

Presumption of Innocence: procedural rights in criminal proceedings

Social Fieldwork Research (FRANET)

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PART A. EXECUTIVE SUMMARY

The fundamental rights of defendants included in Directive 2016/343/EU were implemented in:

- The Criminal Code (*Наказателен кодекс*),¹
- The Criminal Procedure Code (*Наказателно-процесуален кодекс*),²
- The Execution of Sentences and Detention in Custody Act (*Закон за изпълнение на наказанията и задържането под стража*),³
- The Judiciary Act (*Закон за съдебната власт*),⁴
- The Liability of the State and Municipalities for Damages Act (*Закон за отговорността на държавата и общините за вреди*).⁵

The right to be presumed innocent in general:

The practical observance of the right to be presumed innocent in the different professions drew a dividing line between prosecutors, on the one hand, and lawyers and judges, on the other hand, while police representatives were split between the two groups. While all interviewees affirmed the importance of the presumption as a key principle of criminal procedure, the former group firmly stated it was always observed, while the latter group expressed nuances. Aspects of the work of lay judges, prosecutors' collection of solely incriminating evidence and wide publicisation of cases, the trial of organised crime, and high level corruption cases in the Specialised Criminal Court were cited as problematic. Among the factors affecting the presumption of innocence were gender, previous convictions, and ethnic background.

Public references to guilt:

Media coverage of criminal cases was elaborated upon by interviewees comprehensively. While the relations of the different professions with the media were partly regulated by ethics and internal rules and few (police) interviewees pointed to no problems concerning media, most were critical of media coverage and its impact on criminal proceedings. Incompetence and sensationalism by journalists, and a high degree of impact of media on public opinion, affected in turn the presumption of innocence. Although positive effects of media coverage, such as openness and transparency of the work of police, higher attention to domestic violence cases, accountability before society, were pointed to, more than one interviewee stated media coverage had a negative effect on proceedings. Names and personal details of defendants were routinely disclosed, despite prohibitions, and publicisation was affected by many factors, such as migrant and minority background, and gender. Frequent media interventions by the prosecutor's office were criticized harshly. The two case studies on media coverage in Bulgaria also confirmed those harming effects.

The presentation of suspects and accused persons:

Interviewees showed consensus around the use and regulation of restraining measures and the prevention of defendants being presented as guilty. They were unanimous that restraints cannot impact the presumption of innocence but only public opinion, to some extent, through media

¹ Bulgaria, Criminal Code ([Наказателен кодекс](#)), 1 May 1968

² Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 28 October 2005

³ Bulgaria, Execution of Sentences and Detention in Custody Act ([Закон за изпълнение на наказанията и задържането под стража](#)), 1 June 2009

⁴ Bulgaria, the Judiciary Act ([Закон за съдебната власт](#)), 7 August 2007

⁵ Bulgaria, Liability of the State and Municipalities for Damages Act ([Закон за отговорността на държавата и общините за вреди](#)), 1 June 1989

coverage. Assessment, required by law, of the age, sex, and risk the defendant presents, seems to be lacking. Handcuffs and shackles restrained defendants on their way to the court room but they were always taken off before the judge/panel. While police universally supported their use to secure defendants' and others' safety, extreme use was also mentioned. Defendants in Bulgaria wear their own clothes and, although there was no 'dress code' for courtrooms, much was elaborated on the attitude clothes suggest, and provoke. In terms of guarantees for not presenting (vulnerable) defendants as guilty, construction of court buildings was mostly discussed, with a stark contrast between newer buildings, where defendants can enter courtrooms directly, and older ones, where they have to pass through public corridors and be exposed to the public and the media.

Burden of proof:

Interviewees were unanimous that the burden of proof lies entirely on the prosecution. The only 'exceptions' mentioned were faulty prosecutorial practices, like leaving the arguments of the defendant only for the trial stage, and the dependence of expert witnesses on the prosecution. Regarding confessions, while several interviewees mentioned their procedural significance in summary proceedings and agreements between prosecution and defence, others thought they are attenuating circumstances and sign that the defendant is willing to cooperate. In general they have little significance by themselves and need to be corroborated by other evidence. Wrongful procedural practices were mentioned, such as informal 'talks' with operative police before a person is charged, and interviewing persons initially as witnesses and only later charging them and according them full defence. As for confessions being informed and conscious, police claimed explaining defendants their rights and acting lawfully, while lawyers talked of implicit means of coercion, and magistrates mentioned checking whether confessions are indeed genuine. One judge talked of cases where defendants were kept in detention until they confess and strike an agreement with the prosecution, and other rarer instances where judges found confessions were not informed and conscious.

The right to remain silent and not to incriminate oneself:

The right to remain silent was unanimously pointed out as a key right of the defendants of which they are informed continuously. Police were again adamant they were explaining defendants their rights, while lawyers advised clients to remain silent to avoid spontaneous confessions and answering to unclear and overly general charges. Some coercion may, according to lawyers, be exercised on defendants so that they speak, especially in case of first encounter with criminal justice. Defendants in Bulgaria could not be obligated to provide evidence, although magistrates assumed court can authorise taking DNA samples, and other evidence.

The right to be present at the trial and to have a new trial:

The right of defendants to be present at trial is also a right they are informed duly of. Although proceedings in absentia are sometimes possible, the possibility to impose a harsher remand measure if the defendant is not found for trial practically makes presence mandatory, and he/she can be searched for nationally and internationally. Many aspects of effective participation in trial were discussed - physical arrangements in court rooms and means for defending persons' rights, and participating on an equal footing with the public prosecutor. Besides widely cited guarantees as (sign) interpretation and (obligatory) defence, opinions were split on the position of vulnerable defendants, especially those with disabilities – some thought their needs are accommodated, while others stated they were treated badly.

PART B. INTRODUCTION

In total, **12 eligible interviews** were carried out between 19 February 2020 and 6 May 2020.

Interviews were conducted with four police officers, two judges, two prosecutors, and four defence lawyers.

Out of the 12 interviews, two were conducted face-to-face, eight via online communication platforms and two by phone. Three interviewees refused a video connection and one of them also refused to be audio-recorded, due to security concerns (having to speak from their homes), internet connectivity issues, and working concerns. The internet connection was a problem in a number of interviews and interviewees speaking from home were constrained by sharing space and devices with family members.

B.1 PREPARATION OF FIELDWORK

The technical preparation of fieldwork included the translation of the questionnaire, data protection documents and support letter in Bulgarian. FRA guidance and comments were strictly taken into account, as well as established Bulgarian legal terminology and professional groups' jargon, to maximise understanding of specific questions and reduce confusion due to unfamiliar terminology. No specific interviewer training was required as both interviewers had previous experience in interviewing criminal justice practitioners, including as part of previous fieldwork, commissioned by FRA. The entire work was done by the FRANET core team of experts, who were fully acquainted with FRA's requirements.

B.2 IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

The identification and recruitment of participants were done by:

- Official letters to the Prosecutor General of the Republic of Bulgaria (*Главен прокурор на Република България*) and the Director of the National Police General Directorate (*Главна дирекция „Национална полиция“*) to identify the prosecutors and police officers to be interviewed and to authorise the audio recording of the interviews;
- Contacts under previous projects and initiatives to identify criminal lawyers and judges.

In contrast to previous fieldwork commissioned by FRA, interviewees requested via official letters were identified smoothly, and so were judges and lawyers. No objections arose to audio recording either, with the exception of one police officer (see above).

The main challenge before the fieldwork were the emergency measures related to COVID-19. The first two interviews were carried out in person before the outbreak, but all other interviews had to be conducted remotely. Challenges arose due to some professionals not being allowed to their offices or being only allowed in shifts. Difficulties arose for participants also in filling in consent forms remotely.

B.3 SAMPLE AND DESCRIPTION OF FIELDWORK

Police officers:

Requested: 4, completed: 4

Judges/prosecutors:

Requested: 4, completed: 4 (two judges and two prosecutors)

Defence lawyers:

Requested: 4, completed: 4

Table 1: Sample professionals

Code	Group	Operational expertise on criminal investigations and trials	Experience with media	Gender
1	Police officer	Yes	Limited	M
2	Police officer	Yes	Limited	M
3	Police officer	Yes	Limited	F
4	Police officer	Yes	Limited	M
5	lawyer	Yes	Yes	M
6	lawyer	Yes	Limited	F
7	lawyer	Yes	Yes	M
8	lawyer	Yes	Yes	M
9	Judge	Yes	Limited	M
10	Judge	Yes	Yes	F
11	Prosecutor	Yes	No	F
12	Prosecutor	Yes	Yes (experience as a spokesperson)	F

Note: Police officers' experience with media is by default noted as limited since, as will be explained below in the report, all police interaction with the media goes through the press centre of the Ministry of the Interior (Moi) (*Министерство на вътрешните работи, МВР*).

On average, interviews lasted between 40 min and 1 hour. The atmosphere was calm and constructive, although several interviewees could not secure themselves a secluded spot due to COVID-19 exigencies. Nevertheless, apart from interviewees refusing recordings (see above), all interviews showed a high level of trust. Interviewers tried to apply their institutional knowledge and legal background to show thorough understanding of the specifics of criminal proceedings, addressed by interviewees, which assured them that their comments will be reflected correctly.

B.4 DATA ANALYSIS

Data was analysed by first reviewing the answers of each professional group under the themes discussed. Thus, the **consistencies and divergences were outlined in each group**, like, for example, the fact that lower ranking police expressed higher degree of criticism towards the high media

exposure of the Prosecutor's Office. Secondly, **common and diverging points were outlined among different groups** – e.g. police and prosecutors relied significantly on procedural stipulations and lawyers expressed marked criticism towards the media coverage of criminal proceedings and the media exposure of the prosecution. Finally, a **concise presentation** was made under each section, with appropriate comparisons and contrasts, adding relevant quotes to support key findings.

B.5 LEGAL FRAMEWORK

According to the government, Bulgaria has transposed Directive 2016/343/EU through a set of amendments to the Criminal Code (*Наказателен кодекс*),⁶ the Criminal Procedure Code (*Наказателно-процесуален кодекс*),⁷ the Execution of Sentences and Detention in Custody Act (*Закон за изпълнение на наказанията и задържането под стража*),⁸ the Judiciary Act (*Закон за съдебната власт*),⁹ and the Liability of the State and Municipalities for Damages Act (*Закон за отговорността на държавата и общините за вреди*).¹⁰ These measures were communicated by Bulgaria to the European Commission in response to its obligation to present formal notification of transposition. The Criminal Procedure Code (*Наказателно-процесуален кодекс*) also includes the Directive in the list of relevant EU law transposed by its provisions.

After the expiry of the transposition deadline on 1 April 2018, non-governmental organisations raised concerns that the Directive was not fully transposed. The Bulgarian Helsinki Committee (BHC) (*Български хелзинкски комитет*, БХК) referred to the incomplete transposition of the Directive in a statement to the government. In its response, the government stated that 'a preliminary analysis of the compliance of the legislation of the Republic of Bulgaria with the requirements of Directive 2016/343 has been performed' and it 'found that the Bulgarian legislation in the field of criminal procedure law largely complies with the requirements of the directive'.¹¹

The Bulgarian Institute for Legal Initiatives (BILI) (*Български институт за правни инициативи*, БИПИ) also raised concerns in relation to the incomplete transposition of the Directive.¹²

Lawyers also publicly expressed concerns that many provisions of the Directive were not completely transposed,¹³ in particular those on public reference to guilt and on presentation of suspects and

⁶ Bulgaria, Criminal Code ([Наказателен кодекс](#)), 1 May 1968

⁷ Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 28 October 2005

⁸ Bulgaria, Execution of Sentences and Detention in Custody Act ([Закон за изпълнение на наказанията и задържането под стража](#)), 1 June 2009

⁹ Bulgaria, the Judiciary Act ([Закон за съдебната власт](#)), 7 August 2007

¹⁰ Bulgaria, Liability of the State and Municipalities for Damages Act ([Закон за отговорността на държавата и общините за вреди](#)), 1 June 1989

¹¹ Bulgaria, Ministry of Justice (*Министерство на правосъдието*), Information on addressing the proposals received within the public consultation on a draft decision of the Council of Ministers for approval of a Draft law for amendment and supplement of the Criminal Code ([Справка за отразяване на предложенията, постъпили в рамките на обществената консултация по проект на решение на Министерския съвет за одобряване на проект на Закон за изменение и допълнение на Наказателния кодекс](#)), 1 June 2018.

¹² Bulgarian Institute for Legal Initiatives (*Български институт за правни инициативи*) (2019), Questions to the candidate for the position of Prosecutor General of the Republic of Bulgaria ([Въпроси към кандидата за заемане на длъжността главен прокурор на Република България](#)), 11 October 2019.

¹³ Vassileva, R. (2018), '[Spectacular televised arrests, media trials, and abuse of process: the presumption of guilt in Bulgaria](#)', *Rule of law, human rights and democracy in Bulgaria and beyond (personal blog)*, 5 June 2018.

accused persons.¹⁴ In an application to the Constitutional Court (CC) (*Конституционен съд, КС*) concerning tax legislation, the Supreme Bar Council (SBC) (*Висш адвокатски съвет, ВАС*) noted that the Directive 'has not received its full transposition in Bulgarian legislation, although the transposition deadline has expired on 1.04.2018'.¹⁵ A petition to the European Parliament has also been submitted claiming that 'the Directive is not correctly transposed into Bulgarian law and that Bulgaria failed to adopt implementing legislation'.¹⁶

In terms of the scope of application of the Directive, it is important to note that in Bulgaria, the formal status of an accused person (*обвиняем*) applies only in the framework of criminal proceedings as defined by the Criminal Procedure Code (*Наказателно-процесуален кодекс*).¹⁷ To become an accused person, an individual has to be formally charged by an investigative authority (investigative police or investigative magistrate) or by a public prosecutor. This usually happens after the criminal procedure has already started and the investigative authority has collected sufficient evidence concerning the offender's guilt. By way of exception, charges can also be brought at the beginning of the procedure, together with the very first investigative action against the alleged offender. In both cases, the investigative authority must inform the public prosecutor.

The bringing of charges is a formal act. It represents the issuance of a special document, called a decree of formally charging the defendant (*постановление за привличане на обвиняем*). This decree is issued in writing and must include a certain mandatory content, including the full list of the accused person's rights.¹⁸ The investigative authority must present the decree to the accused person and their lawyer, and must allow them to familiarise themselves with its full content. At the moment of the issuance of the decree, the person obtains the formal status of accused person and the set of procedural rights deriving from it.

When the pre-trial investigation is completed, the investigative authority sends the file to the public prosecutor in charge of the case, who decides how to proceed. If the public prosecutor decides to abandon the case, the proceedings are suspended, all charges are automatically lifted and the case is closed. If the public prosecutor decides to bring the case to court for trial, he/she submits to the court a bill of indictment (*обвинителен акт*) against the person. With the start of the trial, the accused person becomes a defendant (*подсъдим*).

In the Bulgarian practice, there are also persons, who are suspected of having committed a crime, but are not (yet) formally charged, and are therefore not considered accused persons in the sense of criminal proceedings. These can be: (1) persons of interest or likely defendants called in for an informal 'intelligence talk' (*разузнавателна беседа*), which is one of the operative means of the police to

¹⁴ Mandzhukova, A. (*Манджукова, А.*) (2019), 'The presumption of innocence and its most recent interpretation by the Prosecutor's Office of the Republic of Bulgaria' (*'Презумпцията за невинност и най-модерният и прочит от ПРБ'*), *De Fakto*, 6 August 2019.

¹⁵ Bulgaria, Supreme Bar Council (*Висш адвокатски съвет*) (2019), Application from the Supreme Bar Council to the Constitutional Court for declaring the unconstitutionality of § 50 of the Transitional and Concluding Provisions to the Amendment to the Corporate Taxation Act (*Искане до Конституционния съд на Република България от Висшия адвокатски съвет за обявяване на противоконституционност на § 50 от ПРЗ на Закона за изменение и допълнение на Закона за корпоративното подоходно облагане*), 4 June 2019.

¹⁶ European Parliament (2018), [Petition No 0464/2018 by Radosveta Vassileva \(Bulgarian\) on alleged systemic breaches of the presumption of innocence and infringements of Directive \(EU\) 2016/343 in Bulgaria](#), 15 May 2018.

¹⁷ Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, www.lex.bg/laws/ldoc/2135512224.

¹⁸ Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 29 April 2006, Art. 219 in connection with Art. 55, <https://www.lex.bg/laws/ldoc/2135512224>.

collect information but does not belong formally to the criminal investigation and the persons do not have any specific procedural status or rights;¹⁹ or (2) persons detained by the police under the Ministry of the Interior Act (*Закон за Министерството на вътрешните работи*) for up to 24 hours on one of the grounds listed in the law (one of which is the existence of information that that person has committed a crime), which is also not part of criminal proceedings but the detained person has some specific rights listed in the law.²⁰

¹⁹ Bulgaria, Ministry of the Interior Act (*Закон за Министерството на вътрешните работи*), 27 June 2014, www.lex.bg/laws/ldoc/2136243824.

²⁰ Bulgaria, Ministry of the Interior Act (*Закон за Министерството на вътрешните работи*), 27 June 2014, Art. 74, para. 2, item 6, www.lex.bg/laws/ldoc/2136243824

PART C. MAIN REPORT ANALYTICAL STRUCTURE

C.1 The right to be presumed innocent in general

In Bulgaria, the presumption of innocence is proclaimed in Article 31(3) of the Constitution, which states: 'A defendant shall be considered innocent until proven otherwise by a final verdict.'²¹ The provision is replicated in Article 16 'Presumption of Innocence' of the Criminal Procedure Code, which uses the same wording.²²

a. How are the different professions implementing the presumption of innocence?

The representatives of **investigative police** stated **they are following the presumption of innocence in all their actions**. Police allegedly never treats a person as guilty, mainly as 'precaution' to avoid mistakes and be prepared for cases where evidence suddenly 'points in an entirely different direction', thus evidence is collected both in favour and against a defendant (Police officer, Bulgaria). According to a police officer from Sofia, there is always a doubt that the alleged offender, 'however guilty they might look', might not be guilty and police should carefully weigh everything from the onset of proceedings. Prosecutors agreed that the presumption is complied with and elaborated on its procedural aspects, one noting that it is applied when deciding whether to bring charges, and in collecting evidence. Another prosecutor added that the presumption applies when explaining to the accused their rights, and also in proceedings in absentia and the option to reopen such proceedings if the defendant has not been informed about them.

(Police officer, Bulgaria) '... Each person is treated without any prejudice... at any point evidence may lead in an entirely different direction, so each person is perceived as totally innocent and evidence collected... may lead to charging him/her or someone else...'

„...Към всяко лице се подхожда без никакви предварителни предубеждения... във всеки един момент обстоятелствата могат да насочат в съвсем различна насока, така че всеки човек се приема изцяло като невинен и доказателствата, които се събират... водят към обвинение на съответния човек или друг човек...“

(Police officer, Bulgaria) '... I was sent... an older woman has died, we received a signal from her son... She was quite old, had signs of alcohol abuse, her son as well... the woman was heavily injured and it turned out the son constantly beat her... We would not exclude the son's involvement... but the presumption of innocence means that I could not just charge him on the spot... it turned out, when the autopsy report came that she indeed had died as a result of the son's abuse... The presumption of innocence means that you look at someone with professional suspicion, but, until evidence is gathered and the court says he/she is guilty, he/she is considered innocent.'

„... Изпратиха ме... починала възрастна жена, сигналът подаден от сина ѝ... Жената беше доста възрастна, за съжаление алкохоличка, синът ѝ също алкохолик... с множество наранявания беше жената и се оказа, че синът ѝ постоянно я малтретирал... Не сме го изключили сина от местопроизшествието... презумпцията за невиновност се изразява в това, че аз не мога да го обвиня на момента човека... в крайна сметка, като излезе аутопсията, се оказа, че тя наистина е починала вследствие на физическия тормоз от сина... Презумпцията за невиновност означава, че гледаш човека с едно професионално подозрение, но, докато не събереш доказателства и съдът не каже, че той е виновен, той се счита за невинен.“

²¹ Bulgaria, [Constitution of the Republic of Bulgaria](#) (Конституция на Република България), 13 July 1991.

²² Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 28 October 2005.

According to prosecutors, especially one, with experience as a spokesperson, the presumption is also applied when disclosing information to the media.

(Prosecutor, Bulgaria) 'We write such notes everyday. For example, in the case of a murder, we simply present the facts themselves, with no names, with initials only and even not with the complete initials, and then there is information that an investigation is being carried out, what actions are being taken, what measure has been imposed, which does not present the accused person as guilty in any way. In fact, it is the court that decides guilty or not, and I think that all my colleagues respect this.'

„Ние ежедневно пишем такива съобщения. Да речем по случай на убийство, просто се изнася самата фактология, без имена, само с инициали и то непълни инициали, и се съобщава, че е повдигнато обвинение, че тече разследване, какви действия са предприети, каква мярка е наложена, което във никакъв случай не представя въпросния обвиняем като виновен. Всъщност виновен или не решава само съдът и аз мисля, че всички колеги го спазват това нещо.“

Two lawyers from Sofia noted that applying the presumption of innocence was rather a job for judges and prosecutors. Another lawyer from Sofia maintained it should be present before and throughout the criminal proceedings. According to the same lawyer, the prosecutors often collect only evidence against the defendant, and in detention proceedings judges tend to impose detention on much lesser grounds than traditionally established in Bulgarian case-law.

(Lawyer, Bulgaria) '... I would also note the attitude of judges. We see it very clearly in the detention measures... they are currently applied universally, people are being detained on grounds never used before... If the logic of criminal repression... with the modernization of society... moves towards lesser but more effective repression, in our country we see the opposite – punishments are raised, more and more people are imposed detention for absurd reasons and that is not okay.'

„... в отношението на съдиите много често... напоследък се наблюдава много видно и в мерките за неотклонение... настана напоследък едно повсеместно задържане на всички... задържат се хора за неща, които никога преди... Ако логиката на наказателната репресия като цяло е... с модернизацията на обществото... да намалява, но да става по-ефективна, при нас е обратното – вдигат се наказания, задържат се все повече хора по нелепи причини и това не е окей.“

A judge from Sofia confirmed the presumption of innocence should apply throughout the entire criminal proceedings, but mentioned the difficulties in explaining to lay judges its verbal and nonverbal aspects.

(Judge, Bulgaria) 'One of my main tasks is, before each hearing, to remind the lay judges that the presumption of innocence is unquestionable, it is valid until the verdict is pronounced; and my requirements for them concern particularly the nonverbal approach, as emotions often express an attitude, or a prejudice. I tell them that it is like they are on TV, i.e. everyone is watching their reactions and emotions, and even the slightest facial expression or gesture can somehow suggest that this person, who is part of a panel with equal rights as mine, is prejudiced.'

„Една от основните ми задачи е, преди всяко заседание, да напомня на съдебните заседатели, че презумпцията за невиновност е безпрекословна, тя важи до момента на произнасяне на присъдата, и основно имам изисквания към тях към невербалния подход, тъй като много често емоциите изразяват отношение, предубеждение. Казвам им, че те са като на телевизор, т.е. всеки гледа техните реакции и емоции и

дори най-малката мимика или жест може по някакъв начин да подсказва, че този човек, който е част от съдебния състав с равни права като моите, е предубеден.“

Another judge from Sofia added that judges should not look as if they have already made a decision and should be careful what messages they send to the parties. They should provide all parties with equal opportunities to ask questions to witnesses, formulate their own questions without showing prejudice, and treat the defendant like any other person.

(Judge, Bulgaria) ‘That is why I will give you an example with a good practice for illustration, which, however, is indicative, because it shows many things from the point of view of culture. It is appropriate to refer to the defendant by mister or miss, and not constantly repeating defendant, defendant, defendant. When you address them as you address all other people, you can see that this somehow increases the confidence and calm in the courtroom.’

„Затова давам пример с една добра практика за илюстрация, която обаче е красноречива, защото много неща показва от гледна точка на култура. Добре е да се нарича обвиняемият господин или госпожа, а не непрекъснато подсъдимия, подсъдимия, подсъдимия. Когато се обръщаш към него така, както се обръщаш към останалите хора, се вижда, че това някак увеличава доверието и спокойствието в залата.“

b. Potential factors that have an effect on guaranteeing the presumption of innocence

Table 2: Factors that may affect the presumption of innocence – for example gender, ethnic group, social background or previous convictions

	Gender	Minority origin	Migrant origin	Previous convictions	Other factors	No affecting factors
Police		1/4		1/4	1/4 (media interventions)	2/4
Judges and prosecutors					1/4 (judge) (jurisdiction of Specialised Criminal Court)	1/4 (judge), 2/4 (prosecutors)
Lawyers	1/4	3/4		2/4	1/4 (media coverage), 1/4 (homeless persons)	
Total by factor	1/12	4/12	0/12	3/12	4/12	5/12

Regarding **factors, affecting the presumption of innocence**, two police officers from Sofia and two prosecutors claimed **there were no such factors**. One of the police officers still stated previous convictions are reflected as to whether the criminal act may be qualified as recidivism. A judge from Sofia underlined that neither gender nor ethnicity, or previous convictions, had affected the presumption of innocence in his/her practice, otherwise s/he would have been requested to recuse.

(Judge, Bulgaria) ‘The criminogenic situation is such that, in certain crimes, such as theft of metals, the perpetrators are usually of Roma origin. But many times these are people with very thick criminal records, they are very careful not to have their presumption of innocence violated, so I am even more cautious in such cases.’

„Криминогенната обстановка е такава, че при определени престъпления, например кражби на метали, извършителите обикновено са от ромски произход. Но това са

хора много пъти с доста дебело свидетелство за съдимост, те много внимават точно за това да не им се наруши тази презумпция за невинност, така че там два пъти повече внимавам.“

A key factor stated to affect the presumption of innocence was **previous convictions**, playing a part 'even on a subconscious level' (Police officer, Bulgaria).

(Police officer, Bulgaria) '... I can't tell you that previous convictions do not have an impact, because they always do, even on a subconscious level. So from here on it is subjectively the task of every officer, depending on his/her education and conscientiousness, to exercise self-control not to fall into a situation where the evidence gathered has pre-defined value or, even if it is not very concrete, to just decide that person X is the perpetrator and that is that.'

„... Няма как да Ви кажа, че не влияе предишно осъждане, защото дори на подсъзнателно ниво при всички положения влияе. И оттук нататък субективно вече всеки един служител в зависимост и от нивото му на образование, и на самосъзнанието му, би следвало сам себе си да контролира да не изпада в ситуация, в която събраните данни имат предварителна стойност или, дори да не са кой знае колко конкретни, ние сме си решили, че едн кой си е извършителят и това е.“

Procedurally, according to a lawyer from Sofia, a person with previous convictions receives 'special' treatment by law regarding their pre-trial detention, as it is presumed they might commit another crime.

