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BULGARIA

END IMPUNITY THROUGH UNIVERSAL JURISDICTION

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1. INTRODUCTION[1]

Bulgaria, which has a civil law legal system, was one of the first countries to enact legislation enabling its courts to exercise universal criminal jurisdiction over ordinary crimes in its very first Penal Code of 1896.[2] However, the current Criminal Code provides for universal jurisdiction (the ability of states to investigate and prosecute conduct abroad which is not linked to the forum state by the nationality of the suspect or the victim or by the harm to the forum state's own interests) over a much more limited scope of crimes. Moreover, there are serious gaps in the legal framework required for the effective prosecution of crimes under international law, including the failure to define expressly certain crimes under international law as crimes under Bulgarian law, failure to provide for universal jurisdiction over many crimes under international law, failure to define principles of criminal responsibility in accordance with the strictest requirements of international law, and a wide range of obstacles to prosecutions and extraditions.

Under the current Criminal Code, Bulgarian courts can exercise universal jurisdiction over crimes defined in Chapter Fourteen "Crimes against Peace and Humanity" of the Bulgarian Criminal Code, which include aggression, genocide, apartheid, war crimes in international and non-international armed conflict and torture during armed conflict, as well as over crimes listed in treaties authorizing states parties to exercise such jurisdiction. However, not only are definitions of these crimes inconsistent with the standards of international law, but the list of crimes against peace and humanity in Chapter Fourteen is incomplete.

Although Bulgaria has defined murder, rape, enforced prostitution, unlawful deprivation of liberty, and unlawful persecution, which are crimes against humanity under the Rome Statute, as ordinary crimes, it has not characterized them as crimes against peace and humanity and, therefore, has not provided universal jurisdiction over such crimes. Other crimes against humanity, such as extermination, enslavement, sexual slavery, enforced

[1] This paper was prepared by the International Justice Project of Amnesty International's International Secretariat in London, based on research by Elena Kostadinova, a lawyer at the firm of McDermott Will & Emery/ Stanbrook LLP, Rue Père Eudore Devroye, 245, 1150 Brussels, Belgium, which provided the organization with pro bono assistance in locating legislation concerning universal jurisdiction in Central and Eastern European and Central Asian countries. It was drafted and updated by Stanimira Georgieva, a Bulgarian lawyer working as a volunteer in the International Justice Project, who did substantial additional research and also translated many of the provisions cited. In addition the organization is grateful for comments on the draft by Associate Professor Dr Krasimira Benkova, Associate Professor Dr Irena Ilieva, and Ivanka Ivanova, independent experts, and the Bulgarian Ministry of Foreign Affairs, Ministry of Justice and Ministry of Interior.

[2] This is the first Penal Code of the Principality of Bulgaria (Penal Law, in Bulgarian: Наказателен закон на Княжество България), which was in force from 1896 to 1951 and not the current Bulgarian Criminal Code adopted in 1968 and subsequently amended.

pregnancy, enforced sterilization, enforced disappearances and extrajudicial executions, are not expressly defined in Bulgarian legislation, but some of their elements are covered in the Criminal Code as ordinary crimes. Unlawful deportation and torture are included in Chapter Fourteen of the Criminal Code, but are defined only as war crimes.

Not only are ordinary crimes not subject of universal jurisdiction under Bulgarian law, but also prosecution of mere ordinary crimes can be barred by statute of limitations. In addition, since certain offences are not expressly defined in the Criminal Code, it is possible that the persons responsible would not be prosecuted or extradited. Therefore, Bulgaria is currently a safe haven from prosecution in its courts for foreigners who have committed many crimes under international law abroad against other foreigners.

Bulgaria has enacted legislation implementing its cooperation obligations under the Rome Statute and it has entered into cooperation agreements with other international criminal courts. Nevertheless, it is possible that persons named in arrest warrants issued by the International Criminal Court or any other international criminal court could not be arrested and surrendered to such courts as current legislation and definitions of certain crimes are ambiguous or missing. There are a number of obstacles to extradition, such as the non-extradition of nationals and the principle of dual criminality (requiring the conduct to be criminal in both Bulgaria and the state requesting extradition), which should not apply to crimes under international law. The provisions in the Criminal Code regarding immunities, bars on retroactive application of law, double jeopardy (*ne bis in idem*), and amnesties also do not make exceptions for crimes under international law.

In certain circumstances, Bulgarian courts can exercise universal civil jurisdiction over civil claims in criminal proceedings based on universal criminal jurisdiction, but such claims could be barred by statutes of limitations. Moreover, prosecutions of serious crimes (crimes of general nature) can only be initiated by the prosecutor and not by the victims or their heirs.

Bulgaria does not have any special unit to investigate and prosecute crimes under international law and there are no known cases involving universal jurisdiction.

A major overhaul of the legal framework and significant changes are necessary for Bulgaria to ensure that persons responsible for the worst crimes imaginable are not walking freely on the streets of its cities.

This paper makes extensive recommendations for reform of law and practice so that the Bulgaria can fulfil its obligations under international law to investigate and prosecute crimes under international law, to extradite them to another state able and willing to do so in a fair trial without the death penalty or a risk of torture or other cruel, inhuman or degrading treatment or punishment or to surrender them to the International Criminal Court.[3]

[3] In all cases where a link to Bulgarian legislation exists it is included in the first reference to that legislation and in the bibliography.

