

BULGARIA

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NATIONAL POLICY

The Republic of Bulgaria implements a consistent and active policy for the prevention and suppression of terrorism which includes broad international co-operation in this field.

In April 2004, the Bulgarian Government approved the **National Plan on Combating Terrorism** dealing with the prevention of terrorist acts on the territory of Bulgaria, the improvement of the activity of the specialised antiterrorist bodies, the protection of the population and support for the antiterrorist initiatives of the international community.

The updated **National Strategy on Counteracting Crime** also contains measures for the prevention of terrorist acts and international co-operation in the fight against terrorism.

LEGAL FRAMEWORK

Penal law

In 2002, the **Bulgarian Criminal Code** (CC) was amended in order to establish special regulations for the punishment of terrorist acts and related crimes. The amendments of 2002 provided for the legal definition of terrorist acts¹ and financing of terrorism.² Besides this, the Criminal Code provides for punishment for setting up, leading or participating in organised terrorist groups³ as well as for using the territory of Bulgaria for the preparation of terrorist acts abroad.⁴ The Bulgarian Criminal Code also contains specific provisions for the punishment of open incitement to terrorism⁵ and threatening to commit terrorist acts.⁶

Whoever commits any of the crimes mentioned in this provision (26 crimes) with the aim of intimidating a population or compelling the representatives of the public authority, society,

foreign state or international organisation to perform or abstain from performing an act within their functions shall be punished for terrorism by imprisonment of five to fifteen years.⁷ Where death has been caused, the punishment imposed shall be imprisonment of fifteen to thirty years, life imprisonment or life imprisonment without alternative punishment.

Any person who in any way directly or indirectly collects or provides means for the purpose of perpetrating a terrorist act, and is aware, or assumes, that these means will be used for that purpose, shall be punished by imprisonment of three to fifteen years and a fine shall be imposed upon him/her of up to thirty thousand Bulgarian Leva.⁸

Article 109 of the Criminal Code regulates punishment for participation in terrorist groups. Paragraphs 1 and 2 of Article 109 provide for punishment for setting up, leading (deprivation of liberty up to twelve years) and participating (deprivation of liberty up to ten years) in organised terrorist groups. Paragraphs 3 and 4 of Article 109 provide for specific measures to encourage the participants in terrorist groups to co-operate with the police and judicial authorities in order to prevent terrorist acts or to collect evidence. In particular, paragraph 4 of Article 109 provides that a participant in an organised terrorist group shall not be punished if he/she voluntarily surrenders to the authorities and reports on the group before the commission of a crime. Likewise, any participant in such a group who surrenders voluntarily and discloses any information he/she has about the group, thus substantially facilitating the detection of and proving the committed offences, should be sentenced on the basis of mitigating circumstances.⁹

Article 110 provides for punishment of up to six years' imprisonment for the preparation of terrorist acts.

The confiscation of the property, or a part thereof, of the perpetrators of terrorist offences and of the

¹ Article 108a, paragraph 1 CC.

² Article 108a, paragraph 2 CC.

³ Article 109 CC.

⁴ Article 356b CC.

⁵ Article 320, paragraph 2 CC.

⁶ Article 320a CC.

⁷ Article 108a, paragraph 1 CC.

⁸ Article 108a, paragraph 2 CC.

⁹ Article 109, paragraph 3.

persons financing their activities is provided by Art. 114, paragraph 2 of the Criminal Code.

Under the general rules of the Criminal Code,¹⁰ accomplices aiding and abetting are liable to the criminal sanctions provided for the perpetration of the respective crime.

Paragraph 2 of Article 320 of the Criminal Code provides that the punishment for openly inciting the perpetration of terrorism is up to six years' imprisonment. It means that the Bulgarian Criminal law considers "incitement to terrorism" as a serious offence.