(Lawyer, Bulgaria) '... Even if he/she is sentenced only once before, when he/she is in the courtroom again, he/she is considered guilty and, when deciding on his/her remand measure, his/her previous conviction is taken into account, which is somehow equal to presuming he/she is guilty... naturally, what is taken into account is that he/she might commit another crime, but this means he/she is already receiving a special treatment.'

„... Дори един път осъждан, когато отново е в съдебна зала, той се счита за виновен и дори при определяне на мярката му за неотклонение винаги се взема предвид предишното му осъждане, което значи, че се приравнява по някакъв начин на виновност... взема се предвид естествено, че има опасност да извърши друго престъпление, но това значи, че към това лице има по-специално отношение.“

According to another lawyer from Sofia, in line with the recent tendency for heightening criminal repression, defendants are increasingly detained regardless of their criminal record when interpreting the 'danger to commit a new crime'. People may be detained by the Specialised Criminal Court (*Специализиран наказателен съд*) (dealing with organised crime cases) even for 'mere participation' in an organised criminal group.

(Lawyer, Bulgaria) '... If we go back to the detention measures, until recently courts... only assessed the probability of the defendant to commit a new crime, based on his/her previous convictions... recently the practice changed completely and even for persons with clean criminal records... a thousand absurd reasons are found to justify the probability of committing a new crime – the public danger of the crime they have allegedly committed... and even public interest due to which the person should be detained... thus people become scapegoats and nobody knows why and how...'

„... ако се върнем на мерките за неотклонение, съдилищата до преди известно време... извеждаха възможността да извърши ново престъпление само от предишна съдимост на лицето... от известно време насам практиката изцяло се преобърна и дори неосъждани лица... се тълкува, че има опасност да извършат нови престъпления

поради хиляди безсмислени причини от рода на обществената опасност на деянието, което е съвсем различно нещо... и дори поради обществен интерес, който налагал лицето да прекара времето в ареста... така човек бива взет за изкупителна жертва и никой не знае защо и как...“

Another factor mentioned was **ethnic background**. According to a police officer from Sofia, crimes committed by the Roma were immediately publicised and defendants were pointed out as guilty.

(Police officer, Bulgaria) ‘Ethnic background plays a role quite often, especially when there is involvement of... representatives of the Roma community, and when crimes, committed by Roma, become more frequent, especially murders... those cases are publicised immediately. Indeed, most of those perpetrators were sentenced by courts, but they were announced as guilty at the moment they were detained... we are not the people to say who is guilty, this is the job of the court... those statements are sometimes made too quickly... and media only reflect what usually the prosecution says, I don’t blame the media...’

„Етническата принадлежност доста често играе роля, особено когато в престъпленията участват... представители на ромската общност, и когато зачестят престъпленията, извършени от такива лица, особено убийствата... тогава тези случаи се оповестяват на секундата. Да, при повечето такива убийства... ромите бяха осъдени от съда, но се обявиха още в момента на задържането, че те са виновни... не сме ние хората, които да казваме кой е виновен, това е работа на съда... Избързва се понякога с тези констатации... Медиите само отразяват, особено на прокуратурата изявленията, аз не обвинявам медиите...“

The impact of ethnic background on the presumption of innocence, especially for thefts and robberies, was also supported by most lawyers.

(Lawyer, Bulgaria) ‘... Roma identity always has an impact, there is nothing to hide or argue. Gender and social identity are not always accounted for, but Roma identity, especially in case of specific crimes like thefts and robberies, is always a factor, nothing to hide here.’

„... Ромската идентичност винаги се отразява, няма какво да крием и да спорим. Джендърска и социална невинаги, но ромската идентичност, особено при едни характерни престъпления като кражби например, и грабежи, винаги си е фактор, не можем да го крием.“

One lawyer from Sofia pointed out that **homelessness** is often a factor of unequal application of the presumption of innocence.

(Lawyer, Bulgaria) ‘According to my observations, it is not applied equally to everyone. Because when you come across someone from a minority group or a homeless person (I remember a detained homeless person that I had some time ago), it is much clearer that this person, just by looking at them, they are guilty. It is completely different when you have, for example, a minister on the other side. In any case, the police and the state repression authorities have in mind who stands against them.’

„По мои наблюдения не се спазва еднакво спрямо всички. Защото, когато попаднеш на някой от малцинствена група или клошар (сеещам се за един задържан клошар, който имах преди известно време), там е от ясно по-ясно, че човекът, само като го видиш, и той си е виновен. Съвсем различно е когато имаш например министър отсреща. При всички положения полицията и органите на държавната репресия имат предвид кой стои срещу тях.“

Media interventions were also mentioned. According to a police officer from Sofia, publicising charges and detentions leaves society feeling that those people were guilty and would be sentenced. A lawyer from Sofia claimed that the presumption of innocence was often violated in cases, used by the Prosecutor's Office to show its effectiveness and 'improve its public image'.

(Lawyer, Bulgaria) 'In general, it does not apply equally to persons with whom the prosecution has decided that it will improve its image. With regard to these persons, there is definitely not just a violation of the presumption of innocence, but an entire attack through out-of-court means - press releases, media statements, identification of persons even in cases where there is no investigation against these persons and this is the only way they can be harmed.'

„Основно не се прилага еднакво спрямо лицата, с които прокуратурата е решила, че ще си подобрява имиджа. По отношение на тези лица определено се наблюдава не просто нарушаване на презумпцията за невинност, а цяла саморазправа чрез извънсъдебни способи – прессъобщения, изявления по медиите, посочване на лица дори в случаите, в които още няма разследване срещу тези лица и това е начин те да бъдат уязвени.“

According to a judge from Sofia, in Bulgaria there is a particular problem with the Specialised Criminal Court (*Специализиран наказателен съд*), which deals with cases of organised crime and high level corruption, and which is increasingly perceived as more rigorous and accusatory than regular courts, as evident from the much heavier remand measures imposed.

(Judge, Bulgaria) 'There is a category of accused persons and defendants, those who end up there [in the specialised court], who seem to be treated a little differently. This can be seen from the remand measures that go through the court, and those that do not go through the court, but are imposed by the prosecution such as bail in a very high amount, which are quite different from the remand measures that regular courts impose for similar prerequisites.'

„Има една категория обвиняеми и подсъдими, тези които попадат там [в специализирания съд], които изглежда като да бъдат третирани малко по-различно. Това се вижда от мерките за неотклонение, които минават през съда, а и тези които не минават през съда, а се определят от прокуратурата като гаранции в много висок размер, са доста по-различни от мерките за неотклонение, които общите съдилища определят при сходни предпоставки.“

Among the factors least mentioned was **gender**. A lawyer from Sofia stated women may be treated with slightly bigger lenience, especially when charged with crimes, 'characteristic' for men.

Talking about **safeguards** against such factors, a police officer from Sofia mentioned 'self-control and self-restraint not to give evidence pre-defined value' and a lawyer from Sofia referred to personal attitude and the fact that there are a lot of 'conscientious', mainly younger, investigative officers and prosecutors.

Regarding **institutional guarantees**, one police officer from Sofia mentioned teamwork by police 'to seek the truth together', together with the role of the supervising prosecutor and the court. Another police officer also emphasised on the role of the presence of a lawyer at each interview.

(Police officer, Bulgaria) '... Next, our work is team work anyway. Even if I reach a decision alone, this would not lead to very negative consequences, because nobody works alone, there is always a team, other colleagues, with whom you discuss, consult, seek the truth...'

„...На следващо място, така или иначе нашата работа е екипна. Аз, и да реша нещо сам, това няма да доведе до кой знае колко негативни резултати, защото никой не

работи сам, винаги има екип, други колеги, с които се обсъжда, се консултира, се търси истината...”

c. The role of prejudices and stigma

Prejudices and stigma were summarily mentioned. People with previous convictions were ‘presumed guilty’ (Lawyer, Bulgaria) ‘even on subconscious level’ (Police officer, Bulgaria), but procedurally previous convictions were indeed a factor to determine the grounds for detention in custody.²³ Alleged perpetrators of Roma origin presented a more ‘straightforward’ case of prejudice and stigma, as their origin was clearly associated with thefts and robberies (Lawyers, Bulgaria). Some ‘reversed’ prejudice is also shown in the case of women defendants who might be treated with more lenience due to being underrepresented among defendants (Lawyer, Bulgaria). Prejudice might also play a part with lay judges who, through non-verbal signals, may violate the presumption of innocence (Judge, Bulgaria).

d. Discussion of findings

Regarding the **observance of the presumption of innocence**, a line may be drawn between:

- two of the police officers and the two prosecutors, who stated the presumption is always complied with; and
- the other two police officers, lawyers and judges who expressed nuanced opinions.

Among the **problematic aspects** cited were the attitude of lay judges (Judge, Bulgaria), the attitude of judges towards detention, the attitude of prosecutors towards collection of evidence (Lawyer, Bulgaria) and the prosecutors’ wide publicisation of cases (Police officer, Bulgaria; Lawyer, Bulgaria), the atmosphere in the Specialised Criminal Court (Judge, Bulgaria).

Among the **factors affecting the presumption of innocence** were previous convictions, ethnic background, and gender, as well as media interventions and the ‘special’ attitude towards defendants in the Specialised Criminal Court.

Safeguards against violations of the presumption were also mentioned, such as **guarantees on personal professional** (self-control and conscientiousness) and **institutional level** (teamwork by police, supervision by prosecution, assessment by court).

In terms of **good practice**, with regard to the dangers of lay judges showing prejudice, regular seminars are organised to instruct them about confidentiality and its binding effect until the end of the proceedings (Judge, Bulgaria).

C.2 Public references to guilt

In Bulgaria, there is no explicit legal provision obliging public authorities not to refer to the accused person as guilty. Some rules on disclosure of information indirectly address this issue.

The Code of Ethical Conduct of Bulgarian Magistrates introduces some restrictions related to the public expression of opinion by judges, prosecutors and investigators.²⁴ One such restriction is the ban on publicly commenting on the final outcome of a pending case, creating impression of partiality and

²³ Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 63.

²⁴ Bulgaria, Code of Ethical Conduct of Bulgarian Magistrates (*Кодекс за етично поведение на българските магистрати*), 20 May 2009.

prejudice, or discussing pending proceedings in front of persons involved in the same proceedings, lawyers or third parties.²⁵ Judges, prosecutors and investigators are required to provide the public with useful, timely, comprehensible and relevant information²⁶ without publicly expressing any preliminary opinion on specific cases.²⁷

The Handbook on the Interaction of the Judicial Authorities with the Media, published by the Supreme Judicial Council in 2015, offers nonbinding guidelines for disclosing information about criminal cases.²⁸ Prosecutors are advised to issue press releases ‘observing the principles of proportionality and innocence’ and avoiding ‘forecasts about the outcome of the case’ or ‘statements that would leave the impression of political affiliation or prejudice’.²⁹ Representatives of the media should not be granted access to pending cases at the pre-trial stage,³⁰ and parties, witnesses and other participants in a hearing may appear in audio and video recordings only with their consent and upon approval by the judge.³¹ As a justification of the latter, the handbook states: ‘The basic principle in criminal law is that a person is presumed innocent until proven guilty by a verdict (presumption of innocence). If the unrestricted distribution of records made during a hearing is allowed, which can help identify the defendant before a verdict is given, this may precede the ruling. There is a risk that if the court rendered an acquittal, the person involved would have already been sentenced by public opinion, based on the pictures in the media. Therefore, the right to a fair trial is also applicable at this stage.’

The Rules on Media Communication in the System of the Prosecutor’s Office of the Republic Bulgaria include the presumption of innocence among the principles of providing information to the public,³² instructing prosecutors to disclose information about concrete cases in a way that does not present the accused person as guilty, until their guilt is proven.³³ The information on concrete cases, included in press releases, press conferences, briefings and other communication, must be defined by the head

²⁵ Bulgaria, Code of Ethical Conduct of Bulgarian Magistrates ([Кодекс за етично поведение на българските магистрати](#)), 20 May 2009, Section 2.3.

²⁶ Bulgaria, Code of Ethical Conduct of Bulgarian Magistrates ([Кодекс за етично поведение на българските магистрати](#)), 20 May 2009, Section 3.3.

²⁷ Bulgaria, Code of Ethical Conduct of Bulgarian Magistrates ([Кодекс за етично поведение на българските магистрати](#)), 20 May 2009, Section 7.4.

²⁸ Bulgaria, Supreme Judicial Council (*Висш съдебен съвет*) (2015), Handbook on the Interaction of the Judicial Authorities with the Media ([Наръчник за взаимодействие на органите на съдебната власт с медиите](#)), Sofia, Supreme Judicial Council.

²⁹ Bulgaria, Supreme Judicial Council (*Висш съдебен съвет*) (2015), Handbook on the Interaction of the Judicial Authorities with the Media ([Наръчник за взаимодействие на органите на съдебната власт с медиите](#)), Sofia, Supreme Judicial Council.

³⁰ Bulgaria, Supreme Judicial Council (*Висш съдебен съвет*) (2015), Handbook on the Interaction of the Judicial Authorities with the Media ([Наръчник за взаимодействие на органите на съдебната власт с медиите](#)), Sofia, Supreme Judicial Council, Section VI.3.2.

³¹ Bulgaria, Supreme Judicial Council (*Висш съдебен съвет*) (2015), Handbook on the Interaction of the Judicial Authorities with the Media ([Наръчник за взаимодействие на органите на съдебната власт с медиите](#)), Sofia, Supreme Judicial Council, Section VI.6.1.

³² Bulgaria, Prosecutor’s Office of the Republic of Bulgaria (*Прокуратура на Република България*) (2015), Rules on Media Communication in the System of the Prosecutor’s Office of the Republic of Bulgaria ([Правила за медийна комуникация в системата на ПРБ](#)), Sofia, Prosecutor’s Office of the Republic of Bulgaria, Section 5.

³³ Bulgaria, Prosecutor’s Office of the Republic of Bulgaria (*Прокуратура на Република България*) (2015), Rules on Media Communication in the System of the Prosecutor’s Office of the Republic of Bulgaria ([Правила за медийна комуникация в системата на ПРБ](#)), Sofia, Prosecutor’s Office of the Republic of Bulgaria, Section 13.2.

of the respective prosecutor's office in consultation with the prosecutor working on the case and in compliance with the presumption of innocence.³⁴

Two case studies are selected to illustrate the media coverage of highly publicised criminal cases. In the case known as the 'Sotirya murder', on 15 August 2019, a seriously injured 7-year-old girl was found in the village of Sotirya (*Сотиря*) located in the district of Sliven. The girl died in the ambulance on the way to the hospital. The police traced a suspect, who had escaped the crime scene and was hiding. Later, the police declared as a wanted person a 21-year-old man from the same village, sought also for robberies. After a chase with the police, the suspect was shot in the leg and arrested. The District Court of Sliven (*Окръжен съд Сливен*) found the accused person guilty and sentenced him to life imprisonment without parole.³⁵ The media covered extensively the proceedings, publishing interviews with members of the suspect's family, the local mayor and residents of the village and disseminating pictures of the defendant on his way to the court. Some tabloids presented the suspect as guilty from the very beginning of the proceedings, often using aggressive language. In the case known as the 'Banishora murder', named after the Sofia neighbourhood Banishora (*Банишора*) where the crime was committed, on 15 January 2019, a 25-year old man and his 23-year-old girlfriend had a quarrel over a message the woman had received and after a fight the girl died. The man claimed he had hit her and she had fallen, but expert examinations indicated about excessive cruelty of the crime. Later, the man tried to commit suicide by shooting himself with a gas gun. After a short stay in a hospital, he was detained in custody and accused of homicide. On 20 February 2020, the case was brought to court and is still pending. The media showed little to no doubt of the suspect's guilt, disclosing a lot of personal information (including pictures) obtained from his and the victim's social network profiles.

a. How do the different professions liaise with the media?

Police officers interviewed explained that **police do not disclose any identifying details of a defendant** (name, address, etc.). All media queries go to the Ministry of the Interior (Moi) (*Министерство на вътрешните работи, МВР*) press centre, which publicises the defendant's initials and age. Details about an ongoing case are only disclosed with the (oral) permission of the supervising prosecutor, and are publicised by the spokesperson of the respective prosecutorial unit (Police officer, Bulgaria). Two police officers from Sofia talked about the daily police bulletin of ongoing proceedings, which does not contain identifying details either. Another police officer from Sofia stated that cooperation with media could be both beneficial and harmful. The officer referred to a case of controlled leak of information to the media, where police, suspecting who the perpetrators of a murder were, carefully supplied information to the media, leading the suspects to believe they had nothing on them, which ultimately helped catch them.

One lawyer from Sofia noted that in the last few years mainstream media, as opposed to sensational disinformation websites, always looked for the views of both the prosecution and the defence. The other lawyers, however, were **critical of media coverage**. One lawyer from Sofia noted that media routinely sought manipulative sensationalism, affecting the interests of defendants. S/He criticised journalists for being incompetent and for making up stories out of what they overheard instead of attending the hearings. The same practice was confirmed by a judge from Sofia who said that journalists were no longer attending the hearings and were therefore not describing objectively what was going on. Another lawyer from Sofia noted that, driven by concerns that their statements would

³⁴ Bulgaria, Prosecutor's Office of the Republic of Bulgaria (*Прокуратура на Република България*) (2015), Rules on Media Communication in the System of the Prosecutor's Office of the Republic of Bulgaria ([Правила за медийна комуникация в системата на ПРБ](#)), Sofia, Prosecutor's Office of the Republic of Bulgaria, Section 31.

³⁵ The sentence has not been published yet.

be incorrectly reported, many lawyers were avoiding contacts with the media or were investing additional time to formulate clear messages to avoid misuse and manipulation.

(Lawyer, Bulgaria) 'There is a group of lawyers, mainly criminal lawyers, who for one reason or another fall into the focus of media interest, but do not like to communicate with the media, because very often their words are distorted, selectively shown depending on the goals pursued by the media. There are no written rules. However, there is an attempt on our part to express ourselves in such a clear way that not a single part or a single sentence of what we say can be used for presenting completely manipulated information.'

„Има една група адвокати, основно наказателни адвокати, които по една или друга причина попадат във фокуса на медийния интерес, но не обичат да комуникират с медиите, защото много често думите им биват изопачени, избирателно показани в зависимост от това каква конюнктура защитава съответната медия. Няма писани правила. Има обаче опит от наша страна да се изкажем по толкова ясен начин, че да не може нито една част или отделно взето изречение да стане повод за съвсем манипулирано предадена информация.“

A judge from Sofia noted the problems occurring when the media contacted the lay judges outside the court where the judge cannot control their behaviour. In principle, media are contacting the press officer of the court, who obtains the consent of the judge for allowing journalists to a hearing (although hearings are public and media could not be banned from attending), or to interview the judge. The same judge noted that the presence of video cameras in the court room, and use of other recording devices, was unacceptable. S/He only allowed taking photos before the beginning of the hearing and/or after its end.

(Judge, Bulgaria) 'I allow photographs, personally, before the hearing and after the hearing. But not during the hearing itself. After all, publicity should not be overexposed and turned into some kind of show.'

„Снимки позволявам, аз лично, преди началото на съдебното заседание и след неговия край. Но не и по време на самия процес. Все пак публичността не трябва да се преекспонира и да се превръща в някакво шоу.“

Another judge from Sofia added that the responsibility of the judge to ensure the educational effect of the proceedings, laid down in the Criminal Procedure Code, gives judges the freedom to decide what information is appropriate to disclose and how.

The two prosecutors displayed quite different experiences in liaising with the media. One prosecutor from Sofia did not personally liaise with media as in most cases information was provided by the spokesperson. The other prosecutor, having experience as a spokesperson, was regularly liaising with the media, mostly by online press releases where the name of the accused was replaced with their initials. According to the same prosecutor, although journalists often pressure for receiving information in advance, she is always trying to give information about past steps, not future plans. Information to the media is also provided upon oral or written request, subject to certain rules, by which the media are often not complying.

(Prosecutor, Bulgaria) 'I can tell you that when a particular case is of real interest to the media, I receive, in the next two days, more than 100 calls a day from the media that are usually asking for clarification, requesting additional information or asking for information to be provided in advance.'

„Мога да ви кажа, че когато определен случай представлява наистина интерес за медиите, аз получавам следващите два дни сигурно по повече от 100 обаждания на

ден от медиите, които са обичайно уточняващи, с искания за допълнителна информация или преждевременно да се подава информация.“

b. Mapping of laws and guidelines

Asked about **what their relations with the media are based on**, a police officer from Sofia pointed to an order by the former Prosecutor General and added that permission is usually given via phone to ‘avoid unnecessary paperwork’. S/He also mentioned the non-binding media ethics code,³⁶ upholding the honour and dignity of citizens.³⁷ Other police officers pointed to the Criminal Procedure Code (*Наказателно-процесуален кодекс*) and to ‘internal rules’. A judge from Sofia referred to the internal rules of the court requiring that all contacts with the media take place with the consent of the judge and not allowing administrative personnel of the court to communicate with the media. A prosecutor from Sofia with experience as a spokesperson noted there are internal rules on the interaction of the prosecutor’s office with the media, whereby prosecutor’s offices at district or higher level were obliged to have a spokesperson, appointed by and subordinate to the head of the respective office, and in permanent contact with the spokesperson of the Prosecutor General. On a daily basis, the spokesperson selects the information to be uploaded on the website thus deciding what to disclose to the public and media.

As to whether **media are allowed to disclose details about defendants**, interviewees were, except one (Police officer, Bulgaria), unanimous that this is not allowed, but nevertheless happens. Another police officer from Sofia supposed information is obtained by media from defendants and their relatives. Yet another police officer from Sofia thought in cases of high public interest the people had the right to know what was happening. A lawyer from Sofia confirmed that observation, noting that when there is public interest in a case authorities are tempted to disclose the identity of the defendant. One prosecutor from Sofia explained that two factors were usually considered when deciding to disclose the identity of the accused: the impact of such disclosure on the investigation and the interest of the public to be informed.

Lawyers criticised the disclosure of details about defendants, in particular those done by the prosecution through the media. One lawyer from Sofia noted that the media disclosed immediately even most sensitive cases not publicised by the prosecution, and there is no way to influence them, especially in view of the press briefings the Prosecutor’s Office holds, where names of defendants are constantly disclosed.

(Lawyer, Bulgaria) ‘... Media have absolutely no inhibitions – even in cases not publicised by the Prosecutor’s Office. I have had such a case, a very unpleasant one, for possession of pornographic material. No authority boasted about the case – but suddenly on the next day an article appeared in one of the dailies – accused X, full name, was detained on these charges. This was a grave violation and blow against the specific person and we did not have any options to react.’

„... За медиите няма никакви задръжки – дори и случаи, които не са изнесени публично от Прокуратурата. Имал съм такъв случай, той беше изключително неприятен като казус, за държане на материали с порнографско съдържание. Нито някой се похвали, че има такъв случай – изведнъж на другия ден в един от ежедневниците излезе статия – лицето, посочено с имена, беше задържано за еди-какво си. Това вече

³⁶ Bulgaria, National Council for Journalistic Ethics (*Национален съвет за журналистическа етика*), Ethics Code of Bulgarian Media ([Етичен кодекс на българските медиите](#)).

³⁷ Bulgaria, National Council for Journalistic Ethics (*Национален съвет за журналистическа етика*), Ethics Code of Bulgarian Media ([Етичен кодекс на българските медиите](#)), Preamble

беше страхотно посегателство и удар върху конкретния човек и нямаше как да реагираме.“

Another lawyer from Sofia openly accused journalists of bribing court and prosecution clerks to supply them with information.

The case studies of media coverage fully support the findings of the interviewees. In the Sotirya murder, the suspect was declared as a wanted person and his name was immediately disclosed. The interviews with people from the same village mostly focused on the suspect's guilt and his previous convictions. The bringing the case to court was accompanied by extensive coverage and interviews with the victim's grandmother and other relatives. The immense public reactions to the cruelty of the crime also provoked a debate on the fairness of the punishments of violent crime in Bulgaria.³⁸ Nevertheless, during the trial, the majority of the media covered in a balanced, neutral and informative way.³⁹ In the Banishora murder, some media referred to the suspect as 'the perpetrator',⁴⁰ and one newspaper published an extensive story about the suspect and the victim, including information about their professions and hobbies, collected from their social media profiles and interviews with neighbours. The article also quoted policemen saying 'To commit a suicide also needs courage.' The article was accompanied by pictures of the suspect and the victim taken from the victim's social media profile.⁴¹ In its article about the court hearing on the accused person's remand measure, another daily newspaper referred to him as 'the Banishora murderer [...] who strangled his girlfriend [...]' and disclosed his identity (first and last name).⁴² Other media emphasised upon the fact that the accused person had made other suicide attempts in the past.⁴³ Although the court hearings were held behind closed doors because of the disclosure of intimate details about the couple's life, much of it was published in the media⁴⁴ and the accused person himself and his lawyer shared a lot of details about the couple's private life.⁴⁵ Overall, the media covered the case with little to no doubt of suspect's guilt.

c. Effects media has on presumption of innocence

Few interviewees, among which a police officer from Sofia, stated the independence of the court and pre-trial authorities does not allow them to be influenced by media coverage and the effect of the

³⁸ For more information, see: <https://play.nova.bg/video/temata-na-nova/season-13/temata-na-nova-2019-09-08>.

³⁹ Nikolova, R. (Николова, Р.) (2020), 'Young Christine's killer got life sentence without parole' (*'Убиецът на невръстната Кристин получи затвор доживот, без право на замяна'*), Trud, 30 January 2020.

⁴⁰ For example, see www.actualno.com/crime/23-godishna-jena-e-ubita-v-stolichnija-kv-banishora-news-716638.html.

⁴¹ Martinov, D. (Мартинов, Д.) (2019), 'Beautiful Kalina strangled during or after sex?' (*'Красивата Калина удушена по време или след секс?'*), 24 Chasa, 17 January 2019.

⁴² Trud (Труд) (2019), 'The Banishora murderer remains in arrest' (*'Убиецът от „Банишора“ остава в ареста'*), Trud, 24 January 2019.

⁴³ Dyulgerova, D. (Дюлгерова, Д.) (2019), 'Georgi Hadzhiev, SMDI: The killer of a 25-year-old woman in Banishora neighbourhood attempted suicide 5 years ago after parting with her girlfriend' (*'Георги Хаджиев, СДВР: Убиецът на 25-годишната жена в кв. "Банишора" е правил опит за самоубийство преди 5 г., след раздяла с приятелката си'*), Glas.bg, 17 January 2019.