2. THE LEGISLATIVE FRAMEWORK

2.1 TYPE OF LEGAL SYSTEM

The Bulgarian legal system is a typical representative of the Romano-Germanic legal family. Acts of Parliament are the main source of law while customary international law (legal custom), case law, legal doctrine, moral rules and equity are recognized as indirect or 'subsidiary' sources of law. The decisions of the Constitutional Court are also considered a source of law.[4]

2.2 STATUS OF INTERNATIONAL LAW

Article 5 (4) of the 1991 Bulgarian Constitution states:

> 'International treaties which have been ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria shall be part of the legislation of the State. They shall have primacy over any conflicting provision of the domestic legislation.'[5]

In the hierarchy of legal acts in Bulgaria, international treaties are a source of law that comes below the Bulgarian Constitution and above any other conflicting national legislation.[6] According to Article 149 (1) of the Constitution[7] in any conflict between the Constitution and

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[4] Angel Panayotov, Venelin Dimitrov, and Blagomir Minov, UPDATE: The Bulgarian Legal System and Legal Research, Hauser Global Law School Program, New York University School of Law: http://www.nyulawglobal.org/globalex/bulgaria1.htm#_2._Sources_of_Law.

[5] Constitution of the Republic of Bulgaria, 12 July 1991, Art. 5 (4) (English translation at the official web page of the General Assembly of the Republic of Bulgaria: http://www.parliament.bg/?page=const&lng=en). The original text reads:

> 'Международните договори, ратифицирани по конституционен ред, обнародвани и влезли в сила за Република България, са част от вътрешното право на страната. Те имат предимство пред тези норми на вътрешното законодателство, които им противоречат.'

[6] Bulgaria has explained with regard to international treaties that "[a]s per article 5, paragraph 4, of the Constitution of the Republic of Bulgaria, these international agreements are part of the internal law of the country. They supersede any domestic legislation stipulating otherwise." Third periodic report of Bulgaria to the Committee against Torture, U.N. Doc. CAT/C/34/Add.16, 13 Oct. 2003, para. 9.

[7] Constitution of the Republic of Bulgaria.

Article 149 (1) 4 of the Constitution reads:

a treaty, the Constitution would prevail. Based on Article 5 (4) of the Constitution and Article 26 (2) of the International Treaties Act of 2001, Bulgarian courts should be able to apply international treaties directly and try persons for crimes of international concern listed in treaties with *aut dedere aut judicare* (extradite or prosecute) provisions. [8] However, according to Article 26 (3) of the International Treaties of the Republic of Bulgaria Act:

'The applicability of the provisions of an international treaty into the internal law is determined in accordance with the character of these provisions, directly applicable or not, and with the hierarchical place of the treaty for incorporation into the internal legislation and according to the Constitution and the laws of the country.'[9]

'The Constitutional Court shall:

4. rule on the compatibility between the Constitution and the international treaties concluded by the Republic of Bulgaria prior to their ratification, and on the compatibility of domestic laws with the universally recognized norms of international law and the international treaties to which Bulgaria is a party.'

The original text reads:

'Конституционният съд:
4. произнася се за съответствието на сключените от Република България международни договори с Конституцията преди ратификацията им, както и за съответствие на законите с общопризнатите норми на международното право и с международните договори, по които България е страна;'

In addition, the spirit of Articles 4 (1) and 5 (1) of the Constitution indicates the supremacy of the Constitution over international treaties.

[8] International Treaties of the Republic of Bulgaria Act of 2001, available at http://lex.bg/laws/ldoc.php?IDNA=2135213056, (translation by Amnesty International).

Article 26 (2) provides:

'A state institution cannot refer to the provisions of national legislation in order to justify failure to comply with international treaties to which Bulgaria is a signatory.'

The original text reads:

'Държавен орган не може да се позовава на разпоредби на вътрешното право като основание за неизпълнение на международен договор, по който Република България е страна.'

[9] International Treaties of the Republic of Bulgaria Act of 2001.

The original text reads:

'Действието във вътрешния правов ред на разпоредбите на международен договор се определя в зависимост от характера на тези разпоредби, пряко приложими или не, и от йерархическото място на акта за обвързване във вътрешния правов ред съобразно Конституцията и законите на страната.'

Therefore, the applicability of international treaties in national law depends on the nature of the treaty provisions and other factors. Although the Bulgarian Ministry of Interior has stated that courts do not need to be expressly empowered to prosecute certain types of crimes because such powers 'they derive by force of the Constitution and the laws'[10], a decision of the Constitutional Court in 1992 demonstrates that the powers of Bulgarian courts are limited when it comes to the direct application of international treaties.

Indeed in its Ruling No. 7 of 2 August 1992 the Bulgarian Constitutional Court clarified the status of international treaties in the domestic criminal law system and their direct application by courts. It articulated a three-stage analysis of the relevant treaty provision to determine weather treaty provisions were directly applicable. First of all, the Court specified the three conditions that have to be met for international treaties to become part of the domestic law of the state. They need to be:

- ratified in accordance with the constitutional procedure.
- promulgated in State Gazette.
- entered into force for the Republic of Bulgaria.

