

XVI. BULGARIA³⁸

1. SUMMARY OF LEGISLATION OF BULGARIA RELATED TO TERRORISM

Bulgarian criminal law provides essential legal grounds for prosecuting and punishing the financing of terrorist acts. In this context, of special importance are the Criminal Code institutes of “preparation” and “complicity”. Furthermore, the Criminal Code provides for punishment of accessories as accomplices in the perpetration of an intentional crime (respectively a terrorist act), i.e. those who have intentionally facilitated the perpetration of a crime through advice, explanations, promises to render assistance after the act, removal of obstacles, supply of means or in any other way (Article 20 of the Criminal Code).

In addition to that, with regard to most crimes of a terrorist nature such as subversion, murder and most generally dangerous crimes, a punishment is also envisaged for the preparation itself including “getting ready the means, finding accomplices and, in general, creating conditions for the perpetration of the intended crime before the commencement of its perpetration (Article 17 of the Criminal Code). The preparation (including the financing) for most generally dangerous crimes constituting, in substance, terrorist acts, is punished by deprivation of liberty for three to eight years (Article 356a of the Criminal Code).

In the Criminal Code, a comprehensive list of crimes and punishments for acts constituting terrorist acts under the relevant UN Conventions is given. The criminal legislation in force concerning these criminal acts is, to a great extent, in line with the international standards.

In the context of the direct organization, preparation, supply and armament of terrorism, the Bulgarian legislation unequivocally defines, as a crime, the provision of any forms of assistance, active or passive, to structures or persons involved in terrorist acts, recruitment of members of terrorist groups and arms supplies to terrorists.

The recruitment of members of terrorist groups and arms supplies to terrorists is punishable as preparation for or facilitation of a respective terrorist act. Besides, illegal arms supplies may be punished as generally dangerous crimes (Article 337 and Article 339 of the Criminal Code) or qualified contraband (Article 242).

³⁸ Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1273, annex). Information was also provided in respect of the Law on Measures against Money Laundering.

In addition to that, the special Decree of the Council of Ministers adopted on 12 December 2001 concerning the application of Resolution 1373 (2001) explicitly prohibits the recruitment, in any way whatsoever, of members of terrorist groups, by Bulgarian persons or entities or in the territory of the Republic of Bulgaria as well as the sale, supply or transfer, by Bulgarian persons or entities or in the territory of the Republic of Bulgaria, of any kinds of armament and related equipment to persons or entities involved in the preparation or commission of terrorist acts.

The Bulgarian Criminal Law also contains special provisions incriminating the use of the territory of the country for preparation or commission of terrorist acts against other states (Article 356b of the Criminal Code). Besides, under Article 10, paragraph 1, sub-paragraph 4 of the Foreign Nationals Act, foreign nationals for whom there is information that they are preparing to commit terrorist acts may not be admitted to the territory of the country.

According to the Bulgarian legislation (Criminal Code), the subject of terrorist acts can be both individuals and groups and organizations. In the broadest sense, the law covers all hypotheses of terrorist activities envisaged in the international instruments. They relate to crimes committed on board of an aircraft to offences endangering the security of the air traffic, against taking of hostages, protection of nuclear material, extradition of persons who have committed terrorist acts. A criminal offence is the preparation for such acts or the setting up of a group or organization on the Bulgarian territory for the purpose of committing a crime abroad resorting to the use of explosives, taking of hostages, endangering the safety of the civil aviation, generally dangerous pollution of the environment.

The Bulgarian State takes all the necessary legislative and practical measures so that each person involved in the financing, planning, preparation for or commission of terrorist acts or support for such acts be liable to the judicial bodies, and guarantee, in addition to all other measures against terrorist acts, that such acts are treated as grave criminal offences under the domestic legislation and provisions and that the punishments duly reflect the gravity of such terrorist acts.

The Criminal Code sets out a detailed list of *corpora delicti* and punishments for actions constituting terrorist acts under the relevant UN conventions. The criminal law in force regarding these criminal acts has been harmonized, to a great extent, with the international standards.

Crimes constituting terrorist acts under the Bulgarian Criminal Code are:

- depriving of life and inflicting a severe bodily injury to a state or public figure as well as causing the death of one or more persons (Article 96);
- depriving of life and inflicting a severe bodily injury to a representative of a foreign state (Article 99);

- destroying or damaging public buildings, construction projects, installations, equipment, transport vehicles or means of communication, or other significant public property (Article 106);
- murdering an official, a representative of the public as well as a serviceman, including one of an allied or friendly state or army, during or in connection with the performance of his duty or function, of a person enjoying international protection as well as murdering in a way or by means dangerous to the life of many (Article 116, paragraph 1, sub-paragraphs 1 and 6);
- setting on fire a building or other property of a considerable value including damaging or destroying the property under Article 330 by an explosive (Article 333);
- causing an inundation and thereby exposing to a danger the life or property of another person (Article 334);
- damaging rolling stock or railway lines, an aircraft, an automobile, an electric transport vehicle or equipment, or accessories to them, a tunnel, a bridge or a supporting wall on the roads as well as a ship thereby creating danger for the life of another person or for considerable endamage of another person's property (Article 340, paragraph 1);
- destroying an aircraft in operation or inflicting on it a damage that make it unfit for flight or endanger its safety in flight (Article 340, paragraph 2);
- placing into an aircraft a device or substance which can destroy it or damage it making it unfit for flight or creating danger for its safety in flight (Article 341a, paragraph 1);
- endangering the safety of an aircraft in flight (Article 341a, paragraph 2);
- exerting violence against a person on board an aircraft in flight if this act has been of such a nature as to endanger the safety of the aircraft (Article 341a, paragraph 3);
- unlawfully seizing an aircraft on the ground or in flight or establishing control over such an aircraft (Article 341b);
- intentionally causing death, bodily injury or considerable property damage in driving a railway rolling stock, an aircraft, a motor vehicle, a vessel, a combat or special machine and violating the traffic regulations (Article 342, paragraph 3);

- removing or shifting to another place a sign or signal intended for securing the safety of movement or railway traffic, water transport and electric transport as well as putting up such a false sign or giving a false signal (Article 344);
- intentionally putting or admixing an object hazardous to human life or health in a well, spring, water mains or another installation intended for public use whereupon or whereby potable water is supplied (Article 349, paragraph 1);
- spreading agents of epidemic diseases for the purpose of infecting people (Article 349, paragraph 3);
- preparing foodstuffs or drinks intended for public use in a way so that therein substances hazardous to human health are formed or allowed to enter as well as selling, offering for sale or otherwise distributing such foodstuffs or drinks (Article 350);
- polluting or allowing the pollution of water sources, basins, underground waters, territorial and inland sea waters, the soil and the air thereby rendering them hazardous to people, animals and plants or making them unfit for use (Article 352, paragraph 1);
- acquiring, holding, appropriating or giving to another person, without due permission, highly active or poisonous substance which is not narcotic substance placed under permit regime as well as violating rules established for the production, acquisition, safekeeping, accounting, prescribing, transportation or carrying of such substances (Article 354).
- damaging nuclear material, nuclear equipment or another source of ionizing radiation, thus causing considerable property damage or damage to the environment or creating danger for the life and health of another person: imprisonment from five to fifteen years; In case that death was caused, the penalty shall be imprisonment from ten to twenty years, life imprisonment or life imprisonment without appeal (Article 356e).

In accordance with Article 110, 117 and 356a of the Criminal Code, the preparation of the above mentioned crimes shall also be punished (the penalty for preparation of these crimes shall be imprisonment up to five or from three to eight years).

2. LAW ON THE MEASURES AGAINST FINANCING OF TERRORISM³⁹

Article 1

This Law shall lay down the measures for the suppression of financing of terrorism, as well as the procedures and the control of the implementation thereof.

Article 2

The objectives set out in this Law are to prevent and detect actions on behalf of natural and legal persons, as well as groups and organisations, intended to finance terrorism.

Article 3

- (1) The measures provided for in this Law are, as follows:
 1. Freezing funds or financial assets, or other property;
 2. Prohibiting the provision of financial services, funds, financial assets or other property.
- (2) The authorities that have applied any of the measures referred to in paragraph (1) shall forthwith inform the Minister of the Interior and the Minister of Finance thereof.
- (3) The freeze referred to in paragraph (1) shall have the effect of distress or foreclosure.

Article 4

The information required in order to achieve the objectives set out in this Law shall be collected, processed, classified, analysed, kept, used and provided by the Ministry of the Interior.

Article 5

- (1) The Council of Ministers, acting on a motion of the Minister of the Interior or the Prosecutor General, shall adopt, supplement or amend by a relevant decision a list of the natural and legal persons, as well as the groups and organisations, in respect of which the measures provided for in this Law shall apply.
- (2) The list referred to in paragraph (1) shall include:
 1. natural and legal persons, as well as groups and organisations designated by the UN Security Council as being associated with

³⁹ Published in State Gazette No. 16 of 18 February 2003, amended in SG No. 31 of 4 April 2003

terrorism or in respect of which counter-terrorism sanctions have been imposed by a resolution of the UN Security Council;

2. persons against whom criminal proceedings have been initiated for terrorism, financing of terrorism, forming, directing or participating in an organised criminal group, having as its purpose the commission of terrorist acts or financing of terrorism, or the preparation to commit terrorist acts, or the manifest incitement to commit terrorist acts, or threat to commit terrorist acts within the provisions of the Penal Code.

(3) The list referred to in paragraph (1) may also include persons designated by the competent authorities of another state or the European Union.

(4) The decision of the Council of Ministers referred to in paragraph (1) shall be published in the *State Gazette* immediately following the adoption thereof.

(5) The persons referred to in paragraphs (2) and (3) may appeal against the decision of the Council of Ministers, whereby they have been put on the list referred to in paragraph (1), before the Supreme Administrative Court. The appeal shall not suspend the enforcement of the act appealed.

(6) Where the reasons for including a person in the list referred to in paragraph (1) cease to exist, the Minister of the Interior or the Prosecutor General shall, on his/her own initiative or at the request of the persons concerned, within 14 days of the time when he/she has been notified that the said reasons had ceased to exist, submit to the Council of Ministers a proposal on the removal of that person from the list. The decision of the Council of Ministers amending the list shall be published in accordance with the procedure laid down in paragraph (4).

(7) Copy of the judgment of the Supreme Administrative Court, whereby the appeal referred to in paragraph (5) is given favourable consideration, shall be forwarded to the Council of Ministers which shall make without delay the necessary amendments. The decision of the Council of Ministers amending the list shall be published in accordance with the procedure laid down in paragraph (4).

(8) When instituting criminal proceedings for terrorism, financing of terrorism, forming, running or participating in an organised criminal group, having as its purpose the commission of terrorist acts or financing of terrorism, or the preparation to commit terrorist acts, or the manifest incitement to commit terrorist acts, or threat to commit terrorist acts within the provisions of the Penal Code, investigators and public prosecutors shall forthwith inform the Prosecutor General thereof.

Article 6

(1) Any funds, financial assets and other property owned by the persons referred to in Article 5, regardless of the holder thereof, as well as any funds, financial assets and other property possessed or held by the persons appearing on the list referred to in Article 5, except for those objects and rights which may not be subject of coercive enforcement, shall be frozen.

(2) The measure referred to in paragraph (1) shall be applied also with

respect of funds, financial assets and other property acquired following the publication of the list referred to in Article 5.

(3) The enforcement of the measure referred to in paragraph (1) shall not discontinue the interest accrual and the acquisition of other civil benefits deriving from the frozen funds, financial assets and other property, however, anything newly acquired shall be frozen too.

(4) The Minister of Finance may authorise payment or any other disposal of frozen funds, financial assets and other property, where this is required for:

1. medical treatment or other emergency humanitarian needs of the person whose property has been frozen or of any of his/her family members;
2. repayment of liabilities to the State;
3. payment of labour remuneration;
4. payment of compulsory social insurance contributions;
5. covering current needs of the natural persons appearing on the list referred to in Article 5 and their family members.

(5) The authorisation referred to in paragraph (4) shall be issued on a case-by-case basis subject to a motivated request filed by the person concerned, and in the event of repayment of liabilities to the State - on the initiative of the Minister of Finance as well. The Minister of Finance shall deliver his/her opinion within 48 hours following the receipt of the request.

(6) The refusal of the Minister of Finance to grant authorisation in the cases referred to in paragraph (4) shall be subject of appeal before the Supreme Administrative Court.

Article 7

(1) Natural and legal persons shall be prohibited from providing funds, financial assets or other property, as well as financial services, to persons included in the list referred to in Article 5, unless in case of an authorisation issued in compliance with Article 6.

(2) The prohibition provided for in paragraph (1) shall not refer to minor transactions intended to cover current needs of a natural person appearing on the list referred to in Article 5 or his/her family members.

Article 8

(1) Transaction involving frozen funds, financial assets and other property of persons appearing on the list referred to in Article 5, as well as transactions involving the provision of funds, financial assets and other property to such persons shall be prohibited.

(2) Anything given by the parties to a transaction performed in violation of the provisions of paragraph (1) shall be expropriated in favour of the State.

(3) The claim under paragraph (2) shall be filed by the Minister of Finance at the place where the property is located or where the transaction took place, as appropriate. In the event the transaction has taken place abroad, the claim shall be filed before the Sofia District Court.

(4) If the funds, financial assets or other property subject to divestment are missing, the pecuniary equivalence thereof shall be adjudicated.

(5) Third *bona fide* persons claiming autonomous rights in regard with frozen funds, financial assets and other property, may file a claim within six months from the publication in the *State Gazette* of the decision of the Council of Ministers adopting, supplementing or amending the list referred to in Article 5.

Article 9

(1) Anyone who is aware that specific operations or transactions are intended to finance terrorism shall be under the obligation to inform without delay the Minister of the Interior thereof.

(2) In cases where, during the performance of the functions entrusted to the Financial Intelligence Agency, suspicions arise that certain operations or transactions are intended to finance terrorism, the Director of the Agency shall forthwith inform the Minister of the Interior thereof.

(3) In cases of any suspicion arisen as to financing of terrorism, the persons referred to in Articles 3(2) and 3 of the Law on Measures against Money Laundering shall be under the obligation to inform the Financial Intelligence Agency thereof. In such cases the Agency shall exercise the powers conferred to it under Articles 13, 17 and 22 of the Law on Measures against Money Laundering.

(4) The persons referred to in Article 3 (2) and (3) of the Law on Measures against Money Laundering shall include in their internal rules of procedure, under Article 16(1) of the same Law, criteria for detecting suspicious operations, transactions and customers intended for financing of terrorism.

(5) The disclosure of the information referred to in paragraphs (2) and (3) may not be restricted for reasons of classified information representing official, banking or commercial secret, and shall not entail liability for violation of the provisions of other laws.

Article 10

(1) The competent authorities that have obtained information in regard with the implementation of this Law shall keep confidential the identity of the sources of such information.

(2) The information collected in compliance with this Law shall be used exclusively for the purposes of this Law or for counteracting crime.

Article 11

(1) In the cases referred to in Article 9(1), (2) and (3), the Minister of the Interior may issue a written warrant for the suspension of an operation or transaction for a maximum period of three working days as of the day following

the date of issue of such warrant, and shall forthwith notify the prosecution authorities thereof, providing them the full information required.

(2) In the event of emergencies, when this is the only possibility to freeze funds, financial assets or other property of a person in respect of whom an information has been obtained that he/she is preparing to commit a terrorist act, the Minister of the Interior may order, by a written warrant, the suspension of an operation or transaction for a maximum period of 45 working days as of the day following the date of issue of such warrant, and shall forthwith notify the prosecution authorities thereof, providing them the full information required.

(3) The warrants issued by the Minister of the Interior in accordance with paragraphs (1) and (2) shall be subject of appeal before the Supreme Administrative Court. The Supreme Administrative Court shall deliver its judgment on the appeal within 24 hours from the receipt thereof. The appeal shall not have effect of suspension.

(4) The persons who are under the obligation to enforce the warrants referred to in paragraphs (1) and (2) shall be deemed notified as of the date of receipt of a copy of the relevant warrant.

(5) Copy of the warrant issued by the Minister of the Interior in accordance with paragraph (2) and the judgment of the court in accordance with paragraph (3), where the subject of freezing is an immovable property, shall be forwarded to the relevant Registration Office.

Article 12

The measures provided for in Article 3(1) shall cease to apply on the day following the date of publication in the *State Gazette* of the decision of the Council of Ministers, whereby the natural or legal person, or the groups and organisations concerned are removed from the list.

Article 13

The Minister of the Interior shall exchange information relevant to the prevention and detection of actions of natural and legal persons intended to finance terrorism with the competent authorities of other states and international organisations.

Article 14

The Financial Intelligence Agency, acting on its own initiative and upon a request received, shall exchange the information provided for in this Law with the relevant international bodies, as well as with the authorities of other states, based on international agreements and under the conditions of reciprocity.

ADMINISTRATIVE & PENAL PROVISIONS

Article 15

(1) Anyone, who commits or allows to be committed a violation under Article 6(1), Article 7(1), Article 9(1) and (3) and Article 11(1) and (2), is subject

to a fine in the amount of BGN 2,000.00 to BGN 5,000.00, provided that the act does not constitute a crime.

(2) Where the violation referred to in paragraph (1) has been committed by a sole trader or a legal person, a property sanction in the amount of BGN 20,000.00 to BGN 50,000.00 shall be imposed.

Article 16

(1) The acts for detected violations shall be issued by the authorities of the Ministry of the Interior, while the penal provisions shall be issued by the Minister of the Interior or by duly authorised officials.

(2) The detecting of violations, the issuing, the appealing and the enforcement of penal provisions shall be in compliance with the Law on Administrative Violations and Sanctions.

ADDITIONAL PROVISIONS

§ 1. For the purposes of this Law, 'financial services' shall mean: performance of the transactions referred to in Articles 1 and 2 of the Law on Banks; insurance, reinsurance or insurance related services; public offering of and trade in securities; all forms of professional management of funds or properties; all forms of collective investment management and management of insurance companies and funds; provision and dissemination of financial information, financial data processing and the relevant software deriving from providers of other financial services, as well as consulting, brokerage, accounting and other supporting activities related to the above described financial services.

TRANSITIONAL & CONCLUDING PROVISIONS

§ 2. The persons referred to in Article 3(2) and (3) of the Law on Measures against Money Laundering shall, within four months from the date of entrance into force of this Law, include in their internal rules of procedure, as laid down in Article 16(1) of the Law on Measures against Money Laundering, criteria for detecting suspicious operations, transactions and customers intended for financing of terrorism, and shall forward them to the Director of the Financial Intelligence Agency for approval.

§ 3. In § 21 of the Law on the 2003 State Budget of the Republic of Bulgaria (published, SG No. 120/2002; as amended, SG No. 2/2003), paragraphs (1) and (2) shall be repealed.

§ 4. The implementation of this Law shall be entrusted to the Minister of the Interior and the Minister of Finance.

This Law has been adopted by the 39th National Assembly on February 5, 2003 and bears the official stamp of the National Assembly.

3. EXTRACT OF THE PENAL CODE

Article 108a

(1) A person who for the purpose of causing disturbance and fear to the public, to threaten or to force a government body or a representative of the community or a representative of a foreign country or international organization to carry out or to fail to carry out a certain action within the scope of their functions and commits a crime under Articles 115, 128, 142.1, 194.1, 216.1, 326, 330.1, 333, 334.1, 337.1, 339.1, 340.1-2, 341a1-3, 341b.1, 344, 347.1, 348, 349.1, 349.3, 350.1, 352.1, 354.1, 356e.1, 356.3 shall be punished for terrorism by imprisonment from 5 to 15 years; in case somebody's death has been caused - imprisonment from 15 to 30 years, life imprisonment or life imprisonment without replacement.

(2) A person who in any way, direct or indirect, collects or provides funds for the purposes of carrying out the act under (1) or is aware or supposes that these are going to be used for the same purpose shall be punished with imprisonment from 3 to 15 years and a fine up to BGN 30,000.

(3) The proceeds subject to the act under (2) shall be confiscated by the state.

Article 109

(1) A person who forms or leads an organization or group, which has set itself the aim of committing crimes under this Chapter, shall be punished by deprivation of liberty for up to twelve years, but not more than the punishment provided for the respective crime.⁴⁰

(2) A person who is a member of such an organization or a group shall be punished by deprivation of liberty for up to ten years, but not more than the punishment provided for the respective crime.

(3) A participant in the group who, of his own accord gives himself up to the authorities and reveals everything he/she is aware of about the group thus assisting significantly the detection and the investigation of crimes committed by the group shall be punished in accordance with Art. 55.⁴¹

(4) A participant in the group who, of his own accord gives himself up to the authorities before a crime he or the groups commits other crime shall not be punished.⁴²

Article 110

For preparation of a crime under Articles 95, 96, 99, 106 and 107 and 108a, the punishment shall be deprivation of liberty for up to six years.⁴³

⁴⁰ Amended, SG No. 99/1989.

⁴¹ Amended, SG No. 95/1975; 92/2002.

⁴² Amended, SG No. 92/2002.

⁴³ Amended, SG No. 99/1989.

Article 114

(1) For crimes under this Chapter, the court may rule compulsory domicile, as well as deprivation of rights under Article 37, sub-paragraphs 6 - 10.

(2) For crimes under Articles 95 - 107, 108a and 109, the court may rule confiscation of part or of the entire property of the convict.⁴⁴

Article 320a

(New, SG No. 41/1985) A person who threatens to commit a crime under Art. 108a.1, Articles 330, 333, 334, 340, 341a, 341b, 342, paragraph (3), Articles 344, 349, 350 or 352, paragraph (1), and where such threat might give rise to justified fear of its implementation, shall be punished by deprivation of liberty for up to two years. The court may also rule compulsory domicile.

XVII. CAMEROON⁴⁵

ELEMENTS DU DISPOSITIF LEGISLATIF ET REGLEMENTAIRE DU CAMEROUN

(a) Constitution

Conformément aux dispositions de l'article 45 de la Constitution du Cameroun, tout Traité régulièrement ratifié est au-dessus de la norme interne. Il n'est donc pas nécessaire, sauf en cas de contradiction avec la Constitution, de procéder au préalable à la promulgation des lois et autres dispositions juridiques en vue d'appliquer les instruments internationaux auxquels le Cameroun est partie.

(b) Code Pénal

En l'état actuel, et en l'absence de manifestation du terrorisme dans le pays, le droit pénal camerounais ne consacre pas d'infraction spécifique pour réprimer la fourniture ou la collecte délibérée de fonds destinés à la perpétration des actes de terrorisme. Ce qui ne doit nullement laisser penser que de tels faits sont tolérés ou soustraits au régime des actes répréhensibles.

Le Cameroun, en ce qui le concerne, dispose d'un cadre juridique général qui permet de répondre à une telle situation en attendant l'adoption d'une législation spécifique plus élaborée sur le terrorisme. En effet, en plus de la possibilité offerte au chef de l'État de mettre en oeuvre les dispositions de l'article

⁴⁴ Amended, SG No. 28/1982.

⁴⁵ Transmitted to the Secretariat by that Government on 15 March 2002 (S/2002/277, enclosure) and on 15 April 2003 (S/2003/489, enclosure). Information was also provided in respect of Act of 19 December 1990 on freedom of association and Law No. 83/002 of 21 July 1983 concerning appeals for public donations.