⁴⁴ РИК (РИК) (2019), 'After the cruel murder in Banishora: the content of the fatal message that killed the model Kalina is now clear' (*'След жестокото убийство в „Банишора“: Стана ясно съдържанието на фаталното съобщение, което погуби моделката Калина'*) РИК, 19 January 2019.

⁴⁵ OFFNews (2019), '20 pills and whiskey – a prelude to a blackout murder of the young woman in Banishora' (*'20 хапчета и уиски - прелюдия към безпаметното убийство на младата жена в 'Банишора'*), OFFNews, 19 January 2019.

media coverage very much depends on whether the information is correctly presented or not (Prosecutor, Bulgaria).

aa. Positive effects

One police officer from Sofia noted a positive effect of media coverage is its (underused) potential to contribute to the **preventive and corrective role** of proceedings. Another police officer from Sofia thought media had beneficial influence in making criminal justice pay **more attention to domestic violence**.

(Police officer, Bulgaria) ‘... Recently more emphasis was put on crimes, related to domestic violence, and legislative amendments were made in that respect, this is maybe the beneficial influence of media on the publicisation of criminal procedure, and respective changes...’

„...В последно време по-голям акцент придобиха престъпленията, които се извършват в условия на домашно насилие, и съответно се предприеха законодателни промени в това отношение, това е може би благоприятното влияние на медиите върху отразяването, съответно върху промяна в процеса...“

Regarding the case studies, the coverage of the Banishora murder was very much related to the raising of domestic violence in the society’s agenda. The case coverage, although not presenting any other point of view than that affirming the suspect’s guilt, nevertheless contributed to the increased public indignation against perpetrators.⁴⁶

A third police officer from Sofia noted media coverage of significant cases in the last few years ‘**disciplined**’ authorities in that they were accountable before society.

(Police officer, Bulgaria) ‘But media, as they reflect cases of public interest in the last few years... disciplined judges and prosecutors... many judges and prosecutors, and investigative authorities, have a bit of subjective interpretation of the law... and they got disciplined in that they feel accountable before society for their actions... and society is not just a group of people nobody should take account of...’

„Медиите в последните години, по начина, по който отразяват по-значимите случаи в обществото... малко дисциплинираха съдии и прокурори... много съдии и прокурори, и разследващи, влагат малко субективно тълкуване на нормите... Дисциплинираха се в смисъл, че дължат отчет пред обществото за своите действия... обществото не е просто съвкупност от хора, с които никой да не се съобразява...“

Yet another police officer from Sofia spoke about the importance of **openness and accountability** of police work, to which media coverage contributes. This line was shared by a prosecutor from Sofia.

Even one of the lawyers admitted there are cases where public opinion has a positive effect in terms of additional efforts on the part of the authorities to discover the truth.

bb. Negative effects

Most interviewees thought the **effects of media coverage were rather negative**. One police officer stated the effect was ‘brutal’ leaving society convinced that the person is guilty.

⁴⁶ OFFNews (2019), ‘20 pills and whiskey – a prelude to a blackout murder of the young woman in Banishora’ ([‘20 хапчета и уиски - прелюдия към безпаметното убийство на младата жена в ‘Банишора’](#)), OFFNews, 19 January 2019.

(Police officer, Bulgaria) ‘... The effect is brutal... You know well that names are being published and this impacts the personal sphere of the person... and impacts those negatively... To which you add the fact that media in the country usually publish... information that somebody is charged, a remand measure is taken against him/her, but then never publish what happens at the trial phase and whether the person is ultimately sentenced or acquitted... by which we instil a conviction in society that, if you are charged, then you are guilty.’

„... Влиянието е брутално... Знаете добре, че се публикуват имена и това влияе на личната сфера на лицето... и влияе негативно... За което допринася и фактът, че медиите в страната обикновено публикуват... данни, че конкретно лице е привлечено като обвиняем, наложена му е мярка за процесуална принуда, а след това почти никога не отразяват какво се е случило на съдебната фаза на процеса и дали това лице е осъдено или е оправдано... с което насаждаме мнение в обществото, че щом си обвинен, значи си виновен“.

A number of interviewees criticised the **frequent media interventions by the prosecutor’s office** (Police officer, Bulgaria), whereas media usually repeat what is publicised by authorities creating the impression that somebody is guilty (Police officer, Bulgaria).

(Police officer, Bulgaria) ‘... Media reflect what is given by authorities – police... prosecution, court. Unfortunately, sometimes an impression is formed in society that somebody is guilty. If the authorities... prosecutor general... Ministry’s chief secretary have gone in front of the cameras, this is absolutely sufficient to pronounce somebody guilty, neglecting the fact that it is the job of the court to do that...’

„... Медията отразява това, което ѝ подадат органите – дали полиция... прокуратура, съд. За съжаление, създава се понякога впечатление в обществото, че даден човек е виновен. Щом органите... главният прокурор... главният секретар на МВР са излезли пред камерите, това е абсолютно достатъчно този човек да се признае за виновен. И много хора пренебрегват факта, че всъщност съдът трябва да го обяви за такъв...“

One lawyer from Sofia claimed prosecution was disclosing manipulative sets of evidence under the pretence of ‘revealing information on cases of public interest’ and inducing false media interpretations. Criminal justice authorities would then tend to ‘preventively’ sentence more severely ‘famous’ persons who found themselves unable to go out for any everyday activity. The lawyer was positive that, although society should be informed about proceedings, the public pressure was never good.

Another lawyer from Sofia underlined that judges were not immune against the influence of public expectations shaped by the media, e.g. remand measures are usually heavier in cases covered by the media. In a recent case a Turkish truck driver was accused of causing a deadly road accident and placed under house arrest but managed to escape to Turkey. As a result of the broad media coverage, which blamed the court for not placing the person in detention, in all similar incidents involving foreign nationals, the courts imposed detention. Another lawyer from Sofia also noted that if a case goes to the media the defendant is inevitably placed in detention.

(Lawyer, Bulgaria) ‘It is clear that when the public is interested, cases of media interest must be covered in some way, but the public must not be directed to the guilt of a particular person as if the case is already over and there is no doubt that this person is guilty. Terms such as "suspect", "considered", etc. can always be used. The judge is also a human being and inevitably begins to be influenced by this constant insinuation, especially by the prosecution,

who is guilty and who is not. Especially when this is reflected in an increase in public expectations in one direction or another.'

„Ясно е, че когато обществеността е заинтересована, трябва по някакъв начин да се отразяват делата, които представляват медиен интерес, но не и да се насочва обществеността към вината на конкретно лице по един категоричен начин сякаш делото вече е приключило и няма съмнение, че това лице е виновно. Винаги могат да се използват термини като „заподозрян“, „счита се“ и т.н. Съдията също е човек и неминуемо започва да се влияе от това непрекъснато натякване, особено от страна на прокуратурата, кой е виновен и кой не. Особено когато това рефлектира в нарастване на обществените очаквания в една или друга посока.“

A judge from Sofia criticised the practice of the prosecution to justify the disclosure of information by the provision of the Directive on the presumption of innocence stating that public authorities should not be prevented from publicly disseminating information on the criminal proceedings. According to this judge, such interpretation was against recital 18 of the Directive, which links dissemination with reasons related either to the investigation (e.g. when the assistance of the public is needed to identify a person) or to a significant public interest (e.g. public health concerns). Instead, what the prosecution service is actually doing is refuting the accused person's defence by 'exporting' the proceedings in the public domain.

(Judge, Bulgaria) 'Recently, there is a trend that is essentially of great importance and is yet to provoke some reaction, including in judicial acts. This is the tendency for the prosecutor's office to publish part of the evidence in the pre-trial proceedings on websites. And they did not give any reason at first, but then, when asked why and whether this infringes the presumption of innocence, they referred to the directive and to the fact that public authorities cannot be prevented from presenting information on pending criminal proceedings. However, in no way does the explanation given so far correspond to recital 18 of the Directive because disclosure of the facts must always serve the needs of the process...'

„Напоследък има една тенденция, която по същество е от голямо значение и тепърва ще търси някаква реакция, включително и в съдебни актове. Това е тенденцията прокуратурата да публикува част от доказателствата в досъдебното производство на сайтове. И основанието, което сочат, в началото не сочеха никакво основание, но след това, когато им задаваха въпроси защо и това не накърнява ли презумпцията за невинност, те се позовават на директивата и на това, че публичните органи не могат да бъдат възпрепятствани да представят информация за висящи наказателни производства. Обаче по някакъв начин обяснението, което се дава досега, не кореспондира на съображение 18 от директивата затова, че винаги трябва оповестяването на фактите да обслужва или нуждите на процеса...“

Another lawyer from Sofia noted the common saying that, where public opinion enters the courtroom, justice jumps out of the window (*когато общественото мнение влезе в съдебната зала, правосъдието излиза през прозореца*). The same interviewee has also heard judges unofficially mention that they will decide on a case one way or another because otherwise 'media will eat me up' (*медиите ще ме изядат*). Prosecutors were also inclined to leave the court to decide remand measures, because media will 'make them crazy' (*ще ги побъркат*). The same lawyer also spoke of the 'aggression' suggested by the media expression, which was also confirmed by the case studies, and the over 90 per cent concentration of media ownership, which unavoidably affects defendants' public image.

According to a judge from Sofia, in 90 % of the cases the effect of media coverage on the presumption of innocence is negative. The media often emphasise the suffering of the victim or encourage the society to expect the penalty as revenge. Indeed, in the Banishora murder case, one daily newspaper published selected comments on the suspect's Facebook page, some of which included threats and calls for the return of the death penalty.⁴⁷ The Sotirya murder led to strong public reactions, covered by many media. One daily newspaper published a neutral-sounding article, which however also referred to a Facebook event calling for a 'fair punishment of the person who took her life' and the appeal to stand for '[...] a child who could not make her dreams come true because a freak took her life in a brutal way'.⁴⁸ Overall, as pointed out by a judge from Sofia, there is a negative public attitude against the judiciary largely due to the way the media report on criminal cases.

(Judge, Bulgaria) 'In 90 % of the cases media coverage has a negative effect. Many media report in a way that emphasises, for example, the suffering of the victim, or the media cover the proceedings in a way that literally draws the society toward punishment goals that are not provided for in the law. For example retaliation, return of the death penalty, etc.'

„В 90 % от случаите медийното отразяване влияе неблагоприятно. Голяма част от медиите отразяват по начин по който наблюдават, примерно, върху страданието на жертвата, или медиите отразяват процесите по начин, по който буквално насъскват обществото към цели на наказанието, каквито няма заложени. Примерно към възмездие, връщане на смъртна присъда и т.н.“

Another judge from Sofia shared an opinion that some media present the information tendentially or publish only the view of the prosecution, which can often discredit the defendant.

Both case studies illustrate the substantial role of media interventions on the part of public authorities. In the Banishora murder, the Director of the Sofia Metropolitan Directorate of the Interior (SMDI) (*Столична дирекция на вътрешните работи, СДВР*) talked to the media disclosing details about the case, explaining the suspect's version, how the police responded to the first signal and the signal about the suspect's suicide attempt.⁴⁹ One daily newspaper referred to information from the police and from emergency ward staff members with details about the body's wounds and traces of rape and suffocation. In the Sotirya murder, after the suspect was arrested, the Secretary General of the Ministry of Interior (Mol) (*Министерство на вътрешните работи, МВР*) disclosed to the media details about the arrest of the person and about his background. One daily newspaper referred to the suspect's description provided by the police (lack of information about psychiatric conditions or drug use, no use of alcohol, preferences to energy drinks, etc.).⁵⁰ A tabloid, however, published particular details of the criminal investigation, including a description of victim's injuries, and referred to the suspect as 'criminal', 'rapist', 'monster' and 'perverted murderer'.⁵¹

⁴⁷ Martinov, D. (Мартинов, Д.) (2019), 'Beautiful Kalina strangled during or after sex?' (['Красивата Калина удушена по време или след секс?'](#)), 24 Chasa, 17 January 2019.

⁴⁸ 24 Chasa (24 часа) (2019) 'Facebook action after the cruel murder in Sotirya: I am Chrisi' (['Акция във фейсбук след жестокото убийство в Сотирия: Аз съм Криси!'](#)) 24 Chasa, 18 August 2019.

⁴⁹ Hristov, N. (Христов, Н.) (2019), 'A young woman killed in the capital's neighbourhood Banishora' (['Млада жена е убита в столичния квартал "Банишора"'](#)), Bulgarian National Radio, 16 January 2019; bTV (2019), 'Young woman killed in Banishora' (['Убиха млада жена в кв. Банишора'](#)), bTV, 16 January 2019.

⁵⁰ 24 Chasa (24 часа) (2019), 'A local person managed to tie the Sotirya murderer in the forest. Martin ran before the police caught him' (['Местен човек успя да завърже убиеца от Сотирия в гората. Мартин бяга, преди да го хванат от МВР'](#)), 24 Chasa, 16 August 2019.

⁵¹ Bulgaria Dnes (България днес) (2019), 'Life sentence threatens Christine's perverted killer' (['Доживот грози извращения убиец на Кристин'](#)), Bulgaria Dnes, 25 November 2019.

Regarding **media interventions by persons outside criminal justice authorities**, a police officer from Sofia mentioned **politicians** from ‘patriotic’ nationalistic parties, as well as **relatives of victims**, who ‘understandably’ (also affirmed by a lawyer, Bulgaria) speak highly negatively of defendants and affect the presumption of their innocence. Relatives may also speak ill of police work on their specific case (Police officer, Bulgaria) or of the general development of the case (Lawyer, Bulgaria).

(Lawyer, Bulgaria) ‘...Family members of victims do use the media a lot, sometimes rightfully, sometimes not. Here, for example, a case from last week... - my client hit by negligence a child, who died. There were repairs on the street, the company did not provide for any safety measures... my client was guilty, no doubt about that. But the mother has, for months already, called the media after each court session and has been explaining how no justice is done and how disappointed she is that my client is not in prison.’

„...Членове на семейства на жертви много използват медиите, понякога с право, понякога не. Ето например, миналата седмица, случай... – клиентът ми по невнимание блъснал дете, което починало. Докато по улицата се правят ремонтни работи, фирмата не е осигурила никакви условия за безопасност... че моят човек има вина, има. Майката от месеца след всяко заседание вика медиите и започва да обяснява как няма правосъдие, няма справедливост, как е разочарована, че човекът не е в затвора.“

A police officer from Sofia noted that when a prominent politician makes a statement, especially against another politician (smearing opponents; Lawyer, Bulgaria), the public often takes it as sufficient evidence of guilt.

Another lawyer from Sofia noted media interventions of the prosecution are followed by statements by political parties, creating danger for undue impact on criminal justice authorities.

A judge from Sofia referred to a case involving a senior politician, in which the prosecutor made several public statements saying that he was happy that the case had gone to a ‘quality judge’ and was therefore going to end ‘with the expected success’, because the judge was going ‘to deliver a fair and appropriate decision’. Another judge from Sofia also referred to cases with interventions by politicians and even members of the judiciary, some resulting in decisions against Bulgaria of the European Court of Human Rights.

According to a prosecutor from Sofia, public statements by persons not directly involved in the proceedings have a negative impact on the presumption of innocence, regardless of being justified by freedom of expression.

(Prosecutor, Bulgaria) ‘My personal opinion is that these comments from politicians, other activists and even the media do not have a positive impact, because without being involved in a particular case, without legal background enabling them to assess the situation, without knowing in detail the entire body of evidence, they are planting in the society some preliminary assessment, which is not correct. Misperceptions are created, people are left with a certain attitude, which subsequently, when the relevant court act is issued, if it does not coincide with what they have built as their perception of the outcome of the case, creates dissatisfaction, which is very often unjustified, insofar as people are not familiar with the whole body of evidence.’

„Лично моето мнение е, че тези коментари от страна на политици, на други активисти и дори на медиите, не влияят положително, защото без да се ангажирани с конкретното дело, без да са юристи, за да могат да преценят, без да се запознати в детайли с цялата съвкупност от доказателства, насаждат в обществото някаква

предварителна оценка, което не е правилно. Създават се погрешни впечатления, хората остават с една настройка, която в последствие, при постановяване на съответния съдебен акт, ако не съвпадне с това, което те са си изградили като някаква представа за изхода на делото, поражда недоволство, което много често е неоснователно, доколкото хората не са запознати с цялостната съвкупност от доказателства.“

A lawyer from Sofia noted that public statements, made by persons who do not know the details of the case, increased the chances of the defendant ending up in detention.

A lawyer from Sofia shared a different opinion noting that the restriction of public statements, suggested by the Directive on the presumption of innocence refers to public authorities only and expanding it to other actors (e.g. politicians from the opposition, the media or civil society organisations) would be a violation of the freedom of speech.

Finally, a prosecutor from Sofia affirmed media interventions would create certain pressure, often making professionals' work more difficult.

(Prosecutor, Bulgaria) 'It has an impact in the sense that it creates a certain pressure that affects the quality of work ...It really hinders work. It will not influence the result of the actions we take or the data we objectively collect, this is not affected by who said what. But it psychologically prevents the prosecutor from being calm, focused on their work, and working effectively. In that sense, it has an impact.'

„Повлиява дотолкова, доколкото се наслажда едно напрежение, което се отразява на качеството на работа. ... Действително пречи на работата. То няма да пречи като краен резултат на действията, които ще извършим, или на данните, които обективно събираме, те не се повлияват от това кой какво казал. Но психологически пречи на прокурора да бъде спокоен, да бъде съсредоточен в работата си и да работи качествено. В този смисъл се отразява.“

In the case studies, the Sotirya case was a fair indication of the effect of interventions by persons different from criminal justice authorities. The media covered broadly the protests organised by the victim's close persons calling for a 'fair' sentence. The protests also received political support and shortly after the start of the investigation the Criminal Procedure Code (*Наказателно-процесуален кодекс*) was amended to restrict the automatic decrease of the punishment for defendants who had made a confession.

Table 3: Remedies available to defendants in case they are publicly referred to as guilty

	ECtHR applications	Civil remedies	Requesting recusal	Other remedies	No possible remedies
Judges and prosecutors		1/4 (prosecutor)	1/4 (judge)	1/4 (raising the issue before the judge)	2/4
Lawyers	1/4	2/4	2/4	3/4 (state liability for damages), 1/4 (insult and libel cases)	
Total by factor	1/8	3/8	3/8	5/8	2/8

Regarding **remedies against referral of defendants as guilty**, one lawyer noted at least three of his/her clients had submitted applications to the ECtHR, declared admissible. Claims may be raised under the

legislation on state's liability for damages (Lawyers, Bulgaria), but the ECtHR admits applications without this remedy being exhausted (lawyer, Bulgaria), as it is generally not considered effective (e.g. Popovi v. Bulgaria, application No 39651/11, Gutsanovi v. Bulgaria, application No 34529/10). Civil claims may be submitted against a specific magistrate, but are often rejected due to functional immunity. Magistrates' recusal may also be sought (also according to another lawyer, Bulgaria, and a judge, Bulgaria), if they are considered biased. Another lawyer (Lawyer, Bulgaria, also supported by a prosecutor, Bulgaria) referred to possible, yet difficult to prove, civil actions for damages. For him, some insult and libel cases may also have disciplining effects on wrongful acts by the media. No claim could be raised before prosecution or court, because they would usually claim they do not follow the media. On the contrary, according to a judge from Sofia, the only option for defendants publicly referred to as guilty, is to raise the issue before the court and hope that the judge will disregard the public comments made in relation to the case.

(Prosecutor, Bulgaria) 'There is no liability in Bulgaria in such cases from the point of view of the procedural law. Rather, and possibly as a consequence, it is possible for the accused person, under civil law, possibly for tort, to file a lawsuit against that person who has, in some way, violated their rights. But this is in accordance with civil law.'

„В България няма предвидена никаква отговорност в такива случаи от гледна точка на процесуалния закон. По-скоро и евентуално в следствие е възможно обвиняемия, по реда например на гражданския закон, евентуално за непозволено увреждане, да води някакво дело спрямо това лице, че е накарнило по някакъв начин правата му. Но това е по реда на гражданския закон.“

d. Differences in media coverage concerning certain groups

Table 4: Differences in the way the media covers cases of male and female suspects that may affect (either negatively or positively) the presumption of innocence; other characteristics of a defendant that might affect (either negatively or positively) how the media covers a case, and their impact on the presumption of innocence

	Gender	Minority (Roma) origin	Migrant origin	Other factors	No affecting factors
Police	2/4	1/4	2/4	1/4 (all murders and hate crimes making coverage more dramatic; children victims or perpetrators)	2/4
Judges and prosecutors	1/4 (judge)	1/4 (judge)		1/4 (judge) (criminal registration being equated to a criminal record)	1/4 (prosecutor), 1/4 (prosecutor)
Lawyers	1/4	3/4	1/4	1/4 (high material status affecting negatively media portrayal)	
Total by factor	4/12	5/12	3/12	3/12	4/12

aa. Men and women

According to two police officers from Sofia, the level of negative media coverage and public opinion is especially emphasised when a crime is committed against a child by their mother or close female relative. At the same time, according to at least one police officer from Sofia, wide negative

publicisation is noticed of cases of domestic violence by men against women. A lawyer from Sofia affirmed women defendants may be portrayed as 'misled' by men, but this opinion was not shared by the other lawyers (Lawyers, Bulgaria).

bb. Children and adults

Wide negative publicisation is also valid, according to another police officer from Sofia, in case of a **child victim** regardless of whether the perpetrator is a man or woman, but wider coverage of cases with **children perpetrators** has been seen as well.

cc. Nationals and non-nationals (including ethnic minorities, e.g. Roma)

According to two police officers from Sofia, **migrant background** is always mentioned especially since the migration waves of 2013-2014. A lawyer from Sofia recalled a famous (rare) case of a foreigner accused and sentenced of murder, who, according to him got worse procedural treatment than a Bulgarian citizen would under the same circumstances.

According to a police officer from Sofia, **minorities** seem in a more favourable position than migrants as defendants' ethnic background, for example Roma, is more rarely mentioned, but another police officer from Sofia countered Roma perpetrators have been mentioned in times of rise of attention to such types of crimes. Roma have been consistently portrayed negatively also according to lawyers and a judge from Sofia, with differences in coverage ranging from mocking the mistakes Roma make when speaking (Lawyer, Bulgaria) to attributing criminal behaviour to the whole Roma population (Lawyer, Bulgaria).

dd. Persons with disabilities

No mention was made about persons with disabilities.

ee. Other groups

A police officer from Sofia pointed generally to the **nature of the crime as factor** as murders, sexual and hate crimes, and other more serious crimes, are always more dramatically covered.

(Police officer, Bulgaria) '... All those factors, gender, religion, sexual orientation, especially in cases of hate crimes, sexual crimes, they are reflected more by the media if a certain topic rises in the public attention... there was a period of great interest towards crimes committed by children because several such cases happened almost at once and media started covering mainly those cases... if there is a multitude of migrants, refugees... or cases with Roma perpetrators, then they switch to those...'

„... Всички тези неща като фактори, пол, религия, сексуална ориентация, особено при престъпленията, свързани с омраза, сексуалните престъпления, се отразяват повече от медиите, когато дадена тема стане обществено по-коментирана... Имаше един период с престъпления, извършени от непълнолетни, отразяваха се много, понеже се наслаждаха няколко случая един след друг и медиите започнаха да отразяват предимно тези случаи... Ако има насищане на мигранти, бежанци... престъпления, извършени от ромски общности, започват да отразяват тях...“

According to one lawyer from Sofia **high material status** is also a factor affecting highly negatively media portrayal especially in view of the recent cases against rich business families.

A judge from Sofia mentioned the **police registration** as a factor that often affects media coverage. Unlike the criminal record (record of previous convictions), police registration does not necessarily mean that the person has been found guilty of a criminal offence. For the media, however, this difference is often irrelevant and the person is usually referred to as a 'person with a criminal record'. In the Sotirya murder, the media interviewed the mayor and people living in the same village asking questions about the suspect's criminal background,⁵² and two daily newspapers specifically emphasised on the suspect's anti-social behaviour and involvement in previous incidents.⁵³

e. Discussion of findings

While the relationships of all groups with media seemed to be **well guided** by rules, a number of problematic aspects occurred. Although at least two police officers from Sofia claimed to be isolating themselves from media coverage, one lawyer from Sofia countered that is practically not possible. Positive aspects of media coverage, including openness and accountability of criminal procedure, and increased attention to domestic violence cases, were not spared, but negative aspects mentioned prevailed. **Names and details about defendants** routinely appeared in the media, despite them formally being referred only by their initials (Police officer, Bulgaria; Lawyer, Bulgaria, etc.), **media coverage seemed to be rather biased**, sensational and unprofessional (Lawyer, Bulgaria), as confirmed by the two media case studies.

(Lawyer, Bulgaria) '... I have had absurd experiences... A court session is going on regarding a serious remand measure in the Specialised Court, hours are passing, a recess is given... and I get a call from the wife of one of my clients and she tells me 'Why didn't you tell me what the court has ruled?'. And I answer 'Because it has still not ruled yet', and she continues 'But I heard it on TV!' ... So journalists obviously followed the session until some point... then thought they should produce a piece for the evening news to make the leading story... made up something out of what they overheard... and what came out were pure lies...'

„...Случвали са ми се абсурдни неща... Заседаваме за тежка мярка в Специализирания съд, минава си времето, излизаме за поредната почивка... и ми звъни жената на един от моите клиенти и ми казва „Защо не ми каза какъв е резултатът от мярката?“, а аз ѝ казвам „Защото още няма резултат“, а тя отговаря „Че те по централните новини казаха еди какво си“... Тоест журналистите седяха, каквото седяха... казали си „трябва да пуснем нещо сега, защото ако не сме първа новина днес...“, сглобили три приказки от каквото са чули и пуснали откровени лъжи...“

Media interventions by the Prosecutor's Office and disclosure of evidence about pending cases seem to be at odds with the prosecutorial rules on relations with the media, but were pointed to by at least two representatives of different professional groups (Lawyer, Bulgaria; Police officer, Bulgaria) as deeply influencing the public opinion and being a 'dangerous' practice.

In the opinions of the interviewees, media coverage seems to be influenced by many factors, including gender, age (children victims and perpetrators), migrant or minority background, previous criminal registration or record, etc.

