluation as a prerequisite for granting legal aid.”²²

How restrictive the poverty criteria are, vary significantly and they are difficult to compare. To a varying degree, the jurisdictions of Northern and Western Europe use upper limits for income and capital assets for eligibility. Most demand contributions of differing kind from the better off. However, the contribution systems used are not so well tailored to the discretionary criteria of the case law of ECtHR if contributions become high. Most schemes also contain discretionary provisions that allow for extension of the poverty criteria. Some schemes also except selected case categories from the poverty criteria and contribution system – for example cases about involuntary placement for treatment in psychiatric institutions. Everyone is entitled to legal aid in such cases.

The huge variation in poverty criteria in Northern and Western European states provide a large selection of possible models for developing poverty criteria for Bulgarian legal aid. See Barlow 2019 p. 246–251. She analyses fourteen different criteria in use in 2018.²³

The share of the population covered by the scheme also has been used to measure its generosity. However, such comparisons appear unreliable. Since poverty rates vary significantly, restrictive limits will cover a far larger share of the population in Bulgaria with a high poverty rate than in Norway with a far lower poverty rate.

RECOMMENDATION NO. 1:

Liberalize the poverty criteria in BLAA. Protect poor above the poverty line against high and

²¹ *Steel and Morris v. the United Kingdom* 2005 Application No. 64186/0.

²² *CEPEJ European judicial systems*. CEPEJ Evaluation Report. Part 1. Tables, graphs and analyses. 2022 Evaluation cycle (2020 data) (CEPEJ 2022) p. 37.

²³ See esp. the list of variable elements in Barlow 2019 p. 247.

exorbitant costs they cannot pay themselves without severe welfare consequences.

Compare the costs of hiring contract lawyers in practical case types to the applicant's disposable income. Evaluate which costs the applicant reasonably can carry without significant suffering.

Use contributions to regulate the costs of applicants that appear able to pay parts of the costs.

Such a liberalisation of the poverty criteria will provide more Roma women with access to legal aid if effective, which is an object of the Roma inclusion strategy (2021–2023).²⁴

4.3 Problem criteria

4.3.1 Content

European legal aid schemes use different methods to identify *the types of problems* covered by the legal aid schemes. A common way is to use legal characteristics connected to the legal issues of the case; like family, contract, criminal, administrative, labour, housing, property, consumer, etc. as basis for delimitation strategies.

Some schemes are mainly *open* to all sorts of legal problems, only with some discretionary barriers against misuse. Other schemes include all types of legal problems *except* a number of specific categories like prison law, libel law, immigration etc. A third way is to list a number of specified case types that are *covered*, and deny legal aid in all other case types.²⁵

Most European legal aid schemes provide at least some coverage of legal problems outside courts.²⁶ Until the 2023 Bulgarian legal aid differed by using a *procedural* criterion. Civil and administrative legal aid mainly covered *court cases* – including the preparatory stage.

Roma women and men might find courts difficult to use. Obviously, they are in great need for legal aid for other problems than court cases and so are other poor Bulgarians.

Experiences from the telephone services and the outreach projects in Roma settlements help in locating problems of especially significance to Roma women.²⁷ The later chapters will provide many examples and recommendations.

After the 2023 reforms, BLAA article 21 now covers:

1. consultations and negotiations with the counterpart with the purpose of reaching a settlement before the start of court proceedings or to file a case to start or conduct proceeding to issue an individual administrative act and/or dispute it under an administrative procedure, including a consultation and/ or preparing documents settling a case that might go to court, including a consultation and/or preparing documents at a regional consultation Centre. (Article 21 1.)

²⁴ Roma inclusion strategy 2021–2030 part VIII.

²⁵ See Barlow 2019 p. 155–192 for further details of the scope of legal aid in Northern and Western Europe.

²⁶ 40 out of 47 European countries reported civil legal aid schemes that covered at least *some* non-court matters in 2016. *European judicial systems. Efficiency and quality of justice* p. 71. CEPEJ STUDIES No. 2. Later evaluation cycles use figures with colour to differentiate, but the colours are too similar to be readable. It seems, however, safe to assume that the overall picture has not changed significantly from 2016 to 2020, which is the last year from which CEPEJ has published legal aid data.

²⁷ See chapter 6.

2. procedural representation (Article 21 2.)
3. representation in out-of-court procedures (Article 21 3.)
4. representation upon detention by the police, custom authorities and national security reasons. (Article 21 4.)

Private law matters like legal help with inheritance, family issues, contracts, and transactions with private counterparts, consumer issues and complaints, housing law, labour law, debts, legal planning and legal representation in private conflict solution *outside courts* still lack coverage. In conflicts with other Roma, several try to find solutions within the Roma community.²⁸

4.3.2 Evaluation

Article 6 of the ECHR secures access to court for every human being. Legal aid in non-court cases is outside the scope of the provision. The Bulgarian problem criteria should therefore be in accordance with human rights. However, according to its wording, article 6 provides for legal aid in cases before "tribunals". ECtHR interprets the Convention's concepts, included "tribunals", autonomously. Since BLAA now includes legal aid in cases before public administration and public tribunals, representation before public consumer boards, mediation bodies, conflict councils, dispute resolution bodies, etc. should be covered as long as they are part of the public administrative system.

Such bodies grow rapidly in modern legal systems. They are meant to make it easier and cheaper for users to have legal conflicts solved. Our capacity has not allowed a thorough analysis of such instances, except The Commission for Protection against Discrimination (CPD), which seems to fulfil the definition of a "tribunal" in ECHR article 6 (1).²⁹

RECOMMENDATION NO. 2:

Bulgaria should check if the Bulgarian Legal Aid Act sufficiently covers all domestic decision-making instances that satisfy the "tribunal" criterion in the European Convention on Human Rights article 6, and if not, expand the coverage.

We considered the previous *overall lack* of legal aid for non-court problems as a major weakness in the legal aid system meant to secure the legal entitlements of poor Roma and other poor people. However, after the 2023 reforms Article 21 1. and 3. now offer wide coverage of administrative cases outside the courts. We think the change a timely reform. The new provisions in BLAA mean an important expansion of the legal framework for covering the legal needs of Roma women, since most of their civil and administrative problems does not concern court use. Other Bulgarian poor will profit too.

Bulgaria has remedied important weaknesses in BLAA provisions. We also think it

²⁸ Mentioned in interviews with NLAB 09.05.22, Ombudsman 09.05.22, Stara Zagora Bar Association 11.05.22, Veliko Taverna Bar Association 12.05.22 and Supreme Bar Association 13.05.22. Roma Meshmere courts were mentioned as a traditional conflict solution body. (See Helena Marhushiakova and Vesselin Popov *The Gypsy Court in Eastern Europe*. 2007 Romani Studies Vol. 17, No 1, p. 67–101. ISSN 1528-0748.)

²⁹ See below chap. 7.2.

important that Bulgaria makes the improved legal coverage effective in practice for the entitled. If not, the improvements in the law might remain mainly symbolic.

RECOMMENDATION NO. 3:

Expand coverage to cover all types of private law problems independent of whether court handling is necessary.

See too that the entitlements with the 2023 amendments now cover all administrative legal problems that appears significantly harmful to Roma's welfare independent of whether court handling is necessary.

Secure that the new amendments to the coverage provided by The Legal Aid Act becomes effective for Roma women and men in a range of discrimination cases like health services, housing, education, employment, social services, social benefits, pensions, consumer issues, criminal prosecution and victimization, family cases, etc.

Since Bulgaria practices ethnic neutrality, coverage should include all Bulgarians that appear sufficiently poor.

Both the implemented reforms and recommendations 2 and 3 on further expansion of coverage conforms well to the Roma inclusion strategy (2021–2023).

4.4 Merits criteria

BLAA article 24 contains some exceptions from coverage. Most relate to the prospects of the claim. Legal aid should be denied if the benefits for the applicant cannot justify the aid, or the claim appears unfounded, unjustified or inadmissible. Additionally, BLAA article 23 (3) demands that the assistance of a lawyer should be “in the interest of justice”.

The last criterion seems gathered from human rights. ECHR art. 6 (3) c. says that legal aid in criminal cases should be given to defendants that do not possess sufficient means to pay themselves “when the interests of justice so require”. Article 6 (1) that entitles everyone to a fair trial also in civil cases, has been interpreted similarly, and obliges states to provide legal aid in civil cases “when the interest of justice so requires”.

The criterion is discretionary. The main guideline is whether the trial will be fair without representation. The principle of “equality of arms” expressed in article 6 (3) d. is important to the standard also in civil cases. As expressed in *Airey*, the complexity of the case and the individual's capacity to represent himself; are central parameters for allocating legal aid.

Since Bulgarian law ranks ECHR before national law, we assume that the legal aid authorities interpret BLAA in accordance with the practice of ECtHR, but we have not researched the question.

Other merits criteria are for example dispensations from the economic limits due to extraordinary costs, proportionality between cost and benefit, the need for representation and the significance of the matter to the client. BLAA Article 23 (3) 1.–7. opens significant space for discretion, but probably not enough to fully satisfy the demands of *Steel and Morris*.

According to BLAA article 1 the statute regulates legal aid in criminal, civil and administrative matters before courts of all instances, (and also in non-court matters). We therefore assume that applications for appellate legal aid are handled according to the same criteria as first instance applications.

Evaluation. We do not have sufficient information about how Bulgarian courts practice the merits criteria in BLAA to evaluate how they work in practice and how they might affect Roma women. The lack of information also makes it difficult to evaluate whether the practice

conforms to the human rights provisions. However, the wording of the merits criteria appears common to the discretionary criteria used in both human rights and other national legal aid schemes.

4.5 Other costs

BLAA Article 25 (1) obliges a grantee to reimburse the costs of legal aid when “a judgement finding against the said person or a sentence”. The duty to reimburse in civil and administrative cases seems limited to BLAA article 21 2. representation in court by legal counsel. The duty to reimburse does not include out-of-court representation in article 21 3. Such a duty might function as a powerful deterrent against access to court for poor people, since the risk of losing always is present and the poverty criteria means that they are unable to pay for a lawyer themselves.

However, the new amendments to BLAA article 25 (1) now also excepts grantees in civil and administrative matters from the reimbursement duty if they fulfil the “unable to pay for the assistance of a lawyer” – criterion in article 23 (3). The change should remove this cost barrier, and improve Roma women’s access to legal aid.

Do parties in civil and administrative trials in Bulgaria risk paying their counterparts’ costs if they lose? If so, the risk of losing might mean another significant barrier to court use for poor people. When considering applications for legal aid, lawyer’s costs must be calculated according to the price paid by contract clients, since the lower legal aid fee only applies when government pays. Alternatively, does Bulgaria use the common law principle that parties always must carry their own costs?

What about costs other than lawyers’ fees, like court fees, fees for expert evidence, and travel costs? If such costs fall outside coverage, they would significantly deter both Roma women and other poor Bulgarians from using legal aid, if they exist. Bulgaria must remove such cost barriers if legal aid shall be effective and in accordance with ECHR article 6 (1).

Article 83 (6) of the Civil Procedural Code Article now exempts parties on legal aid from court fees. We have not researched the other issues, but if such barriers exist, they should be removed.

RECOMMENDATION NO. 4:

Remove all existing cost barriers additional to lawyer costs that might hinder effective use of legal aid by the entitled.

4.6 Delivery

4.6.1 Information about legal aid

A legal aid system is of little help if the potential users lack sufficient knowledge about the content of the service and their entitlements to utilize it. The challenge has different aspects:

The most important one concerns the knowledge that poor people possess when they experience problems covered by legal aid. Do they think of the problem as something that might be handled by legal services? If not, they will not consider legal aid either. They also must have sufficient understanding about how to get access to legal aid. Of course, poor people can gain sufficient operational knowledge both through formal and informal channels.

We have not explored how well Bulgaria disseminates information about civil legal aid among the entitled. Article 99 of the Bulgarian Code of Civil Procedure obliges the courts to inform parties of their legal rights and obligations in relation to legal aid, as well as of the legal

consequences in case of non-fulfilment of their obligations. The provision seems mainly to aim at parties, which means that legal aid already has been granted. Hopefully, poor people that contact a court about a legal problem also receive information about legal aid.

An evaluation of Bulgarian legal aid from 2017, however, found that lack of knowledge or awareness of the existing legal aid schemes lead to a significant underuse of them. Courts do not inform unrepresented poor parties about the coverage. In practise, some courts also confuse legal aid coverage for lawyer costs with exceptions from the duty to pay court fees.³⁰

Neither do we know precisely to what extent Roma and especially Roma women are aware of their entitlements to legal aid. A vague, superficial general knowledge is insufficient. What matters is operational understanding, that make them aware of legal aid when they experience problems that make legal help a useful option.

Poor people often lack sufficient understanding about such options and need advice on their existence and how to use them. Research tells that the lack of operational knowledge about legal aid among poor people is widespread, and constitutes a significant barrier against efficient use. Most do not consider legal aid at all when they experience legal problems.

A reasonable assumption is that Roma, and especially Roma women, largely lack understanding, self-confidence and courage sufficient to apply for and make efficient use of legal aid. The new extensions of the coverage make the information challenges even more pressing since they offer coverage of a range of legal problems previously not included.

The Ombudsman of Bulgaria cooperates actively with the NLAB and the regional consultation centres about consultations. She informs the centres about the problems of citizens and refer citizens to them, so that they receive legal aid and become represented before the courts. However, she does not carry out any activities related to the judiciary (court, prosecutors, investigator) and do not represent clients in court.

The Ombudsman institution seems to have gathered wide attention in Bulgaria, and the information and referrals she provides about legal aid is clearly helpful.

RECOMMENDATION NO. 5:

The National Legal Aid Bureau ought to carry out repeated information campaigns about legal aid aimed at Bulgaria's poor with emphasis on the new extensions of coverage.

Special campaigns should be directed at Roma women and men. Additionally, they ought to target their informal and formal network of advisers and helpers, family, and friends, leaders in the Roma community, social and health workers, schools and teachers, Roma women's organizations etc.

Use outreach projects and mediators as a major vehicle to increase Roma consciousness about legal problems and legal aid, see chap. 6.2 and 6.3 with recommendations 39 and 40.

RECOMMENDATION NO 6:

The Ombudsman's information and referrals about legal aid should be further developed and intensified with emphasis on the new extensions of coverage.

³⁰ Evaluation ... chap 3.2

4.6.2 Service content

Rules and administrative systems for handling applications are a necessary part of a legal aid scheme. In addition, a delivery apparatus for the legal service granted is necessary. A grant is of little use if no one has the competence, capacity or willingness to deliver the service. Judicare systems without any obligation for private practitioners to accept legal aid commissions are vulnerable to the danger, especially if legal aid fees are significantly lower than contract fees.

BLAA article 21 specifies some of the types of lawyers' services that civil and administrative legal aid cover. We assume that the provision includes all types of legal services necessary for professionally sound handling of the problem.

4.7 Actual use of civil legal aid by the people covered

4.7.1 Limited statistics

The high poverty rates in Bulgaria – especially among Roma women and men – mean widespread need for legal aid. Does the actual use correspond to such needs?

A major challenge when answering is the limited statistics available on the use of Bulgarian legal aid. We have used two sources. One is the statistical reports of Council of Europe's Commission for the Efficiency of Justice (CEPEJ), another is the NLAB yearly report for 2021. Both sources contain only some basic figures. When it comes to Roma, Bulgaria does not collect statistics on justice matters that differentiate on ethnicity. We have supplemented the available statistics with rough estimates when deemed sufficiently reliable and useful.

4.7.2 Number of grants

Let us first ask about the total volume of civil and administrative legal aid cases under BLAA.

CEPEJ 2022 reports that legal aid was granted in 2 864 civil and administrative *court* cases in 2020,³¹ down from 3 799 in 2018.³²

Table 1 shows the NLAB figures:

³¹ CEPEJ *Dynamic database of European judicial systems 2020 and 2018 data*.

<https://www.coe.int/en/web/cepej/cepej-stat>

<https://public.tableau.com/app/profile/cepej/viz/QuantitativeDataEN/Tables?publish=yes> (CEPEJ 2022)

³² CEPEJ 2022 p. 10 Q. 020.

Provision	N	Comment
BLAA art 21 1. Consultations for settlements BLAA art 21 2. Preparation of documents for initiating a case BLAA Art 25 of the law on Asylum and refugees Total	4291	
BLAA art 21 3. Representation in court	26018	Refusals 922 of which 694 due to uncompleted reports
BLAA art 21 4, Representation upon arrest under art. 72 (1) of the Ministry of Interior Act and art. 16 a of the Customs Act.	24	
BLAA Chap 5 Sec. I: National Legal Help Line	3252	Refusals 366
BLAA Chap 5 Sec. II: Regional Counselling Centre	263	
SUM	33848	SUM refusals 1288
National Legal Aid Register		
Lawyers registered as active per 31.12.2021	6308	Share of registered public defenders increases.
Cases per registered NLR lawyer	5,4	

Table 1: Legal aid applications handled by NLAB 2021³³

NLAB handled 33 848 applications in 2021. 1 288 did for different reasons not result in payment, which mean that NLAB has accepted and supported 32 560 applications – a figure not very different from the CEPEJ figure for 2020 that amounts to 31 866 cases.

Contrary to the CEPEJ statistics, the NLAB information does not contain separate statistics for criminal cases and other cases. According to CEPEJ 2020 statistics, more than 91 percent of Bulgaria’s legal aid cases were criminal cases – up from 88 percent in 2018. It seems safe to assume that a NLAB count for 2021 would show a share of criminal cases at 90 percent or more, which would leave 3 200 grants or less for civil and administrative cases.

Bulgarian first instance courts registered 312 117 other than criminal cases incoming in 2020.³⁴ 2 864 civil legal aid cases only amount to one percent of that caseload.

The main point is not the exact value, but that even such rough estimates show that legal aid cases constitute an insignificant part of the work of the Bulgarian courts. It follows that they primarily serve the interests of the more affluent parts of the Bulgarian society.

³³ Source: Report on the Activities of the National Legal Aid Bureau for 2021 p. 5–7. (Unpublished?) The report does not differentiate between criminal cases and other cases.

³⁴ CEPEJ 2022.

4.7.3 Roma usage

Poverty is widespread among Roma and especially among Roma women compared to Bulgarians of other ethnicities. We must ask if they as a group is significantly more exposed to the defects of legal aid than other ethnic groups.

The 2021 census showed 266 000 or 4,4 percent of the population Roma and estimates 370 000–800 000 or between 6 and 12 percent of Bulgaria’s population.³⁵ In 2023, the poverty line lay at an income of 257 euro per month and beneath, and around 1.5 mill Bulgarian citizens (22 percent of the population) lived at or below the poverty line.³⁶

Given that Roma people as a minority are far poorer than the Bulgarian majority, it seems safe to assume that 60–80 percent satisfy the poverty criteria for legal aid. If we build on the largest estimate of 800 000 Roma, a poverty rate of 80 percent would mean that 640 000 Roma satisfied the poverty criteria, constituting 43 percent or almost half of all that qualified.

If we suppose a proportional use of civil and administrative legal aid between the different ethnic groups and use the total CEPEJ figure for 2018 of 3 799 cases, 43 percent of the legal aid cases amounts to 1 634 cases or one case per 392 Roma per year.³⁷

With an estimated average living time of 65 years, only *one out six Roma would use civil legal aid during their lifetime* if all users were one-time users. If some use legal aid more than average, which is quite common, the rate of nonusers will be higher.

If we use the estimated minimum poverty rate of 60 percent among Roma and build on the census figure of 266 720, 160 000 Roma live on or beneath the poverty line and satisfy the poverty criteria. However, the outcome of the estimate remains the same. Roma will constitute 11 percent of all who qualify, and 417 cases would mean one case per 384 Roma that qualify per year and still, on average, only one Roma out of 6 or less would ever use legal aid to access the courts during their lifetime.

Several social factors contribute to the low actual use of legal aid among Roma women. Obviously, the actual use appears minimal compared to the estimated need. One important factor is their own legal impotence due to limited education, gender roles and reluctance to leave their Roma neighbourhoods as described previously.

All figures about the use of the civil and administrative scheme presented above in chap 4.7, relates to use *before* the 2023 reforms significantly expanded the coverage of legal problems in BLAA. Figures that might show the effect of the reforms for the first full year, cannot be gathered before 2025.

However, poor Roma’s general attitude towards legal aid will not change due only to changes in the BLAA. The underlying barriers described previously will still exist. It seems safe to predict that the immense underuse or non-use of legal aid among Roma will continue also after the reforms, unless Bulgaria implements significant changes in *the information and delivery system* for legal aid to Roma. The rest of the report will forward many recommendations for improved information and delivery.

³⁵ See above p. 13.

³⁶ Wikipedia *Poverty in Bulgaria*.

https://en.wikipedia.org/wiki/Poverty_in_Bulgaria#:~:text=Poverty%20in%20Bulgaria%20is%20a,lives%20at%20risk%20of%20poverty. (Visited 09/09/2023)

³⁷ The estimate has some inaccuracy since it presupposes that only one Roma is party in one case. Some cases might have more than one Roma party. Similar inaccuracy appears for parties of other ethnicities. Still such estimates give strong indications of huge differences in court use between Roma and other ethnic groups.

4.8 Legal aid lawyers

4.8.1 Registration and qualifications

Solely lawyers in the national legal aid register (NRL) deliver civil legal aid in Bulgaria. Bulgaria does not use paralegals or jurists without a lawyer's licence to deliver legal aid. Neither are practicing lawyers not in NRL used. For preparation, settlement and representation in court cases, the limitation seems sensible.³⁸

Membership of the Bar Association is sufficient to become registered in NRL. No additional qualifications are necessary. When registered, the lawyer should indicate the area of law in which she or he prefer to receive legal aid commissions. Such indications do not signal any special competence, just an interest in the case type. Malpractice, however, might lead to expulsion also from the legal aid register.

In 2016, NLR contained 5 588 lawyers. 172 left the register that year due to their own request, 6 were disbarred for disciplinary offences and 488 new lawyers registered.³⁹

Fees appear significantly lower than for contract clients. NLAB decides the fee scale and the level is less than one third of the minimum fee set for paying (contract) clients.

The low fee represents a significant disincentive against attracting the best and most experienced lawyers to legal aid.⁴⁰ Still, the NLAB guidelines presuppose a legal aid lawyer to "handle cases assigned to him with the same care as if he had been authorized by the client". (Part One, point 2)⁴¹

4.8.2 Lawyers' work with civil legal aid

Workload. Having elucidated the insignificance of the present Bulgarian legal aid in producing legal aid coverage in practice for the entitled, we might ask how important civil legal aid work is for Bulgarian lawyers in practice.

The NLAB report shows 6 308 approved legal aid lawyers in NRL per 31.12.2021. With 13 692 Bar Association members altogether per 05.04.2022,⁴² almost half of the profession had registered for legal aid commissions.



Lawyers training centre of the Supreme Bar Council.

³⁸ The test schemes are different. The Roma mediator might be seen as some sort of paralegal. See below chap 6.3.

³⁹ Evaluation of ... chap 5.2.

⁴⁰ Evaluation of ... chap. 5.1.

⁴¹ Evaluation of ... chap 1.1.3.

⁴² Figure from interview with the Supreme Bar Council 13.05.2022.

The civil legal aid workload does not correspond to the high share of bar members in the legal aid register. 3 200 grants for civil legal aid in 2021, only means a yearly average of 0,5 civil and administrative case per registered legal aid lawyer, or one case every second year. The average number of criminal cases per legal aid lawyer in 2021 then amounts to 4,6 cases, or almost ten times as many.

The work demanded in civil legal aid cases of course varies significantly. However, an average of 5 cases per NRL lawyer per year for civil and criminal legal aid together is so low that it is difficult to imagine that they can fill more than a very limited part of the workload for most of the lawyers in the register.⁴³ Such a small caseload will not foster much expertise and experience.

However, we ought to assume that legal aid cases are quite unevenly distributed. Some lawyers – especially criminal lawyers – handle many cases per year, others only when they lack contract commissions. A major part of the registered legal aid lawyers probably handles only a few cases per year, and many handle legal aid cases even less frequently than yearly. Some NLAB data might elucidate the actual portfolio of legal aid cases among NRL lawyers.

According to the 2021 NLAB report, 3 713 lawyers received payments over the legal aid budget in civil and criminal cases. Then 41 percent of the registered legal aid lawyers must have been inactive in 2021, which corresponds quite well to the average estimates above.

Fees. On average, the active lawyers received 1 892 leva in total fees, or 264 leva per case. The average per case fee is far beneath the minimum fee of 400 leva per case for contract clients. Less than 2 000 leva per year probably contribute only a small part of the yearly fees needed for an average income for a Bulgarian lawyer.

If you want to specialize as a legal aid lawyer, you probably must accept to earn far less than average, and it anyhow seems unlikely that the case distribution mechanism with emphasis on equal distribution of legal aid commissions among the members of the regional bar associations, would support a specialization. In practice a specialization from a wish to improve competence in poverty law seems almost impossible.

As mentioned, the fees for legal aid commissions are significantly lower than the minimum fees that the Bar Association obliges lawyers to charge to market (contract) clients. When interviewed, the Supreme Bar Council commented that the remuneration that lawyers get for legal aid is very low.

The Council did not question the fees for groups that are entitled to civil legal aid. For example, the remuneration for a consultation at a regional centre is 20 leva per hour or 10 euros. However, in criminal matters with obligatory representation, the state appoints a defender if the defendant cannot afford legal representation. Defenders put in a lot of efforts. The bar associations examine how the work is done and do not receive complaints. Therefore remuneration should increase because the colleagues are putting in a lot of effort.⁴⁴

Several jurisdictions follow similar practices. While lawyers set contract fees themselves with or without negotiations with their clients, legal aid fees usually are set by public decisions with little leeway for negotiations.

The representative of the Supreme Bar Council argued an increase in the pro bono work

⁴³ The Supreme Bar Council gave an even lower estimate of one to two legal aid cases per NRL registered lawyer per year during our interview.

⁴⁴ Interview with the Supreme Bar Council 13.05.2022.

of the bar. She emphasized it as her own idea and not an official proposal of the Supreme Bar Council:

“My idea is quite revolutionary and instead of a 10 million budget, it could decrease to 5 million if we say that every lawyer must do two pro-bono cases, and the state can allocate the saved funds to other areas. Legislation amendments should be introduced. There are certain cases where it should be obligatory for a lawyer’s defence to be in place.

For example, when dealing with the interest of children. In every judicial proceeding that concerns the interest of a child as per law, the child is entitled to be informed and consulted by a lawyer and when they have to be heard in court. Who has to do it?

It must be done by a jurist. Although it is required by law, only the Lovech Regional Court ex officio appoints lawyers as special representatives. Because these special representatives when appointed by the court the court has to pay from their budget. And the money saved up can be allocated. Regarding cases of domestic violence, often the interest of the child conflicts with the interest of the parent. Also, including appeals before the court of the second instance.”⁴⁵

Economic considerations then direct lawyers to prioritize paying clients since they pay better than the legal aid fee. So, the larger the gap is, the smaller the legal aid capacity might become. In Bulgaria, the difference is large and might well explain much of the limited use of legal aid.

4.8.3 Some conclusions

Since the share of Roma living beyond the poverty line is larger than for other Bulgarians, low legal aid fees will potentially affect them more than the Bulgarian majority and other minorities. Roma women and children will be disproportionately affected compared to men, due to more extensive poverty. It is also reason to believe that underuse of legal aid is more widespread among Roma than other poverty groups.

Establishing schemes for legal aid in *other* than court cases as done in the 2023 reforms is a major step towards better coverage. If Roma women and men (and other poor people) perceive such legal aid as helpful, they will seek legal aid more frequently, which also might mean that more cases that cannot be solved otherwise will be channelled to the courts.

Consultations and assistance in private law cases that do not imply lawsuits, still is outside coverage. Legal advice, legal writing or to formulate and document other claims according to private law will profit from legal expertise, Further expansion of coverage as suggested in recommendation no. 3 will help.

The limited number of legal aid cases in Bulgaria connects to international findings that ordinary courts are of lesser use to poor people than to the better off. A significant underuse of legal aid exists among Roma that seems more serious among Roma women than among Roma men. Such differences challenge important ideas about access to courts and justice for all.

In practice, claims must have a value that justify the costs to be forwarded to the courts, which excludes poor peoples’ claims disproportionately. Small claims courts might diminish some of the consequences. However, for poor Roma women, also small claims courts seem well out of reach for most without legal aid.

⁴⁵ Interview with the Supreme Bar Council 13.05.2022, edited.

The differences in access increase if we consider that poverty is relative. One euro for a person below the poverty line is of greater welfare value than for a middle or high-income earner.

The UN committee on Economic, Social and cultural rights has recommended that Bulgaria should ensure that Roma have access to civil legal aid and adequate legal remedies.⁴⁶

Official Bulgarian legal aid statistics appear extremely weak and hardly usable as a governing instrument, which means that policy analyses must build on estimates. Conclusions become uncertain. The present report provides many such examples. Government seems to use references to the content of the legal aid *rules* when justifying governmental policies, often without showing how the rules work in practice.⁴⁷ The lack of statistics and fact based analyses makes it difficult to understand how the legal aid scheme works in practise, and to implement reforms well adapted to people's need.

RECOMMENDATION NO. 7:

Significantly improve legal aid statistics and make it public. Digitalization is a must. Statistical vehicles able to capture the effects of the extended coverages introduced in 2023, should be developed.

RECOMMENDATION NO. 8:

Improve the selection of legal aid lawyers in the National Register of Legal Aid Lawyers. Make civil legal aid a speciality and demand education and experience in legal aid cases a condition for entrance into the register. Bar associations should appoint lawyers from the specialized part of the register for such commissions.

Such specialization should not exclude contract commissions, but secure a solid legal aid experience. Reduce the number of lawyers significantly to secure the registered lawyers a continued education and case experience sufficient to maintain and develop their legal aid expertise.

RECOMMENDATION NO. 9:

Establish a recruitment process to maintain a sufficient number of qualified legal aid lawyers.

RECOMMENDATION NO. 10:

Make legal aid to Roma women and men a sub specialization for legal aid lawyers.

RECOMMENDATION NO. 11:

Improve the case distribution mechanism to fit with recommendation no. 8–10. Substantially increase the average number of legal aid cases per legal aid lawyer.

RECOMMENDATION NO. 12:

Increase the legal aid fees. Although civil legal aid cases cannot be among the most

⁴⁶ Guilty by default 2020 p. 26.

⁴⁷ See an illustrative example: *National report of the Republic of Bulgaria on the implementation of the Beijing Declaration and Platform for Action in the context of the 2020 Beijing+25 Global review and 5 years of the 2030 Agenda for Sustainable Development Goals*. Available at <https://www.unwomen.org/en/csw/csw64-2020/preparations#national-level-reviews> (Checked 14.02.2023) The Bulgarian government has issued the report. (Beijing+25)

profitable, they should provide a decent income compared to contract lawyers.

RECOMMENDATION NO. 13:

Consider legal aid contracting as an instrument to improve legal specialization, see below chap. 6.6.

Recommendations 8–13 interconnect. The purpose is to improve both the capacity and quality of legal aid to Roma and other poor.

The professional capacity to deliver quality legal aid should be increased by continuous education and case experience. Increased competence will also improve the capacity for efficient delivery. Decent fees constitute an important driver for the lawyers to do legal aid work. The present fee level seems demotivating.

More efficient delivery and increased quality will make increased fees feasible. Larger legal aid caseloads – for example through legal aid contracting⁴⁸ – might produce incentives for lawyers to better organize their work for handling legal aid commissions. We will develop on recommendation 8–13 later in the report.

Some challenges exist: Bar Associations tend to oppose formal specialization although they often specialize in practise. However, we do not think a formal specialization necessary. The goal such be to develop a pool of lawyers with motivated and competent lawyers sufficient for the demand without any formal barriers towards competition from other lawyers.

The existing space for legal aid clients to choose their lawyer can still be maintained. Norway practices such system for victim's layers, see the discussion on p. 68–69. Research shows that poor people have limited capacity to make an informed choice of lawyer. If the legal aid system provides them with a well-qualified lawyer, most will be grateful,

Another argument for keeping a large pool of legal aid lawyers of which most seemingly handle few cases, might be that legal aid commissions are poorly paid and often perceived as stressful. They therefore are not popular, and to handle them appears more as a civic duty that the bar associations should spread among their members. A large pool is necessary to provide enough lawyers to the grantees.

Of course, sufficient delivery capacity seems a reasonable demand to the legal aid system. If the willingness to take on many legal aid cases appears limited, a large pool might seem necessary. Better pay, quality and efficiency, however, will improve capacity and make it feasible to develop sub specializations in the legal aid register.

Education open to all lawyers in the NRL might be used if recruitment to more advanced specializations becomes insufficient.

We do not think it necessary to exclude legal aid lawyers from contract commissions. As long as legal aid cases constitute a significant part – for example 20–30 percent – of a lawyer's workload, the demand for practical experience should be met.

Neither should a specialization system exclude legal aid lawyers from combining specializations as long as they fulfil the criteria for each of them.

Such criteria must be further developed and adapted to the Bulgarian setting before put into practise.

⁴⁸ See chap. 6.6

5 CRIMINAL LEGAL AID

5.1 Introduction

Criminal cases affect Roma disproportionately.⁴⁹ Most of them concern Roma men and adults. Roma women are less exposed as perpetrators. We did not succeed in scheduling meetings with the police or prosecution. However, criminal legal aid seems well elucidated from written reports. Therefore, our descriptions and analyses mainly build on them.

First, we look into the defender scheme, and evaluates some major weaknesses pointed to in the existing reports.

Next, we turn to the victims of crime, and focus mainly on two aspects of special importance to Roma women, namely legal aid to victims of trafficking in human beings for sexual exploitation and victims of domestic or sexual violence. We focus both on the victims' entitlement to legal aid concerning the prosecution's claim for penalty against the perpetrator and the victim's *civil claims* for compensation, which the victim might forward and have handled together with the prosecution's claim for criminal sanctions.

We start with the perpetrator's access to a legal aid defender, and then we turn to the victim's access to a lawyer in claims against the perpetrator.

5.2 Defender

5.2.1 Legislation

The Bulgarian Criminal Procedure Code (BCPC) lays down detailed regulations of the procedural rights of the accused and the corresponding obligations of the authorities. BCPC entitles accused persons access to legal counsel (defender) from the moment they are officially notified about the accusations and until the end of the criminal proceedings against them.

The realization of any investigative step or other evidence-gathering action that include the accused persons' participation prior to informing them on the right of access to a defence counsel are considered a violation of their right to defence. The police or prosecution must halt the investigation step and immediately allow the accused the opportunity to contact a defender.

BCPC also contains several provisions that makes representation by a professional lawyer mandatory – based on the seriousness of the offence and the vulnerability of the accused



Bulgarian Helsinki Committee

⁴⁹ Krassimir Kanev *Problems with the equal treatment of accused persons in pre-trial proceedings in Bulgaria*. Bulgarian Helsinki Committee 2022 p. 8–9. (Kanev 2022).

person. Representation includes cases about detention.⁵⁰ A defender is mandatory from the moment a suspect is detained.⁵¹

Article 23 (2) of BLAA contains provisions about legal assistance from a defender to an accused in a criminal trial regulated by BCPC when the accused wishes to have such assistance but is unable to pay, and the interests of justice so require.

If a defender is mandatory, for example because the accused risks a prison sentence of 10 years or more or when an accused is detained, article 23 (1) obliges the legal aid authorities to provide for a defender. The entitlement to legal aid covers all parts of the criminal prosecution – investigation, arrest and custody, prosecutorial indictment, trial and appeal. The assessment that the accused or defendant does not have the means to pay a lawyer’s fee shall be made by the authority in charge of the proceedings based on the established financial situation of the person in the particular case.

However, the “unable to pay” criterion means that the poverty line is essential for access to a legal aid defender also in criminal matters. Low income people above the poverty line might not afford to hire a contract lawyer as defender in criminal cases, and therefore resign on using one also in matters that might result in long prison sentence. In accordance with recommendation no 1 for civil and administrative legal aid we recommend less strict poverty demands and the introduction of contributions also in criminal cases.

RECOMMENDATION NO. 14:

Liberalize the poverty criteria for criminal legal aid in BLAA. Protect poor above the poverty line against high and exorbitant defender costs they cannot pay themselves without severe welfare consequences when they risk prison sentences of a year or more.

Compare the costs of hiring contract lawyers in practical case types to the applicant’s disposable income. Evaluate which costs the applicant reasonably can carry without significant suffering.

Use contributions to regulate the costs of applicants that appear able to pay parts of the costs.

Additionally, Bulgaria has provisions for *police investigation* of crimes in the Ministry of Interior Act and Customs Act. They allow for orders and warnings, interrogations, identifications and searches of premises and personal belongings, seizure of property and other items and detention up to 24 hours. Bulgaria categorizes such powers as administrative and part of the operational independence of the police, not as part of ordinary investigations of crime under BCPC.⁵²

BLAA art. 21.4., provides for representation during arrest under art. 72 (1) of the Ministry of Interior Act and under article 16 a of the Customs Act.

The Bulgarian police frequently uses their powers under the Interior Act at the early stages of the investigation of crimes. The evidence discovered might constitute an important basis for further investigative steps and for the prosecutorial decision on whether to indict.

⁵⁰ Bulgarian Helsinki Committee, Human Rights Monitoring Institute, Helsinki Foundation for Human Rights and the Peace Institute. *Right to a lawyer and to legal aid in five European jurisdictions*. Comparative report. 2018 p. 18 (Right to a lawyer 2018).

⁵¹ Guilty by default 2020 p. 36.

⁵² Guilty by default 2020 p. 35–36.

5.2.2 Volume

How does the legal aid scheme cover the need for defenders in criminal cases?

CEPEJ 2020 reports that Bulgaria granted legal aid in 31 855 criminal court cases in 2018, decreasing to 29 002 in 2020. The number of criminal cases in courts amounted to 128 188, which means that the number of appointed public defenders corresponds to one fourth of the cases.

We do not know the number of privately hired defenders, nor the average number of charged per case. Still it seems safe to assume that a large share – perhaps at least half of the cases – was decided with unrepresented defendants. The threshold for obligatory defender – a maximum penalty of more than 10 years – seems very restrictive and insufficient knowledge and information about the access to legal aid and general distrust in lawyers might also explain a limited use.

Suspects rarely use legal aid during police custody. According to data from NLAB, 25 detained received legal aid for a defender out of almost 50 000 detainees in 2016 and 47 in 2017,⁵³ which is less than one percent. The NLAB figures for 2021 showed only 24 applications for legal aid in custody cases under the Interior Act and Customs Act.⁵⁴

A survey from 2017 found that two thirds of the suspects interviewed about their pre-trial interrogation did not have access to a lawyer during their first interview. Two thirds of these suspects also made initial confessions without consultation or participation of a defender.⁵⁵

A newer and more extensive research in 31 penal institutions was published in 2020.⁵⁶ The study mainly comprehends inmates whose pre-trial proceedings had begun after July 2019. 1 010 out of 6 000 inmates became included in the sample. 96 percent were male, 4 percent female.⁵⁷

Roma were highly overrepresented among the recently convicted.

More than 60 percent said they did not see a lawyer during the 24-hour police custody, when they were subject to the “investigative conversations”. Two thirds of the lawyers used by Roma were paid by legal aid, contrary to half of the lawyers of the Turks and less than half of the lawyers used by the Bulgarians.

Respondents reported that the legal aid lawyers were significantly less active during the pre-trial interrogations than the hired ones. They mainly showed up at the end, when the charges against the suspects were presented.⁵⁸ One fourth of the Roma clients was very dissatisfied with the work of their lawyers.⁵⁹

Two thirds of the cases ended with settlements by plea bargaining, one-third with court decisions.⁶⁰

⁵³ Kanev 2022 p. 13 with references and Guilty by default 2020 p. 50 with references.

⁵⁴ See table 1 p. 32.

⁵⁵ Guilty by default 2020 p. 52.

⁵⁶ Kanev 2022.

⁵⁷ See Kanev 2020 p. 5–8 for methodology details.

⁵⁸ Kanev 2020 p. 23.

⁵⁹ Kanev 2020 p. 28.

⁶⁰ Kanev 2020 p. 28.

5.2.3 Access to legal aid during police interrogations and custody

According to the Interior Act, a suspect has a right to assistance from a defender from the moment of arrest. BLAA article 21 4. also provides for legal aid during detentions according to the Interior Act.

Police practices diminish the protection that the right to a defender and to legal aid might provide during interrogations and custody under the Interior Act. A defender is not mandatory, and suspects must positively ask for a defender when arrested and interrogated.

The police shall inform suspects about their right to a lawyer's defence, and that the police have a duty to offer them an opportunity to contact a lawyer. The information consists of a declaration that informs about the rights, which the police make suspects sign. However, the declaration does not inform that the rights apply from the moment of arrest.

Neither does the police stop interrogations due to requests for a defender. If a defender arrives, examples show that the police denies the defender access to the client and must wait until the police has finished its interrogations, even though the investigative authority has the discretion to permit them to attend provided their attendance does not impede the investigation. A thorough study of police use of detention describes the practice:

“In Bulgaria, although the police could perform various de facto investigative and other evidence-gathering acts, such as questioning, identity parades, experiments, there is no special provision, guaranteeing that suspects, who are required to attend these acts, have the right to have their lawyers also present. Participants in the focus groups testified that even when appearing at the police station as retained lawyers, police authorities normally did not allow them to consult and be present during questioning of their clients.”⁶¹

When police practises limit the actual use of defenders during police interrogations and custody, they obviously also reduce the use of legal aid by suspects who qualify. Other studies show that suspects today still lack knowledge about the right to defender and legal aid, and rarely use one. Most give testimony without consultations with or representation from a defender.⁶²

5.2.4 Use of evidence from police interrogations in criminal trials

Evidence collected without respect for the suspect's right to use a defender and to apply for legal aid under the Interior Act, might be inadmissible at the trial under BCPC. Nevertheless, the police and prosecution might circumvent the protection. The report further describes the use of such police interrogations:

“The case files study revealed that records from questioning of suspected persons prior to the initiation of the criminal proceedings against them or during the criminal proceedings but without following the prescribed legal procedure, are presented to the court by the prosecutor and are then included in the court case file. Formally, police records from such investigative and other evidence-gathering acts do not have evidential value in criminal proceedings for failure to comply with the rules of the Criminal Procedure Code. However, the mere fact that

⁶¹ Right to a lawyer 2018 p. 23.

⁶² Guilty by default 2020 p. 46–49, esp. p. 49.

these illegally obtained evidences remain part of the case file is concerning. Essentially, the court does not examine the circumstances under which statements are taken, whether suggestive or coerced police conduct was used, nor the use of procedural safeguards effective for securing the privilege against self-incrimination.”⁶³

Although included in the documents, proceedings under the Interior Act are not considered as a formal part of criminal proceedings under the BCPC. One reason is the limited access to a defender. In principle, the protocols from criminal investigations under the Interior Act cannot be presented and used as evidence in the criminal proceedings even if they are included in the documents.

However, the prosecution might also circumvent the prohibition by bringing the police officers who have conducted the interrogation as witnesses of the accused’s testimony during the pre-trial police investigation.

5.2.5 Police use of coercive methods

The use of physical violence and other threats against suspects to extract confessions seem often to occur during pre-trial interrogations in Bulgaria. In a survey two third of minors reported they had been subject to physical violence during arrest and police custody. Roma minors are disproportionately affected.⁶⁴

According to the Kanev report, police use of coercive methods also appeared widespread. 27 percent of all incarcerated reported that the police used force consisting of beating, assault with fists, kicks, batons, tasers, etc. against them on arrest and 24 percent when inside the police station. Roma appeared significantly overrepresented compared to the ethnic Bulgarians and Turks.

32 percent reported insults, Roma were especially exposed to insults against their ethnicity. Most incidents of ill-treatment had extracting of information as the main purpose – contradictory to the prohibition of involuntary collection of testimony from the suspect/charged in the case law of ECtHR.⁶⁵

Similar to interrogations without a defender present, the prosecution adds such evidence to the case file or document it through witness testimony from the police officers that conducted the interrogation.

5.3 Evaluation

5.3.1 Case law of the European Court of Human Rights

5.3.1.1 Costs

Until the 2023 reforms, BLAA article 25 (1) significantly modified the right to a legal aid defender. If sentenced, the convict must reimburse the costs of legal aid to NLAB. The risk of such costs might well have deterred many charged that qualified from using a defender. The provision seemed in discordance with ECHR article 6 (3) c., which says that necessary

⁶³ Right to a lawyer 2018 p. 23.

⁶⁴ See for example *Guilty by default* 2020 p. 34 and 40 citing the UN Committee against torture.

⁶⁵ Kanev 2020 p. 8–12 and 23. According to the report, the methods seem tolerated by the prosecution and courts in Bulgaria.

assistance from a defender should be *free* for those unable to pay.⁶⁶

After the 23 reforms, both BLAA article 23 (2) and article 25 (1) now exempt grantees from the reimbursement obligation if they fulfil the “unable to pay” criterion. However, poor people over the poverty line might face similar economic challenges as in civil and criminal cases, which recommendation 14 will remedy.

Human rights should be effective and practical, and cost risks that make suspects refrain from using legal aid due to reasonable cost fear, might conflict with that goal. The principle also means that the formal distinction Bulgaria makes between investigations under the Interior Act and under BCPC appears artificial. What matters, is the substantive effects of the police actions. ECtHR says that the rights of the accused in ECHR article 6 apply when the suspect appears “substantially affected” by the investigation, independent of language used in domestic law. Obviously, a suspect is substantially affected when he or she is questioned about having committed a murder as in *Dimitar Mitev v. Bulgaria*, see below.⁶⁷

Missing or misleading information from the police about rights that leads to no or limited use of defender might also result in violations.

5.3.1.2 Right to a defender

Assistance of a lawyer during pre-trial interrogations “when justice so require” is a well-established human right. Article 6 (3) also establishes an obligation for the state to pay for such assistance when the suspect lacks sufficient means.

To hinder a suspect’s access to a lawyer during investigations by denial or misleading information about the rights, obviously conflicts the case law of ECtHR. In *Dimitar Mitev v. Bulgaria*, the applicant had confessed to murder after pre-trial interrogations by the police. ECtHR said:

“67. A further factor to be taken into account when assessing the overall fairness of the criminal proceedings is “the legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with” (see *Ibrahim and Others*, cited above, § 274 (b)). In the case at hand, there is no dispute that the applicant’s confession as such could not have been used as evidence in the trial, as it was not obtained in accordance with the requirements of the Code of Criminal Procedure. The confession was not made before a competent body (a prosecutor, an investigator or a court – see paragraph 29 above), which could take a statement from a suspect only after providing them with their full rights, including the right to a lawyer. Since the Code of Criminal Procedure provides for the exclusion of evidence collected in a manner incompatible with its rules (see paragraph 28 above), the confession could not be included in the body of probative evidence. However, the effect of allowing the testimony of Officers Z.K. and V.V. was, for all practical purpose, precisely the same – to allow that confession as evidence circumventing all procedural rights of the applicant.”

ECHR Article 6 3(c.) states the accused’s right to defend himself through legal assistance of his own choosing as a minimum right. ECtHR concluded that Mitev

⁶⁶ The provision has been significantly modified by the 2023 reforms.

⁶⁷ *Dimitar Mitev v. Bulgaria*. Application 34779/09.

“was not assisted by a lawyer when making the confession which was subsequently used to secure his conviction for murder; that he was not shown to have waived the right to legal assistance; that the Government relied on no “compelling reasons” to justify the failure to provide him with such legal assistance; and the Government’s failure to show that the overall fairness of the criminal proceedings had not been irretrievably prejudiced by the initial failure to provide legal assistance to the applicant, the Court concludes that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.” (§ 72)

The decision means that Bulgaria’s way of practicing interrogations and use of custody under the Interior Act conflicts both with the right to a defender and to legal aid “if justice so requires.”

5.3.1.3 Coercive means

The Kanev report concludes that “systematic violations of human rights and the principle of equal treatment constitute a serious breach of the rule of law and human rights.” Roma suspects seem to suffer the most.⁶⁸

However, when defenders challenge the practice, they risk that the police retaliate by being less willing to make favourable settlements. If suspects complain about mistreatment as illustrated previously, the lawyer faces a dilemma and might well advise the client to abstain from complaining because it might lead to a less favourable bargain.

The main strategy of the legal aid lawyers, namely to plea bargain, might be in the best interest of both the client and the lawyer under the present police strategies. If the use of legal aid and complaints over police abuse worsens the formal and informal sanctions experienced by suspects and accused, they might find it better to refrain from legal actions and adopt a compliant attitude instead.

The case law of ECtHR does not accept the use of compelled confessions as evidence. The police might have some space for the use of force necessary to execute arrests, but not as informal punishment or a method to extract confessions.

In *Saunders v. UK*⁶⁹ the Court

“... recalls that, although not specifically mentioned in Article 6 of the Convention (art. 6), the right to silence and the right not to incriminate oneself are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6 (art. 6). ... The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In this sense the right is closely linked to the presumption of innocence contained in Article 6 para. 2 of the Convention (art. 6-2). 68”

Especially young adults with limited police experience like Roma minors, are vulnerable to coercive interrogation methods. In *Salduz v. Turkey*⁷⁰ ECtHR emphasized that assistance from a defender is crucial for criminal interrogations to be fair. The defender should be available for

⁶⁸ Kanev 2022 p. 32.

⁶⁹ *Saunders v. United Kingdom* 1996 Application no. [19187/91](#)

⁷⁰ *Salduz v. Turkey* Application no. [36391/02](#)

consultations *before* the first interrogation of the suspect.

The Kanev report says that “Bulgaria must create a mechanism that monitors the observance of human rights by the police and during criminal proceedings, a mechanism that systematically registers all abuses and provides swift guidance for their rectification.”⁷¹

Defender presence at all examinations of the suspects might prevent police abuse. Legal aid might be an instrument if suspects have access to consultations with their defenders and they are present during the interrogation of the suspect and willing to protest against mistreatment. A liberal legal aid scheme with independent and responsible defenders constitutes an important precondition. Kanev suggests that a defender should be obligatory during police detention (24h).⁷²

In October 2020 the Committee of Ministers of the Council of Europe adopted an interim resolution as final measure in response to Bulgaria’s systematic refusal to comply with a number of ECtHR judgments. The Committee invited Bulgaria to among seven other remedies, to strengthen free legal assistance; ensure that a lawyer is available in good time to assist every person in police detention who requests it and introduce systematic video recording of the interrogations of suspects.⁷³

We support the resolution and its recommendations. In line with recommendation 12 for civil and administrative cases, we suggest:

RECOMMENDATION NO. 15:

Increase the legal aid fees also for criminal legal aid. Although criminal legal aid cases cannot be among the most profitable, they should provide a decent income compared to contract lawyers.⁷⁴

5.3.2 Police abuse complaints

A connected issue is the lack of an objective and efficient complaint system for police abuse. A remedy proposed in the interim resolution of October 2020 by the Committee of Ministers of the Council of Europe as final measure in response to Bulgaria’s systematic refusal to comply with a number of ECtHR judgments, was to “entrust the preliminary inquiries and investigations of ill-treatment to prosecutors and investigating magistrates who do not have working relationships with the law enforcement agents whose actions have been challenged.”⁷⁵

Modern police and prosecution systems have specialised units that are independent of both the police and prosecution that handle not only claims from victims of police abuse, but has an independent obligation to investigate all reliable information about police abuse on their own initiative, independent of source.

Norway for example has a special unit for investigation and prosecution of offenses and crimes conducted by police and prosecution during service. The unit is independent of the ordinary police and prosecution system. Only the General Prosecutor — who is the top responsible for criminal persecution in Norway — might instruct the special unit.

⁷¹ Kanev 2022 p. 32.

⁷² Interview 13.05.22.

⁷³ Bulgarian Helsinki Committee *Human rights in Bulgaria in 2020 p. 8. 2021(?)*

⁷⁴ See similar recommendation 12 for civil and administrative cases.

⁷⁵ Bulgarian Helsinki Committee *Human rights in Bulgaria in 2020 p. 8. 2021(?)*

RECOMMENDATION NO.16:

Establish a separate and independent unit for investigation and prosecution of police misconduct in criminal cases.

5.3.3 Quality and use of defender

Roma use of defenders in pre-trial proceedings seems far too low and should be increased to help combat the abuses they are subject to today. The Kanev report describes the work of the legal aid lawyers as substandard compared the work of contract lawyers. Contract lawyers appear significantly more experienced than legal aid lawyers do. Overall, detainees lack quality legal assistance in pre-trial proceedings. Roma are disproportionately affected.⁷⁶

Lawyer presence during all interrogations probably would hamper the abuses and illegal practices significantly.

RECOMMENDATION NO.17:

A defence lawyer should be obligatory at all police interrogations under the Interior Act, and at least until a well-functioning video recording system is in place.

Some defenders should receive special training, be made aware of the most common police abuses, and learn about appropriate strategies to combat them. Some legal aid lawyers also should build rapport with the Roma communities and the local police to ease possible friction between them. The outreach projects, see below, might test out alternative models also for criminal legal aid. Kanev thinks legal aid lawyers need more supervision. They are mostly young and inexperienced.

In line with our recommendation no. 10 on a Roma specialisation for lawyers in civil and administrative cases we propose:

RECOMMENDATION NO.18:

Selected criminal legal aid lawyers should receive suitable training to become specialists on defending Roma in criminal trials. Lawyers might well combine such specialization with specialization in civil and administrative cases for Roma as suggested in recommendation no. 10.

An obvious recommendation is to repeal the provisions in the Interior act that allow for police interrogations, and use the provisions in the BCPC for all parts of the criminal prosecution. Such a repeal would clearly show that that the existing system with pre-trial investigation without the same safety mechanisms as provided for by BCPC, is abandoned.

RECOMMENDATION NO.19:

Repeal the provisions on police detention and interrogations in the Interior Act. Use the provisions in the Bulgarian Criminal Procedure Code for all investigations and use of custody in criminal cases.

An alternative to remove the investigation powers in the Interior Act, might be to expand the

⁷⁶ Kanev 2020 p. 25–28.

obligations of the police to see to that suspects receive counsel when detained, and provide the defender with time to learn about the suspicion and the existing evidence and to consult with the suspect before police interrogations start.

RECOMMENDATION NO.20:

Alternatively, update the provisions on police interrogations and custody to eliminate any differences to similar provisions in BCPC.

A defender's presence should be obligatory for all detainees when subject to investigative interrogations of crimes of some seriousness, and coverable by legal aid. ECHR Article 6 (3) says that a defender should be free for defendants if unable to pay.

RECOMMENDATION NO.21:

A defender should be obligatory during police custody and free to all suspects.

A decision of the suspect to abstain from using a lawyer should be informed – preferably made after consultations with a lawyer.

RECOMMENDATION NO. 22:

Defenders should have access to the charge and time to read available documents and then to consult with the suspect before police interrogations start.

When necessary, interpretation should be included. The Kanev report concludes that lack of, or low quality translation, harm Roma with limited Bulgarian capacity – also in their communication if they use lawyers.⁷⁷

RECOMMENDATION NO.23:

Roma suspects should be offered access to qualified interpreters as part of criminal legal aid.

Per case fees produce greater profits the less time the lawyer spends. Neither are they influenced by the outcome of the case. The poorer the pay, the stronger the incentive for substandard work.

The commission of a legal aid lawyer might also include some extra time for necessary general human care and supervision to vulnerable clients like Roma women and adults.

RECOMMENDATION NO. 24:

Remuneration should be better tailored to the type of tasks that legal aid lawyers are supposed to carry out. Per hour fees should be used when per case fees are insufficient compared to the work.

⁷⁷ Kanev 2022 p. 17–18.

5.4 Victims of trafficking for sexual exploitation and of domestic and sexual violence

5.4.1 Introduction

5.4.1.1 Legal aid provisions

BLAA art 22 7. includes “victims of domestic or sexual violence or trafficking in human beings who are unable to pay and wish to avail themselves of the assistance of a lawyer” among the groups entitled to legal aid. The project guidelines especially mention their legal aid coverage as an object for evaluation.

Roma risk different forms of trafficking in human beings (THB) for sexual exploitation, forced labour, organ removal and might also include begging.⁷⁸ We limit our analysis to victims of THB for sexual exploitation.

Broadly, the poverty criteria for such victims are similar to the general poverty criteria for the other types of legal aid. Applicants must live beyond the poverty line to qualify. The entitlement should then include the three types of services listed in BLAA 21 1.–3. Although available to all Bulgarians independent of their ethnicity, access to legal aid in THB cases appears especially important to Roma women and children.

The practical importance of legal aid to victims also depends on other conditions. The crimes mentioned in LAA article 22 (7) must be investigated and prosecuted. Bulgarian law then opens different positions for victims in criminal proceedings:

1. injured party (offended party)
2. private prosecutor (in addition to the public prosecutor)
3. private complainant
4. civil claimant
5. witness

Without police investigation and public prosecution, victims’ possibility to bring before the courts claims for compensation, divorce, child custody and support, right to dispose of common dwelling independent of the perpetrator, etc. seem limited. A similar situation appears if the court acquits the accused. Even the risk of such outcomes might deter victims from forwarding claims. Victims also must know about the procedural possibilities.

The criteria for legal aid in BLAA article 22 7. are common for victims of THB and domestic or sexual violence. However, both the criminalized acts and the victims’ role differ to some extent, and might lead to differences in the need for legal aid. In THB the perpetrator profits from the victim’s earnings on her sexual acts, while in domestic and sexual violence, the criminalization focuses on the sort of violence used independent of any motive of economic profits.

THB for sexual purposes usually takes place outside the victim’s home environment – not seldom abroad and in localities obtained by the trafficker, while domestic violence and, although to a lesser extent, sexual violence, happen in the victim’s home and other

⁷⁸ Beijing+25 p. 40–41, with more details about the services delivered on p. 42–44.

environments meant to give protection against abuse and ill-treatment.

5.4.1.2 Functions of legal aid

Governments combat trafficking for sexual exploitation and domestic and sexual violence through a range of actions. They might include education, health services, public loans and social benefits. Our analyses concern access to legal aid for victims, which is one vehicle out of many. Still legal services might play a key role in providing access to them. Victim's lawyers might see to that the legal conditions for denying or limiting services to clients are properly applied.

Legal aid to victims of THB and domestic and sexual violence appear as part of broader Bulgarian policies for improving gender equality, reducing poverty and securing income for everyone from decent work. The report *Beijing + 25* contains a detailed listing of such policy goals, and describes numerous policies to improve the overall position of victims of crime in Bulgaria. They include improved legal protection against serious crime, exploitation and discrimination.

Furthermore, the report describes shelters for victims of serious crimes in danger of secondary and repeated victimisation, intimidation and retaliation, access to free psychological counselling and criteria that are more liberal for compensation due to such harms. Among other measures are protection against all sorts of discrimination, early marriage and improved education of women and girls.⁷⁹ However, the role of legal aid in women's emancipation policies has not received much attention in the *Beijing + 25 report*.

Although several features are common for the three categories, we prefer to handle victims of trafficking for sexual exploitation separately.

5.4.2 Victims of trafficking in human beings (THB) for sexual exploitation

5.4.2.1 Statistics

When trafficking for sexual exploitation hurts Roma women, their high poverty rate also means that many fulfil the poverty criteria for victim's legal aid, and – like other poor victims – must rely on the efficiency of legal aid for access to legal services.

Statistics from 2016–2018 showed 1398 formally identified Bulgarian victims/survivors of trafficking, of which 89 percent are females. Among them are 8 percent minors and 0,3 percent girls. Statistics from 2013-2015 show similar figures. The majority of women is overwhelming.

Trafficking of women for sexual exploitation appears as the main category. Such victims amounted to two thirds of all victims. Almost all adult female survivors were victims of sexual exploitation. Trafficking for forced labour had 11 percent of the victims, 3 percent women and 8 percent men. Other forms of THB, seemingly less frequent, are organ removal, selling unborn or newly born babies and slavery.⁸⁰

Women with limited education and other qualifications for regular jobs, appear vulnerable to intimidation from their traffickers, and will often lack capacity to use their victim's rights without professional legal support. Still most victims of trafficking are unsupported and unaccompanied during trials against the traffickers. They obviously will

⁷⁹ Beijing+25 p. 3. The listing from the report is exemplary; not exhaustive.

⁸⁰ Beijing + 25 p. 40–41.

suffer significantly if the legal aid scheme appears inefficient.

5.4.2.2 Barriers to leaving prostitution

Bulgaria has taken several necessary steps to improve legal aid for THB victims and deserves credited for those reforms. However, the system still appears ineffective, because a substantive part of the legal aid lawyers seems without necessary training for delivering quality legal aid to victims that as a group appears vulnerable, insecure and young with limited education. Legal aid might become mainly a formal guarantee for the existing case handling of the police, prosecution and courts without the capacity to disclose weaknesses and possible injustices and to correct them.

The motives of traffickers are primarily to generate large profits by exploiting vulnerable groups, women, children and men. Women are especially exposed when they lack income alternatives, becomes subject to family pressure and lack capacity in Bulgarian. Victims might show unfounded trust in traffickers and if they break with their trafficker, they might risk serious social sanctions.

Roma women and women of other ethnicities face other and more fundamental barriers in addition to their need for legal aid if they want to leave the trafficking industry. A study of Roma women in trafficking for sexual exploitation concluded:

“In order for women to successfully and permanently leave prostitution, several key needs must first be met. ... These include access to a social welfare system, familiar and trustworthy networks and safe housing. Roma women in the area of ... do not have access to a social welfare system, are having a hard time leaving their old environment and find it difficult to build new networks due to the fear of the unknown and lack of contacts outside the prostitution scene. In addition to this, they lack the skills and money to arrange their own housing, particularly given the scarcity of safe housing. These examples show that it is not an easy decision for women to leave the industry of prostitution and is not always possible even where there is a desire to leave the industry. On the other hand, there are stories like the story of Annabel of women that want to leave the industry and succeed in doing so.”⁸¹

The practical importance of legal aid to victims of THB depends largely on social circumstances independent on how liberal and professional the legal aid system appears to the victims. It is when victims think that their important social and material needs will be met in a better way than staying with the trafficker that access to legal aid becomes relevant, and the way it functions matters to them.

However, it might also matter to the victims’ decision how complicated and scary the legal challenges to leave prostitution appear; like police reporting, providing testimony and other evidence useful in a criminal prosecution and trial against traffickers. The possibilities and process for receiving compensation for moral, immaterial and material damage, and to receive at least a part of the money earned for the trafficker might appear important to their subsistence after departure. Such challenges might be quite formidable, as we shall see from another report.⁸²

⁸¹ Marianne Sijtsma *Roma women & prostitution* 2018. Master Thesis p. 44.
<https://studenttheses.uu.nl/handle/20.500.12932/31664> visited 25.12.2022.

⁸² Milena Kadieva, Yoana Terzieva, Emanuil Kolarov *Treatment of victims of trafficking in court in Bulgaria* 2017?

Victims' need for legal aid might actualize independent of their will. Trafficking is looked upon as a serious social evil and criminalized due to a strong public opinion to combat the problem. The police usually act against traffickers independent of their preferences without informing or say ask for consent from the victims. Then the victims might realize that it is impossible to continue their activity with the trafficker. They must cope with the new situation, for example the obligation to witness against their traffickers. Then legal aid anyhow might be useful.

5.4.2.3 Victims' experiences with investigation, prosecution and courts

A Bulgarian study with the main purpose to monitor the treatment of the victims during court handling sheds light over the challenges victims of trafficking face during criminal prosecution of their traffickers.⁸³ The study observed 11 trafficking cases that Bulgarian courts in four cities had under treatment in the period May 2014 to April 2015. Eight of them were first instance cases and three before the appeal court.⁸⁴ Monitoring comprehended 40 court hearings. All cases concerned trafficking for prostitution/sexual exploitation. The study did not include other forms of trafficking like exploitation on the labour market as in building industry, agriculture, domestic work, etc.

The report points to several weaknesses:

Courts do not protect the victims' private data and continue to publicly disclose all information about their private life at the beginning of the trial. Victims' identity and personal data (full name, birth date, place of living, place of work, identification number, etc.⁸⁵) are not protected. Only five of the forty hearings were held behind "closed doors", only one of them at the request of a victim.⁸⁶

Witness protection programs did not function, making victims vulnerable to retaliation from traffickers. Neither did the system for information to the victims about their legal rights work as assumed in the law. Information comes untimely with inadequate content and provided only at the beginning of the investigation. Access to legal counselling appeared insufficient and representation too limited, meaning that victims mostly had to rely on self-representation.⁸⁷

Victims are primarily looked upon as witnesses, not as parties to the process. As witnesses, they are central and the prosecution's case might easily collapse if the victim's testimony lacks.

Victims therefore are subject to multiple interrogations. They have to tell their story several times during the process – also in open court – which is unnecessary stressful. Audio or video recording or protocols from previous hearings are rarely used. Both the police and the judges might have limited experiences with trafficking cases and might misunderstand and appear insensitive to the victim's experiences. Some also moralize and make the victim feel inferior. They often neglect the procedural rights of the victims.

All together, the sample included 17 defendants and 26 victims, of which 25 women. All cases

(The report lacks the year of issue) with funding from the European Commission p. 5. (Kadieva et. al.)

⁸³ Kadieva et. al. p. 3.

⁸⁴ Two cases were monitored both at firsts instance and at the appeal level and therefore constitute four of the 11 cases in the sample.

⁸⁵ Kadieva et. al. p. 6–7.

⁸⁶ Kadieva et. al. p. 7.

⁸⁷ Kadieva et. al. p. 3–4.

included charges on trafficking. Additionally the sample included charges of kidnapping, deprivation of liberty, rape, lechery, drug crimes, etc.⁸⁸

Under BCPC victims of trafficking have the right to be legally represented during criminal proceedings as both civil claimants and witnesses. If they fulfil the conditions for legal aid, the court might appoint a lawyer from the legal aid register.

Appointment depends on a request from the victim. However, none of the 26 victims applied for legal aid.

Only one victim was represented by a lawyer both in the first and second instance. She became recognized as private prosecutor and civil claimant by the court. The study lacks information about her lawyer contract. Presumably she had a contract lawyer.

However, she was awarded 30 000 euro in compensation for immaterial damage. Her claim for compensation for the money involuntary transferred to the trafficker was rejected because the court considered the earnings immoral.⁸⁹

The study found it difficult to map precisely the full information that the victims received during the prosecution process, but the courts only gave information about their procedural rights and duties as witnesses and they were examined accordingly. Their positions as a civil claimant and private prosecutor were let out. With one exception, the victims appeared in court without a lawyer, and most came alone without any support from other professionals, family, or friends. The court questioned them in front of the accused and the questioning was coloured by whether they had worked in prostitution also before the trafficking happened.⁹⁰

Except one case, none of the special protection measures that exists was used before, during or after the trial. Neither were victims sufficiently informed about such rights.

Recent research confirms the finding of the report that victims rarely make use of the positions as parties in cases about trafficking for sexual exploitation. A study that monitored 30 proceedings in in THB cases in six towns of Bulgaria, found only one case with the victim as civil claimant. The rest participated as witnesses. Lawyers from NGOs with special competence in victims' legal needs assisted three victims. The competences of the other lawyers are undisclosed.⁹¹

Conclusion. The GRETA report comments the findings:

“GRETA is concerned that, in practice, the effective access of victims of trafficking to compensation remains sporadic. Despite the possibility given under Bulgarian law for victims to constitute themselves as civil claimants and/or private prosecutors in the criminal proceedings, this happens relatively rarely, only when the victim is supported by an NGO which ensures that he/she is represented by a specialised lawyer. In practice, most trafficking victims are treated as witnesses and not as injured parties entitled to compensation. Victims are reluctant to claim compensation due to the length of legal proceedings and the track-record of failed compensation claims.”⁹²

⁸⁸ Kadieva et. al. p. 6.

⁸⁹ Kadieva et. al. p. 8, 13.

⁹⁰ Kadieva et. al. p. 8–11.

⁹¹ GRETA. Group of Experts on Action against Trafficking in Human Beings. *Third evaluation Round: Access to justice and effective remedies for victims of trafficking in human beings*. GRETA (2021)04. Council of Europe p. 20 para 64. (GRETA 2021). GRETA does not give any date for the study except describing it as recent.

⁹² GRETA 2021 p. 30.

Almost all victims must rely on legal aid for the legal service necessary. At present, the service appears ineffective. Victims rarely use it and if they do, much of the service they receive appears substandard. We think that many of the victims in the cited reports felt their participation in the process as a severe burden despite the conviction of their offenders.

A more efficient utilization of victim's rights through legal assistance would be helpful for trafficking victims and significantly improve their outcomes from participating in the criminal prosecution. The existing legislation contains several rights that might be of use.

Reform issues. Several propositions for increased victims' protection can be found in Bulgarian and international reports. They might increase the importance of victims' rights if they are implemented. We agree with many of them and have some proposals of our own for improving victim's legal aid.

The GRETA 2021 report on access to justice for trafficking victims also contains recommendations on legal aid. The report's evaluations connect to state obligations according to the Council of Europe Convention on Actions against Trafficking in Human Beings in force from 2008, which Bulgaria has joined (THB Convention). The report applies a broad approach to the victim's need and to the instruments for covering them. The report contains sections on the rights to information and legal assistance and legal aid, and the recommendations necessary. Recommendations concern improved information on victims' rights, the services available and how to access them. The report also describes the implications of being identified as a victim. We accede to GRETA's recommendations.

5.4.2.4 Information to victims

Existing system. The GRETA report stresses the importance of basic information to victims as a precondition for effective use of their rights. The report refers to the THB convention articles 12 and 15 and adds:

"In Bulgaria, the right to information of all victims of crime, including victims of THB, is guaranteed by the 2006 Law on the Assistance and Financial Compensation of Crime Victims. Pursuant to Chapter Two "Informing Victims of Crime of their Rights", Article 6, paragraph 1, of this Law, the authorities of the Ministry of the Interior, investigators and victim support organisations shall immediately notify victims of:

- i) their options for access to medical care, the organisations to which victims can turn for counselling and support provided free of charge, and the types of counselling and support which they can obtain free of charge;
- ii) victims' right to legal aid, the services to which they can turn in order to exercise that right, and the terms and procedures for obtaining legal aid free of charge;
- iii) the services to which a crime can be reported, the procedures following such a report, and the types of action which victims can take under the applicable terms and procedures;
- iv) the services to which an alert may be submitted in case of violation of their rights by the competent authority acting in the framework of the criminal proceedings;
- v) victims' rights in the criminal process and the options for their participation in it;
- vi) the services to which victims can turn for protection for themselves and their relatives, and the terms and procedures for obtaining such protection;

- vii) the services to which victims can turn for financial compensation from the State, and the terms and procedures for obtaining such compensation;
- viii) possible ways of protecting victims' rights and interests if they are foreign nationals who are victims of crime in Bulgaria;
- ix) possible ways of protecting victims' rights and interests if they are victims of crime in another country, and the services to which they can turn in such cases.”⁹³

Bulgarian law allocates the information responsibility to three instances:

- the Ministry of the Interior,
- police investigators and
- victims’ support organisations.

However, the existing information system shows significant weaknesses. The GRETA report says:⁹⁴

“According to civil society organisations, prosecutors generally fulfil their obligation to check if the protocol and form on rights are signed by victims. However, NGOs have observed that the information on rights is provided in a formalistic way, and is not always comprehensible to the victim as it does not take into account the cognitive skills and psychological state of the victim. For example, victims who are from traumatised may have difficulties in adequately understanding and analysing the information before taking a decision. This is why it is important that information on rights be provided repeatedly by different professionals, including psychologists, social workers and lawyers, while ensuring that the provision of information is structured and consistent throughout the victims’ pathway of engaging with different agencies and organisations.”⁹⁵

Reforms. We think the GRETA analysis important and emphasises the need for reforms. All instruments and services listed presuppose some basic knowledge about them for efficient use, which vulnerable victims often lack. Several of them are legal in nature and presuppose a sufficient understanding by the victim of their material content and procedural conditions to be effective. Victims need to understand their rights if they shall recover from trafficking experiences.

The incomplete information to victims should be remedied. Law enforcement officers ought to be properly trained in how to explain their rights to victims and systematically refer them to specialized services to exercise them.

Language barriers should be considered and remedied. Roma victims might need additional explanations in Romani.

The Roma inclusion strategy (2021–2030) has a general objective of

“Increasing the institutional culture and expertise of public institutions (including national and local administration, court, prosecutor’s office and MoI bodies in relation to EU policies on

⁹³ GRETA 2021 p. 15.

⁹⁴ See especially GRETA 2021 p. 16–17.

⁹⁵ GRETA 2021 p. 17.

diversity, equality, dignity and fundamental human rights. Overcoming cultural barriers to communication and all forms of discriminatory attitudes.”⁹⁶

We think training and reduced language barriers should help.

RECOMMENDATION NO. 25:

Law enforcement officers should be properly trained in how to explain their rights to victims and systematically refer them to specialized services to exercise them. Information in Romani should be offered to all Roma victims.

A similar recommendation concerns continued training of the staff at asylum and detention centres. They ought to proactively inform both persons and groups at risk of being trafficked and interpreters involved.⁹⁷

RECOMMENDATION NO. 26:

The staff at asylum and detention centres and interpreters should receive continued training in how to proactively inform both persons and groups at risk of being trafficked about their rights to protection.

NLAB also provides information through the national legal hotline about the rights of human trafficking victims before legal proceedings are initiated:

“In the form of consultations, legal advice and preparation of documents before the relevant investigative bodies or a court for the opening of criminal or civil proceedings. The information is provided through the national legal aid hotline, which is operated by lawyers from the relevant Bar Associations, the 12 regional counselling centres operated by the lawyers from the relevant Bar Associations, ex officio lawyers appointed upon the request of trafficked persons, information brochures and videos.”⁹⁸

Does the telephone service fulfil the need for information from legal aid lawyers?

The service handles all sorts of problems and requests for advice. It is not specialized. Lawyers appointed from the legal aid register provide the service. Most probably lack special competence on or interest in THB victims.

Access to the scheme presupposes that victims have sufficient knowledge of it to make contact on their own at an early stage.

For victims to make proper decisions, they need an overview of all available services – legal and not legal – with their pros and cons and how the different services might work together to avoid detrimental effects of the service package as a whole.

RECOMMENDATION NO. 27:

The national hotline and the regional counselling centres should include lawyers that are properly trained in how to explain their rights to victims and systematically refer them to

⁹⁶ Roma inclusion strategy (2021–2030) part VII.5.2.

⁹⁷ GRETA 2021 Appendix 1 p. 67.

⁹⁸ GRETA 2021 p. 17 para. 48.

specialized services when necessary to exercise them.

5.4.2.5 Victim's lawyer reforms

From the observations we have made about the victim's legal aid scheme, we think over all improvements important. The present paragraph describes findings from the study of victims of THB for sexual exploitation. In 5.4.4 we include findings from the analysis of the scheme's services to victims of domestic and sexual violence

Appointment. Victims of THB for sexual exploitation should have a lawyer appointed as early as possible, preferably at the start of the investigation, and latest before the police interrogates them. The lawyer should be allowed time to read the documents and consult with the victim before she is interrogated. The police should inform about the right to a lawyer and secure an appointment. Many of the problems described in the court monitoring report seems treatable by emphatic and vigorous counselling and advocacy.

Tasks. Victims of sexual exploitation have a number of rights usable during the criminal prosecution against the trafficker. The reason for including them in the law, is not symbolic, but to see them used whenever a victim might profit from them.

The victim's lawyer should effectively inform and educate the victim about important aspects of the prosecution process; like protective and possible rehabilitation measures, witness tasks and the possibilities to sue for economic compensation and to act as a private prosecutor for the punishment claim. Communication skills are important.

Legal aid lawyers have a key function in both making victims of sexual exploitation aware of other available services relevant to THB-victims, and help them utilize them. They ought to know about such other services and how to refer clients to them and to collaborate with them. At present they cannot expect law enforcement officers, courts or other services to sufficiently possess such capacities and neither the will to do an information job that conforms to the complex needs of victims. Some might do, but not everyone.

A victim's decision of use or non-use of her rights should be based on an adequate understanding of the pros and cons in their individual case. Victims on their own can hardly carry out such analyses properly. They need supervision from a lawyer trained in the special challenges that trafficking cases pose. Whether to use them must in the end depend on the victim's decision.

5.4.2.6 Victims' limited use of legal aid

Article 15 (2) of the THB Convention and article 6 of ECHR oblige state parties to provide in their internal law for the right to legal assistance and free legal aid. The GRETA report evaluates whether the Bulgarian legal aid act provides a coverage sufficient to fulfil the obligations. The report adds that even if domestic law appears insufficient, Bulgarian courts have an obligation to fulfil Bulgaria's human rights obligations.⁹⁹

The report points to the different procedural roles that victims might possess in criminal proceedings, namely as injured party, private prosecutor, private complainant, civil claimant and finally as witness. The first four positions entitle victims to legal aid. With per case fee, however, the legal aid lawyers will earn more the less they do. Better training might counteract

⁹⁹ GRETA 2021 p. 18.

such attitudes. More space for extended fees if the victim chooses any of the four alternatives might also counteract substandard work. NLAB might also introduce better quality control of the work done; preferably through peer review as done in England and Wales.¹⁰⁰

Position as witness entitles the victim to one consultation by a lawyer, mainly concerning the prohibition against involuntary self-incrimination. Also for the witness aid, the general conditions for legal aid apply. The victim must lack the necessary economic resources, and the interest of justice must require legal services if the proceedings shall be fair.¹⁰¹ The criteria should be interpreted in accordance with the case law of the ECtHR.

Child victims of THB have additional access to free legal help in the Child Protection Act, and victims of THB in shelters have additional access to free legal assistance in the Anti-Trafficking Law. NLAB works on a coordination mechanism for victims in shelters.¹⁰² The legal criteria are discretionary in nature, and the wording of the Bulgarian provisions appears quite similar to ECHR article 6, but practice might deviate.

Victims must specifically ask for an “ex officio lawyer”, which might not happen unless they are provided with proper information on beforehand. As discussed above, reports show significant deficits in this respect.

One proposal is to positively offer legal aid to all trafficking victims participating in court proceedings, unless they refuse.

5.4.2.7 Compensation for loss of “immoral earnings”

Although criticized, victims’ testimonies are crucial to receive convictions of the traffickers. A doctrine of Bulgarian courts that the victim cannot claim compensation from the trafficker for loss of “immoral earnings”, will demotivate many victims from using their position as civil claimant. If impossible to regain parts or all of their income, their material interest in contributing to the prosecution of the defender will diminish, and the effectivity of the trial might suffer.¹⁰³

We question the wisdom of the “immoral earnings” doctrine. Even when criminal prosecution results in long prison sentences, they might not mean full protection of victims against retaliation. Therefore, the prospects of receiving a significant sum seem well suited to increase the victim’s motivation both to report the trafficking and to help elucidate the case.

The issue of compensation seems of importance to the victims’ willingness to participate. Their work often creates great earnings, of which little is left to them by the trafficker, and the possibility to receive a fair share of the earnings through compensation in addition to compensation for moral damage, might produce a strong incentive to participate in the process and give evidence. Without that prospect, the victim will lose a major incentive to endure the strain of the process, and choose the position as witness as the least detrimental alternative. The prosecutor, court and legal aid lawyer might also support such a choice because it will make their tasks simpler and the process less time consuming.

Government might also confiscate the profits and use it to support victims of trafficking, which seems to be the preferred alternative in Bulgaria. If victims know that a system exists that will protect them from the worst consequences of poverty and support them in achieving

¹⁰⁰ See chap 6.6 on “Contracting”.

¹⁰¹ GRETA 2021 p. 19.

¹⁰² GRETA 2021 p. 19 for further details and references.

¹⁰³ GRETA 2021 thinks the prosecution’s reliance on victims’ evidence should be lessened.

a competence useful at the labour market, it might help motivating victims to leave trafficking, but not to the same extent as getting back the money legally earned.

Bulgaria does not prohibit sex sale from individuals, although forbids trafficking, brothels, and other forms of organizing sex sale for profit. Since the victim's income is legal like other work earnings, why should not trafficking victims be compensated for income deprived from them by the exploiter?

When confiscation procedures appear ineffective in practice, the question becomes more pressing. Is it preferable to let the trafficker keep most of the profit from "immoral earnings" because of inefficient confiscation procedures than allowing the victim to try to regain some of the profit?

As shown, the court in one of the cases of the study on victims of trafficking in court in Bulgaria denied to handle the victim's claim for compensation for the loss of money she earned from her customers and was forced to pass on to the trafficker. The court's justification for rejection was that the claim was immoral because it related to payment for sexual services.¹⁰⁴

Such rejections might be challenged. Customers cannot claim their payment back, but Bulgarian law allows the government to confiscate the profits and use the money or part of it for rehabilitating the victims.

Such a system probably might secure a socially better use of the prostitution money than if awarded to the victim for free use. The use might also be more altruistic, since victims might be supported also when regaining such profits from their own trafficker appears impossible. Nevertheless, the incentives for the victims to actively participate in the criminal case might be significantly weakened.

If we turn to other forms of THB exploiting a victim's activity that is not regarded as immoral, for example work exploitation, the moral apprehension against handling compensation claims from victims does not exist. We suppose that Bulgarian courts will not exclude them from handling.

RECOMMENDATION NO. 28:

Bulgarian courts have declared compensation claims against traffickers from victims of trafficking for sexual exploitation for depriving them of loss of income, for "immoral" and inadmissible. The use of such labels as a justification for inadmissibility, should be abandoned either by the courts themselves or by legislation.

5.4.2.8 Concluding comments

It is a troublesome finding that the legal possibilities inherent in the four procedural positions as injured party, private prosecutor, private complainant, and civil claimant seem hardly used at all. The GRETA report contains four recommendations urging the Bulgarian authorities to take further steps to facilitate and guarantee access to justice for victims of THB, in particular by ensuring that:

- "1) a lawyer is appointed as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, before the person concerned has to decide whether or not he/she wants to co-operate with the authorities and/or make an

¹⁰⁴ Kadieva et. al. p. 8, 13.

- official statement;
- 2) adequate funding is made available for the provision of legal assistance, legal representation and interpretation/translation to victims of THB placed in shelters;
 - 3) Bar Associations encourage training and specialisation of lawyers to provide legal aid to trafficking victims, and ensure that trafficking victims are systematically appointed a specialised lawyer;
 - 4) access to free legal aid for victims of THB is unconditional and does not depend on proof of lack of financial means to pay for a lawyer.”¹⁰⁵

We think GRETA’s recommendations well founded, and support them.

The Roma inclusion strategy (2020–2030) wants to increase the efforts to combat trafficking in human beings through different means. Among them are additional measures to increase the detection and prosecution of traffickers.¹⁰⁶

Improved legal aid to victims might help them to avoid degrading treatment by the police and the courts, and make better use of their positions as part in the criminal trial. Better use of the positions as part, might also improve their function as witnesses for the prosecution when they have the assistance of a lawyer during trial.

RECOMMENDATION NO. 29:

A lawyer shall be appointed as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, and before the victim has to decide whether he/she wants to co-operate with the authorities and/or make an official statement. The first consultation should be obligatory.

RECOMMENDATION NO. 30:

Adequate funding should be available for the provision of legal assistance, legal representation and interpretation/ translation to trafficking victims placed in shelters.

RECOMMENDATION NO. 31:

Access to free legal aid for victims of trafficking should be unconditional and not dependent on proof of lack of financial means to pay for a lawyer.

Effective rehabilitation of THB victims calls for multiple services, with legal aid as one type. However, most such services have a legal basis, and legal services might have a key function in providing victims with access to health services, social services or educational services and also in making them work properly. Such legal aid is outside the present Bulgarian legal aid scheme, but inside schemes that include legal service for other purposes than court assistance – for example as the victims’ lawyer scheme in the Norwegian Criminal Procedural Code does. See below 5.4.4.2.

GRETA’s proposal that the access to legal aid to victims of THB should be “unconditional and not dependent on proof of lack of financial means to pay for a lawyer”¹⁰⁷ has met objections

¹⁰⁵ GRETA 2021 p. 22.

¹⁰⁶ Roma inclusion strategy (2021–2030) part VII 7 and VIII.

¹⁰⁷ GRETA 2021 p. 22.

from the Bulgarian Ministry of Justice:

“Excluding the requirement to prove lack of income only for victims of trafficking in human beings would result in misbalance and even discrimination, insofar as in all other cases of victims of other kinds of crime, the respective authority is legally obliged to assess the financial capacity of the victims of the crime, who will be represented, before allowing a public defender in the criminal proceedings.

We state our disagreement with this recommendation and propose that it be deleted.”¹⁰⁸

From an international perspective, it seems obvious that access to legal aid without any poverty test might be helpful, especially to victims of trafficking for sexual exploitation since their income mostly will come from illegitimate sources, making them difficult to document, and making victims afraid of having to reveal incomes that might lead to investigations against them.

It is an argument that other victims are subject to poverty tests and an exception means differential treatment. However, differential treatment to improve the situation of deprived groups does not necessarily mean discrimination.

The Norwegian Criminal Procedural Code limits victims’ lawyers to certain serious crimes that inflicts substantial mental or bodily harm on the victim. Then they receive the service without any poverty test from the idea that such victims should not suffer economically from participating in the criminal trial. They should be allowed to forward civil claims, especially for compensation derived from the acts described in the indictment. Victims of other, less serious crimes are not allowed to use a lawyer representing them in criminal trials, but might petition the public prosecutor to forward their civil claims as part of the criminal trial, see below 5.4.4.2.

Also Bulgaria might consider limiting the allocation of a victim’s lawyer without any poverty test to victims of crimes with a maximum penalty equal to or graver than for trafficking. To ration the access to victims’ lawyer according to the seriousness of the alleged crime without any poverty test might bring such a reform free of the discrimination issue.

The GRETA report contains several other recommendations for improvements that concern important aspects of criminal prosecution of trafficking offenders and the procedural and material conditions for handling and deciding victims’ claims for compensation. See GRETA 2021 p. 24-38. We recommend the legal aid authorities to further evaluate them.

5.4.3 Victims of domestic or sexual violence

5.4.3.1 Weaknesses of the present scheme

A CEDAW report that evaluated Bulgaria’s compliance with the Convention of all forms of discrimination against women from 2017, points to important reform issues of relevance to legal aid.¹⁰⁹

The report claims that the Bulgarian means, including legal means, to hinder severe

¹⁰⁸ GRETA 2021 p. 78–79.

¹⁰⁹ The Advocates for Human Rights, Bulgarian Gender Research Foundation, in cooperation with Alliance for Protection from Gender-based violence. *Bulgaria’s Compliance with the Convention on the Elimination of All Forms Discrimination Against Women. Suggested List of Issues Relating to Violence Against Women*. Submitted 29 September 2017 to the 70th Session of Committee on the Elimination of All Forms of Discrimination Against Women (Pre sessional Working Group) November 20–24 2017. (CEDAW 2017)

violence against women are not effective enough. Courts do not use the urgent procedure for issuing orders for protection for the victims and their children. In case of violation of the order for protection, the aggressor is not arrested as required by the law, and enjoys impunity, and violent perpetrators have access to firearms.

State authorities distort the application of the law by blaming victims for the violence, and create risk for women and their children who instead must flee through the country to find shelter.

Instead of providing for urgent protection, against the violence, the court gives priority to the parental and visitation rights of the perpetrator, insisting on hearing an indefinite number of expert opinions, and assigning the victim to mediation sessions with the aggressor.¹¹⁰

Such behaviour from judicial organs is well known from other countries, previously and present. Independent of estimates of how widespread such problems are, easily available and specialized legal aid to the victims are important for counteracting such behaviour from courts, prosecution and the police. See the paragraphs on victims' lawyers in chap. 5.4.4.1 and 5.4.4.2. Bulgarian legal aid only covers victims that live on and below the poverty line.

The CEDAW report criticizes the means test as too strict and the application procedure as too slow and extensive to be effective in these type of cases when urgent action often is necessary to protect the victim from further victimization by the perpetrator.¹¹¹

5.4.3.2 Experiences by Wings on victims of sexual and domestic violence

Mission Wings Office (MWO) in Stara Zagora runs a test program with legal aid to Roma settlements in the area that will be analysed together with other test programs in chapter 6. The office also has significant experience with legal services to victims of sexual and domestic violence that we summarize now, since it relates closely to the challenges described above in the CEDAW report.

A mother and baby unit was founded in 2005 and accommodates mostly women who are victims of violence and homeless. They have welcomed Roma people since the opening, and included underage women and pregnant women as well. The unit has capacity for 8 mothers and one child. However, often mothers come with more than one child, so this is just in theory. There is a bed, baby cradle, and beds for additional children.

If a victim in a criminal case seeks consultation, the MWO lawyer will meet her at any stage of the proceedings. Their main goal is to initiate prevention and prevent recidivism. If children are involved, such early contacts also are helpful in protecting them.

An immediate protection order is very important for the victim's safety. According to the Law on Protection Against Domestic Violence a preliminary order might be issued and imposed before the initiation of the case. When a victim comes to the office, the lawyer drafts a request for immediate protection and submit it to the court, which issues the order to the police within 24 hours. The police go to the home of the victim to enforce the protection order to the perpetrator if he still resides there.

However, preventive measures, such as forbidding the perpetrator to go near the house where the incident happened often appears ineffective, and the police might be reluctant to

¹¹⁰ CEDAW 2017 para. 7.

¹¹¹ CEDAW 2017 para 20.

come and pick up the perpetrator. Many victims are unwilling to carry on with the case until the end. Having submitted the request for protection, at a later stage they withdraw it and cancel the case.

A MWO recommendation for preventing second victimizations is frequent visits to the victim by field workers to make sure that the victim is doing fine.

MWO thinks that the coordinating system needs improvement. The police must have sufficient sensitivity and knowledge both about the victim's status and about the background situation of domestic violence in general, in order to act adequately when they go to the spot. If not, they tend to diminish the importance of the case and end with victim blaming, because of sheer lack of general awareness about gender-based violence.

Perpetrators rarely participate voluntarily in communication with the MWO lawyer and do not admit that they have a problem with aggression and domestic violence. It is demanding to have a court decision for protection against domestic violence and such cases are difficult to prove.

A corrective program for offenders of domestic violence used to exist. Such a measure is envisaged in the Law on Protection Against Domestic Violence, but it is rarely imposed by the court. Victims' lawyers rarely request correctional measures, and such requests rarely come into effect. The court might deem such service being unavailable in the area. In an analysis of 600 court decisions MWO only found one or two occasions where the court had directed the perpetrator to such a program.

RECOMMENDATION NO. 32:

Bulgaria should improve the efficiency of the protection and rehabilitation measures of the victims of domestic and sexual violence. A duty for victims' lawyers to see to that such mechanisms work properly should be part of their work and remuneration.

Compensation. Victims of domestic violence seldom sue for compensation for physical damages. The lawyer tells she has the right to constitute herself as a civil claimant. If the court convicts the perpetrator and states that he harmed the victim, the victim appears satisfied.

If the victim initiates a compensation case, it is very rare that she will receive anything from the perpetrator because most of the time the perpetrator is poor that he does not have any property, money or bank accounts. Some victims also are willing to protect the perpetrators.

Bulgaria has established several crisis centres for victims of domestic violence that serve women and children included Roma. They often face a range of problems and challenges that need to be solved for a successful rehabilitation. Legal problems of vital importance often are part of the challenge. The MWO model clearly demonstrates that a connected legal aid lawyer can provide important contributions to the rehabilitation of the victims. The interdisciplinary teamwork improves the quality of their service. We recommend further development and adoption of the MWO model at other crisis centres that lack integrated legal aid services.

RECOMMENDATION NO. 33:

Crisis centres should have legal aid lawyers assigned that collaborate with the staff in solving the legal problems of the users.

5.4.3.3 The Ombudsman of Bulgaria¹¹²

According to the Ombudsman of Bulgaria, the number of Roma women that have been victims of domestic violence is high. Some try to justify the violence towards them by their way of living, their cultural characteristics and views.

Roma women that are victims of domestic violence have a hard time if they seek to protect their rights. Some are not even aware that they are entitled to protection. Besides, those that decide to receive legal protection face the threat of rejection by their communities as well as the fear of the way that institutions may view their situation.

The child protection agency is protecting the whole spectrum of rights of the child. Children's rights are viewed together with the rights of their mothers. Due to factors as poverty, closed communities, lack of information etc., the majority of children are not legally recognised by their fathers and their mothers are in fact their representatives before the different institutions. However, traditionally in the Roma community the fathers are those who take care of the children in case of separation with the mother. The tradition is still kept in larger communities, like the Roma neighbourhoods in Sliven and Sofia.

The Ombudsman's observations regarding the way rights of access to different entitlement are being protected, have led her to actively work on measures and actions in the field of child justice. It is the last unreformed aspect of the system of the rights of the child, and in every yearly report she dedicates attention to the rights of the children that are in conflict with the law and their access to legal aid.

There is more to do. Bulgaria needs to adopt special legislation, because currently the act in force has been in force since the 1960ies.

The Ombudsman actively works with the civil sector and are often referred to in connection with the legal representation of children to be taken care of in residential services. Legal representation of children with multiple disabilities is a huge challenge. The Law on protection of the child currently in force directs that the child protection system shall represent children at risk. Several NGOs insist on improvements of the special legal representatives for children who are placed in social care facilities.

RECOMMENDATION NO. 34:

We support the Ombudsman's proposals for improved legal aid to Roma children and their mothers, especially in cases of domestic violence.



Crisis Centre Balvan Velico Tarnovo.

¹¹² Interview with the Ombudsman of Bulgaria 09.05.2022.

5.4.4 Two general reforms in legal aid service to victims

Several of the weaknesses pointed to in our analysis of legal aid to victims of THB for sexual exploitation and sexual and domestic violence are shared by victims of other crimes. We will point to two reforms that will mean overall improvements of legal aid to victims of crime.

5.4.4.1 Lawyer qualifications

As pointed to by several evaluations, the professional standard of the service provided to victims needs improvement. One obvious vehicle is improved professional training and adequate practice experiences for legal aid lawyers.

Level of competence. Efficient legal service to victims of THB, domestic violence and sexual violence, is a demanding task that law schools or lawyer's licence education to a limited degree prepare them to handle. The victims face multiple problems, health, family relations, income, network, discriminatory treatment, self-esteem, etc. To deliver quality legal services, lawyers must understand the complexity of the victim's total situation and the part legal problems play, and be able to tailor their service contribution to the other services the victim needs. If some necessary services other than legal services do not function, the victim's lawyer should be able to help making it work.

The Bulgarian legal aid system organised to meet the legal need of victims, uses lawyers in private practise to deliver the service. The overall qualifications are a licence as a general practitioner and registration in the legal aid register (NRL). Legal aid lawyers should indicate their preferred fields of work, namely criminal, administrative and civil cases, in which they would like to receive commissions. However, such registrations do not necessary tell about qualifications, only about the lawyer's preferences.

Such indications obviously are wide, seemingly with no space for further specifications. They therefore give little indications of whether a lawyer is suited as a victim's legal aid lawyer in the particular case.

New lawyers with little experience, might look at legal aid cases as a way to fill up their capacity and therefore indicate all three types of cases, and accept them when allocated.

Neither do such registrations provide any guarantee that the bar association leader will allocate cases according to the legal aid lawyers' preferences. They might prioritize an even distribution of commissions among the lawyers in the register before allocating cases to the available lawyer best suited to handle the type of case and victim in question.

Choice of lawyer. Clients' free and informed choice of lawyer is often used in the arguments from bar associations as a guarantee for quality services. Clients might choose the lawyer they think best suited for their commissions.

However, clients' free choice does not seem to be an important feature of the Bulgarian legal aid system. The leader of the regional bar council appoints legal aid lawyers from the legal aid register. Clients seemingly have little or no say in the appointment process. From the information available to them, it also seems difficult for victims to make an informed choice.

We might conclude:

- The allocation of legal aid lawyers does not emphasise the clients' need, but mainly serves the profession's need for commission.
- Legal aid lawyers lack special training in helping victims of THB and domestic and sexual violence.

- The distribution mechanism also needs reform. The legal aid register must show the lawyers' competence to help victims, and victims' cases should be distributed to them.

Training. Due to the potentially important role that the victim's lawyer might have in the rehabilitation of victims, qualifications concerning the existing support systems for THB victims and how to access them, should be an obligatory training for victims' legal aid lawyers, and the fee system might cover such training to a reasonable extent.

An ordinance from 2009 obliges lawyers to undergo no less than 8 hours of continued professional education per year in subjects of their own choice.¹¹³ An initiative in 2015 to set up a network of specialized practicing lawyers across Bulgaria seemed promising. The project trained 283 lawyers and a handbook was developed.¹¹⁴ In 2017–18, NLAB also provided 283 lawyers in the legal aid register with training in the rights of victims of THB.¹¹⁵

Seemingly, the number of participants far exceeds the number of lawyers needed to day. As shown, the number of registered victims (survivors) today lays around 400–500 a year. If we presuppose that all of them need a lawyer, and each lawyer should handle a minimum of 5 cases per year to gain sufficient experience, a total number of lawyers needed will be 80 of the 6 300 lawyers in the register. If each lawyer handles more cases per year, the number needed will be lower. Today almost all victims appear unrepresented, so a significant raise in the number that apply for a legal aid lawyer, is necessary to keep up a pool of the indicated seize. Both improved services from the legal aid lawyers and information to the victims seem necessary.

The average number of cases handled by victims' lawyers seems far too small to uphold and develop the competence for more than a minor part of the course participants. Many of the participants will not receive a sufficient number of cases to practice their education. Neither do they have any guarantee that they will be picked for such tasks by the bar council leaders. Therefore, such training programs might be quite ineffective. A study of the qualifications of the lawyers that actually handle victim's cases during a period of a year or two, might give data that are more accurate.

Bulgaria ought to reconsider the approach to legal aid to victims. The goal should be to establish a pool of lawyers with the necessary specialized capacities for delivering quality services to this vulnerable group. The pool should have a seize sufficient for the demand, and such commissions should be channelled to members of the pool.

RECOMMENDATION NO. 35:

Legal aid lawyers for trafficking victims and victims of domestic and sexual violence should possess sufficient knowledge about the existing support systems for victims and how to access them. A sufficient number of legal aid lawyers should undergo training, and the legal aid fee system might cover such training to a reasonable extent.

Recruitment might be done through legal aid contracting¹¹⁶ with selected lawyers for larger

¹¹³ GRETA 2021 p. 20.

¹¹⁴ GRETA 2021 p. 21.

¹¹⁵ GRETA 2021 p. 21.

¹¹⁶ See chap. 6.6 on legal aid contracting.

numbers of commissions over some years – at least for as many commissions as necessary for keeping up their specialised competence – and hopefully for significant more cases. The bar council leader might still be responsible for allocating the cases to members of the pool.

Another method is to appoint a number of qualified lawyers as permanent legal aid lawyers for a set time period – for example five years – like the system of permanent victims’ lawyer (and defender) in Norway, which we describe below. All cases that qualify for victim’s lawyer within the district are channelled to a permanent victims’ lawyer unless the client chooses another lawyer willing to perform.

Such allocation systems might be combined with quality control of the case handling. Today, the guarantee for quality solely relies on the lawyer’s general qualifications and ethics with a subsequent disciplinary mechanism that poor people lack capacity to use. Even when qualifications appear sufficient, the concrete case handling might be substandard. *Peer review* of legal aid lawyers’ case files has been efficient to uncover deficits. Such quality control might well be used for all legal aid cases – especially since the low pay might foster incentives for substandard work and outright malpractice unless the quality control is effective.

The legal aid register. A connected reform is to establish a specialized part of the NRL for lawyers with the necessary qualifications who want to provide legal aid to victims of trafficking and oblige the bar leaders to approve lawyers from the specialized part of NRL.¹¹⁷

Still, to link legal aid lawyers with adequate training with the appointment process of associations has challenges. Legal aid registering today does not demand any special qualifications concerning THB or domestic and sexual violence, and the competence issue is left to the discretion of the leader of the bar councils when appointing victims’ lawyers.

Many bar council leaders appoint lawyers randomly and think any form of selection due to special qualifications as unfair competition. The GRETA report thinks this attitude a significant barrier to integrating qualified legal aid to THB victims into the national legal aid system. Therefore, the specialized competences of the legal aid lawyers approved probably varies significantly, and that the information they provide also suffers from the weaknesses found in the information from the police, prosecutors and courts described above (formalism, difficult to understand for victims, etc.).

NLAB has a list of lawyers in the legal aid register that have undergone training in legal service to THB victims. Since no special competences in THB victims are required for acceptance into the legal aid register, the leaders of the bar councils are under no obligation to choose lawyers with such courses.¹¹⁸

However, NLAB has indicated that it has issued special guidelines that requires the regional bar associations to set up specialized registers of lawyers including the ones trained to represent victims of THB, combined with criteria for case allocation and minimum qualifications.¹¹⁹

We think it important to develop an appointment system that secures victims of TBH and domestic and sexual violence legal aid lawyers with sufficient specialized competence. The existing NLAB register on legal aid lawyers with special training might serve as a starting point.

¹¹⁷ Kadieva et. al. p. 30.

¹¹⁸ GRETA 2021 p. 20.

¹¹⁹ GRETA 2021 p. 21.

RECOMMENDATION NO. 36:

The National Legal Aid Bureau should establish and maintain a specialized part of the National Register of Legal Aid Lawyers for lawyers with the necessary qualifications who want to provide legal aid to victims of trafficking and domestic and sexual violence. The bar associations should appoint lawyers from the specialized part of the register for such commissions,¹²⁰ and ensure that trafficking victims are systematically appointed a specialised lawyer.

The recommendation should be in line with the Roma inclusion strategy that has improved access to justice and legal aid for Roma women as an objective.¹²¹

5.4.4.2 Outline of the Norwegian victim's lawyer model

Bulgaria might improve its victim's lawyer scheme. We would like to point to the Norwegian scheme that has a number of advantages compared to its Bulgarian counterpart. Other models might exist in other jurisdictions that have other advantages. However, models have pluses and cons and if used, the point is to import the features that seems useful to integrate in the Bulgarian system, and leave out other parts. A true copy is not the point.

According to Norwegian criminal procedure code chap 9 a,¹²² victims of serious crimes and victims who have suffered severe bodily harm, are entitled to a victims lawyer. In addition to legal advice and representation, the victim's lawyer also shall offer the victim other types of human support and care that appear natural and reasonable from the circumstances of the case and within the capacities of a lawyer.

The last provision obviously improves the quality of legal aid for the victim, and improves rapport between the victim and the lawyer,

Availability. A victim might apply for a lawyer in criminal cases about violations of selected provisions in the criminal code that prohibit:

- the perpetrator to contact the victim or to stay in areas forbidden to the perpetrator by the police or court, also when issued during pre-trial investigation, to protect the victim from pressure from the suspect to recall the report and withdraw testimony.
- to immobilize electronic foot chains,
- forced marriage,
- trafficking in human beings,
- mistreatment in close relationships,
- female circumcision,
- rape and other sexual misuse of similar severity,
- sexual offences against children,

¹²⁰ Kadieva et. al. p. 30.

¹²¹ The *Roma inclusion strategy (2021–2030)* part VIII.

¹²² Norwegian criminal procedure code 22.05.1981 no. 25 § 107 c.

- incest,
- all criminal acts that give reason to believe that the victim might suffer severe harm to body or health.

Courts might appoint a victim's lawyer also from a discretionary evaluation of the circumstances and seriousness of the case, the victim's need or other special circumstances that imply a need for a lawyer.

Information and appointment. The court appoints the victim's lawyer in the individual case according to the victim's wish or a permanent victim's lawyer if the victim lacks preferences. A permanent lawyer has agreed to take on commissions as a victim's lawyer upon request. The Norwegian Court Administration appoints a sufficient number of permanent victims' lawyers. Appointments are for six years and might be renewed. The appointment system helps secure that the victims' lawyers gain sufficient experience.

The police shall inform the victim or her left behinds about the right to a victim's lawyer at the first contact. The police might call a temporary victim's lawyer if the investigation will suffer from awaiting the court's appointment. If so, the appointment issue should be brought before the court speedily.

Tasks. The victim's lawyer shall care for the interests of the victim or her left behinds during investigation and trial. The lawyer shall also provide other practical and human support that appears reasonable and natural as part of the case handling.

The victim's lawyer is entitled to participate in court meetings during investigation and trial, and investigative meetings like inspections of the crime scene and reconstructions when the victim shall participate. The victim's lawyer shall be summoned to police interrogations of the victim, and is entitled to further examine the victim. She might protest against questions that lack relevance or appear inappropriate.

The victim's lawyer forwards the victim's claim for compensation and other civil claims against the perpetrator to be handled together with the prosecution's claim for punishment during the criminal trial. Such claims must derive from the acts described in the indictment. If the court denies combined treatment and refers the victim's civil claims to the civil courts, legal aid still will cover the lawyer's work.

Victims without a victim's lawyer might ask the prosecutor to plead their compensation claims against the perpetrator together with the criminal charge.

Fees. Victims' lawyers are paid similar to public defenders. They can charge extra time for non-legal assistance. No poverty criteria apply, which means that victims qualify independent of their economy. Neither do they pay contributions. It means that the service is free for all victims that satisfy the problem criteria.

RECOMMENDATION NO. 37:

Bulgaria should study the Norwegian victim's legal aid scheme and other developed European schemes and integrate features that might improve the Bulgarian scheme.

6 NEW SERVICES AND TEST PROJECTS

Chap 6 analyses and evaluates a number of innovative legal aid projects in Bulgaria. Two of them have become permanent parts of Bulgarian legal aid, although they still develop their features. Others are projects established for a set period and primarily funded from means outside the ordinary legal aid budget. Bulgarian authorities must then decide whether such legal aid projects should become part of the permanent legal aid system financed by Bulgaria, whether to apply for further temporary financing or just end when the present project period ends.

Independent of status, we think it useful to evaluate a selection of such projects and their meaning for Roma women's access to legal aid.

6.1 Established projects. National Telephone for Legal Aid and Regional Consultation Centres

A decree from 2014 established the National Primary Legal Aid Helpline run by NLAB and the Regional Counselling Centres run by the regional bar councils. The basic rules can be found in BLAA Chapter Five "a" Section I and II.

National Telephone for Legal Aid. The National Legal Aid Helpline offers free legal services without any poverty criteria. Instead the Helpline uses pay phone, meaning that the costs of the call are charged to the caller. For poor people, costs might prevent them from calling.¹²³ A cost free phone would be better.

Considerations of the Ombudsman. The Ombudsman of Bulgaria describes the telephone service as a very useful service because citizens from all around the country can use it. People from remote places and people who cannot afford to travel might still receive legal counselling when needed.

Qualified lawyers that have undergone dedicated training service the national phone line. The phone line works during working hours on working days. It might work 24/7 instead. Queueing happens sometimes. Since one phone consultation has a 20-minute duration, another call might be made if the line is busy. The regional centres also provide phone contacts. Creating more will relieve the pressure on the national phone line.

In the beginning the line was not especially popular, but a short video was made about the line and projected on metro stations and supplied with campaigns to promote the video on different television programmes, including the national television. The Ombudsman also procured publication in different newspapers that elderly people usually read. Also in the courts themselves in different cities the Ombudsman arranged for this film to be projected in the hallways. After such publications calls increased, especially since many elderly people called.

Regional Consultation Centres. 18 centres functioned in 2023, distributed around Bulgaria. They also are part of the primary legal aid system. 9 of the 27 regional bar associations had not established regional counselling centres so far.¹²⁴

The bar councils recruit the lawyers delivering service in the counselling centres, control

¹²³ Evaluation of ... chap 5.4 p. 33.

¹²⁴ A grant from «The Norwegian Financial Mechanism 2009–2014» financed a pilot project.

the quality of the service and determine their fees.

BLAA art 30 l. determines that advice seekers' economy must not exceed the poverty line. However, according to Stara Zagora Bar Association, regional consultation centres do not practice economic limits. Everyone might receive a consultation. If the client appears qualified for legal aid, an application will be forwarded. The Bar Association still assumed that most clients had incomes on or below the poverty line.

Only one consultation per case is allowed, but when relevant information about the client's case lacks, the client might be asked to come back with the missing information for another and more complete consultation. Consultations usually lasted for more than half an hour.¹²⁵

Statistics. Statistic information on the use of the services appears limited. The National Helpline had 4 178 calls in 2015 and 2 940 in 2016, while the Regional Consultation Centres had 587 consultations in 2015 and only 16 in 2016. The figures might seem to support the assumption that telephone service attracts more clients than the regional centres. However, NLAB had only one of their 14 regional centres in operation in 2016.

The NLAB report 2021 supplements.¹²⁶ The Helpline had 3 252 calls that resulted in advice in 2021, while 366 calls were refused. The 2021 figure lies between the 2015 and 2016 figures, which indicates a yearly use of 3 000–4 000 per year.

With an estimated 1,5 mill Bulgarians living on the poverty line and beneath, it means that 0,26 percent of the people qualifying for legal aid use the service each year. Since the service does not ask for income information, the number of callers that qualify for legal aid might be even lower. Obviously the use is highly insufficient compared to the need. If the user frequency continues, only one out of 7 (6,6) entitled on average will ever receive an advice from the telephone service during their life time.

The use of the regional consultation centres appears limited too. According to the NLAB 2021 Report, the 14 consultation centres only gave 263 advices, or only 19 per centre. The number is down from 587 for the only centre in function in 2015, but in line with 16 calls to one centre in 2016.

Evaluation. Ordinary legal applications go to NLAB as the first hand handler for all of Bulgaria and presuppose written applications. Few Roma will apply unless they already have consulted a lawyer about a problem and the lawyer advises them about legal aid and help them to apply, which Roma rarely do without knowing that the lawyer will be helpful and provide the service to no or limited costs.

A well-established finding about legal aid delivery to poor people, is that closeness, openness, friendliness and cultural understanding are important to actual use. Acceptance of oral contact and explanations and assistance with written applications and documentation improve confidence and motivation and seems especially important to Roma, since their literacy rate is significantly lower than for ethnic Bulgarians and Turks. Roma women as a group is less literate than men, which also means a greater need for assistance when handling legal matters.

We therefore think that the two types of services represent important improvements of the methods used to deliver legal aid to Bulgaria's large poverty population. A decentralization

¹²⁵ Interview 11.05.2022

¹²⁶ See chap. 4.7.1 table 1 p. 32.

to 18 counselling centres is a significant improvement in moving the service closer to people – especially for mobile poor who mostly are men. Establishing such centres at the remaining bar associations would mean further improvement of Bulgarian legal aid.

As a group Roma women are less mobile than Roma men, and Roma women are said to rarely move outside their neighbourhood. For them also regional consultation centres mainly are out of reach. A telephone service might work somewhat better, especially if they have Romani speaking lawyers available, which seems unlikely that they do.

The challenge is the client volume that should be significantly increased.

RECOMMENDATION NO. 38:

The National Telephone Service and the regional consultation centres should be further developed and better advertised. Both the National Telephone Service and the regional consultation centres should offer consultations in Romani according to the user's preference.

Bar Associations still without consultation centres should establish them.

The National Telephone for Legal Aid ought to be cost free or limited to a maximum sum affordable also for poor callers. A 24/7 service for poor callers ought to be tested out.

6.2 Test projects. Outreach

New ways of delivering legal aid to Roma are tested in trial projects. One of their main features are the use of *outreach*:

When poor people have to contact legal aid offices either by travel or in writing, by phone or data communication, the filtering effect is strong. Poor people like Roma often give in to such barrier also when their legal problems are severe and their rights neglected if they do not act. Poor Roma women are especially vulnerable, since many have limited capacity in Bulgarian and less often leave their Roma neighbourhood than men. *Outreach* means to offer legal aid in surroundings close to and familiar to the users, and to reduce social, cultural and ethnic barriers so that they do not hinder effective legal services.

We visited outreach projects in Stara Zagora and Veliko Tarnovo. We mainly use summaries from our interviews with the two projects in our descriptions and analysis. Some differences between the two outreach projects visited exists, but mostly their experiences are similar or suited to supplement each other. We focus on what we think forms a common base of experiences.

6.2.1 Outreach projects in Stara Zagora, Varna and Veliko Tarnovo¹²⁷

6.2.1.1 NLAB's motivation for organising outreach projects

Background. From the interviews we learned that NLAB has organised outreach projects in predominantly Roma communities, motivated from BLAA that provides the opportunity for every citizen to ask for legal aid regardless of ethnic origin. During the past years, tolerance is common among people in Bulgaria. Many informational campaigns have taken place. No legal restrictions exist based on the relationships people have formed or the traditions that they might have.

Many Roma live in closed communities. Cultural norms exist that prohibit Roma people

¹²⁷ Interviews with Stara Zagora Bar Council 11.05.2022 and Veliko Tarnovo Bar Council 12.05.2022.

to seek their rights. Some of such thinking might come from within the community and not as a result of outside influence. Before starting the project, Roma appeared less informed and cultural barriers existed, for example, in the customs and rules of the different communities. At the beginning of the project, a norm saying that what happened inside the community could not be brought out, hampered the use of the outreach projects.

Some husbands might beat their wives, and not allow children to go to school even if that's what they want. The work by the outreach project together with a wider information campaign, created a possibility for trust and awareness from women, children and other groups that fall within the target group, which circumvented the barrier, and they could overcome their fear and seek legal aid. Now, their interest is quite high and the subjects of the consultations have become more varied.

Method. Collaboration with a Roma mediator, who serves as intermediary between the lawyers and the community, is important to the client influx. The Roma mediators together with the lawyers visit different places ensuring the possibility for the local population to be consulted on the spot.

The projects are located to regions that first opened regional consultation centres. In addition to the outreach projects, consultations might take place at the regional consultation centre. However, the aim is to focus on mobile consultations. Roma seldom leave their remote homes and that way they might feel secure and confident about their environment.



Stara Zagorora Bar Association.

6.2.1.2 Outreach experiences in Stara Zagora and Veliko Tarnovo¹²⁸



Regional Legal Aid Centre / Veliko Tarnovo bar association.

Stara Zagora outreach. The outreach project in Stara Zagora had 11 lawyers and one mediator participating. They do not work full time, but from requests. 11 lawyers signed up to work at the project, and have provided around 500 consultations since the project started 13 months ago. They have visited over 10 poverty areas outside Stara Zagora, that are predominantly Roma populated. Also two municipalities – Gurkovo and Nikolaevo that also have Roma populations – have been visited.

Delivery method. The lawyers carry on with such visits as long as people request consultations. Three or four places have been visited at least twice during the last year. Roma employees hired by the municipality know about the outreach project and get in touch with the mediator that works for the project, and they communicate on upcoming cases and whenever there is a group of around 10 people who have identified legal problems and need support, the project goes to the place and provides consultations.

At the beginning lawyers took shifts for being available at set places during the week. However, the method appeared inefficient, since people don't seek legal aid every day. So they

¹²⁸ Interviews with Stara Zagora Bar Council and Veliko Tarnovo Bar Council.

changed the method of availability. Users had to request a consultation on beforehand. However, in cases on domestic violence, they act immediately and visit the victim at the place she lives.

Travel expenses are not covered in Stara Zagora, but they usually travel together in cars to keep costs down.

The local villages in Stara Zagora provide facilities for consultations. Usually they are located in buildings of the local municipality or some kind of community centre. Consultations usually last at least half an hour.

Veliko Taverno outreach. The Bar Council in Veliko Taverno runs a regional consultation centre, which is testing an outreach model targeting the population in Roma settlements in remote areas.

Four lawyers delivered the service. They started a year ago and have carried out 1 200 consultations or 80–90 consultations per month.

Mainly, their delivery methods are similar to the Stara Zagora outreach. The four lawyers work in teams of two, together with a Roma mediator. They deliver service from a suitable location in the settlement and might also consult with clients at their homes when deemed helpful.

Evaluations. According to the Bar Council interview in Stara Zagora, the regional bar association had 396 lawyers as members, of which 200 had joined the legal aid register. Five percent participate in the outreach project.

Membership in the Veliko Taverno Bar Association amounted to 290 lawyers, out which two thirds (almost 200) are in the legal aid register. Two percent participate in the outreach.

The outreach lawyers in Stara Zagora provide 45 consultations per lawyer per year, while the Veliko Taverno lawyers provide 300 consultations per lawyer per year.

Seemingly, the Veliko Taverno lawyers put in more of their capacity in the outreach project than the Stara Zagora lawyers and gained a more varied work experience. The downside is the limited number of lawyers in case one or more decides to quit.

We note that the average number of civil cases per lawyer under the ordinary legal scheme amounted to 4,6 cases or 10 percent of the number in the Stara Zagora outreach or only 1,5 percent of the number in Veliko Taverno.

Case structures obviously differ. Before the 2023 reforms, ordinary legal aid mainly contained of court cases or settlements in court cases, while the outreach cases mostly seem to consist of a variation of non-court cases. On average, non-court cases are less time consuming than court cases. However, the difference also shows that court cases, especially civil and administrative ones, constitute a limited share of Roma's legal problems and that outreach seems a promising method for improving Roma use of legal aid in non-court cases.

6.2.1.3 Outreach project of Mission Wings Stara Zagora¹²⁹



Mission wings.

We have previously presented the provision of legal aid to victims of domestic and sexual violence from the Mission Wings Office (MWO) in Stara Zagora. We will now turn to MWO's test program with legal aid to Roma settlements in the area.

The present Mission Wings Office (MWO) opened in November 2021, mainly run by social workers and social assistants. Currently, they work with two lawyers from the NLR. When people come with legal requests, they schedule a meeting with one of the lawyers. The poverty criterion of "unable to pay for a lawyer" in BLAA article 23 (3) applies.¹³⁰

Outreach. They also help Roma communities through outreach programs in surrounding Roma neighbourhoods. They confirm that Roma people, especially women, will not leave their neighbourhood to request services. One of the lawyers goes to MWO's consultation office in the Lozenetz Roma neighbourhood in Stara Zagora. If urgent, the lawyers work shifts. They will come directly if crisis counselling, for example in domestic violence cases, seems necessary.

MWO works with a total of 400–500 people a year at the offices in Stara Zagora and Lozenets. They expect the number to increase. It's hard to say how many of them are Roma. During the pandemic, MWO received more than 100 clients mainly due to the project's outreach.

Legal aid is popular, however humanitarian aid covering basic needs is the most sought-after service and help for Roma people. The legal service is new. During a period of one month,

¹²⁹ Interview with Mission Wings Office 11.05.2022.

¹³⁰ See p. 20–22 for details of the criterion.

one lawyer from the NLAB project advised 20 people. The youngest lawyer is the most active in the legal team. The other lawyer is a bit more reluctant to react on the spot and to travel as soon as a signal is received.

Types of cases. Most often Roma women and children seek legal help for parental rights, social benefits, divorce, domestic violence, and other family matters like legal aid for child alimony, taking children abroad, and paternity disputes. In criminal cases, people tend to see a lawyer in private practice.

Working method in divorce cases. The office describes the interdisciplinary working method they apply in divorce cases:

When one of the spouses initiates a case for divorce, the court decides to whom they shall attribute parental rights during the case, which usually lasts for three months.

If parents cannot agree, the lawyer estimates the capacity of the parents and requests a preliminary measure about to whom the children shall be entrusted. If the mother for example prostitutes herself or uses drugs, the lawyer submits to the court a request for preliminary measures.

The goal is to secure the interest of the child. The Child Protection Unit also contributes. The MWO lawyer sees herself as a lawyer defending justice, not especially as a lawyer for the child. To prevent further disputes about the child's upbringing, such measures last until the case ends.

The court, the parents and the representatives of all parties are obliged to have the best interest of the child as a top priority. When the parents and the child have conflicting interests, the child is entitled to have a representative that will be independent. Child protection authorities might intervene because they are competent to make such observations. In cases with conflicting interest, they can request the court to assign a special representative.

Ethnicity and language. One of the participants in the interview was a lawyer providing legal aid to people in Mission Wings under a NLAB project. She is Roma and also had a social worker background.

She worked as a Roma mediator before graduating from law school, so youth and children might seek her up. People know her from her previous work. She has been consulted not only in her capacity as a lawyer, but for all kind of community problems related to education and work. Also, women have consulted her about contraception.

Still, it is not always an advantage to be Roma when handling Roma clients. The most important thing is the quality of the contact. Positivity matters most for building trust. However, Roma tend to put trust in people from the same community or with similar background. These people would prefer, for example, to consult a Roma psychologist instead of a Bulgarian one. Clients are polite, smile and are willing to cooperate also with professionals of other ethnicities, but still, deep down, things are different. This may be the reason why Roma don't really opt for psychological consultation at the moment.

Most Roma clients speak Bulgarian sufficiently for consultations. The MWO lawyer does not speak Romani, but she speaks Turkish.

When Mission Wings opened the centre in the Roma neighbourhood in Lozenets, some Roma people preferred to come to the MWO in Stara Zagora instead. Being observed visiting the local office, might trigger speculations in the neighbourhood about having problems.

6.2.1.4 Conclusions

We think that the three Roma outreach projects demonstrate a far more effective way to

provide Roma and especially Roma women with legal aid than the present system with written applications.

The Roma inclusion strategy 2021–2030 emphasises “Improving the access of Roma women to legal aid and justice” repeatedly, and especially mentions the outreach projects. They are considered “a very important aspect of the work related to empowerment and equal opportunities”.¹³¹ The strategy also wants to raise “Roma awareness with a focus on Roma women and youth in relation to the possibilities for access to legal aid”. Outreach projects obviously contribute significantly to improve awareness and use of legal aid.

We agree with the strategy’s view, and strongly recommend that Bulgaria take over the projects when the temporary financing through the Norwegian financing mechanism ends, develops them and establish outreach legal aid service in all Roma settlements.

RECOMMENDATION NO. 39:
Bulgaria should continue to develop the outreach projects and establish outreach legal aid service in all Roma settlements.

6.3 Mediator
6.3.1 Introduction



Definition. The outreach projects in Stara Zagora and Veliko Tavno made use of a mediator. A mediator connects the legal aid services with a Roma community and especially helps to uncover their legal need, tells about the legal services and makes appointments. We think a mediator well suited to overcome several of the most important barriers that hinder Roma women and men from using legal aid and will describe their role and working methods.

We interviewed two people with experience as mediators. Since we are interested in mediator experiences as model for extended use, we do not specify which project(s) each experience relates to.

Health mediator model. The first Roma mediators in Bulgaria are the health mediators.

¹³¹ Roma inclusion strategy (2021–2030) part VII 4 and VII.

They have worked for more than 15 years. During the covid pandemic, health mediators played a very important role in informing vulnerable groups about hygienic measures, vaccination, etc. They have had their place in the healthcare act probably for more than 10 years. The model works in Bulgaria.¹³²

The health mediator functions as an important model for the legal mediator.

In a recent study in several Roma communities,¹³³ respondents pointed out the health mediators' importance and key role in spreading news, informing the communities, and in challenging disinformation. Health mediators serve a crucial role in connecting the Roma communities to the outside world, to the state and local institutions and to figures of authority, which tend to be distrusted by people in the Roma communities.

The health mediators also go around, and assist local communities – for example with prevention of HIV and tuberculosis. Furthermore, the methods of communication, utilised by health mediators are very personal and exemplify the individual approach where every single member of the community feels listened to, cared for and appreciated. The health mediator respondents shared numerous stories of mediators personally helping people discriminated against. Once represented by a mediator, they were quickly better received by administrators in official institutions.

Health mediators are recognisable and revered figures in Roma communities. They often contribute to the creation of knowledge and dissemination of information. In many places they have replaced the media as distributors of trustworthy information and have learned to digest and present complex information from the source directly to concerned citizens.¹³⁴

6.3.2 Working method

Outreach. The Roma legal mediator is the one who reaches out to the users. Apart from operating within the city, he travels around villages outside the city and meets with the mayors and organizes meetings with people within the municipality. Part of his role is to inform and to raise awareness.

He helps people identify and channel their problems to the appropriate instances. Sometimes he translates and helps people articulate their legal needs. He contacts the lawyers and also explain to people that they are entitled to legal aid and that he is the point of contact between the community and the lawyers. Besides, people who have already received consultations and legal aid also refer people experiencing problems and give them phone numbers to the mediator and to lawyers who have given them consultations before.

The mediator organizes groups of people who need legal advice, and reports to the project coordinator. She decides how and when to organize the meetings and select the attendants of such meetings on the spot, based on her expertise and the legal problems. The lawyers come to the meetings outside the permanent office to meet clients personally.

Intermediary. The legal mediator functions as an intermediary between the institutions involved. He or she is responsible for acquiring information additional to the material already

¹³² Interview with Ministry of justice representative 13.05.2022.

¹³³ Rosalina Todorova *Media and online narratives, fake news and disinformation trends in relation to Roma in Bulgaria*. 2021? Centre for the study of democracy. (Todorova 2021)

¹³⁴ Todorova 2021? p. 29–31. Based on focus group discussions conducted in July and August 2020, see p. 5–6.

possessed by the institutions.

A specific example concerned a woman victim of domestic violence that was accepted into a hospital. She did not know the three names of her intimate partner nor his personal identification number. (Bulgaria uses three names for a person: first, middle and a surname.)

The mediator meets with the victim, and inquires where the perpetrator might be located. The mediator then reports back the information to the institutions and then they work on the case together. Similarly, feedback from the institutions is very important in the cases they refer to the outreach projects.

Collaboration. A system of different mediators exists with educational mediators, medical mediators and mediators dealing with legal issues. The legal mediator is in touch with other mediators at the municipal level, and often go together with health mediators at the local level and establishes contact with the mayors. The other mediators will make the legal mediator aware if someone needs legal aid.

Something very important for the efficiency of the legal service, for example in cases about domestic violence, is that legal, medical and social services are coordinated and that all different stakeholders coordinate their contributions with each other in constant contact. Mediators obviously play an important role in such collaboration. Preferably mediators of both sexes should be used.

6.3.3 Formal requirements

No formal or obligatory requirements is needed to become a Roma legal mediator. However, the current Roma mediator has a higher education degree. He's actually a teacher. He also works with other projects. So he's well known and renowned in the community, and people trust him.

Work contract. The mediator has a civil work contract. Bulgaria uses two types of contracts for the provision of work. One is a labour contract and the other is the civil one. He sometimes manages to combine his tasks with other tasks for other projects. However, the profession of Roma legal mediator is not recognized in the labour system, so it doesn't exist as an official profession like a doctor or a policeman.

He is not hired full time, but he has certain hours and days that he works with the outreach projects. He reports on them with timesheets. He has days for coordination, organization of meetings, and awareness raising for the population. At the end of each month he reports the days used for these kinds of activities.

NLAB has contracted the Roma mediator for the projects under the Norwegian funding mechanism and also the coordinator and the other lawyers. So, it's like a national coordination that is divided locally in the three places that is Stara Zagora, Veliko Tarnovo and Varna.

6.3.4 The mediator's importance

The legal mediator's role is very important bearing in mind the language barriers, and educational, cultural or even legal knowledge of the users. So, the Roma mediator boosts trust in the organization and in the system. It is a very important role because he's actually the person who encourages the people to receive help, and they trust he will give them a legal explanation in a language they can understand.

The mediator's role as participant is important for efficient consultations with the legal aid lawyer. Since he is known within the community, people trust him. Without him it would be nearly impossible to work unless the lawyers already had been in the Roma communities

with him and had established contacts. Visiting the same place repeatedly improves the relationship of trust and improves the efficiency of the service.

Providing legal aid to outlying settlements without a mediator seems difficult. People could not afford to travel to Stara Zagora or Veliko Tarnovo for service, and an outreach project would receive far less clients.

According to the mediator, the need for legal aid in these communities will continue also when the test projects end. New problems appear in a continuous stream. The project responsible also thought it unsustainable once the project is over to stop picking up phones and stop consultations, because the people are constantly in need of legal aid.

6.3.5 Evaluations

6.3.5.1 Ministry of Justice's development ideas¹³⁵



Ministry of Justice.

Our interview with a representative of the Bulgarian Ministry of Justice contained a number of ideas about the use of mediators in legal aid:

Many people – among them Roma – are not well educated enough to know their rights and it is very difficult for them to exercise their rights. In such cases information is important. In small villages, like Roma neighbourhoods, people don't know how to seek protection of their rights.

Due to the outreach projects of NLAB, the Ministry realised that the role of Roma mediators is very important. First, they have good relations with the community. Second, they can explain to people about their rights, and tell whom that might help them with the different types of cases.

Concerning the NLAB outreach projects, the Ministry thinks about paying attention to the method of collaboration between lawyers and Roma mediators. The ministry considers to expand the practise not only within NLAB projects, but also in other bar associations in regions with large Roma neighbourhoods.

¹³⁵ Interview with the Ministry of Justice 13.05.2022.

Compensation to mediators might be part of this national coordination. Around this coordination mechanism some other legislative amendments will be made. To have a role, the mediators should be included in a law or regulation that will allow to keep them.

The Ministry representative hoped that the outreach project, when it ends, will be a good basis also for legal mediators under consideration. Their role is crucial to help women seek legal aid, also due to the long tradition among Roma to handle their problems internally. Since the mediators themselves come from the Roma communities, people trust them. They are leaders and connect the institutions with the Roma community.

As far as we can see, the considerations and plans of the Ministry of Justice conform well to the recommendations that we forward below about mediators and their collaboration with legal aid lawyers.

6.3.5.2 Evaluations from the Supreme Bar Council¹³⁶



National Supreme Bar Council.

The Supreme Bar Council told that the mobile approach and fieldwork as part of legal aid have been going on for years, and currently running under a program financed by the Norwegian mechanism. The program shall train 300 lawyers from Veliko Tarnovo, Varna and Stara Zagora. Pilot centres that provide free consultations also work. Mobile consultations have been provided the Vidin region.

Mobile teams are a good initiative because that way the lawyer reaches the clients, if it is well announced when and where those teams should be and the local administration spreads this information, it might improve the outreach.

¹³⁶ Interview 13.05.2022.

These programmes should be funded by the state or perhaps other mechanisms such as the Norwegian Financial Mechanism because the mobility has to be supported and financed.

It is easier to make an initial consultation through the hotline system. The regional centres also provide free oral consultations. The last centres to open are located to Gabrovo and Dryanovo.

6.3.5.3 Our evaluations

Legal schemes like the telephone service and the regional legal aid centres might help Roma in overcoming barriers against using legal aid. However, the outreach projects in Roma neighbourhoods appear as the most promising model.

The Roma mediators appeared as an important link between Roma with problems in helping them decide if legal service might be useful and if they qualified for legal aid. When the mediator recommended legal aid and established contact with the outreach service, it made it easier for Roma to trust the lawyer and also gave them some guarantee that the lawyer had a serious interest in the problem, was able to explain the legal aspects in an understandable way and give well-founded evaluations and suggestions for strategies.

For Roma, language might form a barrier if the lawyer does not understand or speak Romani.

Norwegian experiences with legal aid to Sami, showed that the need for translation often lead to wider distrust. When the lawyer spoke Sami, clients perceived it as a sign that the lawyer understood their culture and circumstances and the cultural setting of their problem, while ethnic Norwegian lawyers that only spoke Norwegian, both made the communication more complicated and created uncertainty in clients of whether the lawyer understood their problems properly.

A Roma mediator might discover the problem on beforehand and serve as a translator him/herself, or call a translator if necessary.

The ideas behind the outreach projects conform with internationally recognized ideas about how to organize outreach legal aid to make it better cover vulnerable groups. Especially the use of Roma mediators appears innovative and promising.

The model had just been in operation for a year when we visited the outreach projects. Still, the system of referral by mediators was regarded as very important by the Roma communities involved.

Both the legal aid lawyers, the mediator and the leaders appeared enthusiastic about and committed to the project. Unless later results during the test period appear significantly poorer, we strongly recommend that the model, using Roma legal mediators, receives further support and that the idea to establish it in other bar districts with significant Roma population becomes official legal aid policy.

The Roma inclusion strategy (2021–2030) mentions health mediators as the link and guarantee for access to the health care system of vulnerable groups.¹³⁷ The strategy does not especially mention the legal mediator's crucial contribution to the high influx of especially Roma women in the outreach projects. Still, they obviously should be part of outreach legal aid.

¹³⁷ Roma inclusion strategy (2021–2030) part VII 2.

RECOMMENDATION NO. 40:

A legal mediator in collaboration with outreach legal aid should be available to all Roma settlements and neighbourhoods. Bulgaria should establish a hiring arrangement that secures recruitment and stability, and include the necessary provisions in the Bulgarian Legal Aid Act.

6.4 Data challenge

Stara Zagora Bar Association pointed to another complicated problem that concerns data and digitalization. The ambition both on national and local level is to create a common database for referrals. For example, when there is a case of trafficking in human beings or domestic violence, the institution that receives the information first hand, should be able to enter it into a database that other institutions involved have access to online. When submitted, the respective institution should be able to handle their part of the case. The victim should be saved from the plight to go from institution to institution and retelling her case.

This is also a way to prevent double victimization.

The Stara Zagora outreach exemplified the problem during the interview:

“At the moment we use the phone for this kind of referral mechanism. In a case of a victim of domestic violence, we called the social assistance directorate in the city, which in short are the social services, and forwarded the message about the domestic violence incident.

Then the social assistance directorate called the police and the local bar association, which cooperated and sent a lawyer to the social assistance directory to provide the victim with legal aid information and a policeman went to seek the perpetrator simultaneously.

Unfortunately, by the time they find the perpetrator, he had managed to beat the victim again so hard that she was accepted into the hospital. However, he is now charged with attempted murder. So while the lawyer who is appointed by the Bureau to provide consultations on domestic violence, the Bar Association acts simultaneously in order to prepare the documentation for appointment of this lawyer for free legal representation in court on domestic violence.”¹³⁸

The data project was up for discussions with a deputy minister of justice soon after our interview. It seems obvious that the practical advantages of a functioning data system would significantly increase efficiency and outcome of such cases.

RECOMMENDATION NO. 41:

A database for referrals that reduce the need for repeated documentation from victims should be further developed and made operational.

6.5 Impact work**6.5.1 Introduction**

Impact work. By “impact work” we mean legal strategies meant to handle common legal needs of several clients collectively instead of through individual cases. A parallel might be a lawyer for a membership organisation that forwards cases that concern the interests cared for by the

¹³⁸ Interview Stara Zagora 11.05.2022, edited.

organization on behalf of all members.

Several of the documents used in this report describe and analyse legal reforms aimed at poor people, Roma, Roma women and Roma children. They might contain extensive lists of substantive reform proposals for bettering the living conditions for poor people. Some of them are already operative, meaning that Bulgaria has enacted the legislation necessary.

Legal aid is a vehicle to make the enforcement of such reforms effective for poor people. Still, many poor people might lack the capacity to identify themselves as entitled or not, to produce the documentation needed and the self-confidence and courage necessary to forward a claim. If the issue happens to be of some legal complexity, they might need help to have their legal rights identified and enforced. If poor, they will need legal aid, which legal aid schemes – included the Bulgarian one – offer to some extent. Not seldom, such problems, for example claims for a social benefit, are similar for many poor people. They might be more effectively solved by systemic changes comprising all or most of the people affected.

Traditional legal aid does not open for such services. Each person affected must apply individually and satisfy the poverty and problem criteria. If successful, the judgement only binds the parties in the case, which means that other members of the group also must sue if the losing party is unwilling to accept the decision as a precedent. If such claims shall be handled individually, all poor claimants might need legal aid.

When realizing that many might forward similar claims, a strategy for the opposing party might be to settle the first case to avoid a precedence, and then carry on with the contested practice towards the rest of the group, hoping that they stay unaware of the case and the legal aid coverage and resign on making individual claims. Such outcomes hamper the efficiency of legal rights, and might make the legislation in question mostly symbolic.

“Class actions”. Several jurisdictions have introduced a special procedural vehicle for handling group cases labelled “class actions”, developed in the US as part of the War On Poverty. “Class” is not used in the Marxist sense, but as a wide term applicable on different sorts of groups that have some legally relevant characteristics common.

The procedural vehicle makes it possible to sue on behalf of all people that has suffered from the same type of, for example, alleged wrongful administrative decisions or being sold the same kind of defect consumer goods, and achieve judgments binding for all members of the class and also for the counterpart. “Group litigation” is another label used.

Class or group law suits might be effective vehicles in making entitlements of poor people function, instead of being mainly symbolic. When developed in the US, class actions were looked upon as an important vehicle in combatting poverty and became part of US legal aid.

Other sorts of impact litigation. Class actions are just one type of impact litigation. Another collective strategy might include test cases to check how open courts might be to the needs of the group in question and, if successful, produce an incentive for the counterpart to resign and settle similar claims from the rest of the group. A third strategy is to collect several similar cases against one counterpart into one combined case. A fourth is principled litigation with the purpose of producing a useful precedent, which might make a positive outcome of similar claims simpler to achieve.

6.5.2 Experiences with impact litigation

We have looked for Bulgarian examples of legal impact work, and have interviewed lawyer Natasha Dobreva about her experiences.¹³⁹

Working fields, affiliations and strategy. Dobreva has her own law firm and specializes in international human rights law. She cooperates with several NGOs mainly located in Sofia. Each of them has a specific target group for vulnerable people such as children, women, victims of violence, drug addicts, sex workers, LGBTI people, etc.

The NGOs refer cases to her due to many years of collaboration, and they might include her in the implementation of their projects in different legal roles, for example as a service provider, a lawyer, as a legal consultant, etc.

The NGOs pay her. Her service is free for the clients. NGOs might also pay the court fees, that might be quite substantial.

Her clients are people that lack sufficient means to hire a contract lawyer. Their options are either to use her services as offered and financed through the NGO or to apply for legal aid to NLAB.

However, she might refuse repetitive, multiple cases, because she looks for cases suited for strategic litigation. They must have the potential to become a precedent. In cases considered to be simple and easy, she advises her colleagues in the NGOs to call NLAB.

However, feedback from her colleagues has learned her that NLAB works slowly. It might take weeks and months to engage a specific lawyer for a particular case. Some of the NLAB lawyers are not very well trained for the matters that Dobreva deals with either; domestic violence and trafficking are specialities.

Victims' passivity in using legal aid. Dobreva also accept to represent victims in many criminal cases. Her work fills a gap, because according to Bulgarian legislation, the authorities do not have any obligation to appoint a lawyer to the victim like they have for defenders. They only have a duty to inform them: "You have the right to legal aid if you want to, but then you must organize it yourself".

She mostly works with poor women with limited education. They need to be pushed and to be actively approached. If you just tell them that they have the right to a lawyer, they will do nothing. Lawyers must contact the women and be persuasive. The NGOs also supplement the information on legal aid provided by the police.

Strategic litigation. Dobreva labels cases that have the potential to have not just a regional, but an international impact, for strategic litigation. Such cases might concern a systemic problem that persists in Bulgaria. Examples:



Natasha Dobreva, lawyer.

¹³⁹ Interview 09.05.2022.

- When the usual legal representative of a child, which are the mother or father, has committed a crime against their child, the authorities make mistakes on who is the person responsible to sign some documents and papers in favour of the child.
- Failure of the police authorities to investigate gender based violence, because they consider it as a private conflict between spouses and not something that the police and prosecution should deal with.
- Failure to allowing same sex partnerships, next same sex marriage and accept LGBT people.
- Bulgarian courts do not order traffickers to compensate trafficking victims for depriving them of income they have earned on sexual exploitation.

Ordinary legal aid (ex officio) lawyers have limited experience and understanding of such cases.

An important reason to look for cases that might become precedents, is the limited resources of NGOs. Cases that might impact on similar problems will be more effective than just solving problems individually.

For most NGOs, legal service is a side activity. However, if the main task is to deliver psychological services to victims of domestic violence, the psychologists might discover that legal issues are part of the victims' problems and might call upon Dobрева.

We think impact tools a useful vehicle to NGOs in Bulgaria that want to create legal development through the courts. Legal aid should also be open to finance collective suits on behalf of groups poor enough to qualify for legal aid.

6.5.3 Ombudsman of Bulgaria¹⁴⁰

The Ombudsman's competences and information activity. A main task for the Ombudsman is to advocate and protect the rights and freedoms of citizens when their interests have been infringed by the state, municipal authorities, or private entities when carrying out public functions. Citizens submit complaints of infringements of their rights either by phone or email or via post. The institution of the Ombudsman, after receiving the complaint, carries out a review.

If the review determines that the issue is solvable through the role of an intermediary or an advocate, the



Ombudsman.

¹⁴⁰ Interview with the Ombudsman of Bulgaria 09.05.2022.

Ombudsman makes efforts to restore and protect the rights of the citizens before the institutions in question.

Additionally, *groups* of citizens can also call upon the Ombudsman if their rights have been infringed. If the review establishes that an infringement has happened, the Ombudsman drafts recommendations for the restoring of the rights and for removing any type of infringement that has been committed.

Another competence of the Ombudsman is to make proposals and recommendations to the Parliament for amendments and addendums to legislative acts or on the adoption of a pending law proposal when the matter has to do with the protection of rights and liberties of the citizens. For every draft law that is being considered in the Parliament, the Ombudsman can give her statement.

In May 2022 the Ombudsman participates in a work group at the Ministry of Justice on a legislative project that concerns the rights and liberties of citizens in the Protection against domestic violence act and the amendment and addendum to the Legal aid act. The Legal aid act is a particular priority. The amendments concern broadening the scope of persons who can benefit from free legal aid, and the scope and volume of legal aid itself. The ombudsman has signed a cooperation memorandum with the NLAB.

The Ombudsman can bring cases before the Constitutional Court if she finds that a certain legislative text contradicts the Constitution. During the last year the Ombudsman has transferred five cases to the Constitutional Court about unconstitutional legislative texts. All five requests had positive outcomes. When established that contradictory case law exists, the Ombudsman can bring such cases before the Supreme Court of Cassation or the Supreme Administrative Court for the issuance of decisions on the interpretation of the legal text.

6.5.4 Conclusion

Bulgaria has a large poverty population that qualifies for legal aid and their need for legal assistance appears comprehensive. The number of legal aid cases delivered under BLAA seems to cover only a fraction of the assumed need. Especially Roma women and men appear poorly protected by the scheme in practice.

Using impact work, strategic litigation inclusive, might increase the effectivity of legal aid significantly, and elucidate the underlying factors that create the need far better than singular cases. Impact cases are better suited to trigger general changes in case law, statutes and regulations that might eliminate the problem for everyone affected without forwarding an extensive number of individual claims over legal aid.

The Ombudsman's competences appear an important instrument in impact work to combat the problems of Roma women and men and other poor Bulgarians. Legal aid should cover cases before the ombudsman. Legal aid should also cover complaints to the Ombudsman about general deficits in the law when legal aid recipients lose their cases.

The 2023 reforms of legal aid in administrative cases in NLAB article 21 1. and 3. seem to cover proceedings before public administration units that have decision making power. The Ombudsman's competences seem limited to *recommendations* to administrative units that possess such powers. If so, legal aid will not cover complaints to the Ombudsman, which we think it should.

The Norwegian ombudsman also has the power to recommend legal aid grants to citizens in matters of principle. The provision says:

“Legal aid to a private party in a law suit shall be granted without any poverty test, problem test or merits test if recommended by the Parliamentary Ombudsman for Scrutiny of the Public Administration.”¹⁴¹ (My translation)

RECOMMENDATION NO. 42:

Impact litigation should be part of legal aid. The Bulgarian Legal Aid Act should open for collective actions through amendments.

NGOs and other charity organisations should be entitled to apply on behalf of groups that mainly consist of poor people that qualify for legal aid. A study of different types of impact strategies, with the purpose of including them in Bulgarian legal aid, should be carried out.

RECOMMENDATION NO. 43:

Legal aid should cover individual complaints to the Ombudsman. When legal aid users lose their cases, legal aid should cover the use of lawyers in complaints to the Ombudsman as part of impact work to mend deficits in the law.

RECOMMENDATION NO. 44:

Bulgaria should consider to grant legal aid to the private party in suits recommended by the Bulgarian Ombudsman without any poverty test, problem test or merits test.

6.6 Contracting

We have proposed legal aid *contracting* as a vehicle in several discussions and recommendations so far in the report. At this stage we would like to give a broader explanation of the instrument and its uses. The instrument is flexible, meaning that might be used as small scale additions to the existing legal aid schemes with per case fees, and also for more wide reaching reforms of legal aid. In this report we just want to outline some main features of the contracting model in addition to the individual recommendations we have made. We also recommend further studies of contracting to decide which types of contracting that might be useful in the further development process of Bulgarian legal aid.

Especially England and Wales developed contracting for legal aid commissions during the years after 2000 as a flexible instrument adaptable to the local situation – both to the existing legal need and to the suppliers available like private practitioners and NGOs and other qualified suppliers if they exist.

Such supplier contracts might contain a wide spectre of terms. They might contain comprehensive specifications of the legal services to be delivered, like volume and type of cases, the sort of clients that should be served, location and opening hours, outreach, handling of applications, grant competency and quality criteria for the service.

They also might contain provisions on remuneration and payment method – for example in monthly sums. Then no separate payment for the single case takes place, which probably simplifies billing and payment significantly. With volume of some seize, contracts might contain a yearly price for a set period of time – for example 2–5 years and provide a stable and substantial income for the provider during the tendering period.

¹⁴¹ Norwegian Legal Aid Act of 1980 § 16 (1) 3.

Provisions on quality assurance might concern control on beforehand through quality criteria in the contract, and afterwards through Peer Review. Peer Review means that well qualified lawyers evaluate the service quality of a randomly selected sample of case files at the supplier, focusing on client communication, client counselling, dimensioning of each case, the efficiency of the service, etc.

Contracts might be standardized and used for several suppliers or individually tailored to the specific needs of the clients and the capacities of the supplier. If more suppliers are available than necessary, tendering for the contract – for example between law firms – might be used, with specification of the services the tendering responsible wants.

Contracts might also contain other types of provisions, for example on continuing education, supervision and consequences of breach of contract, and they might also delegate the competence to accept individual applicants for legal aid to the service provider. If used systematically, the costs will be easier to predict for the financing authorities and the application process less bureaucratic and speedier than a system based on case to case provision like the present system in Bulgaria.

Several of our recommendations includes improved continuing education and specialization in case types and clients that are important in legal aid. We think Roma women, men and children a main target for such training. Increased competence in impact work is another. An obligation to undergo such training might be part of a legal aid contract. Similarly, an obligation to handle an agreed number of selected Roma cases might also be included in the contract.

Durations of 2–5 years might significantly help in developing specialized legal aid expertise. Contracts might specify the duties of defenders and victims' lawyers on contracts, availability and content of service, and open for special remuneration arrangements encouraging quality and effectivity. Contracts might be adapted to new lawyers who want to establish themselves, and offer both possibilities for development and legal aid specialization and a stable income for some years.

The use of tendering conforms to European principles for public purchase of service, by regarding the principles of fair competition, and exploits the market power of the legal aid authorities as large buyers of legal services.

Bulgaria, like many European countries mainly use their market power to keep fees down, and mainly leave quality control to the provider associations – namely to the Bar Associations. Competition is not used as an instrument to improve access and quality of the legal aid services. English legal aid has perceived contracting as an important instrument in keeping legal aid costs under control and secure quality and stability in legal aid delivery.

RECOMMENDATION NO. 45:

Bulgaria should study legal aid contracting in other jurisdictions and implement the instrument when useful to improve legal aid to the users.

7 OTHER ROMA DISCRIMINATION EXAMPLES

7.1 Introduction

Roma are subject to discrimination in several fields like criminal justice, education, working life, health services, housing, language, hate speech, etc. Additionally, Roma women are subject to gender discrimination.

Legal means might comprehend effective anti-discrimination measures if enforced. Legal aid might be an important vehicle for protecting poor people – Roma women included – from discrimination if effective. If ineffective, anti-discrimination policies might become mainly symbolic, which means that legislation looks fine, but since it does not work in practise discrimination continues.

We will not try to cover all major forms of discrimination that Roma women might endure. We focus on the role of legal aid in antidiscrimination strategies for selected problems that the reports we have used point out as important for combatting discrimination of Roma.

First, we analyse the major Bulgarian vehicle against discrimination, namely the Commission for Protection against Discrimination (CPD), and evaluate the role of legal aid in CPD's work.

Within criminal justice, we have already analysed the need for legal aid in counteracting discrimination of Roma women as victims during criminal prosecution of trafficking for sexual exploitation and domestic and sexual violence. Now we look into selected discrimination problems concerning employment, housing and health services, and further discuss the role and need for legal aid in combatting such discrimination.

We have selected the problems we comment upon because the information available contains strong indications of harmful discrimination. However, our selection does not mean that the discrimination of Roma in other fields – for example in education or public discourse – is less harmful. We do not intend reliable comparisons with discrimination in other fields.

7.2 Commission for Protection against Discrimination

7.2.1 Structure and tasks¹⁴²



Commission for Protection against Discrimination

¹⁴² Beijing +25 p. 69–70.

CPD is one of the two national human rights institutions in Bulgaria. The other is the Ombudsman of the Republic of Bulgaria. We have previously analysed the Ombudsman as the other main institution with responsibilities to combat Roma discrimination in Bulgaria, and focus on CPD now.

According to the European Network of National Human Rights Institutions

“(T)he Bulgarian Commission for Protection Against Discrimination was accredited with B-status in October 2011. The SCA noted that the Commission’s mandate was limited to preventing and protecting against discrimination, and to promoting equality of opportunity, thus falling short of fully satisfying the broad human rights mandate required under the UN Paris Principles. The SCA also encourage the Commission to amend its legislation in order to provide a clear, transparent and participatory selection and appointment process of its decision-making body.”¹⁴³

CPD is an independent specialised national body for the prevention of discrimination, protection against discrimination and provision of equal opportunities. CPD has extensive powers, both for enforcement and prevention. The body reviews and decides cases of protection against discrimination with respect to all protected characteristics provided for by the national legislation and by international acts. Its decisions are legally binding, with appeal to the Supreme Administrative Court.¹⁴⁴

CPD became established and operates in accordance with the Protection against Discrimination Act. Its provisions are an essential part of Bulgaria’s antidiscrimination policy, including prevention of gender-based discrimination.

CPD is composed of nine members – five elected by the National Assembly and four appointed by the President of the Republic of Bulgaria. CPD uses both specialized permanent panels and ad hoc panels in deciding discrimination complaints.¹⁴⁵

CPD has regional representatives across the country.¹⁴⁶ They perform advisory, supervisory and organisational functions and provide methodological support to improve access to CPD and protect the rights of the natural and legal persons on the territories of their respective regions and in the country in general.

Between 2014 and 2018, CPD opened 110 cases about gender as a protected characteristic, 60 % of which were related to multiple gender-based discrimination. After the comprehensive “personal status” characteristic, the characteristics appearing most often in combination with the “gender” characteristic were “disability,” “education” and “marital status.” During the same period, 14 proceedings on sexual harassment were launched at the CPD.¹⁴⁷

The Bulgarian criminal procedure code (BCPC) contains provisions that oblige judges, jurors, prosecutors, police and other personnel participating in criminal proceedings to behave fair and impartial when applying the law, in decision-making and when conducting other acts

¹⁴³ <https://ennhri.org/rule-of-law-report-2021/bulgaria/> visited 10.04.2023.

¹⁴⁴ Atanasov, Kovacevic, Spitalszky, Ravlic *Discrimination against Roma in Croatia and Bulgaria: A comparative report*. 2021. Minority Rights Group Europe (MRGE 2021) p. 13–14.

¹⁴⁵ MRGE 2021 p. 13–14.

¹⁴⁶ CPD had 24 regional offices in 2020, see Beijing+25 p. 15.

¹⁴⁷ Beijing+25 p. 69–70.

as part of criminal prosecution. Discriminatory treatment based on race, nationality, ethnicity, personal or social status and poverty will contradict this norm.

However, judges, prosecutors and investigators cannot be brought before the Commission for Protection against Discrimination for acts performed as part of their duties.¹⁴⁸

7.2.2 Amalipe's assessment of CPD

The NGO Amalipe¹⁴⁹ has assessed CPD in a 2021 report. Amalipe presents itself as a voice for Roma interests.

CPD case handling. Concerning CPD's case handling, the Amalipe report says:

“The CPD is accredited as a National Human Rights Body under the United Nations Paris Principles. It also serves the function of a national hate crimes contact point at the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe. The CPD accepts complaints and reports from citizens of different social and economic status, representatives of ethnic minorities, people professing different religions and faiths, people with different sexual orientations, etc. The law allows protection on the basis of 19 protected characteristics (gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or faith, education, beliefs, disability, age, sexual orientation...or any other characteristics established by law or an international treaty to which Bulgaria is a party).

In the specialised proceedings before the Commission no record is kept of the complainants' ethnicity, which makes it difficult to present and process statistical data for a particular ethnic group. It has been assumed that practices related to representatives of the Roma community are considered an indication of the ethnic characteristics of Roma origin.”¹⁵⁰

The offender may be subject to coercive administrative measures and penal sanctions. Additionally, the aggrieved party might sue for non-pecuniary damages before the courts. Until 2018, 13 percent of the cases handled by CPD, related to ethnic discrimination, and such complaints from Roma concerned equal access to health services, education and employment including the right to work.¹⁵¹

Roma use of CPD. Amalipe evaluates the Roma use of CPD as limited:

“We cannot claim that there is a well-established practice among the Roma community of complaining or reporting cases of discrimination in labour or other contexts (as well as of violence and hate speech). Rather, the Roma are not informed about the work of the institutions that deal with such issues. The lack of necessary knowledge about the powers wielded by these institutions and their functions also impedes Roma activity to protect their human rights. Rather, people are convinced that there is just one aspect to the truth and that it will always be seen to be on the side of the stronger (the majority). The level of mistrust in

¹⁴⁸ *Guilty by default* 2020 p. 11–12.

¹⁴⁹ Amalipe Centre for Interethnic Dialogue and Tolerance is a leading Roma organization working for the equal integration of Roma in Bulgarian society. Home page: <https://amalipe.bg/en/about-us/> Visited 10.04.2023.

¹⁵⁰ Amalipe Centre for Interethnic Dialogue and Tolerance and others *Civil society monitoring report on implementation of the Roma strategy in Bulgaria. Focusing on structural and horizontal preconditions for successful implementation of the strategy.* March 2018. p. 27. (Amalipe 2018)

¹⁵¹ Amalipe 2018 p. 27.

the judiciary and the law enforcement system, as well as in the equality bodies, is high.”¹⁵²

***Access to legal aid.* Amalipe points to the lack of access to legal aid as one important factor:**

“At state level there is no system for supporting and assisting Roma to file complaints and ask for legal aid. This is an obvious gap with regard to the lower educational attainments of many Roma (and Turks) as well as the language barrier. The only existing possibility for this at present is within the JUSTROM project of the Council of Europe and European Commission. In Bulgaria this project is being implemented with great success in two (of 28) districts, namely, Plovdiv and Veliko Tarnovo, supporting around 1,000 Roma (predominantly Roma women) with consultations, support with filing complaints, and other professional help provided by lawyers, community mediators and coordinators. In addition, some NGOs, like the Bulgarian Helsinki Committee and the Equal Opportunities Foundation, also provide limited possibilities for such support within their projects.”¹⁵³

***Roma distrust and impotence.* Amalipe further refers to viewpoints from focus groups on Roma lack of trust in authorities:**

“Focus group participants¹⁵⁴ in Bulgaria also highlighted the distrust felt by the Roma community towards police officers, prosecutors, the CPD and state institutions in general. It was also mentioned that many Roma victims of discrimination do not know where to seek remedies. Lawyers and legal expert participants of the focus groups in Bulgaria highlighted that the decisions of the CPD are not sufficiently clear and are often contradictory. The participants considered it imperative to make efforts and overcome the contradictions in the CPD’s decisions. This would make the practice of the CPD predictable and would ensure legal certainty, which is an essential element of the right to a fair trial. Furthermore, the anti-discrimination protection provided by state institutions is not fully effective due to the procedural nature of the adjudication of cases and limitations on the kinds of discrimination that can be considered by the CPD.”¹⁵⁵

7.2.3 Conclusions

The CPD statistics for 2014–2018 on gender discrimination do not impress compared to the vast discrimination experiences by Roma described in the different reports we have cited. Amalipe refers to the following evaluation:

“The CPD is considered by interviewed expert, President of the Bulgarian Helsinki committee Kr. Kanev, as not active enough in cases involving the demolition of Roma-occupied houses as well as cases of discrimination involving police officers”¹⁵⁶

¹⁵² Amalipe 2018 p. 28.

¹⁵³ Amalipe 2018 p. 28–29.

¹⁵⁴ “The empirical research consisted of eight focus group interviews in each country. ... in Bulgaria a total of 65 people (46 women and 19 men) participated in another eight focus groups.” MRGE 2021 p. 2. See also MRGE 2021 p. 24 for more details.

¹⁵⁵ MRGE 2021 p. 16.

¹⁵⁶ Amalipe 2018 p. 28.

Amalipe’s assessments of CPD appear reliable, and we build on them in our evaluations and proposals.

Proving discrimination might be a complex task. Although CPD might research and decide discrimination cases on its own initiative, well-founded and well-argued complaints significantly increase the complainants’ chances of success.

Previously, a major weakness in the Bulgarian anti-discrimination system was that the legal aid act did not comprehend complaints before the CPD.

As we understood it in our 2022 interviews, the Ministry of Justice and NLAB consider an expansion of legal aid to comprehend CPD. The 2023 reforms carry through the reform by changes in article 21.

Making legal aid available in discrimination cases before the CPD will help in fulfilling the minimum target in the Roma inclusion strategy (2021–2030) of “at least doubling the proportion of Roma who report cases in which they have been discriminated against;”. Also the operational objective of guaranteeing the right of citizens by “enhancing the capacity to combat crime and acts and discrimination, violence and or hate based on ethnicity” should be promoted if the legal aid reform becomes effective.¹⁵⁷

To our evaluation, CPD clearly fulfils the “tribunal” criteria, in ECHR article 6 (1) and the reform brings Bulgarian law on CPD in accordance with human rights, see also recommendation no. 2.¹⁵⁸

Another challenge is the unfortunate exception of judges, prosecutors and investigators from CPD’s jurisdiction for acts performed as part of their duties. Since the Supreme administrative court is the appellate instance of decisions made by CPD, an exception is understandable for this court. However, given the serious incidents of discrimination against Roma in the criminal justice system, a need for efficient anti-discrimination measures exists, either by expanding the jurisdiction of CPD or by establishing a special organ or both.

RECOMMENDATION NO. 46:

The jurisdiction of the Commission for Protection Against Discrimination should include the justice system – courts, prosecution and police – or a separate anti-discrimination organ for the justice system should be established.

7.3 Employment

Roma women face severe ethnic discrimination concerning employment:

“The gender-based complaints filed with the CPD in relation to the right of work are predominantly by women. Often, they are discriminated against in terms of unequal pay, lack of recognition of their value as employees, sometimes are treated with mistrust or mockery by a predominantly male staff. Frequent complaints are filed with the CPD by women fired during pregnancy, newly hired young women being presented with an ultimatum by their employers that pregnancy would be undesirable, women experiencing adverse changes to their working conditions upon announcing their pregnancies, for instance, work without lunch breaks,

¹⁵⁷ Roma inclusion strategy (2021–2030) part VII 5.3.

¹⁵⁸ P. 27.

harassment, discomfort, lack of recognition of their full value as employees, even accused of betraying the trust of the management by getting pregnant.”¹⁵⁹

Also young Roma need special protection:

“The Labour Code makes a provision for lawful employment of a person under 18 years of age only if the work is not hard, dangerous or harmful to the health and proper development of the child and if the performance of the work does not prevent the child from regularly attending and studying for classes. Persons under 18 years of age are prohibited from performing any work which:

1. exceeds their physical or mental abilities;
2. involves harmful physical, biological or chemical exposure, especially to toxic agents, carcinogens, agents causing hereditary genetic or intrauterine injury;
3. involves any harm having any other permanent adverse impact on the health;
4. involves exposure to radiation;
5. involves exposure to extreme temperatures, noise or vibration;
6. involves risk of work accidents which the minor cannot reasonably be expected to recognise or avoid due to her or his physical or mental immaturity.

Children under 18 years of age can be employed after a medical examination concludes that they are able to perform the work in question and that it will not cause any harm to their health or impede their proper physical, moral and mental development.

The Ombudsman conducted reviews of received complaints, provided an opinion on the draft Gender Equality Act, took part in a working group on gender equality and provided a general position on the adequate action by competent state authorities to ensure inclusion of girls from the vulnerable groups, including minorities.”¹⁶⁰

We agree with the proposals of the ombudsman.

After the 2023 reforms, ethnic and gender discrimination in employment cases before the Commission for Protection Against Discrimination and other public instances in the anti-discrimination system, should qualify for legal aid. If made effective, such legal aid coverage might significantly improve the protection of Roma women and adults against employment discrimination. If effective, the reform will help combatting discrimination in the labour market, which is part of the *Roma inclusion strategy (2021–2030)*.¹⁶¹

7.4 Housing demolition

7.4.1 Roma housing conditions

Present housing standard. Poverty also influences Roma’s housing standards. They live in segregated, sub-standard and unsecured settlements, and are precluded from legally

¹⁵⁹ Beijing+25 p. 6.

¹⁶⁰ Beijing+25 p. 81–82.

¹⁶¹ Roma inclusion strategy part VII 3.

registering of their housings. A 2017 report¹⁶² summarizes their situation:

“The housing for predominantly Roma communities is of significantly poorer quality than housing in communities which are predominantly ethnic Bulgarians or other ethnic groups. This housing situation has led to serious social exclusion, and is connected to other problems including: poor infrastructure (or the absence of infrastructure); poor transport links; low levels of access to public services (electricity, water supply, sewerage, street lighting, refuse); absence of official plans and opportunities for legal construction. The living space per capita is significantly lower in Roma neighbourhoods than for the rest of the population. The neighbourhoods are dense in construction and occupation; large groups of family members are required to live together, despite the downward trend in birth rate within the Roma community. As a result, the average living space for a Roma family is approximately 10 square metres compared with almost 25 square metres for the ethnic Bulgarian population.

These factors mean that Roma as an ethnic group have been systemically compelled (directly or indirectly) to reside in housing without legal basis, and therefore in a state of permanent high insecurity.”¹⁶³

Bulgarian housing policy. The description appears as a challenge to recent Bulgarian housing policy as described in the Beijing +25 report that lists several improvements due to an allocation of BGN 3,462 million during the 2014–2020 programming period, addressing identified national needs. Among them are:

“✓ Create the potable water and wastewater infrastructure. ...the effectiveness of water use and lowering the water waste in the pipework.
✓ Waste management in accordance with the waste hierarchy under the Framework Directive on Waste. ...

Other projects planned for implementation include measures addressing the problem with excessive levels of particulates and nitrous oxides generated mainly from household heating and transportation.”¹⁶⁴

The Beijing+25 report concludes:

“The implementation of these projects should help reduce the burden of unpaid care and domestic work on women; enhance their access to sustainable time- and labour-saving infrastructure (e.g. access to clean water and energy); and, in general, improve the conditions for prevention related to the health of the population of the country, including women and girls.”¹⁶⁵

However, the government report does not say to what extent Roma communities have profited from the reforms listed in the report. Since many live in illegal settlements, the improvements probably are limited. Since many Roma women spend most of their time at home in the

¹⁶² Open Society European Policy Institute *Violations of EU Law and Fundamental Rights by Bulgaria’s Discriminatory Treatment of Roma in the Area of Housing*. 2017 (OSEPI 2017)

¹⁶³ OSEPI 2017 p. 4. See also the description in Amalipe 2018 p. 32–35.

¹⁶⁴ Beijing+25 p. 82.

¹⁶⁵ Beijing+25 p. 82.

settlements, they probably suffer most from Roma's poor living conditions.

7.4.2 Demolition orders and legal aid

Use of demolition orders. Roma housings have been subject to harsh demolition orders, because of illegal construction on land owned by others.

Survey data from 2016 showed that of 514 demolition orders from the National Agency on Construction Control against residential houses, Roma owned 97 percent. Majors of 162 of the 265 Bulgarian municipalities issued 444 removal orders against residential buildings. Roma owned 90 percent of them.¹⁶⁶

Such orders leave the affected Roma families homeless, including children and vulnerable adults, since the municipalities did not provide for alternative housing.¹⁶⁷ Given the severity of the problems described, the OSEPI statement from 2017 that Roma housing problems persist, seems valid also in 2023. According to the Bulgarian Helsinki Committee the practice of demolishing illegal Roma houses continues, mainly in large cities like Stara Zagora and Plovdiv.¹⁶⁸

Roma impotence. The OSEPI 2017 report cited above, continues:

“The existing Bulgarian legal framework and the policies, including the National Roma Integration Strategy 2012–2020, and actions of central and local government fail to facilitate or aim to achieve an end to this situation. There are very limited possibilities to legalize housing, which remain unused by the proportion of Roma who might benefit. In most areas, local administrations do not seek to inform or assist Roma to use procedures for legalization of residential status, while Roma lack information on these procedures as well as confidence in law and state structures”¹⁶⁹

Lack of administrative discretion. OSEPI 2017 also criticizes the lack of discretion available to the administrative courts in housing demolition cases:

“Judicial review in cases of forced demolitions is available at two key points in the demolition process: first, when an order is issued and later, if the order is executed. At both points, the administrative courts have jurisdiction. A first instance administrative court ruling about a demolition order can be reviewed by the Supreme Administrative Court (‘SAC’), but first instance court rulings on execution are final.

As to demolition orders, over the last seven years the SAC has consistently interpreted Bulgarian laws requiring demolition of illegal constructions as conferring no discretion on administrative or judicial authorities not to issue a demolition order. The SAC has ruled that a demolition order must be issued for a construction built without a permit, even if it is not in breach of the local zoning plan or other legal requirements. The SAC has ruled that administrative authorities have no discretion on issue of demolition orders of illegally constructed buildings, and that the only lawful course of action open to the court in such cases

¹⁶⁶ OSEPI 2017 p. 8.

¹⁶⁷ OSEPI 2017 p. 8–10.

¹⁶⁸ Bulgarian Helsinki Committee *Human rights in Bulgaria in 2020 p. 16. 2021(?)*

¹⁶⁹ OSEPI 2017 p. 4. The strategy commented upon in OSEPI 2017 has been replaced by the new Roma inclusion strategy (2021–2030).

is to uphold the order. These rulings preclude application of the Bulgarian law requiring administrative authorities to adhere to the principle of proportionality, since this applies only where the authority has a discretion. The SAC has ruled that the authorities are not obliged to consider and assess the harm caused to the persons affected by a demolition order.

As to the execution of demolition orders for illegal constructions, the courts do not maintain consistent practice. First, there are limitations on the scope of judicial review as it does not apply to any action undertaken during the execution procedure of a demolition order. Some judgments do not recognise the standing of those who are not addressees of the demolition order and whose property rights would not be affected by its execution. As to the question of applicability of the principle of proportionality, some judges have found it to be non-applicable and limited judicial review to procedural issues. Others examine the matter by reference to the principle of proportionality, but even where the building is the applicants' sole residence, the claim is dismissed on the grounds that there are no other means of combatting illegal construction.”¹⁷⁰

The lack of administrative discretion renders the legal control mechanisms ineffective.

The role of the Ombudsman of Bulgaria. Through her work, the Ombudsman has found that the barriers that predominantly the Roma population is facing, mainly concerns the lack of information about citizens' possibilities to protect their rights. In cases about evictions and demolitions of illegal structures, citizens are left without a home. Over the years, the Ombudsman has found that citizens in neighbourhoods affected by evictions do not know and lack information on the ways to protect their rights. In such cases the Ombudsman's main competence is general advocacy – or impact work as we use the term in this report.

Conclusions. As the OSEPI report shows, demolition cases raise complex legal and factual issues. The report argues that the principle in Bulgarian law of proportionality between the negative effect of a remedy and its gains still applies on the affected families and neighbourhoods. Administrative authorities and administrative courts cannot properly apply such principles, unless they consider the concrete circumstances of legal relevance thoroughly and in detail. For poor families, such elucidation of the case can hardly be fair without access to legal aid. However, the Supreme Administrative Court has decided otherwise.

The Roma inclusion strategy (2021–2030) has improvement of housing conditions, including the adjacent technical and public service infrastructure, as a separate operational objective in seven wide ranging points. Point 6 includes:

“Adoption of an Act amending and supplementing the Spatial Planning Act to introduce the principle of proportionality in issuing an order for removal of illegal construction, representing only housing for its occupants”¹⁷¹

Roma families are disproportionately affected by demolition orders, and suffer the most from the lack of legal protection. Their situation should be remedied. The existing legal possibilities to diminish the negative consequences of demolishing Roma dwellings largely remain unused today due to Roma legal impotence and also administrative ignorance.

After the 2023 reforms BLAA article 21 should cover demolition cases not only at the

¹⁷⁰ OSEPI 2017 p. 6–7.

¹⁷¹ Roma inclusion strategy (2021–2030) part VII 4 no 6.

court level, but also at the administrative level. An introduction of the proportionality principle, obviously will improve the efficiency of legal aid in protecting vulnerable Roma against unreasonable consequences of demolitions.

RECOMMENDATION NO. 47:

Bulgaria should reintroduce the proportionality principle in housing demolition cases by legislation.

Access to CPD. CPD, the central Bulgarian equality body, is not considered competent to suspend or quash housing demolition orders.¹⁷² Demolition cases might harm both individual Roma and larger groups like Roma settlements. CPD seems like an obvious instance for evaluating whether such orders imply ethnic discrimination and should be competent to suspend and quash orders found discriminatory.

RECOMMENDATION NO. 48:

The Commission for Protection Against Discrimination should be competent to suspend and quash housing demolition orders found discriminatory.

7.4.3. Human rights. Dimitrova and others v. Bulgaria

Demolitions might raise the issue of inhumane and degrading treatment forbidden in ECHR article 3, and the right to respect for family life and home in article 8 (1).

*Dimitrova and others v. Bulgaria*¹⁷³ describes the harshness of a demolition of Roma houses in Varna. We think the judgement both gives a detailed picture of the human and social costs also of the present demolition practices, and in a concrete way illustrates the consequences of a weak legal aid scheme. We therefore cite quite extensively from the judgement.

ECTHR summarized the facts:

“10. On 21 November 2008, demolition works started on one of the two houses mentioned above. Following an intervention by the association, the municipality orally granted a ten-day postponement for the demolition in order to find alternative housing for the applicants. They also announced on the radio that alternative accommodation would be found, especially for the children, as it was winter. Press reports described how some of the Roma inhabitants had positioned themselves on the roofs of the houses to prevent demolition.

11. On 5 December 2008, without alternative accommodation having been found, the council proceeded with the demolition, with the police entering the houses at 7 a.m. The applicants were evicted by the police with the help of a private security firm. According to the applicants, disputed by the Government, the police destroyed household items with clubs and poured water over the burning stove. All the applicants were ordered to go out into the street. (...)

12. The parties dispute whether Sava Zyumbyulkov Savov, aged one-and-a-half months at the time of the events, was among those evicted. He was the youngest child of the Savovi family. (...)

¹⁷² OSEPI p. 8 para 17.

¹⁷³ *Dimitrova and others v. Bulgaria* Application no. 39084/2010.

13. According to the applicants, the officials present, including the mayor of Mladost, made insulting remarks to them, such as “Take that back home” and “You are too dirty, go take a shower and then come back”. In addition, the children witnessed their homes being destroyed and their parents’ distress.

4. Accommodation of some applicants after the eviction

14. The Dimitrovi family (applicants one to four) moved into another municipal dwelling situated at 115 Pop Hariton Street, to which they were directed by the borough authorities after the demolition on 5 December 2008. They were left in the street for approximately six hours before this accommodation was made available. The four members of the family were accommodated in one room in which they lived until 2014, at some point in time with an additional baby. Six months after they moved in the roof collapsed in the Dimitrovi family room. They patched it up themselves but the roof continued to leak.

15. The Savovi family (applicants eighteen to twenty-three) were not directed promptly to alternative housing. At approximately noon on 5 December 2008, the eighteenth applicant, Ms Savova, concerned about the situation of her new-born baby, enquired with the borough authorities where her family could move. The borough authorities directed them to the dwelling at 115 Pop Hariton Street. The Savovi family was only able to move there at 11 p.m. that day. In the meantime, they were left in the street for about sixteen hours. They took shelter under a block of flats, where they had to change the baby’s nappies and clean their children in the open. They were finally accommodated in one room of the house at 115 Pop Hariton Street. At that point, ten members of the family occupied the same room.

16. (...)

17. The building at 115 Pop Hariton Street was a single-storey house with a total of three rooms. On 5 December 2008, the third room was uninhabitable. The Savovi family made the room habitable so that three people could live in it, while six others (applicants eighteen to twenty-three) lived in the room to which they originally moved. When the Dimitrovi and Savovi families moved into the house, there was no electricity supply and no hot water. The only toilet was an external one which was extremely dilapidated and there was no place to shower or bath. There was only one sink. The applicants attached photographs of the house to their application.

18. On 8 December 2008 the first and the eighteenth applicants signed typed-up declarations provided by the municipality, stating that they were aware that the dwelling which they occupied at the time, the house at 115 Pop Hariton Street, Varna, was in a state of disrepair and posed a danger to the life and limb of its occupants, and that they undertook to inform the people living with them at that address accordingly.

5. Subsequent developments in respect of housing for the applicants

19. The mayor of Mladost ordered on 22 March 2012 that the house the Atanasovi family occupied be demolished as it posed a danger to human occupation. On 5 November 2013 the municipal authorities proposed to the sixth applicant, Mr Atanasov, to move with his minor children and his wife to a small municipal apartment on the 8th floor of a block of flats. Following hesitations expressed by him, the authorities allegedly informed him that if he refused the offer, something he effectively did, more appropriate housing would be offered to his family. This did not happen.

20. On 21 July 2014 the mayor of Mladost ordered the eviction of the first, third, fourth,

eighteenth, nineteenth, twentieth, twenty-first and twenty-third applicants from 115 Pop Hariton Street, on the ground that they occupied it unlawfully. On 23 July 2014 the mayor ordered that the Savovi family, plus a baby born on 8 April 2014 to the eighteenth applicant, be allocated subsidised municipal housing. This order was enforced on the same day when the applicants moved into a flat of twenty-three metres squared.

21. The Dimitrovi family was not proposed any shelter after their eviction ordered in July 2014. While officially still registered at 115 Pop Hariton Street, they rented a room in a house at 44 Krayezerna Street where they were living at the time of their last communication with the Court.

6. Death of Sava Zyumbyulkov Savov

22. At about 4 a.m. on 30 December 2008, the eighteenth applicant, the mother of Sava, had called an ambulance as the child was not breathing. Sava Zyumbyulkov Savov, aged two months and ten days, was declared dead by the emergency doctor. (...)

23. A preliminary criminal investigation against an unknown perpetrator was immediately opened into his death. A number of investigative measures were carried out. Those included an examination of the dwelling where the child had died and the creation of an album of pictures of the child in his cot, interrogation of the mother, as well as a forensic medical expertise, which comprised an autopsy of the infant's body. The mother was provided with an ex officio lawyer.

24. The prosecutor terminated proceedings on 24 March 2009 for absence of a crime as the authorities considered that the child had died of natural causes. The death certificate indicated the cause of death as bilateral pneumonia and acute respiratory and cardiac failure. (...) The child's mother, the eighteenth applicant, who was provided with legal assistance, did not make of her own motion any explicit complaint before the investigating authorities. Nor did she challenge the termination of the preliminary investigation."

Our citations both show the brutality of the demolition and the reluctance of the authorities to provide the evicted Roma with acceptable social housing. We also observe the helplessness of Roma families in forwarding their interests in the demolition process. All in the words of the European Court of Human Rights.

The Roma families received legal help from a local NGO. The leader wrote complaints to the Bulgarian courts, but the courts refused them because of massive procedural mistakes and confusion of issues:

"75. However, while the domestic courts' silence regarding the PADA is open to some criticism, it nevertheless remains the case that the association's application, as indicated previously, was initially chaotic and even after clarification remained unclear and unstructured. It raised very diverse legal issues stemming from the provision, or lack of provision, of housing for the applicants and several of those issues had to be the subject of different domestic procedures unrelated to discrimination. In essence, the domestic courts were being requested to order a full review of the housing policy of the municipality, to order the municipality to house the families in appropriate housing and to award compensation both for the eviction and lack of housing and for the death of an infant member of one of the affected families (see paragraph 30 above).

76. It cannot thus be said, in the circumstances of the present case, that the applicants

provided the national courts with the opportunity which is in principle intended to be afforded to Contracting States by Article 35 of the Convention, namely the opportunity to prevent or put right Convention violations through their own legal system. In view of this finding, the Court considers that it is not necessary to examine the other preliminary objections advanced by the Government and that the Government's objection of failure to exhaust domestic remedies must be upheld."

ECtHR declared the application inadmissible.

7.4.4 Comments

From the Court's description of facts of the case, it seemed that the proof of violations of ECHR article 3 (inhuman and degrading treatment) appeared strong.

However, the complaint lacked sufficient clarity at the national level, and made it almost impossible for the Bulgarian courts to handle it properly and eventually use their powers to award the Roma families adequate redress.

Formulating adequate legal claims in court cases are among the core competences of lawyers. Professional legal aid at the Bulgarian courts and later with the complaint to ECtHR might well have changed the outcome at the domestic level, and if not, at the ECtHR. The case illustrates the importance of effective legal aid if Roma people shall utilize the protection human rights offer in housing demolition cases.

Today, ECtHR only offers legal aid after it has accepted a complaint for further handling. *Dimitrova and others v. Bulgaria* demonstrate that to produce a viable complaint amounts to an insurmountable barrier for Roma without legal aid. The necessity of legal aid in demolishing cases at the national level and to complain to ECtHR is obvious if access to justice for Roma people in demolition cases shall be effective. Bulgaria should cover the gap.

7.4.5 Conclusions

The OSEPI report p. 10–26 further analyses examples of mass demolition of houses in Roma settlements and the Bulgarian and international legal framework for evaluating the practice of demolition of Roma residential buildings. The analysis concludes with several violations:

"Local authorities are hardly taking any action currently to legalise houses in Roma neighbourhoods even though some have been brought up to code. This exacerbates the problem of legalisation in the Roma ghettos, where chaos in housing regulation exists. Even the basic possibilities offered by law remain unused by Roma for two reasons: 1) unfamiliarity with legal culture and procedures and 2) the complexity of the procedures. The problem is compounded by the unpreparedness of many administrations to work with Roma. Only a few Roma have taken advantage of the possibility to legalize their dwellings due to the complexity of the procedures."¹⁷⁴

The conclusions of the report, whether contested or not, further emphasise that the legal issues involved are complex.

We think the legal aid coverage should include eviction and demolition processes,

¹⁷⁴ Amalipe 2018 p. 30.

alternatives to demolishing, access to new intermediate and permanent social housing and necessary social assistance to all residents in the housings planned for demolition.

Impact work. Since demolition cases often affect several Roma in a settlement and also more settlements, strategic litigation, class and group action and other types of impact work seems important, which is outside the purpose of the present legal aid act. Demolition cases might be well suited for NGOs that might pursue them without ties to the interests of local or national government.

NGOs do such work also to day. A financial mechanism that makes the necessary legal services available fast in situations of emergency ought to be set up and allow legal aid lawyers to represent both groups of families affected and the Roma community as a whole when appropriate.

RECOMMENDATION NO. 49:

Legal aid in housing demolition cases should include impact work. See recommendation no. 41.

RECOMMENDATION NO. 50:

In housing demolition cases that affect Roma, legal aid lawyers trained in service to Roma and impact work should be preferred.¹⁷⁵

Coverage should also include preparation of reasonable complaints to ECtHR.

7.4.6. Address and identity documentation

Housing demolition as practiced against the Roma population in Bulgaria, triggers series of new problems, like the need for new dwellings, stressed family relations, health problems, work and educational challenges, increased involvement in crime and prostitution, increased vulnerability of THB, etc. A basic practical problem however, is their lack of address and access to Bulgarian identity cards as expressed by the representative of the Supreme Bar association.

“The main problem inside the Roma community is that predominantly they don’t have identification. The lack of IDs prevents them to access healthcare, social security and access to justice. In the yearly report of the Ombudsman, this was pointed out. Since March 2022, on the territory of the state 244 822 without personal documents, of which 121 000 have never been in possession of IDs. The majority of them are Roma. The reasons behind this are that in Bulgaria there is this problem with civil registration and the inability of certain people to certify their address and their right to be registered there. Because if you don’t have a registration you cannot get an ID. This question of civil registration arises a lot. Cases of Roma eviction are common and afterwards, they have a hard time registering themselves. The Ombudsman refers to the relevant authorities many times because amending the legislation is needed.

I suppose that the majority of Roma people don’t possess personal identification due to not being able to register at an address. I can share my personal impressions but sometimes they don’t register unconsciously and don’t apply for an ID for the purpose of circumventing certain administrative liability. I have been a lawyer for 32 years and I had a lot of contact with Roma, so I am left with the impression that they are a group that is restricted and discriminated against. There are regions in Bulgaria populated with elderly people who live in remote

¹⁷⁵ Se recommendation 10, 17 and 41.

mountain regions and have restricted access to justice.”¹⁷⁶

The Ombudsman also pointed to the detrimental effect of the Roma housing situation during our interview. When they live in illegal housing constructions they risk being left without an official address registration. As a consequence, several also lack identity documents. The Ombudsman task is general advocacy – impact work – to improve their situation. When there is a specific person who needs legal aid, the Ombudsman advises the latter to receive it from the NLAB.¹⁷⁷ In first hand, to register addresses and issue identity documents are administrative tasks.

The Roma inclusion strategy (2021–2030) contains a similar description of the detrimental effects of Roma’s lack of identity cards, and refers a 2018 estimate that nearly a third of the Roma population lacks a valid ID card. One of the strategy objectives is to improve “the legal culture of the Roma in connection with the acquisition, use and the storage of Bulgarian personal documents”.¹⁷⁸ Offering legal aid to help them acquire identity cards seems well in accordance with the strategy.

After the 2023 reforms, BLAA 21 should cover such cases also at the administrative level. The challenge now, is to make the extended coverage effective in practice.

7.5 Health care. Reproductive rights of Roma women

7.5.1 Introduction

The health conditions of the Bulgarian Roma are poorer than of ethnic Bulgarians. Poverty is a major factor. A recent report says:

“The average life expectancy of Roma is estimated to be 10 years less than that of the majority population. Substandard living conditions contribute to the prevalence of communicable diseases, such as tuberculosis and hepatitis, amongst Roma. Due to a number of factors, Romani women are at a higher risk of complications during pregnancy than the majority population. According to the situation analysis of the Bulgarian National Roma Integration Strategy, 12.6% of the Romani population, including children, have at least one form of disability or suffer from a serious chronic disease. A significant proportion of Romani people aged 45–60 years, one-third of Romani men and two-fifths of Romani women in this age group, suffer from poor health affecting working ability, either fully or partially.”¹⁷⁹

Although in greater need of health services, the services actually offered to Roma seem of poorer quality. Women are more exposed than men.

Roma women also experience discrimination concerning their reproductive rights. As a service that especially concerns women, we will describe the discrimination in more detail and evaluate if access to legal aid might help in counteracting it.

¹⁷⁶ Interview with Supreme Bar Association 13.05.2022.

¹⁷⁷ Interview with the Ombudsman of Bulgaria 09.05.2022.

¹⁷⁸ Roma inclusion strategy (2021–2030) part III and VII 5.6.

¹⁷⁹ European Roma Rights Centre *Cause of Action: Reproductive Rights of Romani Women in Bulgaria*. 2020 (ERRC 2020) p. 5.

7.5.2 Bulgarian birth rights

A report from the European Roma Rights Centre (ERRC) elucidates the problem:

“The Bulgarian Constitution protects motherhood and guarantees free obstetric care for mothers.

The Bulgarian Health Act stipulates that the State shall ensure the protection of the reproductive health of its citizens through special measures. Every Bulgarian woman is provided with preventive check-ups, screenings, and obstetric care.

According to a by-law adopted in 2007, which sets out a list of free-of-charge services accessible to uninsured women and services they can receive if they pay, pregnant women without health insurance are entitled to one prenatal consultation free of charge in a public health centre of their choice, and they can also choose the hospital where they wish to give birth; medical and care services connected to the delivery are also free of charge.

It should be noted here, however, the prevalence of corruption within the healthcare system; according to the results of a cross-country comparison of data from 2010–2011, based on national representative samples, informal payments related to hospitalisation are quite extensive in Bulgaria.”¹⁸⁰

Discrimination of Roma women. The ERRC report found widespread discrimination in the form of segregated wards. Hospitals located Roma women to separate rooms or wards with poorer standards concerning toilets, showers, and cleaning than rooms for patients with other ethnicities. They applied stricter limitations on access for visitors; information was mainly available in Bulgarian, not in Romani, which several Roma women had problems in understanding.

Roma women felt neglected by the medical staff by receiving far less attention than women of Bulgarian ethnicity, and the willingness of the staff to provide necessary services and personal articles, (toiletry, towels, sanitary napkins, etc.) significantly more limited. Numerous requests were denied in a derogatory way.

Confidentiality rules were not respected and verbal insults about their sexual behaviour, social status, young motherhood, hygiene, language and screams of pain were attributed to them as Roma.¹⁸¹ Examples from the report:¹⁸²

“According to the accounts of several interviewees, their competence was questioned by various abusive ways in the hospital: “The staff used ‘illiterate’ as an insult for the Roma women” (Sliven); “*They called me ‘a worthless Gypsy woman’*” (Pazardzhik); and they were subjected to verbal offensive remarks: “*You do not understand anything because you are gypsy!*” (SHATGO Varna); “*Shut up and do not talk! You, gypsies, you just talk bullshit.*” (Pazardzhik); “*You, gypsy women, are stupid!*” (Sliven).

Moreover, very often Romani women are abused with derogatory, racist labels, swear-words, and dehumanising slurs: “*You, the Gypsies, are dirty and filthy!*” (Sliven). They shout: “*You, dirty Gypsy woman!*” (Pazardzhik); “*You stink, you ugly blind Gypsy scumbag!*” (Sliven); “*I witnessed how one of the Romani women in my room was crying, because the personnel treated*

¹⁸⁰ ERRC 2020 p. 7–8.

¹⁸¹ ERRC p. 12–17.

¹⁸² Hospital locations in () parentheses.

her in a very rude way calling her names – ‘fatty swine’” (Pazardzhik); “They called me: ‘whore’, ‘bitch’, ‘dumbass’, ‘dirty, sleazy Gypsy woman’” (Velingrad). One of the interviewees considered the context as significant: “The personnel told me that I am a ‘dirty Gypsy woman’ but this was four years ago. This time the attitude was much better, because I had medical insurance” (Pazardzhik).¹⁸³

The Report describes several incidents of violence against Roma women from the staff during childbirth, labelled “obstetric violence” in the report. The women had their hands or legs tied up; the staff prohibited them to scream due to pain, and pinched them to press harder during delivery. Some also experienced slapping on their thighs and in the face for the same purpose. Several women reported perineal stitching without anaesthesia.¹⁸⁴

Finally, the report registered many examples of corruption. The staff demanded informal payments and gifts also from Roma women on free medical service due to poverty, and from their visiting relatives.¹⁸⁵

7.5.3 Might legal aid help?

The report shows significant differential treatment between Roma women and women of Bulgarian ethnicity in hospitals’ childbirth wards. Most of the reported examples seem to amount to legal discrimination of Roma women, and might conflict with their legal rights to health services. Still, the problem seems mainly ignored by the authorities.

Almost all Roma women affected seemed poor and qualified for legal aid. We assume that cases about such discrimination might be brought before the administrative courts. Another obvious instance is CPD. After the 2023 reforms, BLAA should cover CPD in such cases, provided that the Commission’s competence comprehends them.

An obstacle is the fear of further discrimination and maltreatment of the victims:

“In addition to the findings of the interview-based investigation, the Bulgarian Helsinki Committee (BHC) decided to collect more evidence, in order to reveal the systemic nature of maternity ward segregation in public hospitals across the country. The use of the method of phone call-based testing for the purposes of strategic litigation was deemed to be necessary by the BHC, since “no Roma women who said they had been subject to segregation in maternity wards would entertain the idea of lodging complaints or testifying as witnesses in any court action” as they are “wholly dependent on their local hospitals for paediatric and maternity care in the event of future pregnancies”.¹⁸⁶

However, as the citation indicates, successful strategic litigation and other impact work might bring forward changes in the attitude of health authorities and hospitals that might reduce the fear for retaliation. Complaints to the Ombudsman is another option.

Norway, for example has specialized ombudsmen for hospitals. The system with Roma mediators might also help overcoming the fear, especially if women mediators become recruited.

¹⁸³ ERRC 2020 p. 17.

¹⁸⁴ ERRC 2020 p. 17–18

¹⁸⁵ ERRC 2020 p. 18.

¹⁸⁶ ERRC 2020 p. 19.

RECOMMENDATION NO. 51:

Bulgaria should develop an informal complaint system for patients in hospitals comprising Roma women’s birth rights. Legal aid should cover the necessary legal assistance, impact work included.

The Roma inclusion strategy 2021–2030) contains a general objective on “Reducing stigma and discrimination against vulnerable people and raising public health awareness.”¹⁸⁷ We think recommendation 51 well suited to forward the objective.

¹⁸⁷ Roma inclusion strategy (2021–2030) part VII 2.3.

8 LIST OF RECOMMENDATIONS

8.1 Civil legal aid

Recommendation no. 1 (Chap 4.2 p. 25)

Liberalize the poverty criteria in BLAA. Protect poor above the poverty line against high and exorbitant costs they cannot pay themselves without severe welfare consequences.

Compare the costs of hiring contract lawyers in practical case types to the applicant's disposable income. Evaluate which costs the applicant reasonably can carry without significant suffering.

Use contributions to regulate the costs of applicants that appear able to pay parts of the costs.

Recommendation no. 2 (Chap. 4.3 p. 27)

Bulgaria should check if the Bulgarian Legal Aid Act sufficiently covers all domestic decision-making instances that satisfy the "tribunal" criterion in the European Convention on Human Rights article 6, and if not, expand the coverage.

Recommendation no. 3 (Chap. 4.3 p. 28)

Expand coverage to cover all types of private law problems independent of whether court handling is necessary.

See too that the entitlements with the 2023 amendments now cover all administrative legal problems that appears significantly harmful to Roma's welfare independent of whether court handling is necessary.

Secure that the new amendments to the coverage provided by The Legal Aid Act becomes effective for Roma women and men in a range of discrimination cases like health services, housing, education, employment, social services, social benefits, pensions, consumer issues, criminal prosecution and victimization, family cases, etc.

Since Bulgaria practices ethnic neutrality, coverage should include all Bulgarians that appear sufficiently poor.

Recommendation no. 4 (Chap. 4.3 p. 29)

Remove all existing cost barriers additional to lawyer costs that might hinder effective use of legal aid by the entitled.

Recommendation no. 5 (Chap 4.6 p. 30)

The National Legal Aid Bureau ought to carry out repeated information campaigns about legal aid aimed at Bulgaria's poor with emphasis on the new extensions of coverage.

Special campaigns should be directed at Roma women and men. Additionally, they ought to target their informal and formal network of advisers and helpers, family, and friends, leaders in the Roma community, social and health workers, schools and teachers, Roma women's organizations etc.

Use outreach projects and mediators as a major vehicle to increase Roma consciousness

about legal problems and legal aid, see chap. 6.2 and 6.3 with recommendations 39 and 40.

Recommendation no 6 (Chap. 4.6 p. 30)

The Ombudsman's information and referrals about legal aid should be further developed and intensified with emphasis on the new extensions of coverage.

Recommendation no. 7 (Chap. 4.8 p. 37)

Significantly improve legal aid statistics and make it public. Digitalization is a must. Statistical vehicles able to capture the effects of the extended coverages introduced in 2023, should be developed.

Recommendation no. 8 (Chap. 4.8 p. 37)

Improve the selection of legal aid lawyers in the National Register of Legal Aid Lawyers. Make civil legal aid a speciality and demand education and experience in legal aid cases a condition for entrance into the register. Bar associations should appoint lawyers from the specialized part of the register for such commissions.

Such specialization should not exclude contract commissions, but secure a solid legal aid experience. Reduce the number of lawyers significantly to secure the registered lawyers a continued education and case experience sufficient to maintain and develop their legal aid expertise.

Recommendation no. 9: (Chap. 4.8 p. 37)

Establish a recruitment process to maintain a sufficient number of qualified legal aid lawyers.

Recommendation no. 10 (Chap. 4.8 p. 37)

Make legal aid to Roma women and men a sub specialization for legal aid lawyers.

Recommendation no. 11 (Chap. 4.8 p. 37)

Improve the case distribution mechanism to fit with recommendation no. 8–10. Substantially increase the average number of legal aid cases per legal aid lawyer.

Recommendation no. 12 (Chap. 4.8 p. 37)

Increase the legal aid fees. Although civil legal aid cases cannot be among the most profitable, they should provide a decent income compared to contract lawyers.

Recommendation no. 13 (Chap. 4.8 p. 38)

Consider legal aid contracting as an instrument to improve legal specialization, see chap. 6.6.

8.2 Criminal legal aid

8.2.1 Defender

Recommendation no. 14 (Chap. 5.3 p. 40)

Liberalize the poverty criteria for criminal legal aid in BLAA. Protect poor above the poverty line against high and exorbitant defender costs they cannot pay themselves without severe

welfare consequences when they risk prison sentences of a year or more.

Compare the costs of hiring contract lawyers in practical case types to the applicant's disposable income. Evaluate which costs the applicant reasonably can carry without significant suffering.

Use contributions to regulate the costs of applicants that appear able to pay parts of the costs.

Recommendation no. 15 (Chap. 5.3 p. 46)

Increase the legal aid fees also for criminal legal aid. Although criminal legal aid cases cannot be among the most profitable, they should provide a decent income compared to contract lawyers.

Recommendation no.16 (Chap. 5.3 p. 47)

Establish a separate and independent unit for investigation and prosecution of police misconduct in criminal cases.

Recommendation no.17 (Chap. 5.3 p. 47)

A defence lawyer should be obligatory at all police interrogations under the Interior Act, and at least until a well-functioning video recording system is in place.

Recommendation no.18 (Chap. 5.3 p. 47)

Selected criminal legal aid lawyers should receive suitable training to become specialists on defending Roma in criminal trials. Lawyers might well combine such specialization with specialization in civil and administrative cases for Roma as suggested in recommendation no. 10.

Recommendation no.19 (Chap. 5.3 p. 47)

Repeal the provisions on police detention and interrogations in the Interior Act. Use the provisions in the Bulgarian Criminal Procedure Code for all investigations and use of custody in criminal cases.

Recommendation no.20: (Chap. 5.3 p. 48)

Alternatively, update the provisions on police interrogations and custody to eliminate any differences to similar provisions in BCPC.

Recommendation no.21 (Chap. 5.3 p. 48)

A defender should be obligatory during police custody and free to all suspects.

Recommendation no. 22 (Chap. 5.3 p. 48)

Defenders should have access to the charge and time to read available documents and then to consult with the suspect before police interrogations start.

Recommendation no.23 (Chap. 5.3 p. 48)

Roma suspects should be offered access to interpreters as part of criminal legal aid.

Recommendation no. 24 (Chap. 5.3 p. 48)

Remuneration should be better tailored to the type of tasks that legal aid lawyers are supposed to carry out. Per hour fees should be used when per case fees are insufficient compared to the work.

8.2.2. Victims**Recommendation no. 25 (Chap. 5.4 p. 56)**

Law enforcement officers should be properly trained in how to explain their rights to victims and systematically refer them to specialized services to exercise them. Information in Romani should be offered to all Roma victims.

Recommendation no. 26 (Chap. 5.4 p. 56)

The staff at asylum and detention centres and interpreters should receive continued training in how to proactively inform both persons and groups at risk of being trafficked about their rights to protection.

Recommendation no. 27 (Chap. 5.4 p. 56)

The national hotline and the regional counselling centres should include lawyers that are properly trained in how to explain their rights to victims and systematically refer them to specialized services when necessary to exercise them.

Recommendation no. 28 (Chap. 5.4 p. 59)

Bulgarian courts have declared compensation claims against traffickers from victims of trafficking for sexual exploitation for depriving them of loss of income, for “immoral” and inadmissible. The use of such labels as a justification for inadmissibility, should be abandoned either by the courts themselves or by legislation.

Recommendation no. 29 (Chap. 5.4 p. 60)

A lawyer shall be appointed as soon as there are reasonable grounds for believing that a person is a victim of human trafficking, and before the victim has to decide whether he/she wants to co-operate with the authorities and/or make an official statement. The first consultation should be obligatory.

Recommendation no. 30 (Chap. 5.4 p. 60)

Adequate funding should be available for the provision of legal assistance, legal representation and interpretation/ translation to trafficking victims placed in shelters.

Recommendation no. 31 (Chap. 5.4 p. 60)

Access to free legal aid for victims of trafficking should be unconditional and not dependent on proof of lack of financial means to pay for a lawyer.

Recommendation no. 32 (Chap. 5.4 p. 63)

Bulgaria should improve the efficiency of the protection and rehabilitation measures of the

victims of domestic and sexual violence. A duty for victims' lawyers to see to that such mechanisms work properly should be part of their work and remuneration.

Recommendation no. 33 (Chap. 5.4 p. 63)

Crisis centres should have legal aid lawyers assigned that collaborate with the staff in solving the legal problems of the users.

Recommendation no. 34 (Chap. 5.4 p. 64)

We support the Ombudsman' proposals for improved legal aid to Roma children and their mothers, especially in cases of domestic violence.

Recommendation no. 35 (Chap. 5.4 p. 66)

Legal aid lawyers for trafficking victims and victims of domestic and sexual violence should possess sufficient knowledge about the existing support systems for victims and how to access them. A sufficient number of legal aid lawyers should undergo training, and the legal aid fee system might cover such training to a reasonable extent.

Recommendation no. 36 (Chap. 5.4 p. 68)

The National Legal Aid Bureau should establish and maintain a specialized part of the National Register of Legal Aid Lawyers for lawyers with the necessary qualifications who want to provide legal aid to victims of trafficking and domestic and sexual violence. The bar associations should appoint lawyers from the specialized part of the register for such commissions, and ensure that trafficking victims are systematically appointed a specialised lawyer.

Recommendation no. 37 (Chap. 5.4 p. 69)

Bulgaria should study the Norwegian victim's legal aid scheme and other developed European schemes and integrate features that might improve the Bulgarian scheme.

8.3 New services and test projects

Recommendation no. 38 (Chap. 6.1 p. 72)

The National Telephone Service and the regional consultation centres should be further developed and better advertised. Both the National Telephone Service and the regional consultation centres should offer consultations in Romani according to the user's preference.

Bar Associations still without consultation centres should establish them.

The National Telephone for Legal Aid ought to be cost free or limited to a maximum sum affordable also for poor callers. A 24/7 service for poor callers ought to be tested out.

Recommendation No. 39 (Chap. 6.2 p. 78)

Bulgaria should continue to develop the outreach projects and establish outreach legal aid service in all Roma settlements.

Recommendation no. 40 (Chap. 6.3 p. 84)

A legal mediator in collaboration with outreach legal aid should be available to all Roma

settlements and neighbourhoods. Bulgaria should establish a hiring arrangement that secures recruitment and stability, and include the necessary provisions in the Bulgarian Legal Aid Act.

Recommendation no. 41 (Chap. 6.4 p. 84)

A database for referrals that reduce the need for repeated documentation from victims should be further developed and made operational.

Recommendation no. 42 (Chap. 6.5 p. 89)

Impact litigation should be part of legal aid. The Bulgarian Legal Aid Act should open up to collective actions through amendments.

NGOs and other charity organisations should be entitled to apply on behalf of groups that mainly consist of poor people that qualify for legal aid. A study of different types of impact strategies, with the purpose of including them in Bulgarian legal aid, should be carried out.

Recommendation no. 43 (Chap. 6.5 p. 89)

Legal aid should cover individual complaints to the Ombudsman. When legal aid users lose their cases, legal aid should cover the use of lawyers in complaints to the Ombudsman as part of impact work to mend deficits in the law.

Recommendation no. 44 (Chap. 6.5 p. 89)

Bulgaria should consider to grant legal aid to the private party in suits recommended by the Bulgarian Ombudsman without any poverty test, problem test or merits test.

Recommendation no. 45 (Chap. 6.6 p. 90)

Bulgaria should study legal aid contracting in other jurisdictions and implement the instrument when useful to improve legal aid to the users.

8.4 Other Roma discrimination examples

Recommendation no. 46 (Chap. 7.2 p. 95)

The jurisdiction of the Commission for Protection Against Discrimination should include the justice system – courts, prosecution and police – or a separate anti-discrimination organ for the justice system should be established.

Recommendation no. 47 (Chap. 7.4 p. 100)

Bulgaria should reintroduce the proportionality principle in housing demolition cases by legislation.

Recommendation no. 48 (Chap. 7.4 p. 100)

The Commission for Protection Against Discrimination should be competent to suspend and quash housing demolition orders found discriminatory.

Recommendation no. 49 (Chap. 7.4 p. 104)

Legal aid in housing demolition cases should include impact work. See recommendation no. 41.

Recommendation no. 50 (Chap. 7.4 p. 104)

In housing demolition cases that affect Roma, legal aid lawyers trained in service to Roma and impact work should be preferred for appointment.¹⁸⁸

Coverage should also include preparation of reasonable complaints to the European Court of Human Rights.

Recommendation no. 51 (Chap. 7.5 p. 108)

Bulgaria should develop an informal complaint system for patients in hospitals comprising Roma women's birth rights. Legal aid should cover the necessary legal assistance, impact work included.

¹⁸⁸ See recommendation 10, 17 and 41.

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LIST OF INTERVIEWS

Date of Interview	Institution
09.05.22	National Legal Aid Bureau/Telephone Line
09.05.22	Ombudsman
09.05.22	Human Rights lawyer Natasha Dobrova
10.05.22	Commission for the Protection Against Discrimination
10.05.22	Training Centre of the Supreme Bar Council of Bulgaria
11.05.22	Regional Legal Aid Centre/Local Bar Association Stara Zagora Coordination Mechanism
11.05.22	Mission Wings
12.05.22	Regional Legal Aid Centre/Local Bar Association Veliko Tarnovo
12.05.22	Crisis Centre for Women, Tarnovgrad. Crisis Centre for Children, Balavan Village
12.05.22	Legal Clinic for Out of Court Dispute Resolution, Veliko Tarnovo University
13.05.22	National Supreme Bar Association
13.05.22	Bulgarian Helsinki Committee
13.05.22	Ministry of Justice