According to the Constitutional Court, once these conditions are met international treaties are part of the domestic legislation of the state and the legal norms in those treaties become a source of rights and obligations for the subjects of national law. However, international treaties (the Court cited the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, in particular) cannot be directly applied in the national criminal law as they do not define the elements of crimes and do not provide a specific penalty for each crime. Therefore,

> 'in order to incorporate the crimes stipulated in international treaties in the national law, the elements of each particular crime and the relevant penalty have to be defined through a domestic legislative act, the operation of which is determined by the requirements of national legislation.'[11]

Finally, the Court concluded that once the crimes and the corresponding penalties are defined in the domestic legislation the phrases and terminology used in international documents can be used for further clarification of the crimes and their elements.

In Bulgarian legal system, the decisions of the Constitutional Court are recognized as a direct

[10] Letter from the Bulgarian Ministry of Interior 'Comments on the Report of Amnesty International "Bulgaria: End Impunity Through Universal Jurisdiction" within the remit of the Ministry of Interior' to the International Justice Project, Amnesty International, dated 28 November 2008.

[11] Constitutional Court Ruling No 7 of 2 August 1992, available at: http://www.constcourt.bg/, (translation by Amnesty International).

source of law. Therefore, the ruling of the Court has determined that crimes of international concern in treaties have to be first incorporated into the Criminal Code in order to be applied by Bulgarian courts.

Nevertheless, under the reasoning of the Constitutional Court in its 1992 decision, international instruments such as the Rome Statute, where each crime and its relevant penalty are defined, should in theory be directly applied by Bulgarian Courts.[12] However, Bulgarian courts have not ruled on whether the Rome Statute can be enforced directly through prosecutions so it is not certain whether they would permit prosecutions of persons directly under the Rome Statute.

In contrast to defining the crimes and penalties, there are cases where Bulgarian courts have directly applied international human rights treaties, based on Article 5 (4) of the Bulgarian Constitution. For instance, in May 2005, the Sofia Court of Appeals directly applied the 1969 Convention on Special Missions and ruled on the release of a Serbian colonel of the former Yugoslav army, Chedomir Brankovic. Colonel Brancovic, who has entered Bulgaria as a part of an official Serbian military delegation, was arrested by the Bulgarian police by request of the Croatian bureau of Interpol for the alleged commission of war crimes.

However, the case discussed above does not involve prosecution of someone for crimes under international law, but enforcement of a provision protecting individual human rights. Therefore, it is uncertain in which cases Bulgarian courts directly apply international treaties, ratified by Bulgaria, to permit prosecution of someone for a crime under international law and in which instances treaties have to be incorporated into the Criminal Code in order to be applied.

As explained below, some crimes under international law (Section 4.3) and some crimes under national law of international concern listed in treaties with *aut dedere aut judicare* provisions (Section 4.2) are defined in the Criminal Code as crimes.

Whatever the legal effect of the Bulgarian jurisprudence discussed above, Bulgaria, as a state party to the 1969 Vienna Convention on the Law of Treaties, is obliged to recognize in all circumstances the supremacy of conventional international law and customary international law.[13] The supremacy of international law applies to all national law, including Bulgaria's Constitution.[14] As set out in the Vienna Convention, every international agreement concluded

[12] Daniela Boteva, 'Implementation of the Rome Statute in Bulgaria', 16 Finnish Yearbook of International Law, 2005, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=996515. The elements of each crime are further refined in the Elements of Crimes instrument, adopted by the Assembly of States Parties of the International Criminal Court.

[13] Vienna Convention on the Law of Treaties, 23 May 1969, entry into force 27 Jan. 1980, 1155 U.N.T.S. 331. Bulgaria acceded to the Convention on 21 Apr 1987. As of 14 March 2009, 45 states had signed the Convention and 108 are states parties (http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&id=468&chapter=23&Temp=mtdsg3&lang=e).

[14] Annemie Schaus, `Les Conventions de Vienne sur le droit des traités. Commentaire article par article`, Olivier Corten & Pierre Klein (dir.), Bruxelles, *Bruylant-Centre de droit international-Université Libre de*

between states in written form and governed by international law in force is binding upon the parties to it and must be performed by them in good faith.[15] In addition, Bulgaria is expressly prohibited from invoking the provisions of its internal law as justification for its failure to perform a treaty.[16] To the extent that Bulgaria fails to implement its treaty and customary international law obligations, it incurs international responsibility for such failures. Therefore, Bulgaria should undertake any legislative changes necessary to comply with its treaty and customary international obligations.

2.3. COURT SYSTEM

In Bulgaria the system of the courts is decentralized. Courts of various ranks are distributed throughout the country whereas only the Supreme Court of Cassation and the Supreme Adminstrative Court are based in the capital city, Sofia.[17]

Pursuant to Article 3 (1) of the Judicial System Act, courts in Bulgaria are regional, district, administrative, military, courts of appeal, the Supreme Administrative Court, and the Supreme Court of Cassation.[18] Regional and district courts have jurisdiction over civil and criminal cases while administrative courts have jurisdiction on administrative matters.

2.4. ROLE OF THE POLICE AND THE PROSECUTORS

Criminal investigations are regulated primarily in Part Three, Chapters Sixteen and Seventeen of the Criminal Procedure Code and the Ministry of Interior Act (regulating the police force).

Preliminary proceedings are formed only for crimes of general nature. A decision to initiate preliminary proceedings is made by the procecutor (Article 212 (1) of the Criminal Procedure Code) and the investigative bodies (investigating magistrates and police investigators) operate under the guidance and supervision of the prosecutor (Article 52 (2) of the Criminal Procedure Code).

Bruxelles, 2006, art. 27, p.1136 (`L'article 27 de la Convention de Vienne, quant à lui, prescrit certainement, dans l'ordre juridique international, la primauté du droit international sur le droit interne`).

[15] Vienna Convention, Article 26.

[16] *Ibid.*, Article 27.

[17] Angel Panayotov, Venelin Dimitrov, and Blagomir Minov, UPDATE: The Bulgarian Legal System and Legal Research, Hauser Global Law School Program, New York University School of Law: http://www.nyulawglobal.org/globalex/bulgaria1.htm#_2._Sources_of_Law.

[18] Judicial System Act, last amended 7 August 2007, available at: http://lex.bg/laws/ldoc/2133358082.

The original text reads as follows:

> 'Съдилищата в Република България са районни, окръжни, административни, военни, апелативни, Върховен административен съд и Върховен касационен съд.'

Under the Bulgarian legal system there are two types of crimes depending on the proceedings for identification of criminal liability – crimes of general nature and crimes of specific nature. Crimes of specific nature are those where a criminal prosecution is instituted on the basis of complaint by the victim (private complainant). They are found in the Special Provisions sections of the Criminal Code, - for example, minor bodily injury, insult, slander, theft or injury by relatives (spouse, brother or sister). All other crimes or elements of crimes are considered crimes of general nature and require public prosecution criminal proceedings. In case of crimes of general nature the public prosecutor determines whether to prosecute independently of the wishes and the will of the victim.

Therefore, prosecutions for crimes under international law, crimes of international concern and most serious ordinary crimes can be initiated only by a public prosecutor, not by a victim or a person acting of his or her behalf. However, the victim or a person acting of his or her behalf can take part in trial proceedings, that have been initiated by the public prosecutor, as a private prosecutor who can participate in court along with the public prosecutor (Article 78 (1) of the Criminal Procedure Code) and continue the prosecution after the public prosecutor has made a statement that he or she will not pursue it any further (Article 78 (2) of the Criminal Procedure Code). See Section 5.3 below.

Consequently, investigations and prosecution of the crimes discussed in this paper are usually initiated and led by a prosecutor assisted by the police.

Unless otherwise prescribed, prosecutors are obliged to prosecute offences falling within the domain of public prosecution, which means that jurisdiction over these crimes is obligatory rather than discretionary.

Although, Bulgaria has a Special Counter Terrorism Unit, there is no specialized police unit established to investigate genocide, crimes against humanity, war crimes and torture.

3. LEGISLATION PROVIDING FOR EXTRATERRITORIAL CRIMINAL JURISDICTION OTHER THAN UNIVERSAL JURISDICTION

The courts of Bulgaria can exercise active personality, passive personality and protective jurisdiction over certain crimes.

3.1 ACTIVE PERSONALITY JURISDICTION

Active personality jurisdiction is a category of jurisdiction based on the nationality of the suspect or defendant at the time of the commission of the crime or tort.[19] This category of jurisdiction does not include jurisdiction over crimes committed by a foreigner who is not a national, but who is a resident of the country, at the time of the crime, or who subsequently becomes a resident, domiciliary or national of the forum state. Jurisdiction over crimes on such a basis instead falls under the category of universal jurisdiction.

Bulgarian courts can exercise active personality jurisdiction over crimes, defined in the Criminal Code, which have been committed by its citizens abroad at a time when they were citizens. Article 4 (1) of the Criminal Code provides: 'The Criminal code shall apply to the Bulgarian citizens also for crimes committed by them abroad. `[20]

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[19] This is the approach taken in the International Bar Association Legal Practice Division, Report of the Task Force on Extraterritorial Jurisdiction (October 2008) (IBA Report), p. 144: ''The active personality principle, also known as the active nationality principle, permits a state to prosecute its nationals for crimes committed anywhere in the world, if, at the time of the offense, they were such nationals.''. For the scope of the active personality principle, see Amnesty International, Universal jurisdiction: The duty of states to enact and enforce legislation – Ch. One, AI Index: IOR 53/003/2001, September 2001.

[20] Criminal Codeof the republic of Bulgaria, last amended on 28 November 2008, available at: http://www.vks.bg/vks_p04_04.htm, Article 4 (1) (Translation at: http://www.legislationline.org/upload/legislations/d7/8d/c1519b43d701a2f3976b312d2993.pdf, some provisions were also translated by Amnesty International).

The original text reads:

> 'Наказателният кодекс се прилага към българските граждани и за извършените от тях престъпления в чужбина.'

3.2 PASSIVE PERSONALITY JURISDICTION

Passive personality jurisdiction is a category of jurisdiction based on the nationality of the victim at the time of the commission of the crime or the tort.[21] It does not include crimes committed against someone who became a national, domiciliary or resident of the forum state after the crime was committed. In addition, it also does not apply to crimes committed against a national of a co-belligerent state in an armed conflict who is not a national of the forum state.

Bulgarian courts can exercise passive personality jurisdiction over ordinary crimes, defined in the Criminal Code, which have been committed against its nationals abroad. Article 5 of the Criminal Code provides:

> 'The Criminal Code shall also apply to foreign citizens who have committed crimes of general nature abroad, whereby the interests the Republic of Bulgaria or of Bulgarian citizens have been affected.'[22]

3.3 PROTECTIVE JURISDICTION

The category of protective jurisdiction involves jurisdiction over crimes committed against the forum state's own special interests, such as counterfeiting the forum state's currency, treason and sedition.[23]

Bulgarian courts can exercise protective jurisdiction over ordinary crimes committed abroad which are harmful to the interest of Bulgaria. Article 5 of the Criminal Code states:

> 'The Criminal Code shall also apply to foreign citizens who have committed crimes of general nature abroad, whereby the interests of the Republic of Bulgaria or of Bulgarian citizens have been affected.'[24]

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[21] IBA Report, p.146: 'The victim must have been a national of the foreign state, State A, at the time of the crime.'. For the scope of the passive personality principle, see Amnesty International, Universal jurisdiction (Ch. One), *supra* n. 19, at Sect. II.C.

[22] Criminal Code, Article 5.The original text reads:

> ' Наказателният кодекс се прилага и към чужденци, извършили в чужбина престъпления от общ характер, с които се засягат интересите на Република България или на български гражданин.'

[23] For the scope of protective jurisdiction, see Amnesty International, *Universal jurisdiction (Ch. One), supra* n. 19, at Sect. II.D. For a somewhat more restrictive definition, see IBA Report, *supra* n. 19 p. 149: ''[T]he 'protective principle', ... recognizes a state's power to assert jurisdiction over a limited range of crimes committed by foreigners outside its territory, where the crime prejudices the state''s vital interests''.

[24] Criminal Code, Article 5.

4. LEGISLATION PROVIDING FOR UNIVERSAL CRIMINAL JURISDICTION

There are two separate provisions authorizing courts to exercise universal jurisdiction, one which is based on the nature of the crime (Article 6 (1) of the Criminal Code) and the other, which overlaps with regard to certain crimes, based on treaty obligations (Article 6 (2) of the Criminal Code).

According to Article 6 (1) of the Criminal Code, Bulgarian courts can exercise universal jurisdiction over the crimes listed in Chapter Fourteen of the Bulgarian Criminal Code, entitled 'Crimes against Peace and Humanity' (Articles 407 to 419)[25]: planning, preparing or waging of aggressive war, propaganda and incitement towards armed attack, genocide, the crime against humanity of apartheid, war crimes (including torture). In addition, pursuant to Article 6 (2) Bulgarian also can exercise universal jurisdiction over certain crimes listed in treaties permitting or requiring states parties to exercise such jurisdiction.

However, Bulgaria cannot exercise universal jurisdiction over extrajudicial executions, enforced disappearances or crimes against humanity other than apartheid and torture in wartime because they are not listed in Chapter Fourteen and are defined merely as ordinary crimes.

4.1 ORDINARY CRIMES

Bulgaria was one of the first countries to enact legislation enabling its courts to exercise universal criminal jurisdiction over ordinary crimes in its very first Penal Code.[26] Article 6 of the 1896 Penal Code provided that Bulgarian courts could exercise universal jurisdiction over

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[25] Bulgarian Criminal Code Article 6 (1):

> 'The Criminal Code also applies to foreign citizens who have committed abroad crimes against peace and humanity, whereby the interests of another state or foreign citizens have been affected.'

The original text reads as follows:

> 'Наказателният кодекс се прилага и за други престъпления, извършени от чужденци в чужбина, когато това е предвидено в международно съглашение, в което участвува Република България.'

[26] This is the first Penal Code of the Principality of Bulgaria (Penal Law, in Bulgarian: Наказателен закон на Княжество България), being into force from 1896 to 1951 and not the current Bulgarian Criminal Code adopted in 1968 and subsequently amended.

a foreigner suspected of committing any crime abroad against another foreigner if that suspect was not extradited. Article 5 in the 1896 Penal Code provided for active personality jurisdiction:

'In addition to the cases indicated in Article 4, a Bulgarian national is also penalized according to this code, when he commits abroad a crime defined in this code.'[27]

And the text of Article 6 extended the scope of Article 5 to crimes committed abroad by foreigners, but subjected such universal jurisdiction to two conditions, refusal of a request for extradition and approval of a political official:

> 'Article 5 shall be also applied to foreigners when the crime they have committed is penalized by this code with at least imprisonment, when the foreign authorities` request for extradition is not approved and the minister of justice orders for the initiation of criminal proceedings.'[28]

These provisions were not included in the 1968 Criminal Code. Although the Penal Code of 1896 permitted Bulgarian courts to exercise universal jurisdiction over persons suspected of ordinary crimes who were not extradited, in contrast to many other countries, there are no provisions in the current Criminal Code authorizing courts to exercise universal jurisdiction over ordinary crimes, such as murder, assault, rape or kidnapping.[29]

4.2 CRIMES UNDER NATIONAL LAW OF INTERNATIONAL CONCERN.

There are two different ways for Bulgarian courts to exercise universal jurisdiction over crimes under national law of international concern - first, where the crimes are expressly listed as crimes against peace and humanity in the Criminal Code (Article 6 (1) of the Criminal Code):

> 'The Criminal Code also applies to foreign citizens who have committed abroad crimes against peace and humanity, whereby the interests of another state or foreign citizens have been affected.'[30]

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[27] Bulgarian Penal Code of 1896, Article 5. The original text reads as follows:

> 'Освенъ случаите, посочени въ чл. 4, наказва се тъй също по настоящия законъ и онзи български поданикъ, който извърши вънъ отъ държавата едно отъ предвидените въ настоящия законъ престъпления.'

[28] Bulgarian Penal Code of 1896, Article 6. The original text reads as follows:

> 'Постановленията на чл. 5 се прилагатъ и за чужденците, когато извършеното отъ тяхъ престъпление се наказва споредъ настоящия законъ поне съ тъмниченъ затворъ, когато предложението на чуждите власти за предаването имъ не бъде прието и министърътъ на правосъдието се разпореди за възбуждане на углавно преследване.'

[29] There are more than 50 states which provide for universal jurisdiction over ordinary crimes.

[30] Criminal Code, Article 6 (1).

The second scheme under which Bulgarian courts can exercise universal jurisdiction is over crimes of international concern identified in treaties, to which Bulgaria is a party, with *aut dedere aut judicare* provisions - providing for or requiring universal jurisdiction. [31] Article 6 (2) of the Criminal Code reads as follows:

> 'The Criminal Code shall also apply to other crimes committed by foreign citizens abroad, where this is stipulated in an international agreement, to which the Republic of Bulgaria is a party.'[32]

4.2.1 AN OVERVIEW: CRIMES UNDER NATIONAL LAW OF INTERNATIONAL CONCERN THAT ARE SUBJECT TO UNIVERSAL JURISDICTION IN BULGARIA

The crimes under national law of international concern listed in treaties authorizing or requiring states parties to exercise universal jurisdiction are listed below. There is also an indication of whether Bulgarian courts can or cannot exercise universal jurisdiction, depending on the ratification of a treaty by Bulgaria and, where it has been possible to make this determination and whether the crime is incorporated into the Criminal Code upon Bulgarian ratification of a treaty.

For the purposes of this paper, it is sufficient simply to note that Bulgaria has implemented, at least in part, the relevant treaty obligation. If this is the case, it is indicated whether the Criminal Code expressly defines the conduct or at least some of the conduct, prohibited in the treaty as a crime or not. Even if the Criminal Code has not expressly defined the conduct as a crime, it covers some of its elements and, therefore, it may be possible in some instances to prosecute a person for some of that conduct as an ordinary crime. In most instances, there is little or no jurisprudence addressing the scope of jurisdiction. The crimes are discussed roughly in chronological order, based on when a crime became generally recognized as subject to universal jurisdiction as with piracy, or when it was the subject of an international or regional treaty provision, regardless when Bulgaria became a party. Indeed, in some cases, Bulgaria has not ratified the relevant treaty. The crimes and the relevant treaties (protocols are discussed together with the related treaty) discussed below are as follows:

- Piracy: Customary international law, 1958 Convention on the High Seas and 1982 United Nations Convention on the Law of the Sea;

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[31] Although In certain circumstances a treaty with *an aut dedere aut judicare* provision does not involve universal jurisdiction (for example, when the obligation only concerns a national of the requested state), it normally does involve universal jurisdiction by requiring the requested state to extradite any person, including foreigners accused of committing crimes outside the requested state against foreigners where there is no harm to the requested state's own interests. If the requested state declines to extradite the accused, it will then be obliged under the *aut dedere aut judicare* provision to exercise universal jurisdiction.

[32] Criminal Code, Article 6 (2). The original text reads as follows:

> 'Наказателният кодекс се прилага и за други престъпления, извършени от чужденци в чужбина, когато това е предвидено в международно съглашение, в което участвува Република България.'

- Counterfeiting: 1929 International Convention for the Suppression of Counterfeiting Currency;

- Narcotics trafficking: 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs;

- Violence against passengers or crew on board a foreign aircraft abroad: 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention);

- Hijacking a foreign aircraft abroad: 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention);

- Sale of psychotropic substances: 1971 Convention on Psychotropic Substances;

- Certain attacks on aviation: 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention);

- Attacks on internationally protected persons, including diplomats: 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;

- Terrorism suppression: 1977 European Convention on the Suppression of Terrorism;

- Hostage taking: 1979 International Convention against the Taking of Hostages;

- Theft of nuclear materials: 1979 Convention on the Physical Protection of Nuclear Material;

- Attacks on ships and navigation at sea: 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;

- Use, financing and training of mercenaries: 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries;

- Attacks on UN and associated personnel: 1994 Convention on the Safety of United Nations and its 2005 Protocol;

- Terrorist bombing: 1997 International Convention for the Suppression of Terrorist Bombings;

- Financing of terrorism: 1999 International Convention for the Suppression of the Financing of Terrorism;

- Transnational crime - Transnational organized crime: 2000 UN Convention against Transnational Organized Crime;

- Transnational crime - Trafficking of human beings: 2000 Protocol to Prevent,

Suppress and Punish Trafficking in Persons, Especially Women and Children;

- Transnational crime – Firearms: 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition;

- Nuclear terrorism: 2005 International Convention for the Suppression of Acts of Nuclear Terrorism; and

- Terrorism prevention: 2005 Council of Europe Convention on the Prevention of Terrorism.

4.2.2 SPECIFIC CRIMES

Piracy

Piracy is a crime which can be committed only on the high seas or outside the territorial jurisdiction of any state. Under customary international law, courts of any state can exercise universal jurisdiction over piracy independently of any treaty, although one definition has been codified in two treaties providing for universal jurisdiction over this crime. Bulgaria has been a party to the 1958 Convention on the High Seas since 31 August 1962. It has been a party to the 1982 United Nations Convention on the Law of the Sea since 15 May 1996. Both treaties provide for universal jurisdiction over piracy.[33] Bulgaria made a declaration upon ratification of the treaty stating that:

> 'the definition of piracy given in the Convention does not cover certain acts which under contemporary international law should be considered as acts of piracy and does not serve to ensure freedom of navigation on international sea routes.'[34]

Bulgaria has not expressly defined piracy as a crime in its Criminal Code. Nevertheless, the main elements of the crime of piracy are defined in Article 20 and Article 32 of the 2000 Law for Sea Space, Inland Waterways and Ports, as well as in Articles 340, 341b and 341a (3) of the Criminal Code. Therefore, Bulgarian courts can exercise universal jurisdiction over many acts of piracy on the high seas based on Article 5 (4) of the Constitution and Article 6 (2) of the Criminal Code.

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[33] Convention on the High Seas, available at: http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_high_seas.pdf, 29 April 1958 (entered into force 29 Sept. 1962), arts. 19 (authorizing seizure of pirate ships or aircraft on the high seas), 101 (defining piracy).

UN Convention on the Law of the Sea, available at: http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf, 10 Dec. 1982 (entered into force 16 Nov. 1994), Arts. 101 (Definition of piracy), 105 (Seizure of a pirate ship or aircraft).

[34] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXXI/treaty2.asp.

Counterfeiting

Bulgaria has been a party to the 1929 International Convention for the Suppression of Counterfeiting since 22 May 1930.[35] This treaty requires states parties to make counterfeiting of foreign currency and attempts to do so ordinary crimes (Art. 3), to make such crimes subject to extradition (Art. 10) and, if the state party recognizes a general rule of extraterritorial jurisdiction, to prosecute persons suspected of counterfeiting of foreign currency abroad if extradition has been requested and rejected for a reason not connected with the crime (Art. 9).

Bulgaria has defined counterfeiting as a crime in Articles 243 to 246 of the Criminal Code. Therefore, Bulgarian courts can exercise universal jurisdiction over counterfeiting of foreign currency abroad based on Article 5 (4) of the Constitution and Article 6 (2) of the Criminal Code.

Narcotics trafficking – 1961 Single Convention

Bulgaria has been a party to the 1961 Single Convention on Narcotics Drugs, as amended by the Protocol amending the Single Convention on Narcotic Drugs since 25 October 1968.[36] This treaty requires states parties to define certain conduct concerning narcotic drugs as crimes under national law (Art. 36 (1)) and, if a person suspected of prohibited conduct is present in its territory and not extradited, to prosecute the suspect (Art. 36 (2) (a) (iv)). [37]

Bulgaria has defined some of the conduct prohibited by the 1961 Single Convention as crimes in the Criminal Code in Article 242 (2), (3) – carrying of narcotic substances and/or analogues, and precursors, installations and materials for the production of such substances across the border of the country, Article 354a (1) – manufacturing processing, acquisition, or detention of narcotic substances and/or analogues to the purpose of distribution or distributes such substances, Article 354 (2) stipulates certain conditions related to narcotic substances and/or analogues (including recidivism) that lead to a more severe penalty, Article 354b (1) – persuasion or help of another to use narcotic substances and/or analogues, and Article 354c (1) – cultivation of opium poppy, the coca bush plants and those of genus cannabis. The possession of narcotic substances not for the purposes of distribution (small quantities) is not specified as a crime in the Penal Code. However, the Narcotic Substances and Precursors Act prohibit the possession and use of narcotics and/or their analogues for

[35] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partII/Treaty-14-a.asp.

On 5 November 2007, Bulgaria made notifications to the treaty: (i) giving the European Police Office (Europol) a mandate to combat euro counterfeiting and (ii) with regard to the counterfeiting of all other currencies and for central office functions not delegated to Europol in accordance with point 1, the existing competencies of the national central offices shall remain in effect.

[36] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterVI/treaty21.asp.

[37] 1961 Single Convention on Narcotics Drugs, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 25 Mar. 1972 (entry into force 25 Aug. 1975).

personal needs except for medical and research purposes. Chapter 6 of this Act provides for international cooperation against narcotics related crimes and Article 79 (3) provides for extradition in accordance with international treaties to which Bulgaria is a party.[38]

Therefore, according to Article 6 (2) of the Criminal Code, Bulgaria has authorized its courts to exercise universal jurisdiction over these crimes stipulated by the 1961 Single Convention on Narcotics Drugs, as amended by the Protocol amending the Single Convention on Narcotic Drugs and incorporated into national law.

Violence against passengers or crew on board a foreign aircraft abroad

Bulgaria has been a party to the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) since 28 September 1989.[39] This treaty authorizes states parties to take measures to ensure persons suspected of violence against passengers or crew on board a foreign aircraft abroad can be extradited or prosecuted (Art. 13 (2)) and to extradite persons suspected of responsibility for such acts or to institute criminal proceedings against them in their own courts (Art. 15 (1)).

Bulgaria has defined acts of violence against passengers or crew on board an aircraft as a crime in Article 341a (3) and (4) of the Criminal Code. Therefore, Bulgarian courts can exercise universal jurisdiction over these offences abroad based on Article 5 (4) of the Constitution and Article 6 (2) of the Criminal Code.

Hijacking a foreign aircraft abroad

Bulgaria has been a party to the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) since 26 May 1971.[40] This treaty requires states parties to define seizures of aircraft as crimes under national law (Art. 2), to establish jurisdiction over persons suspected of such seizures who are present in its territory if they are not extradited (Art. 4 (2)), to take measures to ensure presence for prosecution or extradition (Art. 6 (1) and (2)) and to submit the cases to the competent authorities if they are not extradited (Art. 7).

Bulgaria has defined hijacking an aircraft as a crime in Article 341b of the Criminal Code. Therefore, according to Article 6 (2) of the Criminal Code it has provided its courts with universal jurisdiction over such crimes.

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[38] Narcotic Substances and Precursors Act, available in Bulgarian at: http://www.paragraf22.com/pravo/zakoni/zakoni-d/23909.html.

[39] Convention on Offences and Certain Other Acts Committed on Board Aircraft, available at: http://untreaty.un.org/English/Terrorism/Conv1.pdf, Tokyo, 14 Sept. 1963 (entered into force 4 Dec. 1969).

[40] Convention for the Suppression of Unlawful Seizure of Aircraft, available at: http://untreaty.un.org/unts/1_60000/24/40/00047980.pdf, The Hague, 15 Dec. 1970 (entered into force 14 Oct. 1973).

1971 Convention on Psychotropic Substances

Bulgaria has been a party to the 1971 Convention on Psychotropic Substances since 18 May 1972.[41] The Convention requires each state party, subject to its constitutional limitations, to treat as a punishable offence, any intentional action contrary to a law or regulation adopted in pursuance of its obligations under the Convention, and ensure that serious offences are liable to adequate punishment (Art. 22 (1) (a)) and to prosecute offences committed in their territory and suspects found in its territory, if extradition is not acceptable under that state's law (Art. 22 (2) (b)).

Bulgaria has not expressly defined the conduct prohibited by the 1971 treaty as crimes in the Penal Code.[42] However, according to the definitions of certain terms provided in the Narcotic Substances and Precursors Act, psychotropic substances can be considered as analogues to narcotics and are, therefore, covered in the Criminal Code. Hence, all the provisions concerning narcotics in the Criminal Code can be applied for psychotropic substances. Moreover, in 1998 Bulgaria has signed an agreement for the control of psychotropic substances with Turkey and Romania and in 2001 with Slovenia.

Bulgaria has not directly authorized its courts to exercise universal jurisdiction over such drug offences but according to Article 6 (2) of the Criminal Code and the Narcotic Substances and Precursors Act Bulgaria can exercise universal jurisdiction over all or most of the offences listed by the 1971 Convention on Psychotropic Substances.

Certain attacks on aviation

Bulgaria has been a party to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention) since 22 February 1973.[43] This treaty requires states parties to define certain attacks on aviation (Article 1) as crimes under national law (Art. 3), to establish jurisdiction over persons suspected of such attacks who are present in its territory if they are not extradited (Art. 5 (2)), to take measures to ensure presence for prosecution or extradition (Art. 6 (1) and (2)) and to submit the cases to the competent authorities if they are not extradited (Art. 7).

Bulgaria has defined these attacks on aviation as a crime in Article 341a of the Criminal Code. Therefore, pursuant to Article 6 (2) of the Bulgarian Criminal Code it has provided its courts with jurisdiction over such crimes.

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[41] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterVI/treaty22.asp.

[42] Convention on Psychotropic Substances, 21 Feb. 1971, available at: http://www.incb.org/pdf/e/conv/convention_1971_en.pdf.

[43] http://www.fco.gov.uk/resources/en/pdf/pdf18/fco_ref_sl_safetycivilaviation.

Attacks on internationally protected persons, including diplomats

Bulgaria has been a party to the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents since 18 July 1974.[44] This treaty requires states parties to define attacks on internationally protected persons, including diplomats, as crimes under national law (Art. 2), to establish jurisdiction over persons suspected of such attacks who are present in its territory if they are not extradited (Art. 3 (2)), to take measures to ensure presence for prosecution or extradition (Art. 6 (1)) and to submit the cases to the competent authorities if they are not extradited (Art. 7).

Bulgaria has defined internationally protected persons in Article 93 subparagraph 13 of the Criminal Code and has defined attacks on internationally protected persons as a crime in Articles 116 (1), 131 (1)1, 142 (2)4, and 144 (2) of the Criminal Code. