

BULGARIA

Legal Basis for Criminalizing Terrorist Acts

Terrorist acts include “depriving life” and inflicting severe bodily harm to a state or public figure or to a foreign representative; causing the death of one or more persons; destroying or damaging public buildings, installations, equipment, transport vehicles, means of communication or other significant public property; murdering an official, a public representative or a serviceman, even one of an allied or friendly state or army, during or in connection with the performance of his duty or function, or a person under international protection, as well as murdering in a way that endangers the lives of many; arson to a building or property of considerable value and damaging property through explosion, causing inundations, damaging railway lines, aircraft, automobiles, tunnels, bridges or supporting walls on roads, and ships and more. Furthermore, any damage to aircraft or compromising its safety and any violence in an aircraft or other means of transportation can be terrorist acts.

Another set of terrorist offences is the intentional placement or admixing of an object hazardous to human life or health in a well, spring, water mains or other installations intended for public use or involved in the distribution of potable water; polluting or allowing the pollution of water sources, basis, underground waters, territorial and inland sea waters, soil and air and making them dangerous to people, animals and plants or making them unfit for use; spreading agents of epidemic diseases for the purpose of infecting people; preparing foodstuffs or drinks for public use so that they contain hazardous substances and selling, offering or distributing them; and acquiring, holding, appropriating or giving to another person, without permission, highly active or poisonous substance which is not covered by a permit for narcotics, as well as violating rules for the production, acquisition, safekeeping, accounting, prescribing, transporting or carrying of such substances.

The draft amendment to the Criminal Code foresees a new *corpus delicti*, which will cover 23 severe crimes fulfilling special purposes and defined as terrorist acts. The draft provides for punishment of terrorist acts with imprisonment from five to fifteen years; if the perpetrators inflicted deaths, imprisonment from fifteen to thirty years and up to life imprisonment without appeal. Under the current law, gathering and supplying means to perpetrate terrorist acts is punishable with three to fifteen years prison and a fine. The object of a terrorist act shall be confiscated under the current law, while the draft envisages partial or complete confiscation of the property of the offender. The draft deems the instigation of a crime to be a crime of itself, and imposes punishment of up to six years prison, and the threat to commit a crime is punishable as a crime with up to two years prison.

The Criminal Code applies to all crimes committed in Bulgaria and applies to Bulgarian citizens who commit crimes abroad, to foreign citizens who commit crimes abroad but which affect the interests of Bulgaria or its citizens, to foreign nationals who have committed crimes against peace and humanity outside Bulgaria and thereby affect the interests of another country and foreign citizens. The law also covers crimes committed by foreigners abroad if it is so provided in an international agreement to which Bulgaria is a party. Foreign nationals who prepare in Bulgaria to commit a dangerous crime abroad, including terrorist acts, can be punished with up to five years imprisonment. If a group or organization has been set up for that purpose, punishment is one to six years, and three to eight years for the leaders or organizers. The criminal law envisages the punishment of acts deemed crimes under international conventions, and the Code of Criminal Procedure states that provisions of international agreements take precedence over the Code’s provisions with respect to legal assistance in criminal matters and extradition.

Preventing The Supply of Arms for Terrorist Groups

The operative framework for Bulgarian institutions engaged in the fight against crime and terrorism in particular is the Plan of Detecting and Preventing Terrorist Activities in the territory of the Republic of Bulgaria. This plan has established a strict regime to control hazardous materials by strengthening requirements for people who apply for and hold firearms or who deal with explosives or other dangerous items. The Plan also led to active counter-measures against crimes involving explosives and to complex security checks at sites where explosives, strong poisons, and radioactive and other materials are kept.

An amendment to the law on Foreign Trade in Arms and Dual Use Goods and Technologies is supposed to improve the administration of licensing and permit regimes and effective implementation of international obligations. The introduction of a registration and licensing system for brokering companies has already improved the control over “intangible transfers of technologies” and “brokering activities related to foreign trade of arms and dual-use goods and technologies.”

