

INTERNATIONAL LEGAL AID GROUP CONFERENCE: 1 TO 3 APRIL 2009 – WELLINGTON, NEW ZEALAND

NATIONAL REPORT: BULGARIA¹

Introduction

After several years of research, awareness campaigns and policy consultations the legal aid system in Bulgaria was thoroughly restructured in 2006 with the Legal Aid Act. The shortcomings of the previous modes of delivery of legal aid and specifically in the criminal justice system are extensively documented in previous research projects conducted by the Bulgarian Helsinki Committee² and the Open Society Institute³. The Legal Aid Act entered into force on 1 January 2006 but *de facto*, it effected action only in May 2006, due to the short *vocatio legis*, the delayed election of Chairman and Deputy Chairman of the National Legal Aid Bureau, and the slow adoption of the Regulation for Payment of Legal Aid by the Council of Ministers. The process of structuring of the National Legal Aid Bureau, the employment of officers and the developing of rules, systems and forms for accounting and payments for legal aid also contributed to the delay of the moment of the *de facto* effecting of the LAA. By the end of 2006 the logistical problems were overcome and since then the NLAB took over the implementation of the legal aid policy.

Before the enactment of the LAA the right to state funded legal aid was scattered in several statutory laws. Most of the emphasis was placed on the provision of legal aid in criminal cases. Relatively less attention was given to civil matters and no legal aid was extended to administrative cases. With the enactment of the LAA the normative scope of the system increased in the direction of civil and administrative problems. For first time the so called primary legal aid was regulated. In the analysis below it will be discussed the extent to which the actual implementation of the policy meets the wording of the law.

¹ Researcher, Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (TISCO), Tilburg University; m.a.gramatikov@uvt.nl

² Kanev, Krassimir (Ed.), (2003), *Access to Justice: International Standards and the Situation in Bulgaria*, Sofia: BHC [Dostapat do pravosadie: Mezhdunarodni standarti I polozhenieto w Bulgaria].

³ Marinova, Gergana (Ed.) (2006), *Access to Justice: Public Defense on Criminal Cases*, Sofia: Open Society Institute. [Dostapat do pravosadie: sluzhebna zashtita po nakazatelni dela].

The National Legal Aid Board consists of a Chairman, Vice-Chairman and three members. The latter are designated by the National Bar Council whereas the Chairman and the Vice-Chairman are appointed by the government. This division of the leadership of NLAB intends to introduce form of balance between the public interest and the providers of the legal services. According to the LAA the NLAB is a funding and coordinating authority. Less explicitly the law vests significant powers to the 27 local bar councils. *De facto* it is the local bar councils that administer to a large extent the legal aid policy. Most importantly at the local level takes place the matching between the need and supply of legal aid. According to the LAA the local bar councils should also organize and implement the quality control mechanisms. A closer look at the institutional setting, however, reveals a significant tension between the needs for objective control over the quality of the publicly funded legal services and the inherent interests of the bar councils to support the professional and economic interests of their members.

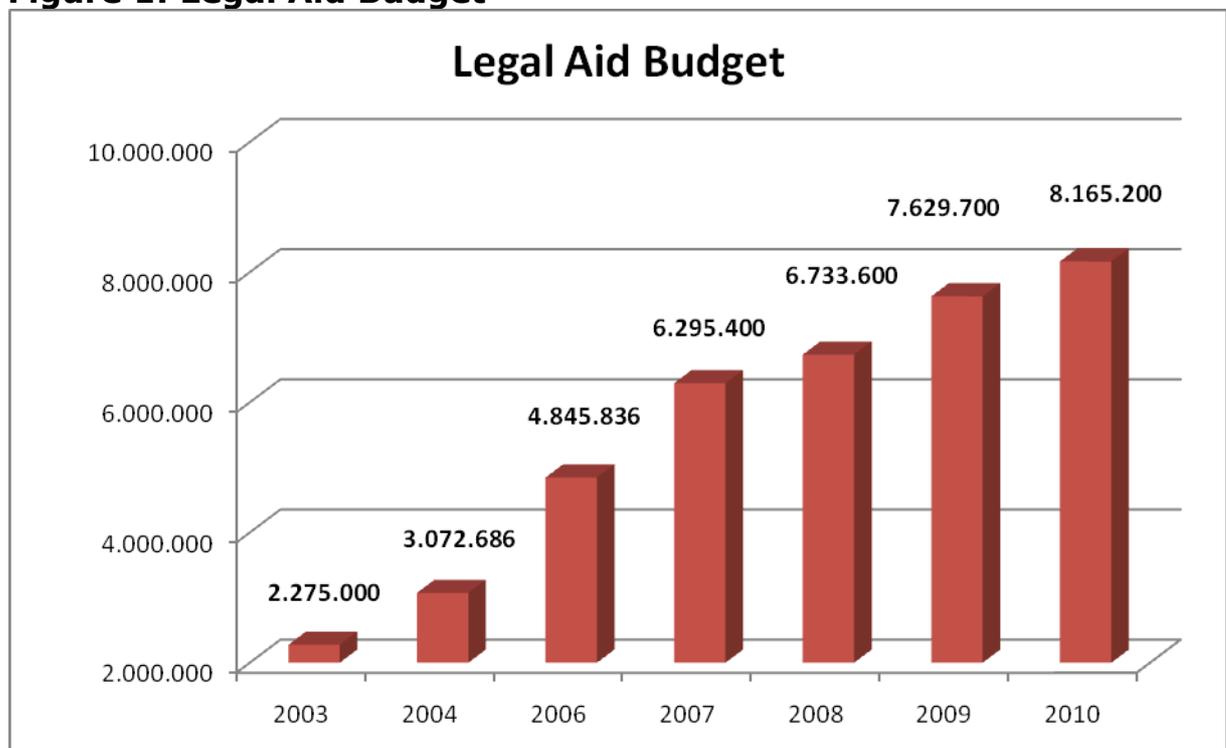
In 2007 the NLAB proposed amendment in the regulation which in effect would have decreased the influence of the National Bar Council in the implementation of the legal aid policy. In response to this proposal the Bar reacted vehemently and the proposal was relinquished. This episode of power game is an eloquent indication of the power balances and tensions in the Bulgarian legal aid system. At the beginning of 2009 the Ministry of Justice expressed willingness to initiate a process for establishment of co-ordination council with members representing the NLAB, Ministry of Justice, National Bar Council and the Supreme Judicial Council.

Funding

A main weakness of many legal aid systems, including the Bulgarian system until 2006, is the lack of reliable and trustworthy information about the financing of the legal aid. This problem additionally aggravates the chronic shortage of sufficient resources to operate an effective legal aid system. One of the biggest achievements of the LAA is the aggregating in a common budget frame of all possible sources of funding. The establishment of the NLAB as a secondary administrator of budgetary funds allows for evidence based analysis of the public funding of the legal aid system in the country. The availability of objective information makes also possible the planning of the legal aid supply and demand processes in accordance with the development of the court system, the availability and extent of public funding, the needs of the Bulgarian citizens and the political will for guaranteeing equal access to justice.

Differing from the previous system, the NLAB has an integrated budget. Now we know with sufficient degree of certainty that in 2006 BGN 4,845,836⁴ have been spent on the legal aid system, from which BGN 1,327,836 capital and personnel expenses and NLAB overhead. The sum for administrative expenses is 27.4% of the general expenses of the legal aid system, and the explanation is that lots of expenses were needed for fixed costs such as offices, information systems and so on. According to the internal audit results⁵ for 2006, NLAB paid attorneys' fees amounting to BGN 2,641,000, and BGN 253,000 were paid to the local bar councils for execution of their powers according to the LAA. As **Error! Reference source not found.** indicates the budget gradually increased in 2007, 2008, 2009 and 2010. There is an increase of 68% in the legal aid budget from 2006 to 2010. However, per capita this increase looks less impressive – from 0,34 EUR in 2006 to 0,58 EUR in 2010.

Figure 1: Legal Aid Budget



It is evident that in the first year of the functioning of NLAB there was insufficient information, on which more rational decisions for the demand, supply and budgeting of the legal aid system to be grounded. The implementation of an automated case management system in the first months of 2007, gives grounds to think that, over time, the empirical data gained will turn into substantial

⁴ 1 BGN ≈ 1,95 EUR

⁵ See <http://www.nbpp.government.bg>

knowledge for the development of policy providing and guaranteeing high-quality legal aid.

While discussing the draft LAA, part of the debates were devoted to the repayment of the costs of legal aid in cases when the person who used legal aid is obliged to pay the legal costs with an act of court act. According to the Civil Procedure Code and the Criminal Procedure Code, the person using state funded legal aid is obliged to pay for the expenses on the case if found guilty or if the case is decided in favor of the other litigant. Among the criminal cases, it is a rare occasion that a person is declared innocent with a sentence. In this frequently encountered hypothesis, the court should issue an execution form in NLAB benefit, which, on its turn, should collect the expenses made. Thus presumed, the decision raises injustice and bears problems in the practice.

On one hand, there are many cases when legal aid is granted to persons who cannot care after themselves. These are the cases of obligatory public defense on Article 94, Section 1, Paragraphs 1 and 2 of the Criminal Procedure Code, Article 155 etc Health Act, and Article 16, Section 6 of the Civil Procedure Code. There is no worldly logic to expect such persons to refund the legal aid received. The practice on the LAA shows that, in this respect, the texts of Article 64, Section 6, and Article 189, Section 3 are without real application.

On the other hand, while granting legal aid in the hypothesis of Article 94, Section 1, Paragraph 9, a serious argument arises with regard to the philosophy of the state funded legal aid. In its deep essence the philosophy of the legal aid is rooted in the normative principle that every person, without consideration of social and economical status, gender, race and so on, should have equal access to justice as any other person, and should have equal opportunity for defending of their rights and legal interests in the frame of the legal process. The possibility for refunding of the attorney fees by the persons who cannot afford to pay for such brings the institute to a form for short-term financing of the legal aid use. It is true that, until this moment, there is no effective collection of these costs (the persons who use legal aid and were sentenced to reimburse the expenses usually do not have little or no property), but legislative mechanism is erroneous and should be changed.

Number of Legal Aid Cases

As of February 2009 data is available for the provision of legal aid in the years 2006 and 2007. For comparison I took year 2004 in which according to data from the MoJ legal aid has been delivered in 4 881 civil and 16 275 criminal cases (including pre-trial and trial criminal proceedings). In this report I put the focus of the analysis to the provision of legal aid from March 2006 to May 2007. The NLAB provided the author with detailed case level data for this period. According to the official NLAB report for 2007 payments were disbursed in 29 392 cases of legal aid delivered in 2007. Of these 25 379 were in criminal, 3 953 in civil cases, 31 administrative and 29 others (14 of which primary legal aid). Comparing to the data from 2004 it is obvious that in the second year of implementation of the LAA is observed a significant increase of 36% in the delivery of criminal legal aid from 2004 to 2007. Such trend, however, is not visible in the civil and administrative cases. Primary legal aid (possible only in civil and administrative legal problems) is virtually non-existing. This is an alarming finding in the light of a recently published research which shows significant number of justiciable (civil and administrative) events in the Bulgarian society⁶.

Case level data for the period Mart 2006 to May 2007 provides more insights in the functioning of the legal aid system in Bulgaria after the enactment of the LAA. **Error! Reference source not found.** shows the distribution of the legal aid granted for different types of cases. It is obvious that most of the legal aid is granted in the court phase of criminal cases of public prosecution – 38% of all cases of legal aid. There are followed by the criminal cases of private prosecution– 16%, investigations⁷ – 15%, civil cases – 13%, and police investigations – 9%. If all legal aid cases related to the pre-trial phase of the criminal procedure are aggregated, it is estimated that 31% of all public defenses are granted on this type of cases. There are only 13 cases of legal aid granted in administrative cases for 2007. The number of the legal aid provided in civil cases is higher – 3336 but still remarkably low if compared with the large amount of unmet legal needs arising from civil legal problems.

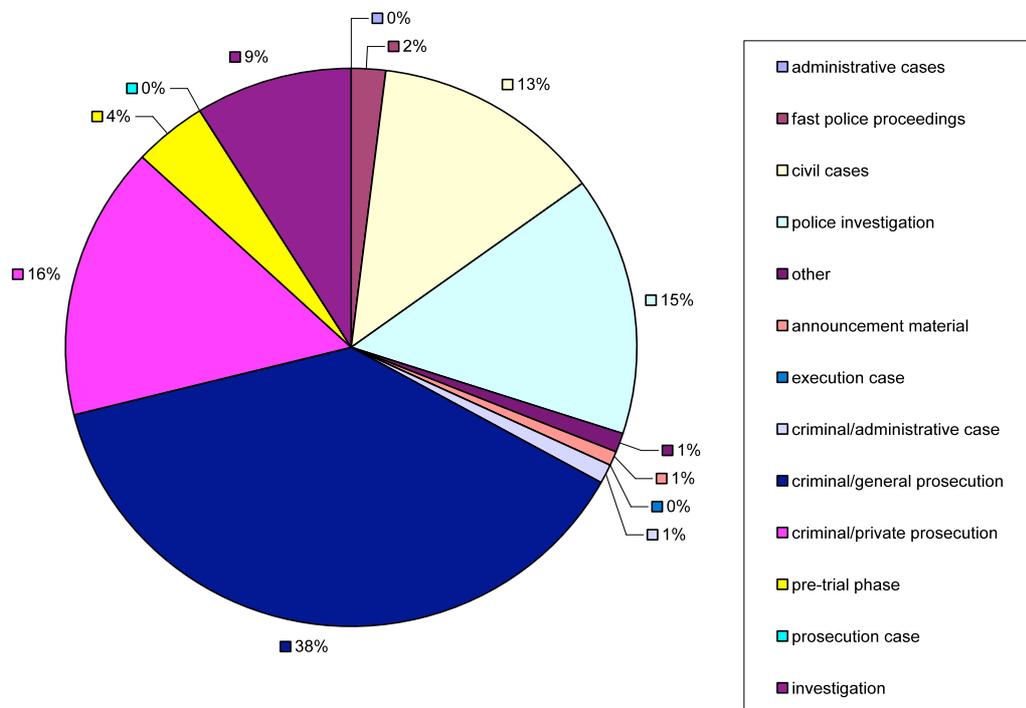
⁶ MARTIN GRAMATIKOV, Multiple Justiciable Problems in Bulgaria (SSRN. 2008).

⁷ Due to historical reasons there are two types of pre-trial investigations in the Bulgarian criminal justice system. Charges against minors, as well as the most serious felonies are investigated by a small investigative service staffed with lawyers who possess status of magistrates. The rest of the crimes fall under the investigative authority of the police.

The lack of noticeable impact of the LAA on access to legal aid in civil and administrative disputes may be hypothesized as consequence of three factors:

- Lack of information among the citizens about their right to ask for appointment of a special representatives in case they are not able to pay the lawyer’s fee, and
- The remuneration rates do not provide sufficient incentives for the attorneys, who specialize in civil and administrative matters;
- The existing mechanism for proving inability to pay the lawyer’s fee impedes actions of the persons involved.

Figure 2: Legal Aid 2006-2007



Remuneration of the Legal Aid

Until 2006, there was no data about the number of the attorneys who have granted legal aid as publicly appointed defenders or about the fees disbursed. The opinion that the legal aid is underpaid was widely spread in the judiciary system. In fact little has changed for the last 3 years after the enactment of the LAA. Combined with delayed, non-regular and complicated payments, the perceived low levels of remuneration reflected on the profile of the attorneys serving as legal aid lawyers. There was an opinion in the profession (still valid nowadays) that the legal aid is predominantly source of income for attorneys who have problems with their competitiveness on the market for legal services.

The calendar year 2006 cannot serve as a reliable starting point for comparison due to the fact that there were several months of delay in the effective implementation of the LAA. Thus the data from the March 2006 – May 2007 period can provide a better picture regarding the distribution of the yearly legal aid budget. NLAB paid fees amounting to BGN 4,668,493 for the reviewed period. It should be pointed here that this number reflects the remunerations approved by NLAB, but not the fees proposed by the corresponding bar. The practice shows that in a significant part of the reports filed, the bars propose the maximum set by the by-law which sets out the remunerations in the specific case. On its turn, the NLAB has established until 2008 a routine practice to decrease the fees in the frames of its discretion power on Article 39, LAA corresponding to Article 38 Section 2, LAA.

Table 1 shows how the legal aid budget was distributed among the attorneys from the local bars. Apparently the attorneys from the biggest bars received most of the funds, as the members of the Sofia Bar received 28% of the total disbursements. It is also interesting to observe the large variation by local bar in the annual⁸ mean amount of money received by the providers of legal aid. For example, a lawyer from the Lovech Bar providing legal aid, earned BGN 3,050 per year on average (BGN 254 monthly). In the Smolyan Bar, the bar with lowest disbursement, the respective numbers are BGN 590 per year and 49 BGN per month. This discrepancy shows that there are significant differences in the implementation of the LAA at the level of the local bar councils. Apparently the supply and demand of legal aid is not uniform across the country. It is also indicative that the local bar councils implement the LAA somewhat differently. This gap casts doubts on the abilities of the NLAB to implement a coherent and uniform national policy in the field of legal aid.

⁸ Precisely the period of analysis is March 2006-May 2007

Table 1: Fees paid for the March 2006 – May 2007 period

Local Bar	Registered providers of legal aid	Sum March 2006-May 2007 ⁹	Mean Reimbursement Per Attorney in BGN
Blagoevgrad	115	206 689	1797.30
Bourgas	119	216 160	1816.47
Varna	121	201 870	1668.35
Veliko Tarnovo	66	71 065	1076.74
Vidin	75	157 965	2106.20
Vratsa	39	93 689	2402.28
Gabrovo	40	71 670	1791.75
Dobrich	47	58 938	1254.00
Kardzhali	7	10 350	1478.57
Kyustendil	89	111 718	1255.26
Lovech	49	149 495	3050.92
Montana	41	105 400	2570.73
Pazardzhik	104	193 570	1861.25
Pernik	45	55 040	1223.11
Pleven	109	273 480	2508.99
Plovdiv	141	246 272	1746.61
Razgrad	52	73 450	1412.50
Rousse	134	120460	898.96
Silistra	44	95 045	2160.11
Sliven	80	131 015	1637.69
Smolyan	25	14 760	590.40
Sofia	527	1 297 245	2461.57
Stara Zagora	135	280 937	2081.01
Targovishte	50	75 810	1516.20
Haskovo	90	120 950	1343.89
Shumen	59	130 070	2204.58
Yambol	68	105 380	1549.71

Gender and age as factors in the appointment of attorneys in legal aid cases

In order to get a better insight in the appointment of attorneys in legal aid cases I enriched the case level data for 6 local bars¹⁰ (three big and three small) with the gender and the age of the attorneys in the particular cases. Another variable which was included is whether the attorney assumes any official position in the

⁹ Only attorneys who are publicly appointed to at least one case in the March 2006 – May 2007 period are included in the analysis. A significant number of the registered attorneys were actually never appointed a legal aid case.

¹⁰ Blagoevgrad Bar, Burgas Bar, Varna Bar, Veliko Tarnovo Bar, Vidin Bar ,Vratsa Bar

local bar council. The mean age of the registered attorneys from the six bar councils is 45 years, the youngest attorney is 26 and the oldest – 91. Most of the attorneys are relatively young – 40% are up to 38 years of age and only 10% older than 64. The main group of providers of legal aid is attorneys between 30 and 40 years old. Among the women the mean age is 41 years, while among the men it is 50.

The data shows that for the period March 2006 – May 2007 female attorneys have received in total negligibly higher mean remuneration - BGN 1,351, in comparison with BGN 1,341 for the male attorneys. The slightly higher remuneration, however, should be interpreted in the light of the fact that on the average for the period female attorneys were appointed in 8.01 cases, while this figure for the male attorneys is 7.13. Thus the mean remuneration per case of the male attorneys is higher - BGN 136, compared with BGN 126 for female attorneys. The difference is indicative as it confirms that male attorneys (who are more experienced in general) are appointed for a lesser number of cases, which however are better paid.

Table 2 confirm that the remuneration for legal aid work vary by gender and age. Male attorneys in the age range of 51 – 60 have received more from the legal aid budget than the rest groups of attorneys. On the other extreme are the 60+ female attorneys. The difference in the remuneration of the young attorneys is also noticeable. For male attorneys in the age range of 20 – 30 years the average remuneration for the period is BGN 1,325, while for the female attorneys the figure is BGN 1,704.

Table 2: Remuneration by gender and age

Age	20 – 30	31 – 40	41 – 50	51 – 60	Above 60
Gender					
Male ¹¹	1,325.63 n=8	1,865.7 n=45	1,927.73 n=55	2,074.30 n=50	1,430.21 n=47
Female	1,704.09 n=33	1,812.42 n=148	1,985.28 n=70	1,187.50 n=28	1,964.7 n=23

¹¹ We have included in the analysis only attorneys, who have been appointed and have reported at least once on the case during the reviewed period.

Quality of the legal aid

The quality of legal aid was evaluated as one of the most serious problems prior to entry into force of the LAA on January 1st, 2006. The concept of quality of legal services, and legal aid services in particular, is difficult to define and measure, but surveys have shown beyond doubt that state financed legal aid is considered of inferior quality in comparison to contractual council. As a result of this the LAA implemented the concept of quality of legal aid, although lacking a precise definition – Article 33 Section 5 Paragraph 3, Article 37 Section 2, and Article 38 LAA. The law establishes a two-tier system for ensuring the quality of the provided legal aid. At the first level the quality should be controlled by the local bar councils. The NLAB is deemed to be the second instance of the system for quality control.

During a series of qualitative interviews with attorneys I did not discover any systematic practices for evaluation and control of the quality of legal aid at local level. It is difficult to imagine that the bar councils will exercise anything more than formal check of the submitted reports for delivered legal aid. As described by one of the interviewed attorney, who is registered to provide legal aid: "There are thousands of legal aid cases per months. Irrespective of the diligence of the bar council, it would be an exaggeration to say that there is effective, in the full meaning of the word, supervision over all these cases of legal aid." This is confirmed by protocols of the bar council of the Sofia bar, which are published on the Internet.¹² For instance the Sofia Bar Council in its session from June 12th, 2007 has decided en bloc on the quality of 708 legal aid reports submitted by its members. Although the existence of positive practices cannot be ruled out, one may safely assume that at present the local bar councils are passive in their efforts to impose a viable system for control of the quality of the delivered legal aid.

By virtue of Article 39 and Article 35 Section 1 of the LAA, the National Legal Aid Bureau is the second level in the quality control system. The legislator has endowed the NLAB with the power to monitor the performance of the individual providers of legal aid. Pursuant to the outcome of the quality control the NLAB could cut down the legal fees in particular cases or expel attorneys from the register of the providers of legal aid. The effectiveness of the NLAB in provision of effective supervision, however, is severely restricted due to the limited capacity in comparison to the number of legal aid services rendered and reported. As of the present, I am not aware

¹² See <http://www.sak.applet-bg.com/>

of any practices of the NLAR to employ attorneys to perform independent inspections of the activities of their colleagues on specific cases. This means that all of the more than 2,000 reports, received by the NLAR per month for the period March 2006 – May 2007, are reviewed for quality by the 10 employees of the “Legal Aid” Department. Obviously with such a limited institutional capacity the NLAB can only monitor whether all required documents have been submitted with the reports. Apart of the formal documentary check no regular nor random monitoring is performed on the quality of the provided legal aid.