⁵² Stefanova, R. (Стефанова, Р.) (2019), 'Cruel child murder in Sotirya' (['Жестоко убийство на дете в село Сотиря'](#)), Bulgarian National Television, 16 August 2019.

⁵³ 24 Chasa (24 часа) (2019), 'Seven-year-old girl is murdered in the Sliven village of Sotirya' (['7-годишно момиченце е убито в сливенското село Сотиря'](#)), 24 Chasa, 15 August 2019; Nikolova, R. (Николова, Р.) (2019), 'The man wanted for the child murder in Sotirya was involved in another tragedy' (['Издирваният за убийство на дете в Сотиря бил замесен и в друга трагедия'](#)) Trud, 16 August 2019.

In terms of good practice, a judge from Sofia shared that when the sentence is read and there is increased public interest (many journalists/media inquiries), s/he often explains some parts to prevent the public from interpreting based on their own assumptions.

C.3 The presentation of suspects and accused persons

In Bulgaria, there are no specific legal standards relating to the presentation of suspects and accused persons. The only binding legal act, related to such presentation, is Instruction No 1 of 22 March 2019 on the organisation and procedure for carrying out the convoy activity by the employees of the Directorate-General “Execution of Sentences”, which governs, among other things, the use of restraint measures when transporting detainees (convicted prisoners and pre-trial detainees).⁵⁴ According to Article 13(1) of this instruction, when escorting inmates from prisons and pre-trial detention facilities, the head of the relevant territorial service is authorised to decide whether handcuffs should be used, based on an assessment of the age, sex, physical and health condition and individual risk assessment of the escorted persons. According to Article 21(8) of the same Instruction, handcuffs may not be covered by clothes or other objects in view of ensuring permanent visual control.

The instruction was adopted in 2019 in response to a broad public debate on the use of handcuffs on suspects and accused persons. The debate started after a series of media publications showing a female pre-trial detainee, accused of corruption, with cuffed hands and feet while being taken to a hospital for checks on a pre-existing condition as well as in the court room. The excessive use of handcuffs was criticised by the Ombudsman⁵⁵ as well as by NGOs.⁵⁶ As a result, the Ministry of Justice (MoJ) (*Министерство на правосъдието*, МП) adopted a new instruction requiring the use of handcuffs to be accompanied by an assessment of the detainee’s age, sex, condition and risk.

- a. Measures used to present the accused and its impact on their presumption of innocence

Table 5: Measures used to physically restrain defendants during their transportation to a courtroom, and once they are in the courtroom

	Handcuffs	Shackles	Other measures
Police	4/4		1/4 (more than one defendant tied together)
Judges and prosecutors	4/4		
lawyers	4/4	3/4	1/4 (link between handcuffs and shackles)
Total	12/12	3/12	2/12

The only restraining measures mentioned by police were **handcuffs**, used until the entrance of the judge in the court room, and **defendants being tied to one another**, if more than one. Those measures were **universally supported by the representatives of the police profession interviewed as means of**

⁵⁴ Bulgaria, Instruction No 1 of 22 March 2019 on the organisation and procedure for carrying out the convoy activity by the employees of the Directorate-General for Execution of Sentences ([Инструкция № 1 от 22 март 2019 г. за организацията и реда за осъществяване на конвойната дейност от служителите на Главна дирекция „Изпълнение на наказанията“](#)), 22 March 2019.

⁵⁵ Lex.bg (2018), ‘The Ombudsman: For one year, 100,000 detainees in Sofia have been subjected to humiliation’ ([‘Омбудсманът: За година 100 000 арестанти в София са били подложени на унижение’](#)), 6 August 2018.

⁵⁶ Shapkadzhiyeva, L. ([Шапкаджиева, Л.](#)) (2018), ‘Ivancheva’s take to the hospital with chained hands and feet: from demonstration to overreaction’ ([‘Отвеждането на Иванчева до болницата с оковани ръце и крака: От показност до престараване’](#)), 1 August 2018.

protection, making no mention of assessment on whether they should be used. One police officer from Sofia thought no social standing or gender should hinder their use in cases of aggression, including verbal aggression, threat for the person to escape or hurt himself/herself or others (the latter confirmed by another police officer, Bulgaria).

(Police officer, Bulgaria) 'If somebody is famous, or is a woman and we would not handcuff him/her [because of that], why would we handcuff somebody else?... provided they are both... aggressive, even verbally aggressive... If defendants go around handcuffed, we are asked why they are in handcuffs, if they go around without handcuffs, we are asked why they go without handcuffs.'

„Ако някой е известен или е жена, няма да му слагаме белезници [заради това], защо тогава слагаме на друг?... ако и на двамата поведението им е... агресивно, дори вербално агресивно... Когато е с белезници, ни питат защо е с, ако е без, ще ни питат защо е без.“

Another justification mentioned by a police officer from Sofia for using restraint measures was the possible revenge by the victim's relatives.

(Police officer, Bulgaria) '... These are measures for the defendant's safety because there is always the danger of the victim's relatives 'taking justice in their own hands'... it is for his/her protection... sometimes you commit a crime accidentally, there are victims, the court lets the defendant go, but publicity has put him/her at risk of revenge...'

„... Това са мерки за сигурността на обвиняемия, защото винаги има опасност близките на пострадалия „сами да потърсят справедливост“... за негова защита е... понякога човек извършва престъпление, без да иска, има пострадали лица, съдът го пуска, а публичността го е изложила на риск от саморазправа...“

Another police officer from Sofia took a rather sympathetic view of defendants, especially when they are tied to each other, saying that media 'love' such cases, but should actually not be allowed to see them.

Most lawyers from Sofia also explained the order of restraining defendants mentioning **shackles, besides handcuffs** and noting those are always taken off when the judge enters the court room.

A judge from Sofia provided interesting background – according to her, the use of measures physically restraining defendants changed after a case, which became known as 'The Killers' (organised criminal group accused of contract killings committed in 2009, whose case went on until final sentencing in 2017). Until that case, defendants were never physically restrained before a regular court. In that case, however, for safety reasons, defendants remained handcuffed during the hearing. Overall, according to the same judge, handcuffs are only used in the courtroom for exceptional reasons.

According to police officers, **covering defendants' faces** is neither regulated, nor forbidden, and it is happening in reality. Lawyers from Sofia noted covering faces is pointless as the media already know defendants' identity and often approach them unethically, seeking to photograph their faces and provoke them verbally on the way to the courtroom. This is where conveying authorities may step up and impose order by not allowing journalists anywhere around the defendants (Lawyer, Bulgaria). A judge from Sofia noted that some defendants are wearing hoodies, but inside the court room they are requested to remove them. According to another judge from Sofia, defendants are never prevented from hiding their faces.

(Judge, Bulgaria) ‘There are cases of [defendants] wearing hoods when they enter. I do not allow them to wear hoods at the hearing. They may ask not to be photographed, not to have media, I respect that, but without the hood – I have to see who is on the opposite side.’

„Има случаи с качулки, когато влизат. Не им позволявам да с качулки по време на съдебното заседание. Могат да поискат да не бъдат снимани, да няма медии, това го уважавам, но без качулка – аз трябва да видя кой е отсреща.“

A prosecutor from Sofia generally defended the legitimate right of defendants to cover their faces not to be photographed with the exception of the courtroom, where their faces must be visible to the judge.

(Prosecutor, Bulgaria) ‘Very often, when they do not wish to be photographed, and every person has the right, no matter whether accused or not, not to be photographed, then I have seen them hiding their faces. However, there is definitely no way for this to happen in a courtroom, since the court must be convinced of the identity of the person before it, and in that connection the person’s face must be visible in order for the court to do that check.’

„Много често, когато не желаят да бъдат снимани, всяко лице има право, независимо дали е обвиняемо или не, да не желае да бъде снимано, и тогава съм виждала, че си закриват лицата. Но в съдебна зала, категорично, няма как, тъй като все пак важи принципът за непосредственост и съдът трябва да се убеди в самоличността на лицето, което стои пред него и в тази връзка трябва лицето да бъде открито, за да може съдът да направи съответната проверка.“

Police officers generally thought handcuffs were not a measure to suggest somebody’s guilt or innocence, but to protect the person’s own life and health and those of officers and third persons.

(Police officer, Bulgaria) ‘Restraining measures are used not to imply guilt or suggest the innocence of someone, but to preserve the life and limb of the person himself/herself, of the authorities using such measures and of third persons.’

„Помощните средства се използват не за да вменят вина или да демонстрират невинността на някого, а за да запазят здравето и живота на самото лице, на органите, които използват тези помощни средства, и на трети лица.“

Lawyers took a more critical stance on the impact of restraining measures on the presumption of innocence. One lawyer from Sofia mentioned the defendant stays physically restrained until the entrance of the judge and the press goes around them taking pictures, thus influencing public opinion and, indirectly, the court. The same lawyer spoke critically of the atmosphere in the Specialised Criminal Court (SCC) (*Специализиран наказателен съд, ЧС*), generally hearing organised crime and high profile corruption cases, where, under the influence and fear of media and public opinion, no judge ever changes pre-trial detention into a lighter measure, or acquits a defendant. Another lawyer from Sofia mentioned highly publicised cases, where defendants are brought in front of the media, using unjustified extreme restraint measures.

(Lawyer, Bulgaria) ‘...In highly publicised cases with wide media coverage I have seen also more unpleasant cases, where people have handcuffs and shackles, and a link between those, which is quite hard for them... I remember such a case, quite unpleasant... like dancing bears... the case was not tried in the court building, but in a room close to the detention facility... so the defendants were taken out, through the whole yard, even if they don’t wish to be photographed, photos are inevitable...’

„...При медийни процеси с широко отразяване съм виждал и по-неприятни случаи, когато хора са водени с белезници на ръцете, на краката и със свързващо звено

между тях, което е доста тежко за тях... Спомням си за такъв случай, доста неприятен... малко като панаирджийски мечки... делото не се гледаше в съдебната зала на съответния град, а в специално помещение близо до ареста... изваждат подсъдимите, водят ги през целия двор с белезници на ръцете и краката, и да искат да не ги снимат, не могат...“

Another lawyer from Sofia also emphasised on the particularly negative impact of the use of restraint measures in front of the media.

(Lawyer, Bulgaria) ‘It has a negative impact, especially when there are journalists. From then on, the people who watch the report say to themselves that there is a reason to transport the person in that way. Somehow they naturally accept that the person is a criminal of the highest class.’

„Отразява се негативно, особено когато има журналисти. Оттам насетне, самите хора, които гледат репортажа, си казват има защо този да го водят така. Някак естествено приемат, че човекът е престъпник от най-висша класа.“

Similarly, another lawyer from Sofia noted the use of restraint measures, especially on persons who are obviously harmless, is a clear demonstration that these persons were guilty and dangerous and at the same time is against the law, which stipulates that the only purpose of restraint measures is to prevent escape and ensure the safety of nearby persons.

(Lawyer, Bulgaria) ‘Taking them to court in handcuffs, for the hearing in which the remand measures were decided, is a clear way to show that these people are very guilty and that they are socially dangerous, provided that the law clearly states that the restraint measures have one single purpose - to prevent escape and to ensure the safety of persons in the immediate vicinity. Putting handcuffs on a woman who weighs no more than 50 kilograms is an obvious attempt to simply damage her reputation.’

„Воденето им с пранги в съда за вземането на мерките за неотклонение е явен начин да се покаже, че тези лица са много виновни и че са обществено опасни, при условие, че в закона ясно е записано, че мерките за възпиране имат една единствена цел – да предотвратят бягство и да осигурят безопасността на лицата, които се намират в непосредствена близост. Да сложиш пранги на една жена, която е не повече от 50 килограма, е явен опит просто да се увреди нейното име.“

A judge from Sofia noted the use of handcuffs during the transportation of detainees is justified as long as they are removed once the person enters the court room.

(Judge, Bulgaria) ‘Persons detained in custody are transported handcuffed. During the hearing the handcuffs are removed. [...] I personally have never allowed a person to be present in the court room handcuffed.’

„Лицата, които са с мярка задържане под стража, се вкарват с белезници. Задължително по време на процеса белезниците се свалят. [...] Аз лично не съм допускал лице да присъства в залата с белезници.“

A judge from Sofia affirmed it is a responsibility of the judge to explain to the parties that restraining measures and detention are implemented only to ensure their presence in court and do not predetermine the outcome of the proceedings.

Prosecutors generally noted restraint measures were outside their responsibilities:

(Prosecutor, Bulgaria) ‘What we do is really just document work. We see the defendant in very rare cases, for example when the prosecutor decides to bring the charges personally... For the first time, I see the defendant when the trial begins, when the court has scheduled a hearing and I see the person and the other witnesses already in the presence of the judge.’
„Това, което правим, е в действителност работа само по документи. Ние виждаме обвиняемия в изключително редки случаи, да речем в случай, когато прокурорът реши сам да го привлече... За първи път обвиняемият го виждам, когато започва да тече съдебното дела, когато съдът насрочи заседание и го виждам заедно с останалите свидетели в присъствието на съдебния състав.“

Elements of the two media case studies also illustrated the importance of the presentation of defendants on the way to and into the court room. In the Banishora murder case, one TV channel illustrated their news report about bringing the case to court with a photograph of the accused person in handcuffs, surrounded by guards in uniforms.⁵⁷ Other TV channels broadcasted close-up footage of the accused person crying.⁵⁸ When covering the trial for the Sotirya case, many media showed the accused person on his way to the court room in a wheelchair, surrounded by six or seven police officers. He was also shown looking down when passing by the victim’s relatives.⁵⁹

b. Clothing

According to all interviewees, and the applicable legal regulation, **defendants in Bulgaria wear their own clothes and that does not impact the presumption of innocence.** One police officer from Sofia even thought of it as means to avoid the stereotyping of defendants on the part of society.

(Police officer, Bulgaria) ‘... This is rather perceived as a more liberal treatment... the person can wear his/her own clothes, so he/she cannot be stereotyped from the beginning and the society would not be prejudiced... that he/she is guilty...’
„...По-скоро се възприема като по-либерално отношение... съответният човек има възможност да носи собствените си дрехи, съответно не може да му се лепне стереотип от самото начало, да се предубеди обществото... че лицето е виновно...“

Another police officer from Sofia thought in case of a horrendous crime clothes, ragged or expensive, nevertheless impact public opinion.

(Police officer, Bulgaria) ‘... If we have a homeless man, having committed a murder or sexual assault against a child, his/her ragged clothes would create a negative impression on people... If it is a businessman, a wealthy man... having committed a heinous crime, his/her shiny clothes would also create a negative impression... But the judge should never be affected by such factors.’
„...Ако е някой клошар, извършил убийство или блудство с дете, неговите разкъсани дрехи ще настроят хората още повече срещу него... Ако е някой бизнесмен, заможен човек..., пък извършил гнусно престъпление, лъскавият му вид също би настроил хората срещу него... Но пък съдията не би трябвало да се води от това нещо.“

⁵⁷ bTV (2020), ‘The Prosecutor’s Office brought to court the indictment for the Banishora murder’ ([‘Прокуратурата внесе в съда обвинителния акт за убийството в кв. „Банишора“](#)’), bTV, 5 February 2020.

⁵⁸ BGNES Agency (2019), ‘The accused of the Banishora murder remains in the arrest’ ([‘Обвиненият за убийството в Банишора остава в ареста’](#)), BGNES Agency, 19 January 2019.

⁵⁹ Atanasova, D. (Атанасова, Д.) (2020), ‘A sentence for the cruel Sotirya murder: life imprisonment without parole’ ([‘Присъда за жестокото убийство в Сотиря: доживотен затвор без право на замяна’](#)), bTV, 30 January 2020.

Lawyers from Sofia confirmed detainees appear in their own clothes, usually the clothes they have been detained in, and most of them talked of clothing as a sign of respect to the judicial institution and of their own attempts to make their clients appear in proper attire.

(Lawyer, Bulgaria) ‘... I personally advise my clients to always respect the institution... which also includes clothes. If one comes in sports clothes, it looks different from coming in a suit... not that this impacts the presumption of innocence or the ultimate decision, but this is respect towards the institution before which you are appearing... I have sent back clients to put on some other clothes... because they have appeared as if they are going to play football...’

„... Аз лично съветвам своите клиенти винаги да се отнасят с уважение към институцията и... това включва и дрехите. Ако човек дойде по анцуг, изглежда по различен начин, отколкото ако дойде с костюм... Не че се отразява на презумпцията или на решението, по-скоро е уважение към институцията, в която си се явил... Връщам съм клиенти да се преоблекат... защото са ми се явявали все едно отиват да играят футбол...“

(Lawyer, Bulgaria) ‘It is always good for the person to be able to shave, wear a suit, etc. If it was not possible for them to dress, they will certainly look quite crumpled and tattered, which has a bad effect. But it depends a lot on the individual. If the gets into such a situation for the first time, they have never thought they may come across such a situation, they are so stressed that there is no chance they will think of their clothes. Most of them can only think of a hood so they can hide their face.’

„Винаги е добре човекът ако може да се обръсне, да е с костюм и т.н. Ако не е имало възможност да се облече със сигурност ще изглежда доста омачкан и орфан, което се отразява лошо. Но това много зависи от конкретния човек. Ако той за първи попада в такива нещо, никога не си е мислел, че ще попадне на такова нещо, той е толкова стресиран, че няма голям шанс да се сети сам. Повечето се сецат само за някаква качулка, за да могат да си скрият лицето.“

A judge from Sofia noted there is no ‘dress code’ for participating in the hearing and clothes do not impact the presumption of innocence (confirmed by prosecutors, Bulgaria). Another judge (Judge, Bulgaria) explained that, according to the law, detainees can receive clothes while in detention and can therefore choose what to wear in court, but overall those detained and not detained go to court similarly dressed.

c. Presentation of vulnerable groups

Regarding **guarantees for not presenting defendants, and especially vulnerable groups, as guilty**, interviewees mentioned specific safeguards and general rules and guarantees. In terms of **specific safeguards**, a police officer from Sofia mentioned the fact that in the court room defendants are usually presented without any restraints unless their conduct threatens themselves, officers or third persons.

A number of interviewees (for example, Police officer, Bulgaria) elaborated on **construction specifics of court buildings**, allowing or not allowing defendants to be brought directly to court rooms without being seen (in handcuffs) by journalists (taking photos) and the public. Nevertheless certainty was expressed (Police officer, Bulgaria) that would not impact the outcome of proceedings. A police officer from Sofia elaborated on well working rules and good practices developed – defendants never enter through the main court doors but through special entrances with no members of the public present, detainees are kept in a special room in the court building and the public can only see them in the

corridors, where, 'unfortunately', they also get photographed by journalists, even if the session ends up behind closed doors.

Most lawyers from Sofia contrasted older and newer court buildings in Sofia and two, together with a judge from Sofia, mentioned defendants and lawyers can request the court, usually successfully, not to be exposed to the public in the court room and corridors.

(Lawyer, Bulgaria) 'For example, I have had several cases in the specialised court, where journalists are allowed into a very narrow space, in a narrow corridor, through which you must pass to reach the first four courtrooms, which are the main ones, i.e. you cannot avoid the journalists. And they are placed there, they are given the opportunity to mount their cameras and everything else. You cannot avoid them and no one stops them.'

„Аз например съм имала няколко случая в специализирания съд, където журналистите се пускат в едно много тясно пространство, в един тесен коридор, през който задължително минаваш, за да стигнеш до първите четири зали, които са и основните, т.е. ти няма как да избегнеш журналистите. И те са поставени там, дава им се възможност да си монтират камерите и всичко останало. Не можеш да ги избегнеш и никой не ги спира.“

A lawyer from Sofia also gave the opposite example of a defendant in a highly publicised case who wanted to talk to the media, but ultimately could not, and spoke of inconsistent practices in that respect.

(Lawyer, Bulgaria) '... Sometimes we have the opposite case – defendants want to be photographed and talk to the media. Our notorious Mr X said he wanted to talk to the media. They asked the judge whether Mr X could talk to them in one of the recesses. The judge granted the request, but said the interview should happen outside the court room, but there is nowhere else they could interview him, so he did not get an interview. Do you see the paradox? Then TV channel Y faxed a request that they want to interview him in the detention place. The judge denied the request because Mr X was deprived of his liberty.'

„... Понякога има обратният момент – обвиняемите искат да бъдат снимани и да говорят с медиите... Прословутият г-н... беше казал, че иска да разговаря с медиите. Те в съдебна зала попитаха съдията може ли г-н... в някоя от почивките да им даде интервю. Съдията каза „Може, но не в съдебна зала“, а то няма къде другаде и той не даде интервю. Разбирате ли самия парадокс? Оттам нататък телевизия... пуснаха по факса молба, че искат да направят с него интервю в затвора, което пак съдията трябва да разреши. Съдията каза „С оглед, че е задържан под стража, не разрешавам.““

A judge from Sofia, who is working in one of the newer court buildings, explained that the premises of the court s/he is working at allow for defendants, especially detainees, to be transported to the court room through a separate entrance after everyone else is already inside and the main entrance is closed. Thus, the defendant has no direct contact with the persons in front of the court room, including the media. According to another judge from Sofia, the majority of court buildings do not have separate corridors and guards pass through the public areas.

Regarding **young defendants (between 14 and 18 years of age)** one police officer from Sofia mentioned that, by law, detention is only applied to them in exceptional cases. Others (Police officers, Bulgaria) recalled that they can often be tried behind closed doors. A lawyer from Sofia mentioned the special procedural rules on cases of defendants under 18 years of age.

Regarding **people with disabilities**, one police officer from Sofia thought they should be given special care and equal access but did not elaborate on how this relates to not presenting them as guilty.

A lawyer from Sofia mentioned an important guarantee for **foreigners**, who should be informed that they can contact representatives of their embassies and consulates, who can provide information and seek a lawyer. This, according to the interviewee, is practically never done.

d. Reactions to presenting accused as being guilty

Regarding **remedies** for not being presented as guilty through restraining measures, one lawyer from Sofia mentioned defendants can raise such an issue in court, but handcuffing is practically obligatory according to the rules of security officers, so such an objection would not pass. Moreover, as mentioned by another lawyer from Sofia, even if defendants had the right to raise the issue before the court, that would hardly solve the problem as defendants are often very frustrated by the situation and therefore relying solely on them to raise the issue will not work.

According to another lawyer from Sofia, defendants only have civil law avenues to defend their rights, although the interviewee would mention negative circumstances before the court so that judges be potentially convinced to release the person.

According to a judge from Sofia, if the court has not ordered the removal of handcuffs, the defendant can request the recusal of the judge on the grounds of prejudice. Then the court has to provide a justification of its decision and if it is appealed the second instance court will decide whether this is a serious procedural violation. A prosecutor from Sofia gave a personal opinion that there is no obstacle for the defendant to raise the issue before the prosecutor or the judge and to request taking off restraint measures.

(Judge, Bulgaria) 'Inside the courtroom, in order to ensure the fairness of the trial and the conviction that the court complies with the presumption of innocence, the court must remove the handcuffs without the defendant's request. If the accused person has to ask because the court has not removed the handcuffs during the hearing, this could be an indicator for the accused person to think that the court is biased and ask for their recusal.'

„В съдебната зала, за да се осигури справедливост на процеса и убедителност в това, че съдът се съобразява с презумпцията за невинност, съдът трябва сам да сваля белезниците без обвиняемият да иска. Ако обвиняемият се наложи да иска, защото съдът не му сваля белезниците в хода на съдебното заседание, това би могло да бъде индикатор за обвиняемия да помисли, че съдът е пристрастен и да му иска отвод.“

e. Discussion of findings

The chapter on presenting defendants as guilty through the use of restraint measures presented fairly straightforward findings. All measures mentioned – handcuffs, shackles and ties between them – seem to be allowed by law and no interviewee alluded they can affect the presumption of innocence. What seems to be problematic is the lack of assessment of age, sex, condition, risk, etc. required by law – police interviewees were unanimous that handcuffs should be always used, lawyers seemed more concerned with the effect on media and public opinion, and judges just made sure handcuffs, and face coverings, are taken off in the court room. Another aspect of concern seemed to be media coverage and photographs outside court rooms and in corridors, for which covering of faces seemed useless – representatives of all groups expressed sympathy to defendants in such situations and many talked of older court buildings not allowing defendants to be entered directly in the court rooms. Separate entrances and corridors were presented as good practice:

(Police officer, Bulgaria) ‘...here in my department nobody sees them, we have special entrances, internal stairs, we somehow keep their self-respect... but in court there are no special corridors from the room they are kept to the court room, so they pass through the general corridors and if it is a case of high public attention, there wait journalists, who photograph them, unfortunately.’

„... тук никој не ги вижда, има си специални входи, вътрешни стълби, по някакъв начин се запазва тяхното самоуважение... но в съда няма специални коридори от помещението, където са задържани, до съдебната зала, те минават по общите коридори и, ако случаят е по-медиен, там има журналисти, които ги снимат, за съжаление.“

Vulnerable defendants seem to be covered by the regulation on assessment on whether restraint measures should be used, but, as assessment was never mentioned, the guarantees interviewees talked about rather concerned general rules on young defendants (14-18 years of age), people with disabilities and foreigners.

C.4 Burden of proof

Article 103 ‘Burden of Proof’ of the Criminal Procedure Code (*Наказателно-процесуален кодекс*) defines the legal standards relating to the burden of proof.⁶⁰ According to Article 103(1): ‘The burden of proving the charges in cases of general nature rests with the prosecutor and the investigative bodies, and in cases instituted upon a complaint of the victim – on the private complainant.’. According to Article 103(2): ‘The accused shall not be obliged to prove that they are innocent.’. According to Article 103(3): ‘No conclusions can be drawn to the detriment of the accused because they did not give or refuse to give explanations or did not prove their objections.’.

All interviewees confirmed that the **burden of proof lies solely on the prosecution**, or private complainant for the crimes, prosecuted upon complaint by the victim (lighter crimes often among relatives) (Police officer, Bulgaria).

One judge from Sofia noted public prosecutors, in their final speeches, are often trying to allude that the accused person is not actively arguing against the charges, therefore they are guilty. Although such statements are, in principle, valid legal arguments, the judge should take them into account always in relation to all other evidence.

(Judge, Bulgaria) ‘In their closing pleadings, the prosecutor emphasises only the defendant’s procedural inaction in the sense that they have not refuted the indictment at all, so they are guilty. But these are legal arguments that I take into account in my motives that, in the end, the defendant is not required to prove that they are innocent, the prosecution must prove that they are guilty. The prosecution cannot take advantage of the defendant’s passive procedural behaviour and draw conclusions in this direction.’

„При пледариите прокурорът набляга единствено на процесуалната неактивност на подсъдимия. Един вид – той въобще не е опровергал обвинителната теза, следователно е виновен. Но това са правни аргументи, които аз взимам под внимание в своите мотиви, че в крайна сметка подсъдимият не е длъжен да доказва, че е невинен, прокуратурата трябва да докаже, че е виновен. Тя не може да се възползва от неговото пасивно процесуално поведение, за да гради изводи в тази насока.“

⁶⁰ Bulgaria, Criminal Procedure Code ([Наказателно-процесуален кодекс](#)), 28 October 2005.

Prosecutors from Sofia saw the burden of proof on prosecution as an illustration of how the presumption of innocence applies in the process of gathering evidence.

(Prosecutor, Bulgaria) 'It is the prosecutor who has to prove the charges and this is precisely from the point of view of the presumption of innocence and its practical application in the process of proving. This is one of its manifestations - that it is the prosecutor who has to prove the indictment and that the indictment must be proven beyond doubt. Any doubt in the indictment entails a plea of not guilty and the termination of the accused person's pre-trial proceedings respectively.'

„Прокурорът е този, който трябва да докаже обвинението и това е именно от гледна точка на презумпцията за невиновност и от нейното приложение на практика в процеса на доказване. Това е едно от нейните проявления – че прокурорът е този, който трябва да докаже обвинението и че обвинението трябва да е доказано по несъмнен начин. Всяко едно съмнение в обвинението влече след себе си признаване за невиновен и респективно прекратяване на досъдебното производство на обвиняемия.“

(Prosecutor, Bulgaria) 'As a prosecutor, I work on tax crimes, and these crimes are extremely difficult to prove, they are very time consuming, and, in many cases, they cannot be proven because of the lack of a subjective element like when the person did not know. We fully abide by the rules and when something is not proven, there is simply no charge. The percentage of discontinued proceedings due to lack of evidence, lack of subjective element or objective element is not small. The prosecutor collects all objective data and already after collecting everything they sit down and assess whether there is a crime, whether it can be proven in court, how it can be proven, etc. But the burden is entirely on us.'

„Аз като действащ прокурор работя данъчни престъпления, а тези престъпления се доказват изключително трудно, бавно, а в голямата си част и не се доказват поради липсата на субективния елемент, поради незнание. Ние изцяло съблюдаваме правилата и когато нещо не се доказва, просто не се повдига обвинение. Не е малък процентът на прекратените производства поради липса на доказване, поради липса на субективен елемент или на обективен елемент. Прокурорът събира всички обективни данни и вече след като събере всичко сяда и преценява има ли състав, няма ли, това може ли да бъде доказано в съда, по какъв начин да бъде доказано и т.н. Но тежестта е изцяло наша.“

a. Exceptions to the burden of proof

Lawyers mentioned a number of cases they considered as exceptions to the burden of proof, although those were rather practices of how prosecutors build their cases that the lawyers see as negative.

According to a lawyer from Sofia, there is no mechanism by which a judge may inspect charges against a defendant and 'the ball is passed' to the court to prove whether the person is innocent or guilty.

(Lawyer, Bulgaria) '...The system is full of exceptions. The prosecutor in Bulgaria is the master of pre-trial proceedings. We have no mechanism in Bulgaria, like in other countries, by which, when the prosecutor wants to charge someone, a judge may review the charges and evidence and assess whether the prosecutor has the right to bring such charges... Very often prosecutors collect only evidence they are interested in, bring the case to court and thus pass the ball to judges to make a new investigation in the trial phase to see whether the person is innocent or guilty.'

„... Пълно е с изключения. Прокурорът в България е господар на досъдебното производство. В България няма механизъм, както в други държави, по който, когато прокурорът иска да повдигне обвинение на някого, съдия да се запознае с обвинението, с доказателствата и да прецени дали прокурорът има правото да повдигне това обвинение... Много често Прокуратурата събира само това, което я интересува, внася делото в съда и така му прехвърля топката да прави ново разследване в съдебна фаза, за да разбере виновен ли е човекът или не.“

Another lawyer from Sofia pointed out the problem about expert opinions. Experts are appointed and paid by the pre-trial authorities, so their opinions usually serve the purposes of the prosecution. Even if the defence requests a new opinion, it is usually assigned to the same experts. This practically reverses the burden of proof, because lawyers have to disprove their prosecution-oriented opinions. According to the same lawyer from Sofia, another factor infringing upon the presumption of innocence is the general phrasing of charges, which, upon the detention of the defendant, the court accepts due to the early stage of the proceedings.

(Lawyer, Bulgaria) ‘...it is a simple situation – experts are appointed by the pre-trial authorities... and are paid by the budget of the respective authority. If the expert is paid by the prosecution, and not by me or my client, guess what the direction of his/her opinion will be and how fervently he/she will defend it, including with absurd arguments...’

„...ситуацията е проста – вещите лица се назначават от съответните водещи досъдебното производство полицаи... съответно им се плаща от бюджета на съответното учреждение. След като на експерта се плаща от прокуратурата, а не от мен или от клиента ми, сами се сетете накъде водят експертизите и колко ревностно биват те защитавани включително с безумия в някои случаи...“

Another lawyer from Sofia mentioned drug-related crimes as an exception, in practice, to the general rule that the burden of proof rests with the prosecution. In cases of drug possession or drug driving, without being envisaged in the law, the person is practically presumed guilty just because they have tested positive for drugs or have drugs in them, and have to prove that, for example, they did not know that the substance was a narcotic drug.

(Lawyer, Bulgaria) ‘Drug crimes. For example, the person held some green substance. How could they prove that they actually knew what that substance was. And somehow, it is presumed that they knew. This is a situation in which the burden of proof is practically reversed.’

„Престъпленията с наркотици. Например държал зелена маса. Как се доказва, че е знаел каква е тази маса. Някак се приема дефинитивно, че знае. Това е ситуация, при която тежестта на доказване практически е обърната.“

A lawyer from Sofia elaborated on the **burden of proof in the context of pre-trial detention**. According to the law, the accused person can be detained in custody when there is a ‘reasonable assumption’ that they have committed the crime, for which they are charged. In recent years, courts have started to base their decisions on as much evidence as possible and accused persons have started to present evidence in order to avoid detention. This practice has been brought to the attention of the European Court of Justice as on two occasions the Specialised Criminal Court (SCC) (*Специализиран наказателен съд, ЧС*) has requested preliminary rulings on (a) whether national courts are obliged to review all evidence, including evidence presented by the defendant, when assessing the reasonable assumption in detention proceedings, and (b) whether not considering the evidence presented by the defendant was a violation of Directive 2016/343. According to the lawyer, regretfully, the European Court of Justice ruled that detention proceedings fall outside the scope of the Directive (because the

Directive was not precluding the adoption of preliminary decisions of procedural nature) and the Directive is not restricting (but is not obliging either) national courts to examine all forms of evidence. In Bulgaria, however, detention proceedings are part of criminal proceedings and when deciding on detention judges are practically discussing the guilt of the defendant, albeit in the form of 'reasonable assumption'. This problem became even more relevant after, in 2017, judges who had participated in detention proceedings were allowed to try the same defendant. As a result, judges stopped assessing the evidence during detention proceedings to avoid accusations that they are discussing the defendant's guilt in violation of the presumption of innocence.

(Lawyer, Bulgaria) 'There is a particular problem with the presumption of innocence with regard to remand measures. When a remand measure detention in custody is requested or when a remand measure detention in custody is requested to be replaced by a lighter measure, we have a problem with this so-called reasonable assumption, because the court more and more often does not examine the evidence on the merits, more and more often it refers only to the fact that there is an accusation and that it is of high public danger, putting the accused person and the defense in a position to prove the opposite.'

„Има особен проблем с презумпцията за невинност по отношение на мерките за неотклонение. Когато се иска мярка за неотклонение задържане под стража или когато се иска заменяне на мярка за неотклонение задържане под стража в по-лека, имаме проблем с това т.нар. обосновано предположение, защото съдът все по-често не вниква в доказателствата по същество, все по-често се позовава единствено на факта, че има обвинение, че то е с висока обществена опасност, поставяйки обвиняемия и защитата в позиция те да доказват обратното.“

b. Confession

There was a general consensus among interviewees that **confessions** had no impact on the outcome of proceedings. According to police officers from Sofia, a confession should not discourage the police to gather more evidence, should be checked against other evidence, can be an attenuating circumstance and can be withdrawn or changed at any time, while sentences or charges cannot be based only on defendant's confessions.

(Police officer, Bulgaria) '...his/her confessions... are not taken into account... because he/she has the last word... until the closing of proceedings... he/she can change his/her confessions an unlimited number of times... if he/she makes a confession and pleads for an agreement... or summary proceedings, then his/her confessions are taken into account, but still, giving him/her the last word, the procedural law gives him/her the opportunity to change his/her confessions until the last minute.'

„...неговите самопризнания... не се вземат предвид... защото той има последна дума... до приключване на процеса... той може да променя колкото пъти пожелае обясненията си. ... ако направи самопризнание и пожелае споразумение... или съкратено съдебно следствие, то в тези случаи самопризнанията му имат значение, но, давайки право на последна дума, процесуалният закон му дава възможност до последно да променя самопризнанията си.“

According to one lawyer from Sofia, even if defendants make confessions on crimes they have not committed to strike an agreement and get out of detention, judges do not accept them in the absence of other evidence. Another lawyer from Sofia pointed to wrongful procedural practices such as informal 'talks' where persons make confessions before proceedings are instituted, without having any rights of defence, and their confessions are then made part of the case by testimonies of the operative police having held the talks. Further, persons are often first called as witnesses to confess

to certain things shortly before they are charged and made formal defendants, where they can refuse to speak.

(Lawyer, Bulgaria) ‘...Confessions cannot justify by themselves a guilty sentence, they should be supported by other evidence... they have an impact depending on how they are used... practice is complicated... one problem are some specific confessions authorities often use – those unregulated ‘talks’, often reflected later in the testimony of operative police, where the person... then only a witness, has confessed something at a moment he/she has no defence rights, so those ‘talks’ are often used in a perverse manner.’

„... Самопризнанията не могат да обосноват сами по себе си една осъдителна присъда, трябва да бъдат подкрепени с други доказателства... отразяват се спрямо това как ще бъдат използвани... в практиката е сложно... проблем до някаква степен представляват един тип самопризнания, които често ползват органите – нерегламентираните беседи, които услужливо се пресъздават от оперативни работници, които твърдят, че съответният към този момент никакъв... свидетел е разказал нещо, докато той все още няма никакви права, и тези беседи се използват доста превратно.“

Another lawyer from Sofia also mentioned the confessions given before the formal start of proceedings. These confessions are not used in court, but according to the lawyer, sometimes affect the defendant’s actions during the proceedings as they start to feel vulnerable due to the things they have said.

(Lawyer, Bulgaria) ‘In my practice, it often happens that persons voluntarily hand over narcotic substances to the police. By voluntarily handing over the narcotic substance, according to the practice in Bulgaria, in 95 % of the cases you are incriminating yourself. This means that before handing them over voluntarily, your rights must be explained to you, what is happening, what is the meaning of this act. And I try to object, but then, when the case goes to court, the person starts to worry and to wish to sign agreements to end the case.’

„При мен често се случва някой да предава доброволно наркотично вещество. Предавайки доброволно наркотичното вещество, в българската практика, на 95 % ти се самоуличаваш в престъпление. Това означава, че преди да ги предаде доброволно, трябва да му се разяснят правата, какво се случва, какъв е този акт. И аз се опитвам да правя възражения, но после като се стигне до съд и хората започват да се притесняват и да искат да сключват споразумения, за да приключи делото.“

As for judges and prosecutors, who were also in agreement with the other professions on the significance of confessions, one judge from Sofia explained that the confession has no binding effect on the judge even in summary proceedings, where, if the defendant confesses all of the facts, on which the charges are based, imprisonment is automatically reduced by 1/3.

(Judge, Bulgaria) ‘Even when there is such a confession, the court is required to ex officio establish that that confession is supported by the facts of the case and then declare that it will use the confession as the basis for the conviction. There have been cases, not in my practice though, when the court has refused to accept a confession, since the facts do not support that confession, i.e. the court has concluded that the defendant is covering up someone else’s guilt.’

„Дори когато има такова самопризнание, съдът е длъжен служебно да установи, че това самопризнание се подкрепя от фактите по делото и тогава да обяви, че ще се ползва самопризнанието като основа на осъдителната присъда. Имало е случаи, на мен не ми се е случвало, когато съдът отказва да приеме самопризнанието, тъй

като фактите не подкрепят това самопризнание, т.е. съдът прави извод, че той прикрива чужда вина.“

According to one prosecutor from Sofia, confessions are mostly used to direct the investigative authorities where to look for more evidence.

(Prosecutor, Bulgaria) ‘Honestly speaking, the role [of confession] is not particularly significant. It has such a role insofar as it can direct investigative authorities how to collect more evidence, i.e. it has a guiding role. But otherwise, sentencing someone on the basis of confession is inadmissible. [...] Even if a prosecutor dares to file an indictment only on the basis of confession and some indirect circumstantial evidence, I do not think there is a Bulgarian court to convict that person.’

„Да ви кажа честно ролята [на самопризнанието] не е особено голяма. Има такава роля дотолкова, доколкото може да насочи разследващите за събиране на по-голям обем от доказателства, т.е. насочваща роля. Но иначе по отношение на това въз основа на самопризнание някой да бъде осъден, това е недопустимо. [...] Дори и някой от прокурорите да си позволи само въз основа на това и на някакви косвени доказателства да внесе обвинителен акт, мисля че няма български съд, който да го осъди.“

As for **confessions being informed and conscious**, one police officer from Sofia underlined that defendants always certify with their signatures that they have been informed and are aware of their rights, so any claim to the contrary is just ‘a form of defence’. According to another police officer from Sofia, investigative authorities always ask whether the defendant understands the charges and additional clarifying, never leading, questions may also be asked. For several police officers from Sofia another guarantee would be the presence of a (state-appointed mandatory) lawyer, without whom confessions would have even less value. This was countered by a lawyer from Sofia in that especially when the lawyer has not been chosen by the defendant, it is not clear when and how this lawyer has advised their client to confess. Interviews in the presence of a judge were also mentioned as safeguard (Police officer, Bulgaria), as well as the defendant’s right to keep silent and the fact that any information they bring in requires new corroborative actions (Police officer, Bulgaria).

(Police officer, Bulgaria) ‘...Firstly, he/she signs that he/she is acquainted with his/her rights, but in practice it is often claimed that this is... just a formalistic act. And this is not true – I first read the rights to him/her, he/she signs that he/she has heard and understood them... and then he/she claims this never happened or he/she did not understand something, this is just a form of defence...’

„...На първо място, той се е подписал, че е запознат с правата си, а в практиката много често се твърди, че това е... формален акт. А това не е вярно – аз първо съм му ги изчел на глас, той се е подписал, че ги е изслушал и разбрал... това, че след това твърди, че това не се е случило, или че нещо не е разбрал, това е форма на защита...“

Interviewees from at least two professions (Police officers, Bulgaria; Lawyer, Bulgaria) mentioned (rarer) confessions innocent people do due to confusion or low level of education, ‘emotion, surge of morality or guilt’.

(Police officer, Bulgaria) ‘... It is often the case that due to an emotion, or morality, or guilt, some people make confessions. Confessions are not taken by themselves, our work is not finished, ‘oh, he/she confessed, no more evidence is needed’. Just the opposite, confessions are checked against all other evidence gathered...’

„... Често се случва под въздействие на емоция, или на някакво чувство за морал, или за вина, някои хора да правят самопризнания. Те не се разглеждат единично, с това работата не приключва, „той си е признал, няма защо да събираме повече доказателства“. Напротив, самопризнанията се проверяват и трябва да се съпоставят с всички други събрани доказателства...“

According to a lawyer from Sofia, there are no practical safeguards to ensure any confession is an informed and conscious choice and coercion or violence is difficult to prove.

(Lawyer, Bulgaria)...There are no guarantees. We are talking the following: confession is given in the form for interviewing the defendant, where on two pages his/her rights are listed, then a confession and a signature. In many cases... the judge has no way of knowing how the defendant gave that confession, there is just a form with signatures, prepared in accordance with the rules.'

„... Няма гаранции. Говорим за следното: самопризнанието се дава в протокола за разпит на обвиняем, където на две страници в бланката има неговите права, следва съответното самопризнание и подпис. В много от производствата... съдията няма как да разбере как той е дал това самопризнание, има протокол, подписан и изготвен съобразно правилата.“

A lawyer from Sofia suggested the use of audio and video recordings during questionings, which can be used by the judge in case of doubt confession might not have been informed and voluntary.

According to another judge from Sofia, by asking probing questions, the judge can check if the defendant has actually experienced the things they are confessing and thus discover if the confession was voluntary. The same judge from Sofia shared an observation that defendants are often placed in detention until they consent to conclude an agreement with the prosecutor confessing their guilt in exchange of a suspended sentence or imprisonment that is equal to the duration of pre-trial detention. According to the law, such agreements, permitted for less serious offences only, are concluded between the prosecutor and the defendant and must be approved by the court. Occasionally courts have refused to approve such agreements when the judge is not convinced that the confession has been made voluntarily and consciously.

(Judge, Bulgaria) 'It often happens, unfortunately, especially in the courts of first instance at the lowest level, I mean the regional courts, that the accused persons are detained until they agree to conclude an agreement and in order to conclude an agreement they must confess before the court. And, since they are detained, they agree to do so just because they know that the prosecutor would then agree to a sentence, which is either equal to the time they have already spent in detention or it will be suspended and they will be able to leave immediately.'

„Често се случва, за съжаление, особено в първоинстанционните съдилища от най-ниското ниво, имам предвид районните съдилища, обвиняемите да бъдат задържани до момента, в който се съгласят да сключат споразумение, а за да се сключат споразумение трябва да се признаят за виновни пред съда. Те са задържани и го правят само и само защото знаят, че прокурорът след това ще бъде съгласен на наказанието, което им се определя да бъде за срока евентуално на излежаното или да бъде с отложено изпълнение и да могат да излязат веднага.“

According to a prosecutor from Sofia, safeguards to ensure that the confession is an informed and conscious choice usually apply in case of indications that it might have not been made voluntarily.

Safeguards include the written record that is drawn up for the confession, the right to and the presence of a lawyer.

(Prosecutor, Bulgaria) ‘Confession would be verified if there is any information or evidence that, for example, the confession was not voluntarily given. It should be borne in mind that the confession is always objectified in the record of the interrogation of the accused person, which contains the relevant details and which is signed by the person. Often the confession is made in the presence of the person’s lawyer. In fact, this, combined with the absence of any other evidence that the confession was not given voluntarily, eliminates the doubt. In my personal opinion, I, as a prosecutor, would only make a check if I had any information giving me reasonable doubt that this confession had not been given voluntarily.’

„Самопризнанието би се проверявало, ако в материалите по делото се съдържат някакви данни или доказателства че това самопризнание, например, не е дадено доброволно. Трябва да се има предвид, че самопризнанието винаги се обективира в протокол за разпит на обвиняем, който съдържа съответните реквизити и който е подписан от лицето. Често самопризнанието се прави в присъствието на защитника на лицето. И всъщност това, при липсата на някакви други данни, че самопризнанието не е дадено доброволно, изключва съмнението. По лично мое мнение, аз като наблюдаващ прокурор по делата бих направила проверка, само ако имам някакви данни, които да будят у мен основателно съмнение, че това съмнение не е дадено доброволно.“

Among **guarantees for vulnerable defendants**, a police officer from Sofia mentioned that defendants under 18 years of age, people with physical or mental disabilities, and foreigners not having command of the Bulgarian language, are obligatorily represented by a lawyer. Another police officer from Sofia mentioned the involvement of relatives and NGOs. A lawyer from Sofia also mentioned as available safeguards the presence of a lawyer and the mandatory defence. Regarding child defendants, they are treated with police’s utmost attention, by specialised inspectors. According to a police officer from Sofia, asylum authorities can be considered a guarantee for third country nationals. A judge from Sofia noted that the court is obliged to check whether vulnerable defendants know that they are making a confession and what are the consequences of such confession.

c. Discussion of findings

Interviewees from all professions confirmed that the burden of proof lies entirely with the prosecution and even figures like the private prosecutor or private complainant (roles in which the victim can participate in the proceedings) cannot be seen as exceptions to the rule. What was mentioned as exceptions by lawyers were wrongful procedural practices by prosecution such as not allowing defence’s evidentiary requests and indirectly influencing the work of experts. A judge from Sofia also criticised the attempts by prosecutors to link the procedural inactivity of the defendant with their potential guilt.

Regarding confessions, although such happen, mainly due to confusion or willingness to close proceedings/get out of detention, they are never taken into account alone and sentences can never be based only on them. Police defended strongly that confessions are always informed and conscious, while lawyers were rather critical and pointed to another set of wrongful procedural practices such as ‘informal talks’ of potential defendants with operative police and summoning them first as witnesses, without a fully fledged right of defence. Judges and prosecutors pointed to possibilities where confessions may be covering up somebody else’s guilt (Judge, Bulgaria) and even alluded to possible cases where confessions might not have been voluntary and further checks are needed (Prosecutor,

Bulgaria). One judge from Sofia talked about confessions, which were only made to strike a deal with prosecution for a lighter sentence.

C.5 The right to remain silent and not to incriminate oneself

a. The right to remain silent in practice

Article 55 'Rights of the Accused' of the Criminal Procedure Code (*Наказателно-процесуален кодекс*) explicitly includes the right to remain silent among the procedural rights of the accused person.⁶¹ According to Article 55(1): 'The accused has the following rights: [...] to give or to refuse to give explanations in relation to the charges [...].'. This right is also proclaimed in Article 115 'Explanations of the Accused'. According to Article 115(1): 'The accused has the right to refuse to give explanations.'. Article 103 'Burden of Proof' defines the consequences when the accused has exercised their right to remain silent. According to Article 103(3): 'No conclusions can be drawn to the detriment of the accused because they did not give or refuse to give explanations or did not prove their objections.'.

Police officers elaborated in detail about **defendants' right to remain silent**. According to one police officer from Sofia the right was recently expanded to police detention (outside the remit of criminal proceedings), but police cannot make defendants state anything. Thus, at a subsequent stage they can always claim they did not understand the charges against them, which can be deemed a procedural violation. Two police officers from Sofia confirmed just a few defendants give explanations. According to one police officer from Sofia, defendants only speak at trial because the trial phase is central to the criminal proceedings.

(Police officer, Bulgaria) '...what happens in practice: he/she just does not give explanations on the charges brought. He/she should state – which is not regulated as his/her obligation – that he/she understands the charges and will use his/her right not to give explanations... If he/she does not state he/she understands the charges, I cannot make him/her state anything... and at the next stage he/she can always claim he/she did not understand.'

„...практически как се случва: той просто не дава обяснения по повдигнатите обвинения. Той следва да заяви – което никъде не е регламентирано като негово задължение – че разбира в какво е обвинен и че се възползва от правото си да не дава обяснения... Но ако той не заяви, че разбира, аз не мога да го накарам да заяви каквото и да било... на един следващ етап винаги може да заяви, че не го е разбрал.“

(Police officer, Bulgaria) '... This is his/her choice, nobody forces him/her to speak – in many cases, when there is enough evidence gathered, I even prefer he/she remains silent, he/she has nothing new to tell me.'

„... Това е негов избор, никой не го кара – даже в много от случаите, когато има достатъчно събрани доказателства, предпочитам той да запази мълчание, той няма какво ново да ми каже.“

(Police officer, Bulgaria) '... Defendants get their rights explained and this is among their basic rights. And defendants usually exercise that right and only speak at the trial phase. This is their right of defence, their discretion, as well as the defence line of their lawyers. There are also those who give information, point to additional witnesses, but those are few... maybe because the trial phase is central to the proceedings, the pre-trial phase is only preparatory.'

⁶¹ Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005.

„... На обвиняемия се разясняват правата и това е сред основните му права. И обвиняемите обикновено се възползват от това си право и отказват да дават показания, чак на съдебна фаза. Това е тяхно право на защита и преценка, както и линия на защитника. Има и такива, които дават информация, посочват допълнителни свидетели – но са малко... може би защото съдебната фаза е централна в процеса, досъдебната е само подготвителна.“

Two lawyers from Sofia said that the right is contained in the forms for defendants' interviews, although one can never say who has read the forms and how, and is consistently repeated to defendants by authorities. A lawyer from Sofia expressed concerns that the list of defendants' rights on the interview form is written in small letters and can easily be missed.

(Lawyer, Bulgaria) 'Both defendants and witnesses are informed about their right not to give testimony, respectively explanations, with the protocol in which the testimony or the explanations are recorded. It is written there in small letters - you may read them, you may not read them - but formally the law is observed, because then you sign. And if you do not have a lawyer, which is not mandatory in all cases, it is possible to skip this process. There are some conscientious investigative police officers and prosecutors who always explain rights orally, including the right to remain silent and not give explanations that can incriminate you, but this does not always happen. In any case, the procedure is done in this way and the forms themselves are prepared in such a way that you cannot say that these rights have not been explained to you, because you sign immediately below the part in which these rights and obligations are written.'

„Както подсъдимите, така и свидетелите, се информират за правото си да не дават показания, съответно обяснения, с протокола, в който показанията или обясненията се записват. Там с едни ситни буквички е записано – може да ги прочетеш, може и да не ги прочетеш – но формално законът е спазен, защото ти после се подписваш. И ако нямаш адвокат, който не е задължителен във всички случаи, е възможно този процес да го пропуснеш. Има някои съвестни разследващи полицаи и прокурори, които обясняват правата винаги устно, включително и правото да запазиш мълчание и да не даваш показания, които могат да те уличат в престъпление, но това не винаги се случва. При всички положения обаче, така е направена процедурата и така са изготвени самите бланки на протоколи, че ти не можеш да кажеш, че тези права не са ти разяснени, защото ти се подписваш непосредствено под частта, в която тези права и задължения за записани.“

A lawyer from Sofia explained that s/he usually advises his/her clients to remain silent as one cannot control what they would say out of worry and confusion.

(Lawyer, Bulgaria) '... I mainly advise them to remain silent, and here is why. Many defendants, when they enter the court room, they... completely change, you would not recognize them. I am afraid that, however right he/she may be, he/she may blabber such nonsense in the courtroom out of worry and not understanding what he/she is asked... Some clients, I see them and I do not trust them, they say themselves they cannot do it and they are not ready. Others would enter the court room and tell their story from beginning to end, without being worried by questions or anything.'

„...Основно ги съветвам да пазят мълчание, и казвам защо. Много от подсъдимите и обвиняемите, влизайки в съдебна зала, се превръщат в... други хора, все едно не ги познаваш. Мен ме е страх, че, колкото и да е прав, в съдебна зала може да изрече такава глупост от притеснение и от неразбиране какво го питат... Има хора, които, като ги гледам, им нямам доверие, те сами казват „не съм готов, не мога“. Има и

други, които ще застанат в съдебна зала и ще разкажат историята от-до, както смята, че е вярна, и няма да се притеснят нито от въпроси, нито от нищо.“

According to another lawyer from Sofia, the defendant should always be informed of their right to remain silent and the lawyer usually advises his/her clients to keep silent at least during pre-trial, because decrees are usually general and lack detail, so no sensible answers can be given.

(Lawyer, Bulgaria) ‘...Defendants should always be informed about their right to keep silent. How I apply that – to be frank, during the pre-trial it is always my stance that defendants should keep silent, and most of my colleagues take that stance too... First, this is the defendant’s right and nobody should make any negative inferences from that... Secondly, upon bringing charges... and interviewing the defendant... this is a very initial stage, decrees are unclear and too general, without details and it is difficult... it is illogical to start explaining something if you don’t know what you are asked. So most of my clients speak, but already at the trial phase, towards the end.’

„...Обвиняемите трябва винаги да бъдат информирани за това си право. Аз как го прилагам – ако трябва да бъда напълно честен, в досъдебната фаза това е моята позиция винаги, а смея да твърдя и на повечето колеги... Първо, това е наше право и никой няма право да вади от това каквито и да било негативи за обвиняемото лице... Второ, на етапа на привличане към наказателна отговорност... и разпит на обвиняемото лице... това е доста начален етап и постановленията са неясни, бланкетни, без конкретика, трудно е в такъв момент... няма логика ти да започнеш да обясняваш нещо, без да знаеш какво точно те питат. Така че обяснения повечето ми клиенти дават, но ги дават на съдебна фаза, и то към края.“

According to a judge from Sofia, defendants are always informed about their right to remain silent and the majority of them are taking advantage of it. The same judge noted that it is always useful to audiotape the proceedings to disprove a claim by the defendant of not being informed about their rights. According to another judge from Sofia, defendants prefer to get information about their right to remain silent from their lawyers. The same judge from Sofia emphasised the defendant should understand that their confession can be regarded as a mitigating factor, but remaining silent can never be considered as an aggravating one. The same judge noted that during the trial many of them claim they have not understood the information about their rights at the pre-trial stage.

(Judge, Bulgaria) ‘It is not the judge's approach that is crucial, but the lawyer's help, although the judge must also be careful to not point the defendant in one direction or another. However, it is important for the defendant to know that giving an explanation could be a mitigating circumstance, but if this is pointed out, the court should immediately say that if they do not confess, this is not an aggravating circumstance. This is required and, in my opinion, the professional culture has already established it as a dominant practice.’

„Решаващ е не подходът на съдията, а адвокатската помощ, макар че съдията също трябва да внимава да не насочи подсъдимия в една или друга посока. Но все пак важно е подсъдимият да знае, че ако даде обяснение, това би могло да бъде смекчаващо отговорността обстоятелство, но ако това нещо бъде изтъкнато веднага съдът да каже, че ако не направи самопризнание, това не е отегчаващо отговорността обстоятелство. Това се изисква и според мен съсловната култура вече го е установила като доминираща практика.“

A prosecutor from Sofia explained that the accused person is informed, and explained, about their right to remain silent, and other rights, before the start of the questioning, which takes place immediately after the bringing of the charges by the investigative authority – investigative magistrate,

investigative police or customs officers - or the prosecutor. Many defendants actually choose to remain silent - those not accompanied by a lawyer more often than those who have a lawyer. Another prosecutor from Sofia put the moment of information even earlier, at the moment of bringing the charges against the person.

b. How is information on the right to remain silent and not to incriminate oneself shared with the accused?

According to a police officer from Sofia, **defendants are usually informed** about their right to remain silent orally, through explanations. All police interviewees also recalled that the defendant is formally informed twice – upon the bringing of charges against them and upon their interview, through the relevant procedural forms.

According to two police officers from Sofia, police cannot really **ensure the defendant understands their rights**, they can only ask them verbally. Defendants may claim they do not understand, in which case rights get explained again (also confirmed by another police officer, Bulgaria), but if the defendant remains silent, police practically assume they understand their rights and continue working. If a lawyer is present, the lawyer gives additional explanations to the defendant. Importantly, another police officer from Sofia added rights have to be explained in a simple language. According to another police officer from Sofia, defendants mostly understand their rights and almost always appear with their lawyers.

(Police officer, Bulgaria) ‘...How can we practically ensure that? We ask him/her whether he/she understood his/her rights, he/she says yes or no, or does not say anything. This does not mean we should stop work – if he/she says he/she did not understand, we explain again, but if he/she does not say anything, we cannot stop working, because he/she can remain silent for several days.’

„...на практика как можем да се уверим? Ние го питаме разбрал ли е правата си, той отговаря разбрал или неразбрал, или нищо не отговаря. Това обаче не означава, че трябва да спрем – ако каже, че не е разбрал, му ги разясняваме пак, ако обаче нищо не каже, не можем да спрем работата, защото той може нищо да не отговори и няколко дни.“

Table 6: Special or additional measures to ensure that vulnerable defendants understand the right to remain silent

	Interpretation and translation	Sign interpretation	Reading of documentation	Other factors
Police	4/4	2/4	2/4	1/4 (representatives of/lawyers sent by embassies), 2/4 (special rules for child defendants), 1/4 (psychologists)

*The presence of a lawyer was already mentioned by most interviewees when elaborating on confessions.

Police officers elaborated upon guarantees for **vulnerable defendants’ understanding of their right to remain silent**. According to at least three police officers from Sofia, migrants, like anybody not in command of Bulgarian, get an interpreter appointed, plus a translation of the decree for bringing charges, the minutes of the defendant’s interview and the remand measure decision, while one police officer from Sofia also added representatives, or lawyers sent by embassies, may appear. Persons with hearing or speaking disabilities get a sign interpreter (Police officers, Bulgaria), while those with visual

impairments, or low level of literacy, get procedural documentation read (Police officer, Bulgaria) possibly by an independent witness (Police officer, Bulgaria). A fourth police officer from Sofia emphasised a psychologist may appear, for example in cases of suspected alcohol or drug abuse. Among the guarantees is also the participation of inspectors from the child pedagogical units (*детска педагогическа стая*) when the defendant is between 14 and 18 years old (Police officer, Bulgaria).

c. Self-incrimination

According to the majority of interviewees, **the defendant does not have any obligation to provide evidence** and even if there is a court order, e.g. for providing DNA samples, the defendant cannot be forced to provide such samples (Lawyers, Bulgaria). According to a lawyer from Sofia, contrary to the established legal order cases of coercion to give evidence may still happen.

Professionals were divided in their opinion as to when a defendant can be obliged, by a court decision, to provide incriminating information. A judge from Sofia and a prosecutor from Sofia said that in some cases the defendant can be obliged to provide a DNA sample, but this cannot apply to data such as PIN numbers and passwords, as this will violate their right to remain silent, i.e. there is a difference between obliging the defendant to 'give' a DNA sample and to 'tell' a password. Defendants often agree to provide such data either by their own decision or upon advice by their lawyers if (Lawyer, Bulgaria) that would be in their favour.

(Judge, Bulgaria) 'There is a difference. When biological traces are seized, then, in my opinion, a slight form of coercion is acceptable, for example when sampling blood, hair, etc. But when they are asked to provide data at any cost, whatever it might be, including passwords, this has an impact on their consciousness and that is already affecting their right not to give explanations in any way. Personally, I would not allow a defendant to be obliged to communicate information, but I would order coercive taking of biological samples for DNA examination.'

„Има разлика. Когато се изземат биологични следи, тогава според мен е допустима една лека форма на принуда, например при вземане на проба от кръв, косми и т.н. Но когато се иска той да предостави на всяка цена данни, каквито и да било, включително пароли, това е някакво влияние върху съзнанието, което вече му влияе на правото да не дава обяснения по никакъв начин. Аз лично не бих допуснал да го карам на сила да съобщава информация, но бих наложил принудително изземване на биологични проби от него за ДНК експертиза.“

(Lawyer, Bulgaria) 'They cannot be legally bound, but they can be convinced that it is best for them to provide the information voluntarily.'

„Той няма как да бъде задължен правно, но може да бъде убеден, че за него е най-добре да предостави информацията доброволно.“

Another judge from Sofia noted that, with the authorisation of the court, defendants can be obliged to provide information that cannot be collected by other means, including DNA samples, fingerprints, passwords and PIN numbers, etc.

d. Right to remain silent

According to all police officers, **the choice of the defendant to remain silent does not have any effect on proceedings**, or on the situation of the defendant, although it may inconvenience the investigating authorities and prosecution, as they have to prove the charges. A warning that the choice of the defendant to remain silent will be taken into account during proceedings cannot be given lawfully.

According to a police officer from Sofia, if the defendant decides to remain silent, this is put into the minutes of their interview and does not in any way absolve the authorities of their responsibility to prove the charges.

(Police officer, Bulgaria) ‘...each charge should be supplied with evidence... and the prosecutor evaluates the evidence and the grounds to bring charges... not giving evidence is reflected in the minutes of the defendant’s interview, but this does not impact the pre-trial proceedings in any way as the authorities continue to be obliged to collect evidence...’
„...за да се стигне до обвинение, то трябва да е подплатено с доказателства... прокурорът преценява въз основа на събраните доказателства дали са налице основания да се повдигне обвинение... недаването на обяснения се протоколира в самия разпит, но оттам насетне не се отразява по никакъв начин на фазата по досъдебното производство, защото органите са задължени да събират доказателства...“

(Police officer, Bulgaria) ‘... If the proceedings only relied on the defendant giving evidence... In any case, proceedings do not stop and are not finished with the defendant’s explanations. A multitude of investigative actions take place, the explanations of the defendant are an element of the proceedings, but proceedings do not depend solely on those explanations...’
„... Ако производството разчиташе само на това той да даде обяснения... Така или иначе не спира, производството не се изчерпва само с обясненията на обвиняемия. В едно производство се провеждат страшно много процесуално-следствени действия, обясненията на обвиняемия са елемент от цялото производство, но не зависи производството само от тези обяснения...“

As for lawyers, in the view of one lawyer from Sofia, the defendant’s refusal to provide evidence always gives an impression to the authorities that they might be guilty. Defendants might ‘unofficially’ be told that they would never get out of detention or prison, if they remain silent.

(Lawyer, Bulgaria) ‘... The defendant’s refusal to talk does impact proceedings, because it places an additional burden on authorities. It is a lot easier for them when someone confesses, because they gather evidence to support the confession and then the case is closed.’
„...Има отражение, защото се натоварва работата на органите на разследване. Много по-лесно е, ако някой си признае, да си съберат доказателства, които да подкрепят признанието, и да приключи процесът.“

According to another lawyer from Sofia, illegitimate pressure can be made especially upon persons encountering criminal justice for the first time to ‘tell everything’ until the lawyer arrives. Another lawyer from Sofia also expressed concerns that defendants are usually pressured to speak before their lawyer’s arrival in order to avoid worsening their situation.

(Lawyer, Bulgaria) ‘...Again, silence should not affect proceedings in any way. If... he/she decides to speak, then his/her testimony is checked against the other evidence... defendant’s testimony is a source of information and a defence position... but in 60-70% of the cases testimony is not given... Pressure is sometimes exerted, ‘tell us everything, no problems’... especially for persons encountering criminal justice for the first time, until the lawyer arrives... but this is illegal, therefore unregulated.’
„...Пак казвам, по закон не трябва да се отразява никак. Ако... той реши да даде обяснения, то обикновено тези обяснения се проверяват с другите доказателства по делото... Те са източник на информация и защитна позиция... но в 60-70% от случаите не се дават обяснения... Мога да кажа, че понякога се оказва натиск, казва

се „кажи си, няма проблеми“... особено в случаите, докато дойде адвокат, особено за лица, които не са се срещали със системата... но това е незаконно, следователно и нерегламентирано.“

A lawyer from Sofia noted that in cases publicised by the media, this choice is often used to describe the defendant as guilty.

(Lawyer, Bulgaria) 'I have not had a case where the court gave weight to the refusal of the defendant to give explanations. However, there have been cases, including recent ones, of statements by the prosecution that the accused did not want to cooperate, including by giving explanations, which is absolutely inappropriate as a statement because the decision to cooperate is a personal right and cannot be interpreted in the context of the prosecutor's overall statement of how guilty this person is.'

„Не съм имала случай съдът да отдаде тежест на недаването на обяснения. Но има случаи, включително и наскоро, на изказвания на прокуратурата, че обвиняемият не е искал да съдейства, включително чрез даване на обяснение, което е абсолютно недопустимо като изказване, защото желанието да съдейства или не е лично право и то не може да се тълкува в контекста на цялостното изказване на прокурора колко това лице е виновно.“

According to a judge from Sofia, the manner, in which the defendant is informed about their right to remain silent, can in some cases be interpreted as pressure.

(Judge, Bulgaria) 'It may sound a little ambiguously – your right to remain silent will be taken into account when the verdict is delivered. This can be interpreted, and I would interpret it for myself, as: Be careful, if you say nothing, you are guilty.'

„То може да е малко йезуитски казано – правото Ви на мълчание ще бъде взето предвид при постановяване на присъдата. Това може да се тълкува, и аз за себе си бих го изтълкувал, по следния начин: Внимавай, ако не кажеш нищо, си виновен.“

According to another judge from Sofia, at the pre-trial stage, about 90 % of defendants who have a lawyer remain silent and refuse to give explanations, all upon the advice of their lawyers, which is due to the low level of trust in the investigative authorities. During the trial, the share of the defendants who prefer to remain silent falls down to about 50 %.

Prosecutors from Sofia also confirmed the choice of the defendant to remain silent, or give incorrect explanations, is never interpreted to the detriment of the defendant.

(Prosecutor, Bulgaria) 'There is such a consistent case law that refusing to give explanations is a right of its own and cannot be an aggravating circumstance. On the contrary, I have had many cases of defendants deliberately giving false information to mislead me. They are not criminally liable for that, unlike the case with witnesses, i.e. they can talk whatever they want, and the prosecutors and investigative authorities have to establish the objective facts.'

„Има такава константна съдебна практика, че това, че лицето отказва да даде обяснения, е негово право и не може да бъде утежняващо обстоятелство. Тъкмо обратното, аз съм имала много случаи, в които умишлено дават неверни сведения, за да ме заблудят. Те не носят наказателна отговорност, както е при свидетелите, т.е. той може да си говори каквото си иска, а прокуратурата и разследващите трябва да установят обективните факти.“

e. Discussion of findings

In the views of the interviewees, the right to remain silent seems comprehensively regulated and is constantly presented to defendants both in writing and orally. Police defended their work in explaining to defendants their rights but still admitted many of them prefer to remain silent during the pre-trial proceedings. Prosecutors also confirmed strict compliance with the defendant's choice to remain silent. Lawyers admitted they advised their clients to remain silent either because they 'do not trust' what they are going to say (Lawyer, Bulgaria), or because charges at the initial stage are too general and no sensible answers can be given (Lawyer, Bulgaria). The procedural guarantees already mentioned for various vulnerable groups – interpretation and translation, sign interpretation, presence of lawyers and mandatory defence, special rules on child defendants – were mentioned with regard to the right to remain silent as well. Defendants can never be obliged to give any evidence, apart from, as confirmed by judges and some prosecutors, producing DNA samples. The defendant's silence should not have an impact on proceedings, although, according to lawyers, the defendant's guilt may be inferred (Lawyer, Bulgaria) or persons in first contact with the criminal justice system may be easily persuaded by authorities to speak even before their lawyer arrives (Lawyers, Bulgaria). Police officers, judges and prosecutors emphasised on police and prosecution's obligation to prove the charges and unanimously confirmed a warning that silence will be taken into account in the proceedings would constitute illegitimate pressure.

C.6 The right to be present at the trial and to have a new trial

The legal standards relating to the right of the accused to be present at the trial are defined in Article 269 'Presence of the Defendant at the Trial' of the Criminal Procedure Code (*Наказателно-процесуален кодекс*).⁶² According to Article 269(1), in cases of charges of a serious crime⁶³, the presence of the defendant at the trial is mandatory. According to Article 269(2), the court may also order the defendant to appear in cases, in which their presence is not mandatory, when this is necessary for revealing the objective truth. According to Article 269(3), where this will not prevent the disclosure of objective truth, the case may be heard in the absence of the defendant if: 1. the defendant has not been found at the address indicated by them or changed that address without notifying the relevant authority; 2. the defendant's place of residence in the country is unknown and has not been established after a thorough search; 3. the defendant has been regularly summoned, has not stated valid reasons for their failure to appear and the procedure under Article 247b(1)⁶⁴ has been applied; 4. the defendant is outside the borders of the Republic of Bulgaria and (a) their residence is unknown; (b) cannot be summoned for other reasons; (c) was regularly summoned and had not stated good reasons for not appearing.

Defendants, who do not comply with their obligation to attend a hearing, may get a remand measure imposed on them or may have their already imposed measure replaced with a harsher one (e.g. bail can be changed into detention in custody). Article 66(1) of the Criminal Procedure Code (*Наказателно-процесуален кодекс*) 'Consequences of non-compliance with obligations, concerning remand measures' stipulates that if the defendant does not appear before the respective authority

⁶² Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005.

⁶³ According to Article 93 of the Criminal Code (*Наказателен кодекс*), a 'serious crime' is a crime, for which the law provides for a sentence of imprisonment of more than five years, life imprisonment or life imprisonment without parole.

⁶⁴ According to Article 247b(1) of the Criminal Procedure Code, the defendant must receive a copy of the bill of indictment and must be informed about, among other things, the possibility of the case being heard and decided in their absence.

for no justified reason or changes residence without notification a remand measure is imposed on them or the remand measure already imposed is replaced with a harsher one.

The Criminal Procedure Code (*Наказателно-процесуален кодекс*) defines the consequences in cases where the criminal proceedings may not continue in the absence of the accused. According to Article 25(1), criminal proceedings are temporarily suspended when the hearing of the case in the absence of the accused would prevent the objective truth from being revealed.

As a guarantee for the rights of the accused, Article 94(1) of the Criminal Procedure Code (*Наказателно-процесуален кодекс*) stipulates that in proceedings taking place in the absence of the accused the participation of a lawyer is mandatory.

Article 423 of the Criminal Procedure Code (*Наказателно-процесуален кодекс*) 'Reopening of Criminal Proceedings at the Request of a Person Convicted in Absentia Due to Their Nonparticipation in the Criminal Proceedings' lays down the rules and procedure for exercising the right to a new trial.⁶⁵ According to Article 423(1), within six months of learning about the sentence, which has entered into force, or of the transfer from another country to the Republic of Bulgaria, the convicted person may file a request for reopening of the criminal case on the grounds of their nonparticipation in the proceedings. The court is obliged to reopen the case, unless the convicted person has fled after the presentation of the charges during the pre-trial proceedings, and because of that the procedure under Article 247b(1)⁶⁶ may not be applied or, after being applied, the convicted person has not appeared at a court hearing without good reason.

a. Consequences of non-appearance

Lawyers were fairly unanimous about defendants **being informed about the trial and appearing for it**. According to a lawyer from Sofia, defendants are always informed about the trial and the consequences of non-appearance. The interviewee cited a very recent CJEU decision in Case C-688/18 under the request for a preliminary ruling under Article 267 TFEU from Bulgaria's Specialised Criminal Court (SCC) (*Специализиран наказателен съд, ЧС*), but stated it is doubtful that the defendant can renounce their presence at trial when such presence is mandatory as they can be imposed detention in custody. Another lawyer from Sofia always advises his/her clients to supply their actual addresses, to avoid detention, due to not being found.

(Lawyer, Bulgaria) '... But I am asking here: can you afford, in Bulgaria, to state you do not wish to go to the trial if your remand measure can become heavier if you do not appear? ... There is collision here... There is no obstacle for procedural actions to be taken if you are properly notified about the trial... but how would a court not change your remand measure...' „... Но аз питам... можеш ли в България да си позволиш да кажеш, че не искаш да присъстваш, при положение, че си застрашен да ти бъде изменена мярката за неотклонение, защото не се явяваш?... Тук става една колизия... Няма пречка да се проведат действия, когато си уведомен, че ще има съдебно заседание... обаче как пък съдът няма да ти измени мярката за неотклонение...“

Defendants are officially informed about the trial in the subpoena for the preliminary court hearing (Lawyers, Bulgaria), personally and/or through their lawyers (Lawyers, Bulgaria). Also according to judges and prosecutors, the first point of notification is the servicing of the bill of indictment

⁶⁵ Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005.

⁶⁶ According to Article 247b(1) of the Criminal Procedure Code, the defendant must receive a copy of the bill of indictment and must be informed about, among other things, the possibility of the case being heard and decided in their absence.

(Prosecutors, Bulgaria). After receiving the bill of indictment, the judge writes down a detailed ruling for scheduling the preliminary hearing, which includes information about the trial, about the right (or obligation) of the defendant to be present and about the consequences of not showing up (Judge, Bulgaria). This ruling is then handed to the defendant and their lawyer, who confirm its receipt by their signatures (Judge, Bulgaria). During the preliminary hearing the information about presence at the trial and consequences of nonattendance is given to the defendant again (Prosecutor, Bulgaria) and the judge is obliged to check if it has been correctly understood (Judge, Bulgaria). A prosecutor from Sofia (Prosecutor, Bulgaria) noted the majority of defendants have lawyers who are also explaining to them their rights.

If the defendant cannot be located at the address provided, full check is made of their whereabouts in the official registers, a search warrant (also, according to a lawyer, Bulgaria, Interpol bulletins, EAWs and extraditions) is put out (also according to a judge, Bulgaria) and the court may change their remand measure into detention in custody (Lawyer, Bulgaria).

According to a lawyer from Sofia, the intensity of the efforts to locate a defendant depend on the personal assessment of the judge of how important the participation of that defendant is and can include inquiries to prisons, detention facilities and border authorities (also confirmed by a judge, Bulgaria), visits to the defendant's workplace, calls to all phone numbers registered at their name, collection of contact details from banks, etc. After the standard procedure is exhausted, the judge decides whether the defendant is intentionally absconding and whether the proceedings can continue in their absence (Judge, Bulgaria). A judge from Sofia underlined that if the defendant is not found before the first court hearing, equal efforts to locate them must be made before each of the next hearings. For a prosecutor from Sofia, the mandatory participation of a lawyer and the option for reopening the case if the defendant has not been informed about the trial are safeguards for the presumption of innocence, while defendants often decide not to show up simply to hamper or delay the proceedings.

(Lawyer, Bulgaria) 'It depends on the situation. I have also come across cases of very thorough search for a person. If the official servicing the subpoena does not find them, the standard searches of prisons, pre-trial detention centres and borders are launched, the employer is checked, if through the National Social Security Institute it can be found who is paying their social security contributions, mobile operators are asked whether the person has telephone numbers in their name, banks are checked where the person has accounts. But it all depends on how much the judge has decided that they need this person.'

„Зависи от ситуацията. Аз съм попадал и на много щателно издирване на човек. Ако призовкарят не го намери, се пускат стандартните търсения по затворите, следствените арести и границите, проверява се работодателя, ако може чрез НОИ да се разбере от къде го осигуряват, дали има телефони на своя сметка при мобилните оператори, банкови сметки къде има. Но всичко зависи от това доколко съдията е преценил, че му трябва този човек.“

(Prosecutor, Bulgaria) 'Then, in the trial phase, for example, the defendant's participation in the trial is mandatory. However, you know that the Criminal Procedure Code provides for the possibility to carry out proceedings in absentia, which, I would emphasise, is not unlimited. In cases where reopening of proceedings may be requested under the Criminal Procedure Code, it must be proved that the defendant did not really know that such proceedings were taking place and that the proceedings were carried out in their absence. However, on the contrary, rights are not unlimited too, and if it is proved that they knew and still they hid or changed their address without informing the authorities, accordingly, there will be no reason for reopening.'

„След това, в съдебната фаза например участието на подсъдимия в процеса е задължително. Знаете обаче, че НПК е предвидил възможност производството да се състои в негово отсъствие, което, държа да подчертая, не е неограничено. В случаите, когато може да се иска възобновяване на това производство по реда на НПК, трябва да се докаже, че подсъдимият действително не е знаел, че тече такова производство и че производството е гледано в негово отсъствие. Обаче обратно, правата все пак не са неограничени, ако се докаже, че той е знаел и въпреки това се е укривил или си е променил адреса и не е уведомял органите, съответно няма да има основание за възобновяване.“

Lawyers were generally critical as to the available **guarantees for vulnerable defendants**. A lawyer from Sofia underlined that for those vulnerable defendants, for whom there are special safeguards laid down in the law, these rules were observed (e.g. translation of document for defendants who do not speak Bulgarian), but for the rest (e.g. persons with disabilities) everything depends on the discretion of the authorities.

(Lawyer, Bulgaria) ‘Where there are clear rules, such as for those who do not speak or do not understand Bulgarian, it is clear - they appoint a translator, the translator is responsible. But when we talk about something else, when on the basis of some external characteristics, largely subjective, it can be assumed that they are not quite aware of what is happening, then it remains in the hands of the prosecutor and investigating authorities to assess whether this person needs some special additional support.’

„Там, където има ясни правила, като с неговорещите или неразбиращите български език, там е ясно – назначават преводач, преводачът си носи отговорност. Но когато говорим за нещо друго, когато по външни белези, до голяма степен субективно, може да се предположи, че не е съвсем наясно какво се случва, тогава остава в ръцете на прокурора и на разследващите да прецени дали това лице има нужда от специална допълнителна подкрепа.“

Two lawyers from Sofia noted that no formal **guarantees exist for vulnerable defendants**. According to one of them, the official responsible for servicing the subpoena may, in principle, explain to the defendant what are they summoned for, but there have been cases of officials providing incorrect explanations.

(Lawyer, Bulgaria) ‘The official servicing the subpoena can explain, if necessary. But these officials do not even read the subpoenas. There are cases, in which the subpoena states that your attendance is not mandatory. But the officials always say - it is mandatory, you must come. Otherwise, there is no mechanism, if, for example, a person has intellectual disabilities or is illiterate, to explain to them what it is about and what their rights are. What the lawyer explains to them, that is all, if they manage to find a lawyer.’

„Ако се налага, призовкарят може да обясни. Само че призовкарите дори не прочитат призовките. Има случаи, в които в призовката пише, че явяването ти не е задължително. Но призовкарите винаги казват – задължително е, явете се. Иначе няма никакъв механизъм, ако например човекът е с интелектуални ограничения или пък е неграмотен, да му се обясни за какво става дума и какви са му правата. Адвокатът каквото му обясни, това е, ако успее да си намери адвокат.“

According to judges from Sofia, the only safeguards provided to vulnerable defendants, including for ensuring their attendance, are the assistance of an interpreter (for persons not speaking Bulgarian) and a lawyer (for persons with mental or intellectual impairments). According to one judge from Sofia, the failure of judges to properly identify the vulnerability of defendants can lead to a violation of their

rights. Prosecutors from Sofia also pointed to the presence of a lawyer (mandatory in case of most frequent vulnerabilities) as a safeguard for the right to be informed of the trial. The failure to identify and recognise such vulnerabilities, according to one prosecutor from Sofia, is a serious procedural violation.

b. What has been understood as “effective participation”?

According to a lawyer from Sofia, effective participation includes presence (in person), understanding of procedural rights, sufficient opportunities to exercise these rights and right to have a lawyer, including a lawyer appointed by the state. For another lawyer from Sofia, the key component of effective participation is the ability of the defendant to understand what is going on in the courtroom, which, however, is often hampered by the defendant’s frustration with the situation. Another lawyer from Sofia noted the defendant has full guarantees for effective participation in the courtroom (there are no glass boxes in Bulgaria), they can see and know everything, give statements and make evidentiary requests at any time, even interrupting a witness interview. Another lawyer from Sofia confirmed there are no cases, in which the defendant is physically present but is unable to follow or understand the proceedings. The same lawyer also shared his/her satisfaction with how the participation of defendants via Skype has been organised (a practice introduced during the COVID-19 outbreak), referring to a case where the judge, noticing that the defendant has difficulties hearing the sound from the courtroom, has stopped the hearing, asked the technicians to solve the problem and resumed after making sure the defendant is able to hear what is going on.

In the opinion of another lawyer from Sofia, however, effective participation is not ensured in 99 % of the cases due to the small size of courtrooms which are uncomfortable and generally not adapted to the big trials taking place at present.

(Lawyer, Bulgaria) ‘... This is a huge problem. I dare say that effective participation of persons is not ensured in 99% of the cases. This is mostly seen in the bigger trials I am involved with... Imagine a room, 18 defendants, 18 lawyers, 30 witnesses – no place for everybody to be seated. lawyers’ places are... three to four in the biggest room, so lawyers have no opportunity to participate, what to say about defendants – they are sitting somewhere at the back, no place for writing, computers or aids... you can hardly hear in a room with 70 people, this is a huge problem. Court rooms are small and unadapted to the proceedings taking place...’
„...Това е огромен проблем. Смяя да твърдя, че ефективно участие на лицата не се осигурява на 99%. Това най-често се наблюдава в големите процеси, в които участвам... Представете си в една зала, осемнадесет подсъдими, осемнадесет едвоката, трийсетина свидетели – няма място категорично къде да седнат всички. Адвокатските места са... три до четири в най-голямата зала, не се създава възможност за адвокатите да участват, за подсъдимите да не говорим – насядали са някъде по скамейките отзад, няма къде да пишат, да си оставят лаптоп, помощни средства... много често не се и чува, в зала със 70 човека, това е огромен проблем. Залите са малки и непригодени за такива процеси, които се разглеждат...“

Another lawyer from Sofia noted that the main factor hampering effective participation are rules being only formally observed, like, e.g. the participation of lawyers appointed by the state who are consenting to everything said by the judge or the prosecutor.

(Lawyer, Bulgaria) ‘Real obstruction [of effective participation] is possible when some procedural rules are observed in a formal way and here I am mainly referring to the ex officio legal defence. When an ex officio lawyer is appointed, who stands passively and only says "I do not object" and "I believe that the defendant did not commit the crime with which they

are accused", but without analysis, without gathering evidence, without procedural activity. I have had many such cases in connection with proceedings against persons convicted in absentia. I have even been able to reopen a case that has long since ended with an effective sentence, on the grounds that the lawyer's defence was formal.'

„Реално възпрепятстване е възможно тогава, когато едни процесуални правила се осигуряват по формален начин и тук основно визирам служебната адвокатска защита. Когато се назначава служебен адвокат, който стои безучастно, и само казва „Не възразявам“ и „Считам, че подсъдимият не е извършил престъплението, в което е обвинен“, но без анализ, без събиране на доказателства, без процесуална активност. Имала съм много такива случаи по повод разглеждане на дела на задочно осъдени лица. Включително съм успявала да възобновя дело, отдавна приключило с влязла в сила присъда, на основание това, че осъществената адвокатска защита е била формална.“

Judges and prosecutors gave complementing conceptual interpretations of 'effective participation'. According to a judge from Sofia, 'effective participation' means that the defendant is fully aware of all of their rights as well as of the presumption of their innocence, and that they are allowed to participate in the collection of all evidence (also confirmed by prosecutors, Bulgaria). The judge gave examples of his/her own cases, where defendants turned out to not be able to read, and s/he was providing them with additional explanations to make sure they could properly understand their situation. S/He further noted that defendants are always placed very close to the judge, with no physical barriers separating them from the other participants.

(Judge, Bulgaria) 'I understand effective participation in such a way that they are aware of all their rights and also of their presumption of innocence. The defendant's right to participate in the collection of absolutely all the evidence should not be neglected as well. This means that if they were not found for the first hearing, that does not mean that no attempt should be made to find them for every subsequent hearing.'

„Тълкувам ефективното участие по начин, по който да е запознат с всичките си права и също с презумпцията си за невиновност. Не трябва да се пренебрегва и правото му да участва при събирането на абсолютно всички доказателства. Кое то означава, че ако той не е намерен за първото съдебно заседание, това не означава, че за всяко следващо съдебно заседание не трябва да се правят опити за неговото намиране.“

According to a prosecutor from Sofia, in cases, in which the defendant is present but not able to follow the proceedings, the judge will undertake measures to guarantee effective participation.

(Prosecutor, Bulgaria) 'To participate means to ask questions to witnesses, to ask questions to expert witnesses, to actively make evidentiary requests. My observation is that in the court in which I am participating in hearings, such an opportunity is always given to the accused person. They are always given the opportunity to ask questions of witnesses and experts, to make evidentiary claims.'

„Да участва се има предвид да задава въпроси при разпитите на свидетелите, да задава въпроси при разпита на вещните лица, активно да отправя доказателствени искания. Моите наблюдения са, че в съда, в който аз се явявам по дела от общ характер, такава възможност на обвиняемите е предоставена. Винаги им се дава възможност да задават въпроси на свидетели и вещи лица, да правят доказателствени искания.“

(Prosecutor, Bulgaria) In many cases, they object against the findings of the expert witness, make requests for new expert evaluation, a second one, or a triple one, they bring witnesses, ask for the questioning of specific persons... They are a party to the trial and all the rights available to the prosecutor are also available to the defendant and their lawyer. Just as I can ask witnesses or expert witnesses and participate in their interrogation, or make any other request under the Criminal Procedure Code, so can they. There is no difference between what each party can request.'

„В много от случаите те оспорват експертизи, правят искания за нови, повторни, тройни, петорни, довеждат свидетели, искат разпит на конкретни лица... Те са страна в процеса и каквито права има един прокурор, такива права има и един обвиняем и неговият защитник. Както аз мога да искам разпити на свидетели или вещи лица и да участвам в техния разпит, да правя каквито и да е искания по НПК, така могат и те. Няма някаква разлика между това коя страна какво може да иска.“

Another judge from Sofia understood 'effective participation' in terms of the defendant being allowed to do the same things during the proceedings as the public prosecutor.

(Judge, Bulgaria) 'Effective participation is to be able to consult prosecution witnesses by disputing what they say, asking them questions, exposing them, and creating doubts about the authenticity of their testimonies, to present evidence, to have read the whole case in advance in order to be able to comment on it and request the collection of evidence, i.e. everything that the prosecutor can do, the defendant must be able to do too.'

„Ефективно участие е да има възможност да се консултира със свидетелите на обвинението, като оспорва това, което те казват, да им задава въпроси, да ги разобличава, и да създава съмнения в достоверността, да представя доказателства, да се е запознал предварително с цялото дело, за да може да го коментира и да иска събиране на доказателства, т.е. всичко, което може прокурорът, да може да го прави и подсъдимият.“

c. Vulnerable groups

In terms of **vulnerable defendants**, lawyers unanimously agreed that persons who do not speak Bulgarian are provided with oral interpretation during the hearing and written translation of the main documents related to the case. For persons with disabilities, lawyers from Sofia mentioned the mandatory participation of a lawyer.

A lawyer from Sofia elaborated on the safeguards available to defendants with deteriorated health – a medical team is present in the courtroom and shorter court sessions are held, with more recesses. Another lawyer from Sofia referred to his/her experience with clients in bad health condition, arguing that they had no real options to participate in proceedings – they could hardly hear what is happening and they should either ask questions from their place, often interrupting whoever is speaking and violating the order in the court room, or talk to their lawyer, again making a violation.

(Lawyer, Bulgaria) '...I have clients in wheelchairs, in bad health condition... they cannot stand up and move... recesses should be taken at regular intervals... they are treated roughly... they want to ask questions, but they can hardly hear, sometimes they interrupt the person speaking, for which they are rightfully stopped by the court... by what are the options of someone in a wheelchair at 10 meters length... to speak from their place or call the lawyer and talk to him/her which is again a violation of order... so you have no option to participate in the proceedings without violating the order in the room.'

„...Имам клиенти в инвалидни колички, хора, които са зле здравословно... те не могат да станат и да се придвижат... трябва да се правят почивки на определени интервали... към тях се постъпва небрежно, грубо... тези лица искат да задават въпроси, но рядко успяват да чуят, понякога задават въпрос през говорещия, съответно биват правилно прекъсвани от съдебния състав... но какви са ви вариантите, ако сте в инвалидна количка на 10 метра разстояние... да се изкажете от място или да викнете адвокатите да му кажете какво искате... което отново е нарушение на реда в залата... тоест нямаш вариант за активно участие в процеса, без да нарушиш реда в залата.“

A judge from Sofia explained that even when the defendant needs to remain seated during the hearing, they are placed as close as possible to the judge. In terms of defendants with physical, mental or intellectual disabilities, as long as these disabilities do not constitute a reason for discontinuing the proceedings, the only available safeguard is the participation of a lawyer, while other measures such as consultations or participation of support person are not in place.

(Judge, Bulgaria) 'If a person has a mental disability, the only way is through their lawyer. There is no mechanism for appointing, for example, a psychological assistant, a psychiatric assistant or psychological counselling. There is no such mechanism.'

„Ако лицето е с умствен дефицит, единственият начин е чрез защитника му. Не съществува механизъм да му се назначи например психологически помощник, психиатричен помощник или психологическа консултация. Няма такъв механизъм.“

Another judge from Sofia emphasised experienced judges would easily see if the defendant has difficulties following the trial and undertake the necessary measures to solve the problem. The judge, and the prosecutors from Sofia, confirmed that the main guarantees are related to the participation of sign interpreters (for defendants with hearing impairments) or lawyers (for persons with mental or intellectual disabilities), but, according to the judge from Sofia, judges must monitor if these third parties are actually acting in the interest of the defendant.

(Prosecutor, Bulgaria) 'If this was the case [the person had a vulnerability], then this should have been established during the pre-trial proceedings, during the investigation. In this case, the person has the right to defence, if they have any mental impairment that prevents them from defending themselves or when they do not speak Bulgarian. This defence is mandatory and a lawyer can be appointed, an interpreter may also be involved.'

„Ако това е било така [лицето е имало уязвимост], то това би следвало да е било установено още в хода на досъдебното производство, в хода на разследването. В този случай лицето има право на защита, в случай че има някакво психическо увреждане, което му пречи да се защитава само, или не владее български език. Тази защита може да бъде задължителна защита и да му бъде назначен адвокат, може да участва и преводач.“

(Prosecutor, Bulgaria) 'Those with mental disabilities are entitled to a special interpreter. Those with a lower level of intelligence may have a lawyer appointed by the court. For juveniles, a parent or a guardian must be present and again a lawyer can be appointed by the court. My personal opinion is that our Criminal Procedure Code is extremely good in this direction, in the sense that every effort has been made to guarantee the rights of the accused person and especially of such persons who cannot defend themselves.'

„Тези, които имат ментални увреждания, имат право на тълковник. Тези, които имат някаква по-ниска степен на интелигентност, съдът може да им назначи служебен защитник. За непълнолетни задължително участва родител, настойник и

пак служебен защитник. Моето лично мнение е, че нашият НПК е изключително добър в тази посока, в смисъл – положени са всички усилия за гарантиране на правата на обвиняемия и специално на такива лица, които не могат да се защитят.“

d. Discussion of findings

The right to be present at trial and the consequences of non-appearance caused little argument among interviewees - all affirmed that defendants are informed about the trial and their right/obligation to appear, as well as about the consequences of non-appearance. However, while prosecutors and judges from Sofia emphasised on the rules for proceedings in absentia, lawyers rather pointed out to detentions being imposed as a result of non-appearance. Detailed elaborations were made on the concept of effective participation – while some lawyers from Sofia were fairly content with defendants' participation, others emphasised on various spatial constraints and poor defence on the part of the lawyer (Lawyer, Bulgaria). Judges and prosecutors, on the other hand, outlined various aspects of the defendant's ability to use all their rights in the proceedings effectively and personally. Among vulnerable groups, persons of deteriorated health and with various disabilities were mentioned. While one lawyer from Sofia and the representatives of the judiciary were rather of the opinion that enough adaptations are made to their benefit (e.g. sitting as close as possible to the judge), another lawyer from Sofia defined their treatment as bad and stated they had little to no opportunities for effective participation without breaking procedural rules.

C.7 Challenges and improvements

a. Challenges

Two police officers from Sofia firmly stated **no challenges are encountered** as Bulgarian investigative authorities aim to fully observe the law and the three-instance trial and the role of certifying witnesses (*поемни лица*) in actions like searches and seizures guarantee the correct execution of proceedings.

(Police officer, Bulgaria) '...the presumption of innocence is generally well regulated... there are states, where rights are not so developed and are violated... but in our country we aim to observe our laws and in the investigation we stick to the norms of the legislation, so I do not think there are such challenges.'

„...като цяло презумпцията за невинност е добре регламентирана... имаме държави, където не са толкова добре развити и се потъпкват правата на гражданите... но в нашата страна се стремим да си спазваме законите и в разследването се придържаме към постулатите на закона, така че не мисля, че има някакви предизвикателства.“

Another police officer from Sofia stated that society and law enforcement should indeed only consider a person guilty if the court has ruled so. According to a lawyer from Sofia, the presumption of innocence should be complied with and valid even from the stage preceding proceedings, and should be reflected into allowing consulting lawyers for witnesses, keeping the defendant well informed and able to have a lawyer, correct coverage of the case by the prosecution and the media and ensuring comfort and no pressure to the deciding authority.

(Lawyer, Bulgaria) '...The presumption of innocence should be complied with and be valid throughout all the procedural phases. Although it is regulated in the Criminal Procedure Code and not in the legislation on the Ministry of the Interior... I think it should be valid from the stage preceding proceedings until the very end... from allowing consulting lawyers, giving the defendant information and the opportunity to have a lawyer, correct coverage by the

prosecution and the media... and comfort without pressure to the deciding authority so that an adequate decision is taken.'

„...Презумпцията трябва да бъде спазвана и пренасяна във всички фази на производството. Макар че тя е регламентирана в Наказателно-процесуалния кодекс, а не в Закона за МВР... аз смятам, че тя трябва да намира своето място още от началото на производството до неговия край... като започнем от недопускането на консултиращи адвокати, преминем през информираността на обвиняемите и невъзможността да използват адвокатски услуги... коректното отразяване от страна на прокуратура и медиите... и стигнем до това на решаващия орган да се осигури комфорт без натиск, за да вземе адекватно решение.“

In terms of a specific challenge, a judge from Sofia mentioned again the participation of lay judges as part of the panels for very serious crimes, where the professional judge is in a minority position. There have been cases with lay judges overruling the professional judge, not being able to disregard the public attitudes surrounding them. This problem, according to the interviewee, can be overcome by providing better trainings.

(Judge, Bulgaria) 'The cases for the most serious crimes are heard by an extended panel, where the professional judge is a minority, as the two lay judges may rule, there are such cases, a verdict only on the basis of their votes, and the judge can only express a dissenting opinion. Very often, the lay judges are biased, and perhaps there is a need for much better training for these lay judges, as they are part of the panel, with an equal voice with the judge, and have trouble overcoming these public attitudes that one person who enters the room in handcuffs, though they are removed, is innocent until proven otherwise.'

„Делата за най-тежките престъпления се разглеждат от разширен състав, където съдията професионалист е малцинство, тъй като двамата съдебни заседатели, които са него, могат да постановят, има такива случаи, присъда само на база на своите гласове, а съдията да остане на особено мнение. Много често съдебните заседатели се явяват предубедени и може би тук е нуждата от много по-добро обучение на тези съдебни заседатели, тъй като те са част от съдебния състав, с равен глас със съдията и имат проблеми да преодолеят тези обществени нагласи, че един човек който влиза в залата с белезници, макар че му ги свалят, той е невинен до доказване на противното.“

According to a number of interviewees from different professions, the biggest challenge to the presumption of innocence is indeed the **media pressure**.

(Police officer, Bulgaria) '...It is the media pressure, there is nothing else I can think of now. I think the biggest challenge, related to infringing upon the presumption of innocence, is media pressure...'

„...Медийният натиск, нищо друго не се сещам в момента. Мисля, че най-сериозното предизвикателство, свързано с нарушаването на презумпцията за невинност, е медийният натиск...“

A lawyer from Sofia pointed as challenge various political developments, linked with substantial media coverage and leading to the politicisation of a whole court – the Specialised Criminal Court (SCC) (*Специализиран наказателен съд, СНС*), turning into an extraordinary jurisdiction many others also talked about. As for media pressure, the same lawyer from Sofia thought three court instances would neutralise it. Media coverage may sometimes also be beneficial to the failures of prosecution to prove defendants' guilt.

(Lawyer, Bulgaria) ‘... Some political cases and events, with substantial media coverage, may totally influence a whole court to violate the presumption of innocence, thus turning it into an extraordinary jurisdiction. Public opinion may influence some weaker personalities among judges... but the outcome would hardly be impacted in three instance proceedings... But very often media in the court room can benefit the defendant... A case would often end up in court presenting just one point of view (of the prosecution), there are journalists in the court room, who hear witnesses, claiming exactly the opposite of what the prosecution has stated, headlines go ‘the case against X has failed’ and events suddenly take a different direction.’

„...едни политически случаи и събития, които са силно отразени медийно, тотално са повлияли на цял съд да не посмее да спазва презумпцията за невинност. Защото този съд се превръща в извънредна юрисдикция. Общественото мнение може да повлияе на по-слаби психически съдии... но в едно триинстанционно производство трудно може да повлияе на крайния резултат... Но много често присъствието на медиите в съдебна зала може да е в полза на обвиняемия. ...Едно дело се вкарва в съда само в едната гледна точка, и има журналисти в съдебната зала, които слушат свидетели, които казват точно обратното на това, което прокуратурата до момента е изложила, и изведнъж казват „крах на делото срещу еди кой си“ и нещата вземат друга посока.“

A judge from Sofia also singled out media coverage as the biggest challenge to the presumption of innocence, as many times, in an effort to expose the ineffectiveness of the judiciary, media coverage is very distorted.

(Judge, Bulgaria) ‘In many cases, for the sake of sensation, for the sake of some political purpose, such as defamation of the judiciary, showing it as ineffective at the expense of the executive or the legislature, media coverage is rather distorted and quite different from what happens in the court room.’

„В много случаи, в името на сензацията, в името на някакви политически цели, например обругаване на съдебната система, изтичане на заден план за сметка на изпълнителната или законодателната власт като по неработеща, медийното отразяване е доста изопачено и доста различно от това, което се случва в съдебната зала.“

Another judge from Sofia, as well as two lawyers from Sofia singled out as the biggest challenge the practice of the prosecution service to disclose evidence already at the pre-trial stage, thus preparing the society what to expect before the trial has even started.

(Judge, Bulgaria) ‘This is a new challenge, because so far the prosecutor's office has not resorted to such means - when in the pre-trial proceedings, even before the trial on the merits, the society is already prepared, by the disclosure of some of the accusatory evidence, about its expectations of the sentence.’

„Това е ново предизвикателство, защото досега прокуратурата не прибегваше до такива способности – когато в досъдебното производство, още преди да започне съдебният процес по същество, обществото вече е подготвено, заради огласяването на част от обвинителните доказателства, относно очакванията си за присъдата.“

(Lawyer, Bulgaria) ‘At the moment the most serious and fundamental problems are in the pre-trial proceedings and at the beginning of the cases, when the prosecutor's office has decided to give the case to the media. This possibility of the prosecutor's office, which under the prosecutor general has become a policy, to give information collected through special

intelligence means to the media, to let the public listen to wiretapping recordings, must be significantly limited. This seems very manipulative and very problematic.'

„В досъдебното производство и при започването на делата, когато прокуратурата реши да даде делото на медиите, там проблемите в момента ми се струват големи и фундаментални. Трябва да бъде изцяло ограничена тази възможност на прокуратурата, която при новия главен прокурор се превърна в политика, да се дават на медиите СРС-та, да ги слушаме. Това изглежда много манипулативно и много проблемно.“

A lawyer from Sofia elaborated on the issue noting that the problem that can be solved by introducing guidelines, e.g. through an interpretative decision by the Supreme Court of Cassation (SAC) (*Върховен касационен съд, ВКС*), on how the rules on disclosing information must be applied in the light of the presumption of innocence and the provisions of Directive 2016/343.

(Lawyer, Bulgaria) 'In the first place, I would definitely put the practice and behaviour imposed by the prosecution, to prosecute certain defendants exclusively through press releases, extensive interviews in the media, identification of persons, and selective publication of evidence. This is always justified by the fact that under the Criminal Procedure Code, with the permission of the supervising prosecutor, the investigating police officer may disclose evidence. But there is no legal framework in the Criminal Procedure Code for the conditions and grounds for doing this. However, referring to the Directive, this is absolutely unacceptable.'

„На първо място категорично поставям практиката и поведението, които налага прокуратурата, саморазправата с определени обвиняеми да се извършва изключително посредством прессъобщения, пространни интервюта в медиите, посочване на лица, избирателно публикуване на доказателства. Те винаги се оправдават с това, че по НПК с разрешение на наблюдаващия прокурор, разследващият полица може да огласи доказателства. Но в НПК няма никаква правна рамка на условията и основанията за това. Позовавайки се обаче на Директивата, това е абсолютно недопустимо.“

The two prosecutors from Sofia also concurred the biggest challenge is media coverage in relation to the 'unjustified expectations it sometimes creates in the society in relation to the outcome of certain criminal proceedings' and the media not verifying the reported information.

(Prosecutor, Bulgaria) 'The biggest problem is what we have already talked about - media coverage, i.e. what each media, through its views and interests, offers to the people as information on the respective cases. Because this creates a wrong attitude and opinion in society about the outcome of the case. And thus, when the decision of the court or the prosecutor's office does not coincide with this public attitude, confidence in the judicial authorities and the prosecutor's office is undermined.'

„Най-големият проблем е това, за което вече говорихме - медийното отразяване, т.е. това, което всяка една медия, пречупвайки през своите виждания и интереси, предлага на хората като информация за съответните дела. Защото по този начин се създава една погрешна настройка и мнение в обществото за изхода на съответното дело. И по този начин, когато решението на съда или на прокуратурата не съвпада с тази обществена нагласа се подкопава по този начин доверието в съдебните органи и прокуратурата.“

(Prosecutor, Bulgaria) 'This is an opportunity, even if it somehow made legally binding, for journalists who disclose information to verify its authenticity. I think this will be extremely useful for everyone.'

„Това е възможността, дори чисто законодателно да бъде скрепено, журналистите, които изнасят информация, да проверяват нейната достоверност. Мисля, че това ще бъде изключително полезно за всички.“

b. Improvements

One **positive change** a police officer from Sofia thought of was the obligation of police to inform persons of their right to remain silent also upon police detention (outside the remit of criminal proceedings).

The other improvements were mentioned in the context of the overall strengthening of procedural rights of suspects and accused (see below). They concerned better protection of personal data, better observance and certain widening of the scope of rights under the influence of international law.

c. Suggestions

No specific recommendations for improvement of the observance of the presumption of innocence were suggested.

PART D. GENERAL ASSESSMENT

Two police officers from Sofia stated there is a general **strengthening of the persons' rights** due to their good observance and the influence of international legal standards and the introduction of new safeguards, for example for their personal data. One police officer from Sofia even thought rights of defendants in Bulgaria are better protected than in other countries.

A judge from Sofia also had a positive opinion due to the latest legislative changes which have introduced additional safeguards such as the mandatory provision of the indictment to the defendant in a language they understand, and the right of the defendant to participate in the newly introduced preliminary hearing and to point out violations in the indictment at the very beginning of the trial (before the introduction of this hearing such questions were decided by the judge alone). Despite his/her generally critical stance, another judge from Sofia also thought defendants' procedural rights have become stronger even before the adoption of Directive 2016/343, mostly due to the standards introduced by the ECtHR. However, in the opinion of the same judge, for countries like Bulgaria EU Directives have not only introduced certain standards, but have also increased practical compliance with existing national law.

The two prosecutors from Sofia also concurred defendants' rights are protected better in the last few years, and stronger than those of victims, due to better awareness of people about their rights and increased sensitivity of society towards injustice.

(Prosecutor, Bulgaria) 'My impression from the years I am a prosecutor is that in Bulgaria the rights of the accused persons are extremely well protected and guaranteed by law. Even to a certain extent, I think that defendants have more rights guaranteed by law than victims of crime.'

„Моето впечатление, от годините, през които съм прокурор, е, че в България правата на обвиняемите са изключително добре защитени и гарантирани от законите. Даже в известна степен мисля, че обвиняемите имат повече права, които законът им гарантира, отколкото пострадалите от престъплението лица.“

(Prosecutor, Bulgaria) '[The defendants' rights] are far better protected. I think that over time, the sense of freedom has grown, people have expanded their horizons, everyone knows their rights, how far and what they can request, who they can request it from, and everyone is concerned about their rights. I believe that in this line of thought it has become almost impossible to violate anyone's rights and without immediately facing a reaction. We are aware that, in principle, the rules must be followed, because everyone is already aware of their rights.'

„[Правата на подсъдимите] са далеч по-добре защитени. Аз смятам, че с течение на времето, усещането за свобода стана по-голямо, хората разшириха кръгозора си, всеки знае своите права, това докъде и какво може да иска, от кого да го иска, и всеки съблюдава своите права. Считам, че в този ред на мисли стана почти невъзможно да се нарушат права на някой и от това да не последва реакция. Ние сме със съзнанието, че по принцип правилата трябва да се спазват, защото вече всички са наясно с това.“

A number of interviewees shared opinions **in the negative spectrum**. A police officer from Sofia stated that rights are going for the worse due to widely publicised cases and claims by the prosecution, which, however, as experience has shown, may still not result in the sentencing of defendants.

(Police officer, Bulgaria) ‘... rights are going for the worse, I don’t think they are strengthening. Especially the high media interest cases in the last few years, lots of people were detained, who society previously thought were untouchable. The prosecution says they have committed crimes, but those cases have not reached court, the court has not ruled on the guilt. Just the opposite, there have been many high interest cases in the past, where people were again said to have committed crimes, but the court finally ruled they were innocent...’

„... По-скоро се влошават правата, не мисля, че укрепват. Особено медийните дела в последните години, задържани има доста хора, включително големи фигури, които обществото считаше за недосегаеми. Прокуратурата казва, че са извършили престъпления, но тези дела не са влезли в съда, съдът не се е произнесъл, че тези хора са виновни. А напротив, назад във времето имаше много шумни медийни дела, където отново се каза, че хора са извършили престъпления, а съдът накрая каза, че са невинни...“

A lawyer from Sofia was also of the opinion that rights are worsening due to the appearance of ‘extraordinary jurisdictions’ in Bulgaria, although in ‘regular jurisdictions’ (courts different from the Specialised Criminal Court (SCC) (*Специализиран наказателен съд, СНС*)), the presumption of innocence is complied with. Press interventions by the prosecution were also seen as detrimental on the defendant’s rights, and, although the main lines of Directive 2016/343 are present in Bulgarian law, prosecution’s media activity, media interest and concentration of media ownership have a negative impact on defendants’ rights.

(Lawyer, Bulgaria) ‘...It depends on who is applying the law. Unfortunately, we already have extraordinary jurisdictions. When you have a case in a normal jurisdiction, no publicity or anything would affect the presumption of innocence, it is there. But when the prosecution is the main actor in the news and holds press briefings, how could the defendant make his/her own briefing, if he/she is in detention... Prosecutors should not make the news all day... prosecution should not do it so that defendants do not have to do it either... Media interest... and concentration of media influence do not affect the presumption of innocence positively. When somebody is pointed out as bad, he/she remains bad.’

„... Зависи кой прилага закона. За съжаление вече имаме извънредни юрисдикции. Когато имаш дело в нормална юрисдикция, публичността и всичко не влияе толкова на презумпцията, нея си я има. Но когато прокуратурата е основен герой в новините и сама си свиква брифингите, как обвиняемият да си свика брифинг, когато е в ареста... Не трябва прокуратурата да е в телевизията от сутрин до вечер... нормално е прокуратурата да не го прави, за да не се налага и другият да го прави... Медийният интерес... и концентрацията на медийно влияние не повлияват положително на презумпцията. Когато нарочат някого за лош, той си е лош.“

Another lawyer from Sofia also gave a negative assessment and pointed out a number of procedural faults, such as universally applied custody measures, where people may stay in detention for months and authorities tend to violate the maximum term of detention, eight months for serious intentional crimes, by forming a new case and charge out of materials from the present case and starting a new eight month term.

(Lawyer, Bulgaria) ‘...Unfortunately the status of rights is worsening – especially regarding the detention measures, where persons stay in detention for months and, secondly, the violation of the maximum term of detention of a person... eight months for the most serious crimes... shortly before the last month... suddenly the case becomes ‘very complicated’, materials are taken out to form a new charge and a new 8-month term starts for the new charge... and over and over again... thus defendants bear something resembling deprivation of liberty without

even an indictment submitted to court... endless procedural violations, sometimes I have been refused to even give explanations on a case...'

„...За съжаление според мен се влошават – специално по отношение на мерките за неотклонение, на първо място, където лицата си стоят в ареста с месеци, и, вторият голям проблем, заобикалянето на максималния срок за задържане на едно лице... осем месеца при най-тежките престъпления... малко преди изтичането на осмия месец... изведнъж делото се оказва много сложно, отделят се материали и по новото обвинение започва нов осеммесечен срок... и така до безкрай... Така едно лице се оказва с нещо като присъда за лишаване от свобода, без дори да е внесен обвинителен акт... безкрайни процесуални нарушения, не съм успявал дори да давам обяснения... “

A lawyer from Sofia explicitly noted that the Directive on the presumption of innocence is not fully transposed in Bulgaria and this, combined with the unacceptable practice of the prosecution to publicly disclose evidence related to pending cases, has worsened the situation of defendants.

(Lawyer, Bulgaria) 'In no way in Bulgaria has the Directive contributed to the improvement of the rights of defendants from the point of view of the presumption of innocence. On the contrary, due to the fact that it has neither been transposed, applied in practice, nor observed, the situation of the defendants in terms of the presumption of innocence has changed only due to the newly introduced practice of the prosecution [to publicly disclose evidence] and in this sense it has deteriorated greatly.'

„По никакъв начин в България Директивата не е повлияла в посока подобряване на правата на подсъдимите от гледна точка на презумпцията за невинност. Напротив, поради това, че тя нито е транспонирана, нито се прилага на практика, нито се съблюдава, положението на подсъдимите от гледна точка на презумпцията за невинност се промени единствено поради наложилата се практика на прокуратурата и в този смисъл се влошава изключително много.“

Opinions that there is **neither improvement nor worsening** of the procedural situation of defendants were also expressed. A police officer from Sofia thought criminal procedural rules have not practically changed during the last few years, while a lawyer from Sofia noted that there are both improvements (e.g. better access of defendants to lawyers) and setbacks (biased media coverage shaping negative attitudes in society).

(Lawyer, Bulgaria) 'Yes and no. Yes, they are better guaranteed, because 10-15 years ago it took time to meet a detainee. It usually happened that when I went between 8 o'clock and 10 o'clock in the morning, they let me in at 3 o'clock in the afternoon. And now, in recent years, this problem is solved and whenever I go a maximum of 20 minutes after I show up at the police station and I say who I am they let me in. This is already a standard. At the same time, it seems to me that a wave has recently begun, that too many rights have been granted and they have to be restricted. And there are some extreme views that lawyers are criminals, because all they want is to help criminals, which was not the case 10-15 years ago.'

„Да и не. Да, по-добре гарантирани са, защото преди 10-15 години, за да вляза при задържан изискваше време. Обикновено се случваше, като отида между 8 ч. и 10 ч. сутринта, да ме пуснат към 3 ч. следобяд. А сега, през последните години, този проблем е решен и когато и да отида максимум до 20 минути след като съм се появил в районното и съм казал кой съм ме пускат. Това вече е стандарт. В същото време ми се струва, че напоследък започва една вълна, че твърде много права са дадени и трябва да започнат да се ограничават. И се залита към една такава крайност, че

адвокатите са престъпници, защото единственото, което искат, е да помагат на престъпници, което преди 10-15 години не беше така.“

PART E. CONCLUSIONS

The twelve professionals interviewed on the practical dimensions of observing the presumption of innocence in Bulgaria all showed keen understanding of the importance of its key aspects and the strict postulations of the law regarding the presumption itself and the defendant's various related rights. Fair unanimity was shown in pointing out that burden of proof lies entirely on the prosecution, that the defendant has an undisputed right to remain silent, often burdening authorities with gathering additional evidence, and that his/her confession cannot form basis for a sentence in itself, but should always be corroborated by other evidence.

From there on, various divides have appeared. While police, with some notable exceptions, have been keen on defending their strict and lawful work, and prosecutors elaborated on various aspects of the treatment of defendants within criminal proceedings, lawyers and judges painted a much more nuanced picture of criminal justice. A number of the problematic aspects were pointed out.

Foremost among them was the 'extraordinary nature' of trials in the specialised jurisdictions, dealing with organised crime and high profile corruption cases. According to lawyers and even judges, due to public opinion and media pressure, combined with politicisation, significant problems exist with the presumption of innocence there, resulting, among others, in rare acquittals and a larger amount of detentions in custody imposed.

With an equal degree of criticism, judges, lawyers and even some representatives of police mentioned the frequent media interventions by the prosecutor's office publicising evidence on ongoing cases. Although justified with informing society on cases of high public interest, that allegedly manipulated evidence, taken up by media publications, has a highly detrimental effect on proceedings, 'demonising' especially defendants of higher public standing. In the same line, media coverage of criminal cases was harshly criticised as unprofessional and sensational, affecting to a large extent public opinion and thus indirectly criminal justice.

Various procedural practices were emphasized as wrongful and detrimentally affecting the presumption of innocence. Among those were the (sometimes inadvertent) signs/acts of prejudice shown by lay judges, which may even influence the final sentence, as they can outvote the professional judge(s), when the cases are heard by panels. Informal talks with citizens before they are charged and given full rights of defence, and pressure on people, who encounter the criminal justice system for the first time, were also noted as factors. A group of lawyers also mentioned the increased use of pre-trial detention on seemingly much lesser grounds than before.

Interviewees pointed out to a number of factors which may affect the presumption of innocence in proceedings and the media coverage of criminal cases. Gender seemed to be losing significance as there were already cases of high public interest with women defendants, although media covered extensively cases of domestic violence towards women by men, and crimes against children committed by women. Migrant and especially minority (Roma) background seemed to be of significance for the media and public opinion, influencing indirectly the criminal justice system. High material status and previous criminal registrations were also pointed out by some as significant.

ANNEX: CASE STUDIES

For the purposes of this project, **'case study'** is defined as a descriptive analysis (using the below template) of a pending or finalised criminal court case dealing with the subject material of Directive 2016/343/EU (especially on the topics covered in the interviews).

- Cases should constitute examples of actual court practice and should have been at least decided by a first instance criminal court (but could still be subject to appeal).
- If FRANET contactors have difficulties identifying cases decided by the first instance court, they should discuss with FRA the possibilities of presenting ongoing cases.
- All references to personal data or other data enabling the identification of the parties to the proceedings should be removed.

Bulgaria case study/ media coverage #1		
1	Reference details/Name/Title (please indicate here how the case has been publicly referred to)	The Sotirya murder
2	Brief description of the case	On 15 August 2019, a seriously injured 7-year-old girl was found in the village of Sotirya (<i>Сотиря</i>) located in the district of Sliven. The girl died in the ambulance on the way to the hospital. The police traced a suspect, who had escaped the crime scene and was hiding. Later, the police declared as a wanted person a 21-year-old man from the same village, sought also for a number of robberies. After a chase with the police, the suspect was shot in the leg and arrested.
3	Timeline of events (briefly outline major events in order to capture the nature of the case)	<ul style="list-style-type: none"> • On 15 August 2019, a 7-year-old girl is found with heavy injuries. An ambulance was called, but the victim died on the way to the hospital. Later, the police declared as a wanted person a man from the same village, who was also suspected for a number of robberies. • The suspect was arrested on 16 August 2019 after a police chase. During the chase, the suspect was shot in the leg. • On 9 January 2020, the suspect was brought to court for homicide committed with extreme cruelty, for sexual offence and for attempted rape. The victim's mother claimed compensation of BGN 400,000

		<p>(approximately €200,000) and the victim's grandparents claimed compensation for non-material damages of BGN 200,000 (approximately €100,000). The trial was postponed for 30 January 2020.⁶⁷</p> <ul style="list-style-type: none"> On 30 January 2020, the court sentenced the defendant to life imprisonment without parole and ordered him to pay the full amount of the compensations claimed by the victim's family members. The defendant and his lawyer appealed the sentence. The proceedings before the second instance court have not started yet.
4	<p>Media coverage (how did the media refer to the suspects? How were the suspects presented, e.g. handcuffed, in prison clothes? Did law enforcement authorities or other actors inform about the case, e.g. in a press conference? Please include references, including links where possible)</p>	<p>While the police searched for the suspect, the media interviewed the mayor and people living in the same village. Questions referred mainly to the suspect's criminal background.⁶⁸ The daily newspapers 24 Chasa and Trud elaborated on a previous incident, in which a person died bitten by his own dogs while trying to save the suspect from the dogs. Both newspapers emphasised on the suspects anti-social behaviour and his involvement in previous incidents.⁶⁹ The article in Trud included also a picture of the suspect showing inappropriate gesture.</p> <p>After the suspect was arrested, the Secretary General of the Ministry of Interior (Moi) (<i>Министерство на вътрешните работи</i>, МВР) disclosed to the media details about the arrest of the person and about his background. 24 Chasa referred to the suspect's description provided by the police (lack of information about psychiatric conditions or drug use, no use of alcohol, preferences to energy drinks, etc.).⁷⁰ The tabloid Bulgaria Dnes (<i>България днес</i>), member of the same media group as 24 Chasa, published particular details</p>

⁶⁷ bTV (2020), 'The court case for the murder of the 6-year-old Christine from the village of Sotirya has started' (*Започна делото за убийството на 6-годишната Кристин от село Сотиря*) bTV, 9 January 2020; Focus Agency (*Агенция Фокус*) (2020), 'District Court of Sliven postponed the trial for the murder of the 7-year-old Christine from the village of Sotirya for 30 January' (*Окръжен съд - Сливен отложи делото срещу обвинения в убийството на 7-годишната Кристин от село Сотиря за 30 януари*), Focus Agency, 9 January 2020.

⁶⁸ Stefanova, R. (*Стефанова, Р.*) (2019), 'Cruel child murder in Sotirya' (*Жестоко убийство на дете в село Сотиря*), Bulgarian National Television, 16 August 2019.

⁶⁹ 24 Chasa (*24 часа*) (2019), 'Seven-year-old girl is murdered in the Sliven village of Sotirya' (*7-годишно момиченце е убито в сливенското село Сотиря*), 24 Chasa, 15 August 2019; Nikolova, R. (*Николова, Р.*) (2019), 'The man wanted for the child murder in Sotirya was involved in another tragedy' (*Издирваният за убийство на дете в Сотиря бил замесен и в друга трагедия*) Trud, 16 August 2019.

⁷⁰ 24 Chasa (*24 часа*) (2019), 'A local person managed to tie the Sotirya murderer in the forest. Martin ran before the police caught him' (*Местен човек успял да завърже убиеца от Сотиря в гората. Мартин бяга, преди да го хванат от МВР*), 24 Chasa, 16 August 2019.

		<p>of the criminal investigation, including a description of victim's injuries, and referred to the suspect as 'criminal', 'rapist', 'monster' and 'perverted murderer'.⁷¹</p> <p>After the arrest, bTV interviewed the suspect's mother, who admitted she had helped her son to hide from the police. The journalist asked personal questions about suspect's school years, showing pictures of his childhood drawings.⁷²</p> <p>The case led to strong public reactions, which were covered by many media. 24 Chasa published an article, in which the information was delivered was in neutral language, but it also referred to the announcement of a Facebook event calling for a 'fair punishment of the person who took her life' and the appeal to stand for '[...] a child who could not make her dreams come true because a freak took her life in a brutal way'.⁷³</p> <p>When covering the trial, many media showed the accused person on his way to the court room in a wheelchair, surrounded by six or seven police officers. He was also shown looking down when passing by the victim's relatives.⁷⁴</p>
5	Key issues (e.g. major allegations of guilt in the media; where the presumption of innocence was concerned, reactions of persons involved and the media)	<p>Being declared as a wanted person, the suspect's name was immediately disclosed in the media. The following interviews with a number of people from the same village mostly focused on the suspect's guilt and his previous convictions.</p> <p>The immense public reactions to the cruelty of this particular crime also provoked a debate on the degree of fairness is the existing punishments of violent crime in Bulgaria.⁷⁵</p> <p>The bringing the case to court was accompanied by extensive coverage and interviews with the victim's grandmother and other family members and relatives.</p>
6	Key consequences or implications of the case with regard to the presumption of innocence (with a focus on public reaction to	<p>The media covered broadly the protests organised by the victim's family members and other close persons calling for a 'fair' sentence. The protests also received political support and shortly after the start of the investigation the Criminal Procedure Code (<i>Наказателно-процесуален кодекс</i>) was amended to restrict the automatic decrease of the punishment for defendants who had made a confession. The amendment</p>

⁷¹ Bulgaria Dnes (*България днес*) (2019), 'Life sentence threatens Christine's perverted killer' (*'Доживот грози извращения убиец на Кристин'*), Bulgaria Dnes, 25 November 2019.

⁷² Atanasova, D. (*Атанасова, Д.*) (2019) 'Martin Trifonov's mother confesses helping her son' (*'Майката на Мартин Трифонов призна, че помогнала на сина си'*), bTV, 17 August 2019.

⁷³ 24 Chasa (*24 часа*) (2019) 'Facebook action after the cruel murder in Sotirya: I am Chrisi' (*'Акция във фейсбук след жестокото убийство в Сотиря: Аз съм Криси!'*) 24 Chasa, 18 August 2019.

⁷⁴ Atanasova, D. (*Атанасова, Д.*) (2020), 'A sentence for the cruel Sotirya murder: life imprisonment without parole' (*'Присъда за жестокото убийство в Сотиря: доживотен затвор без право на замяна'*), bTV, 30 January 2020.

⁷⁵ For more information, see: <https://play.nova.bg/video/temata-na-nova/season-13/temata-na-nova-2019-09-08>.

	publications in the media which might lead to a public debate)	made it possible for the court to impose the heaviest punishment available – life sentence without parole – even in cases in which the defendant had confessed their guilt.
In case the case brought before a court or a non-judicial mechanism – the following questions would also need to be answered		
7	What was the decision of the case (summarize briefly and indicate reference details of the case)? How did media report on the decision?	The District Court of Sliven (<i>Окръжен съд Сливен</i>) found the accused person guilty and sentenced him to live imprisonment without parole. ⁷⁶ The vast majority of the media covered in detail the trial, including the delivery of the sentence, in a generally balanced, neutral and informative way. ⁷⁷

Bulgaria case study/ media coverage #2		
1	Reference details/Name/Title (please indicate here how the case has been publicly referred to)	The Banishora murder, named after the Sofia neighbourhood Banishora (<i>Банишора</i>) where the crime was committed
2	Brief description of the case	On 15 January 2019, a 25-year old man and his 23-year-old girlfriend had a quarrel over a message she had received and after a fight the girl died. The man claimed he had hit her and she had fallen, but expert examinations carried out during the investigation indicated about excessive cruelty of the crime. Later, the man tried to commit suicide by shooting himself with a gas gun. After a short stay in a hospital, he was detained in custody and accused of homicide.

⁷⁶ The sentence has not been published yet.

⁷⁷ Nikolova, R. (*Николова, Р.*) (2020), 'Young Christine's killer got life sentence without parole' (*'Убиецът на невръстната Кристин получи затвор доживот, без право на замяна'*), *Trud*, 30 January 2020.

3	<p>Timeline of events (briefly outline major events in order to capture the nature of the case)</p>	<ul style="list-style-type: none"> • On 15 January 2019, a murder was committed in an apartment in the Sofia neighbourhood of Banishora. • While the police and the fire brigade were trying to enter the locked apartment, there was another signal for a person attempting suicide. This person was suspected of committing the murder out of jealousy. He was taken to a hospital with superficial injuries. • On 17 January 2019, the Sofia City Prosecutor (the head of the Sofia City Prosecutor’s Office) personally announced to the media that the suspect was charged and that the prosecution filed a request to the court for permanent detention in custody.⁷⁸ • The court ordered detention in custody for the accused person on 24 January 2019. • The case was brought to court on 5 February 2020.
4	<p>Media coverage (how did the media refer to the suspects? How were the suspects presented, e.g. handcuffed, in prison clothes? Did law enforcement authorities or other actors inform about the case, e.g. in a press conference? Please include references, including links where possible)</p>	<p>In the first news reports about the crime, some media referred to the suspect as “the perpetrator”.⁷⁹ Later on the same day, the Director of the Sofia Metropolitan Directorate of the Interior (SMDI) (<i>Столична дирекция на вътрешните работи, СДВР</i>) talked to the media disclosing details about the case, explaining the suspect’s version, how the police responded to the first signal and that another signal was received allegedly about the suspect’s suicide attempt.⁸⁰</p> <p>24 Chasa referred to information from the police and from emergency staff members disclosing details about the body’s wounds and about traces of rape and suffocation. The media also quoted the neighbours saying they had not heard the couple arguing before.⁸¹ Furthermore, the newspaper published an extensive story about the suspect and the victim, including information about their professions and their hobbies collected from their social media profiles and from interviews with neighbours. The article also quoted policemen commenting on the case, saying ‘To commit a suicide also needs courage.’ The article was accompanied by pictures of the suspect and the victim taken from the victim’s social media profile.⁸²</p> <p>In its article about the court hearing for deciding on the accused person’s remand measure, Trud (<i>Труд</i>) referred to him as ‘the Banishora murderer [...] who strangled his girlfriend [...]’ and disclosed his identity</p>

⁷⁸ bTV (2019), ‘The Prosecutor’s Office: the Banishora murder – probably out of jealousy’ (*‘Прокуратурата: Убийството в „Банишора“ – вероятно от ревност’*), bTV, 17 January 2019

⁷⁹ For example, see www.actualno.com/crime/23-godishna-jena-e-ubita-v-stolichnija-kv-banishora-news_716638.html.

⁸⁰ Hristov, N. (*Христов, Н.*) (2019), ‘A young woman killed in the capital’s neighbourhood Banishora’ (*‘Млада жена е убита в столичния квартал „Банишора“’*), Bulgarian National Radio, 16 January 2019; bTV (2019), ‘Young woman killed in Banishora’ (*‘Убиха млада жена в кв. „Банишора“’*), bTV, 16 January 2019.

⁸¹ 24 Chasa (*24 часа*) (2019), ‘25-year-old Kalina killed in a particularly cruel manner in Banishora’ (*‘25-годишната Калина убита по особено жесток начин в „Банишора“’*), 24 Chasa, 17 January 2019.

⁸² Martinov, D. (*Мартинов, Д.*) (2019), ‘Beautiful Kalina strangled during or after sex?’ (*‘Красивата Калина удушена по време или след секс?’*), 24 Chasa, 17 January 2019.

		(first and last name). ⁸³ Other media emphasised upon the fact that the accused person had made other suicide attempts in the past. ⁸⁴ Although the court hearings were held behind closed doors because of the disclosure of personal information about the couple's life, much of it was published in the media. ⁸⁵ bTV illustrated their news report about bringing the case to court with a photograph of the accused person in handcuffs, surrounded by guards in uniforms. ⁸⁶ Other TV channels broadcasted close-up footage of the accused person crying. ⁸⁷
5	Key issues (e.g. major allegations of guilt in the media; where the presumption of innocence was concerned, reactions of persons involved and the media)	Overall, the media covered the case with little to no doubt of suspect's guilt. A lot of personal information about the accused person was revealed by the media. The court held the hearings behind closed doors when making a decision on suspect's detention in custody because of the personal details that had to be disclosed and that were relevant to the case. However, the accused person himself and his lawyer shared a lot of details about the accused person's and the victim's private life. ⁸⁸
6	Key consequences or implications of the case with regard to the presumption of innocence (with a focus on public reaction to publications in the media which might lead to a public debate)	Due to the increased number of media reports on domestic violence incidents ending with the death of the victim, the case contributed to the increased public indignation against perpetrators. The media did not present any other point of view apart from the one affirming the suspect's guilt as there were no other

⁸³ Trud (Труд) (2019), 'The Banishora murderer remains in arrest' ('Убиецът от „Банишора“ остава в ареста'), Trud, 24 January 2019.

⁸⁴ Dyulgerova, D. (Дюлгерова, Д.) (2019), 'Georgi Hadzhiev, SMDI: The killer of a 25-year-old woman in Banishora neighbourhood attempted suicide 5 years ago after parting with her girlfriend' ('Георги Хаджиев, СДВР: Убиецът на 25-годишната жена в кв. "Банишора" е правил опит за самоубийство преди 5 г., след раздяла с приятелката си'), Glas.bg, 17 January 2019.

⁸⁵ РИК (ПИК) (2019), 'After the cruel murder in Banishora: the content of the fatal message that killed the model Kalina is now clear' ('След жестокото убийство в „Банишора“: Стана ясно съдържанието на фаталното съобщение, което погуби моделката Калина'), РИК, 19 January 2019.

⁸⁶ bTV (2020), 'The Prosecutor's Office brought to court the indictment for the Banishora murder' ('Прокуратурата внесе в съда обвинителния акт за убийството в кв. „Банишора“'), bTV, 5 February 2020.

⁸⁷ BGNES Agency (2019), 'The accused of the Banishora murder remains in the arrest' ('Обвиненият за убийството в Банишора остава в ареста'), BGNES Agency, 19 January 2019.

⁸⁸ OFFNews (2019), '20 pills and whiskey – a prelude to a blackout murder of the young woman in Banishora' ('20 хапчета и уиски - прелюдия към безпаметното убийство на младата жена в 'Банишора'), OFFNews, 19 January 2019.

		versions. Even the suspect's claims that he did not remember killing his girlfriend were accompanied with interpretations that he would regret it once the court found him guilty. ⁸⁹ 24 Chasa published some comments of other people on suspect's Facebook page, some of which included threats and calls for the return of the death penalty. ⁹⁰
In case the case brought before a court or a non-judicial mechanism – the following questions would also need to be answered		
7	What was the decision of the case (summarize briefly and indicate reference details of the case)? How did media report on the decision?	On 20 February 2020, the case was brought to court and is still pending. The information about the start of the trial, more than a year after the extensive coverage of the incident, was presented briefly by the media, which mostly reproduced, almost literally, the official press release of the prosecutor's office. ⁹¹

⁸⁹ OFFNews (2019), '20 pills and whiskey – a prelude to a blackout murder of the young woman in Banishora' ('20 хапчета и уиски - прелюдия към безпаметното убийство на младата жена в 'Банишора'), OFFNews, 19 January 2019.

⁹⁰ Martinov, D. (Мартинов, Д.) (2019), 'Beautiful Kalina strangled during or after sex?' ('Красивата Калина удушена по време или след секс?'), 24 Chasa, 17 January 2019.

⁹¹ For example, see Standartnews (2020), 'The case about the Banishora murder started' ('Започна делото за убийството в "Банишора"'), Standartnews, 5 February 2020.