As for weapons of mass destruction, Bulgaria has adopted the Guidelines for Transfer of Sensitive Chemical and Biological Items of the Australia Group - International Export Control Regime, which reflects the Council of Ministers adoption of the Guidelines for Transfer of Sensitive Chemical and Biological Items. The Law on the Control of Foreign Trade Activity in Arms and Dual-use Technologies and Goods bans unauthorized foreign trade activity in arms and in dual-use goods and technologies; a person engaged in such unauthorized foreign trade activity shall be imprisoned for a period up to 8 years and with a fine of up to 1,000,000 leva. The Decree for Adoption of Regulation on Implementation of the Law on the Control of Foreign Trade Activity in Arms and Dual-Use Goods and Technology and for Amendment of Legal Acts of the Council of Ministers authorizes the Commission for Control of and Permission of Foreign Trade Transactions with Arms and with Dual-Use Goods and Technologies to issue permits for foreign trade transactions of armaments and dual-use technologies. Also relevant are the Regulation for the Production, Trade, Stockpiling, Transportation and Use of Highly Poisonous Substances and the Regulation on the Import of Goods of Significance for the Public Health. Crimes related to the possession of poisonous substances entail a penalty of two years in prison; and using or ordering to use nuclear or chemical weapons to wage war is a war crime and offense against humanity in violation of international law, to be punished with ten year imprisonment.

A special concern is the security of the Kozlodouy Nuclear Power Plant from any illegal encroachment on nuclear material at any time and from sabotage. The government has developed a physical protection concept on the basis of a threat assessment by the National Security Service and in light of the material involved. It conforms to the requirements of a national ordinance and IAEA regulations and sets out administrative and technical procedures. The Civil Defense State Agency collaborates in the automated system of radiation monitoring for early warning in the case of nuclear incidents and radioactive contamination across national borders.

Domestic Authority

The Office of the Prime Minister oversees a Security Council which unites the Ministers of Foreign Affairs, of Defense, of the Interior, and the Deputy Ministers of Foreign Affairs and Defense, as well as the Secretary General of the Ministry of the Interior and the Directors of the National Intelligence and the National Security Services. It analyzes available information about possible threats to national security, develops measures to counteract these threats, coordinates the information gathering mechanisms of different state agencies, handles allocation of resources, and proposes solutions in times of crisis. The Security Council is the main policy-making body with respect to suppressing terrorism. An inter-agency mechanism allows the collection, processing, and spreading of information concerning the planning or commission of terrorist acts. The intelligence services, the National Security Service of the Ministry of the

BULGARIA

Interior and the Ministry of Economy provide information on potential terrorist activities based on their licensing for trade and arms trade transactions.

The Ministry of the Interior has set up a rapid reaction unit for immediate response to possible terrorist threats. Within the Ministry of the Interior, better interaction of the different divisions allows for better and earlier knowledge of possible terrorist threats against important targets, including diplomatic missions. New guidelines apply to officers on duty in emergency situations and lay down procedures concerning the interaction and information sharing between the Ministry of the Interior, Civil Defense and the Fire and Emergency Service.

“Under the Ministry of the Interior, a National Service for Detecting and Preventing Terrorist Activities on the Territory of the Republic of Bulgaria has been functioning since October 2001, which collects, analyzes and processes information, supplied by the relevant competent institutions.” Its subdivision is divided into two special units dealing with internal and international terrorism respectively. The Counter Terrorism Division engages in information exchange and interacts with law enforcements bodies in other countries. The Institution Building Plan provides that the Counter Terrorism Division should function as an information and coordination center for law enforcement bodies. All interested institutions and organizations, including border and narcotic control agencies, have access to these analyses.

Financing of Terrorism and Freezing Assets

Even before and especially after September 11th 2001, all Bulgarian institutions were actively engaged in “preventing and blocking the access of terrorist groups and organizations to financing.” The government is aiming to eliminate all possibilities for terrorists to draw on funds and other financial resources from the territory of Bulgaria for purposes or structures in any way connected with terrorist groups. The draft Law on Measures against Financing of Terrorism, which also contains a definition of terrorism, and which was approved by the Council of Ministers in June 2002, aims at preventing and detecting the financing of terrorism perpetrated by individuals or groups. It provides for the freezing of all funds, assets and property “owned or controlled by persons included in a list adopted by the Council of Ministers,” independent of who possesses them. Only property rights are exempt, because they cannot be subject to judicial impediment under existing law. Enforcement lies with the Ministers of the Interior and of Finance.

The Law on Measures against Money Laundering, which arose out of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in 1996, requires additional persons and bodies to report suspicious transactions and clients to the Financial Intelligence Agency. The Agency has “independent controlling functions including on-the-spot control over persons in charge of finances.” The Financial Intelligence Agency has drafted a work plan that envisages various inspecting activities and measures to supplement the system of criteria that obligates financial institutions and agents to report suspicious operations and transactions. Lastly, the Financial Intelligence Agency receives lists of persons and entities through international exchange of such information and records these in order to obligate banks to report on their transactions.

The Special Part of the Criminal Code was amended in 1997 in conformity with the Law on Measures Against Money Laundering to include a specific offense of money laundering and “introduced the concept of self-organization of the financial system in the prevention and detection of attempts aimed at using the system for the purposes of money laundering.” It is contemplated to set up an institution in charge of preventing money laundering “as a part of the financial system itself and integrated in the structure of the Ministry of Finance.” The Code of Criminal Procedure applies to freezing financial assets of persons or organizations connected to terrorism or any buildings or properties in any way linked to such persons or groups, and allows the public prosecutor and the examining magistrate to “take the necessary measures to prevent a crime (including terrorist act) for which there are grounds to suppose that it will be committed,

BULGARIA

including a temporary seizure of the means with which the crime could be perpetrated.” The Criminal Code will also create liability for the preparation of crimes that may be terrorist acts, such as kidnapping and unlawful deprivation of liberty, illegal manufacture, trade, transportation, importing or exporting of explosives, firearms or ammunition and other crimes related to the use of nuclear energy for peaceful purposes.

One example of freezing accounts and assets is the implementation of UN Security Council Resolution 1267 (1999) concerning financial resources of the Taliban, which was carried out in Bulgaria through a decree in 2000. Another decree to implement Resolution 1373 (2001) allows for the freezing of funds and financial assets or economic resources “of persons and entities committing, attempting to commit or facilitating the commission of terrorist actions.” It also provides for the freezing of assets of third parties that originated from property connected to persons or entities with terrorist links.

The Ministry of Finance is preparing a regulatory framework for mechanisms to supervise financial flows and prevent the use of the Bulgarian financial system to finance terrorist acts. This supervision system will provide for the identification of persons and groups suspected of financing terrorism, for additional information gathering and analysis and dissemination to law enforcement agencies. The draft law on Measures against Financing of Terrorism envisages the broadening the scope of the system for reporting suspicious transactions. The new law will also require persons to report transactions that are risky and suspicious of being connected with terrorism. The same requirements that apply in terms of suppressing money laundering also apply to the suppression of the financing of terrorism, namely identifying and recognizing the customer, keeping the records and reporting pursuant to the law.

International Cooperation

Bulgaria is a party to various bilateral and multilateral agreements that provide for co-operation in the fight against terrorism, as well as international legal instruments for the prosecution and punishment of terrorism. Bulgaria has entered into 24 bilateral agreements for legal assistance in criminal matters. In addition, Bulgaria has ratified the key international instruments for extradition and judicial co-operation in criminal matters, namely the European Convention on Extradition and Additional Protocols, the European Convention on Mutual Assistance in Criminal Matters, the Convention on Transfer of Sentenced Persons, and the European Convention on the Suppression of Terrorism, which lay the groundwork for cooperation with other states in detecting and punishing persons involved in planning and carrying out terrorist acts. Judicial co-operation and assistance in investigating and prosecuting crimes of the financing or preparation of terrorist acts are available, and Bulgaria is also willing to provide any relevant evidence that may be located in Bulgaria and needed by other states.

Bulgaria also plans to implement regional measures provided for in the EU Action Plan in the area of police co-operation. Regarding co-operation in the fight against organized crime, including fraud, corruption, money laundering, terrorism, illicit drug and arms trafficking, and illicit trafficking in nuclear, chemical, biological and other potentially lethal materials, the Bulgarian Constitution integrates ratified and promulgated international instruments into national law and grants them supremacy over national laws in case of conflict of law. Actions are being taken to identify enterprises that produce and trade and engage in activities governed by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CPCW). This has led to the current monitoring of over 100 economic entities that are now required to report annually on planned and actual activities involving toxic chemicals and their precursors subject to declaration and control. For this purpose, there are special ways to collect industrial data on the production, processing, storing and transfer of such chemical substances, and these measures are being improved all the time to ensure maximum accuracy. All collected information in this area will be recorded in a

BULGARIA

specialized database, and in each production enterprise there will be a contact person for CPCW enforcement issues.

Limitations imposed by the UN Security Council, the European Union (EU Code of Conduct with respect to trade in arms), the Organization for Security and Cooperation in Europe (OSCE), the Wassenaar Arrangement and other international export and non-proliferation regimes are implemented in Bulgaria mostly by enacting legally binding acts that impose these obligations on Bulgarian legal entities and individuals directly. Complying with the UN Security Council Resolutions, the EU and OSCE, Bulgaria approved “a list of states and organizations against which a ban or restrictions on sales and deliveries or armaments, related equipment, and dual use goods and technologies were imposed.” Within the OSCE, Bulgaria has made a political commitment to implement the principles and measures contained in the OSCE Document on Small Arms and Light Weapons (SALW). Bulgaria also participates in the UN Conference for Prevention of Illegal Trade in Small Arms and Light Weapons and is working towards its implementation.

In addition, Bulgaria participates in control regimes such as the Nuclear Suppliers Group, the Zanger Committee and the Australian Group. It has ratified the Treaty on Non-proliferation of Nuclear Weapons, the Convention on Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, the Convention on Prohibition of the Development, Production, Stockpiling and Use of Bacteriological (biological) and Toxin Weapons and on their Destruction, the Convention on the Physical Protection of Nuclear Material, and others. The ratification of the International Convention for the Suppression of Terrorist Bombings is under way.

BIBLIOGRAPHY ON BULGARIAN LEGISLATION

Legal basis for criminalizing terrorist acts

1. Criminal Code, Articles 3, 4, 5, 6, 93, 96, 97a, 99, 106, 109, 110, 116, 117, 330, 333, 334, 340, 341a, 341b, 342, 344, 349, 350, 352, 354, 356
2. Draft Amendment to the Criminal Code, Articles 108a, 110, 114, 320,
3. Foreign Nationals Act, Article 10
4. Constitution of the Republic of Bulgaria, Article 5

Preventing the recruitment of members and the supply of arms for terrorist groups

1. Criminal Code, Articles 233, 242, 337, 339, 354, 356, 356b, 415,
2. Special decree of the Council of Ministers (2001) (applying Resolution 1373)
3. National Security Concept (State Gazette, issue 46/1998)
4. Decree No. 216 of the Council of Ministers (1998)
5. Commercial Navigation Code
6. Ordinance No. 7/2001 of the Ministry of Transport and Communications, Section 8
7. Law on Foreign Trade in Arms and Dual Use Goods and Technologies (1996)
8. Decision No. 704 on the adoption of the Guidelines for Transfer of Sensitive Chemical and Biological Items of the Australia Group - International Export Control Regime, 1 November 2002
9. Law on the Control of Foreign Trade Activity in Arms and Dual-use Technologies and Goods, 3 September 2002, Article 4.3
10. Decree for Adoption of Regulation on implementation of the Law on the Control of Foreign Trade Activity in Arms and Dual-Use Goods and Technology and for Amendment of Legal Acts of the Council of Ministers, 6 March 1996
11. Regulation for the Production, Trade, Stockpiling, Transportation and Use of Highly

BULGARIA

- Poisonous Substances, 1973
12. Regulation No. 27 on the Import of Goods of Significance for the Public Health, 17 August 1995
 13. Regulations Implementing the Ministry of the Interior Act
 14. Institution Building Plan of the National Service for Combating Organized Crime
 15. Plan of Detecting and Preventing Terrorist Activities in the territory of the Republic of Bulgaria
 16. System of Physical Protection of the Kozlodouy Nuclear Power Plant
 17. Ordinance No. 6/06.08.1993
 18. INF CIRC/225/REV 4 of the IAEA

Financing of Terrorism and Freezing Assets

1. Law on Measures against Money Laundering (1998), Article 12
2. Criminal Code, Articles 17, 20, 142, 142a, 185, 52, 253, 337, 356
3. Decree No. 39 of the Council of Ministers (2000)
4. Special Decree, 12 December 2001
5. Decision No. 804 (2001) on ratification of the Convention for the Suppression of the Financing of Terrorism
6. Draft Law on Measures against Financing of Terrorism
7. Law on Banks
8. Law on Postal Services

International Cooperation

1. Convention of the International Civil Aviation Organization, Standards and Recommendations of Annex 17
2. Ministry of the Interior Act
3. Civil Aviation Act
4. Ordinance No. 17/99
5. Document 30 ("Safety") of ECAC, Annex L
6. Code of Criminal Procedure, Articles 439a, 461
7. Constitution of the Republic of Bulgaria
8. Law on Foreign Trade in Arms and Dual-use Goods and Technologies
9. Resolution of the Government of 15 November, 2001
10. Special Decree No. 91 of the Council of Ministers (2001)
11. Decision of the Council of Ministers to approve the OSCE Document on Small Arms and Light Weapons and its nation-wide implementation
12. Law on the ratification of the International Convention for the Suppression of Terrorist Bombings (2001)