Besides this, Article 320a of the Criminal Code provides that "a person who threatens to commit a crime under Article 108a, para.1 (i.e. terrorism)... and where such threat might give rise to justified fear of its perpetration, shall be punished by imprisonment for up to two years".

Under the provisions of Article 356b of the Criminal Code, a foreign national who on the territory of the Republic of Bulgaria plans to commit abroad any offence involving a threat to the population (including terrorist acts) is liable to imprisonment of up to five years. If an organisation or group has been established for the same purpose, the punishment is imprisonment of one to six years, and three to eight years for the organisers and leaders.¹¹ The criminal liability under these provisions does not require the respective offences to have been committed or their perpetration to have been attempted.

Jurisdiction

According to Article 3, para.1 of the Criminal Code, the Code is applicable to all crimes, committed on the territory of the Republic of Bulgaria. The Criminal Code is applicable to Bulgarian citizens for crimes committed by them outside the country;¹² to foreign nationals who have committed crimes outside the country, where these crimes affect the interests of the Republic of Bulgaria or of Bulgarian citizens;¹³ to foreign nationals who have committed crimes against peace and humanity outside the country and, thus, affect the interests of another country or foreign citizens;¹⁴ as well as other crimes committed by foreign nationals outside the country, when this is envisaged in an international agreement to which the Republic of Bulgaria is a party.¹⁵

¹⁰ Article 21 CC.

¹¹ Article 356b, paragraph 2.

¹² Article 4, paragraph 1.

¹³ Article 5.

¹⁴ Article 6, paragraph 1.

¹⁵ Article 6, paragraph 2.

When a request for the extradition of a foreign national who has been found on the territory of Bulgaria and who has committed an offence abroad affecting the interests of another state or of a foreign national is for some reason refused, the competent Bulgarian authorities should exercise criminal jurisdiction and accordingly institute criminal proceedings against the foreign national, where this is provided for in an international agreement to which the Republic of Bulgaria is a party (e.g., pursuant to Articles 6 and 7 of the European Convention on Suppression of Terrorism).¹⁶

Procedural rules

There is no special procedure in Bulgaria for sentencing persons suspected of having committed terrorist acts. The rules and principles governing the investigation and prosecution of corruption related offences are the same as for any other offence. They are laid down in the Bulgarian **Code of Criminal Procedure**. The persons accused of terrorist activity have the same rights as all other accused persons during the preliminary proceedings and the trial and with regard to the conditions for appeal.

Under Art. 171 of the Code of Criminal Procedure in the case of an act of terrorism, preliminary criminal proceedings should be initiated. Preliminary proceedings are carried out by investigating magistrates under the control of the prosecutor's office.

Investigation measures

The Code of Criminal Procedure provides for the use of technical means for gathering evidence (special investigative techniques).¹⁷ A Law on Special Investigative Techniques was adopted in 1997. Bugging in private or public premises, telephone tapping, other means of intercepting communications (mail, fax, e-mail), electronic surveillance, observation, controlled delivery, anonymous informants and searches may be used in cases of terrorism. Special investigative means may only be applied if approved by the court following a request from the police or the prosecutor's office.

¹⁶ Article 6, paragraph 2 of the Criminal Code.

¹⁷ Articles 111a-111c.

Protection of Witnesses

The Code of Criminal Procedure regulates witness protection.¹⁸ Such protection can be provided by keeping the identity of the witnesses secret (anonymous witness) or by providing physical protection both to the witnesses themselves and to their families, relatives or other close persons. The witness protection measures are taken when the proceedings are instituted. The protection measures may continue after the proceedings.

Compensation of Victims

Under the Bulgarian Code of Criminal Procedure, victims and their successors, and institutions and legal entities having sustained damage as a result of a criminal offence may bring a civil action for damages in the criminal proceedings and before the criminal court hearing the case, and may thus enter the criminal proceedings as civil plaintiffs. A civil claim in the criminal proceedings may be brought either against the defendant or against any other party that should be held liable under civil law for the damage caused by the crime. Such an action may not, however, be brought in the criminal proceedings if the plaintiff has already brought it before a civil court. Where the criminal proceedings are discontinued, the civil claim will not be examined by the criminal court but may be brought separately before a civil court.

In the course of criminal proceedings, the courts may and should play an active part in protecting the interests of those affected by acts of terrorism. The Bulgarian Code of Criminal Procedure puts the court and the pre-trial authorities under an obligation to explain to any victim that he or she is entitled to bring a civil action to seek redress for the damage caused by the offence. At the request of the victim made at the pre-trial stage, the competent court of first instance should order the provision of collateral to secure the claim in line with the Civil Procedure Code.

Preventive measures

On 5 February 2003, the National Assembly adopted the **Law on the Measures against Financing of Terrorism**. The Law was drafted in compliance with the measures under Resolution 1373 (2001) of the UN Security Council and taking into account the provisions of the Council's Regulation (EC) No. 2580/2001 of 27 December 2001 on the specific restrictive measures directed against certain persons and entities with a view to combating terrorism. The aim pursued by the Law on the Measures against Financing of Terrorism,

as defined in Article 2, is the prevention and disclosure of the actions of natural persons, legal persons, groups and organisations aimed at the financing of terrorism. The measures envisaged in that Law are freezing of assets and other property, and a prohibition on providing financial assets, services or property.

The measures under the Law are applied with respect to individuals and entities included in the list approved by the Council of Ministers. The list is adopted, modified or amended on a proposal submitted by the Minister of the Interior or by the Prosecutor General. The list includes any individuals and organisations identified by the UN Security Council as linked with terrorism or on whom sanctions for terrorism have been imposed by virtue of a resolution of the UN Security Council, as well as any persons against whom the Bulgarian authorities have instituted criminal proceedings for terrorism or for crimes related to terrorism. Likewise, any person identified by the competent authorities of another country or of the European Union may be included in the list. The list is published in the State Gazette and the persons concerned may appeal before the Supreme Administrative Court against the decision of the Council of Ministers under which they are included in the list.

Under the Law on Measures against the Financing of Terrorism, anyone who knows that certain operations or transactions are aimed at the financing of terrorism must report to the Minister of the Interior. Banks and other reporting entities under the **Law on Measures against Money Laundering** must notify the Minister of the Interior and the **Agency of Financial Intelligence** about any suspicion of the financing of terrorism. Those entities are also under an obligation to insert in their internal regulations criteria for the identification of suspicious operations, transactions and customers related to the financing of terrorism. The disclosure of such information cannot be prevented on grounds of official, bank or commercial secrecy. The competent authorities having received information under that Law, must keep confidential the identity of those who provided the information, and may only use those data for the purpose of the Law or to combat crime.

The Law on Measures against the Financing of Terrorism does not regulate the criminal suppression of terrorist acts. That law, however, puts in place a preventative administrative mechanism, thus building the conditions indispensable for the detection of acts that might constitute terrorism-related offences.

¹⁸ Article 97a.

The **Law on the Ministry of the Interior**, the Law on Measures against Money Laundering, **the Law on Control of Explosives, Fire Arms and Ammunition**, the **Law on Foreign Trade in Arms and Dual-use Goods and Technologies** and the **Law on the Prohibition of Chemical Weapons and Control of Toxic Chemical Substances and their Precursors** are also related to the prevention of terrorism.

INSTITUTIONAL FRAMEWORK

In the Republic of Bulgaria several authorities within the Executive and Judiciary are responsible for combating terrorism.

A **Security Council** operates under the Office of the Prime Minister. The consultative functions of the Security Council were defined in the National Security Concept of 1998 and legally regulated by Decree No. 216 of the Council of Ministers of 29 September 1998. The members of the Council are the Minister of Foreign Affairs, the Minister of Defence, the Minister of the Interior, the Deputy Ministers of Foreign Affairs and Defence, the Secretary General of the Ministry of the Interior and the Directors of the National Intelligence Service and the National Security Service. The Security Council analyses and makes conclusions on the basis of all the current information regarding the risks to national security; maps out concrete measures to neutralise possible dangers; coordinates the plans of specialised bodies; gives opinions on the allocation of resources; and proposes solutions in crisis situations.

Within the Judiciary, the investigation authorities, the prosecution office and the courts are entrusted with the investigation or punishment of terrorist offences. The preliminary investigation of acts of terrorism is carried out by the investigating magistrates of the **Special Investigative Service**. The Special Investigative Service investigates terrorist acts committed abroad, acts of politically motivated terrorism as well as cases of kidnapping and unlawful deprivation of liberty of persons enjoying international protection, taking of hostages whose release is contingent on certain conditions, perpetration of punishable acts against civil aircraft, as envisaged in the respective UN conventions. This Service fulfils foreign requests for legal assistance related to investigation of acts of terrorism.

Within the Executive, the Ministry of Justice, the Ministry of the Interior and the Ministry of Finance, through their competent services, have different functions and tasks with respect to the prevention and detection of terrorist offences, the preparation

of the legal framework and international co-operation with the relevant bodies of other States and international organisations.

The **National Service on Combating Organised Crime**, which is established at the Ministry of the Interior, has special responsibilities (along with its other tasks) concerning the fight against terrorist acts. The National Service on Combating Organised Crime is a specialised police office within the Ministry of the Interior with operative and searching functions, established to counter the criminal activity of local and cross-border criminal structures.¹⁹ Independently or in co-operation with other specialised bodies it carries out operative, search, information and organisational activities in order to counter terrorism.²⁰

The **National Security Service** within the Ministry of the Interior is specifically assigned counter-intelligence activities for the supervision, detection, countering and prevention of attempts upon national security related to use of force or dangerous devices for political purposes, and to international terrorism.²¹

The **National Service Gendarmery** is a specialised security police service within the Ministry of the Interior which conducts search operations for the purpose of providing security to strategic and key sites, combating terrorist and subversive groups, preserving public peace and working against crime. In the fulfilment of the tasks covered by Article 104, the Gendarmery is entrusted, independently or jointly with other Ministry of the Interior services, with the organisation and provision of security to strategic and key sites and is responsible for rendering terrorist groups inactive, as well as for providing assistance to any person in distress or to individuals who are the victims of criminal offences or other breaches of the peace, or are injured in accidents, incidents or disasters.

The **Specialised Terrorism Combating Unit** is a specialised service of the Ministry of the Interior with the purpose of combating terrorist acts, protecting strategic and key sites, and preventing and detecting serious crimes. In the fulfilment of its tasks under Article 156 of the Law on the Ministry of the Interior, the Specialised Terrorism Combating Unit is instructed to prevent any terrorist act, detain or render harmless any perpetrator of a serious crime putting up, or

¹⁹ Article 89 of the Law on the Ministry of the Interior.

²⁰ Article 90, paragraph 1 (2).

²¹ Article 46, paragraph 1 (4) and (10) of the Law on the Ministry of the Interior.

intending to put up, armed resistance, to release hostages, and to take any action related to the protection of the national and public interest against any criminal offence or terrorist act.

The **Financial Investigation Agency** is created at the Ministry of Finance. This service is entrusted with the enforcement of the measures against money laundering, including measures against the financing of terrorism.

INTERNATIONAL CO-OPERATION

Mutual assistance and extradition

The mutual legal assistance and extradition in criminal matters, including in terrorist cases, can be afforded to the extent provided for by international instruments (bilateral treaties and multilateral conventions) and national legislation.

The Code of Criminal Procedure contains separate sections on extradition and mutual legal assistance in criminal matters, the provisions of which take into consideration the international standards in the field of judicial co-operation. Unless otherwise provided for in any international agreement to which Bulgaria is a party, the above rules will apply. Extradition and judicial assistance may also be implemented on a reciprocal basis if no international agreement has been signed.

In the Section on "Extradition"²² there are provisions concerning competent authorities (General Prosecutor or Minister of Justice), requests and supporting documents, the rule of speciality, grounds for extradition (international treaty or reciprocity) and extraditable offences (dual criminality), refusal of extradition (extradition of nationals, capital punishment, military offences, political offences, non bis in idem), preliminary and court procedures, and the supremacy of international law.

Mutual assistance rules are set out in the Section on "Legal Assistance in Criminal Matters".²³ These provisions deal with grounds for mutual legal assistance (international treaty or reciprocity), scope of letters rogatory, grounds for refusal (prejudice to sovereignty, security, public order or other essential interests protected by law), appearance of witnesses and experts before foreign judicial authorities, contents of the request, competent authority (Ministry of Justice unless otherwise stipulated by an international treaty), execution of the request, and expenses.

The relevant provisions of the Bulgarian law concerning extradition and mutual legal assistance are applied unless otherwise stipulated in an international treaty or convention.

Police co-operation

Police co-operation, which is regulated by a number of bilateral and multilateral treaties, as well as with the assistance of Interpol, is supervised by the Ministry of the Interior.

All international agreements on co-operation in the fight against crime contain provisions regarding exchanges of information with the law enforcement authorities of other states on matters concerning the fight against terrorism.

Bulgaria has concluded 33 bilateral agreements on police assistance, as well as two trilateral agreements (Bulgaria-Turkey-Romania and Bulgaria-Greece-Romania) and two multilateral regional agreements (Black Sea region and South-Eastern Europe) which also contain provisions on the fight against international terrorism.

Measures at international level

United Nations

The Republic of Bulgaria has ratified the United Nations conventions in the field of the fight against terrorism, including the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism. Bulgaria supports the activity of the UN Security Council and takes all the necessary measures in order to implement the Resolutions of the UN Security Council on the fight against terrorism. Bulgaria also supports the activity of the Security Council's Counter-Terrorism Committee (CTC) and the current efforts to adopt a comprehensive convention against terrorism.

Council of Europe

The Republic of Bulgaria ratified the European Convention on the Suppression of Terrorism on 17 February 1998 and the Convention entered into force for Bulgaria on 18 May 1998. On 19 December 2001 the Republic of Bulgaria withdrew the reservation that was made at the ratification of the European Convention on the Suppression of Terrorism. Thus, at present, the Republic of Bulgaria may not refuse the extradition of a person who has perpetrated a terrorist act, unless there are grounds for considering the crime for which the extradition is requested as political. The Republic of Bulgaria ratified the Protocol amending

²² Article 435-441 of the Code of Criminal Procedure.

²³ Article 461-466 of the Code of Criminal Procedure.

the European Convention on the Suppression of Terrorism on 26 February 2004 and thus became the first state that ratified this Protocol. The 25th Conference of European Ministers of Justice was held on 9 and 10 October 2003 in Sofia at the

invitation of the Bulgarian Minister of Justice who submitted the main report dealing with the response of the justice system to terrorism.

Relevant Council of Europe conventions - Bulgaria	Signed	Ratified
European Convention on the Suppression of Terrorism (ETS 90)	11/09/97	17/02/98
Amending Protocol (ETS 190)	15/05/03	26/2/2004
European Convention on Extradition (ETS 24)	30/09/93	17/06/94
First Additional Protocol (ETS 86)	30/09/93	17/06/94
Second Additional Protocol (ETS 98)	30/09/93	17/06/94
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	30/09/93	17/06/94
First Additional Protocol (ETS 99)	30/09/93	17/06/94
Second Additional Protocol (ETS 182)	08/11/01	11/05/04
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	09/10/03	30/03/04
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	28/09/92	02/06/93
Convention on Cybercrime (ETS 185)	23/11/01	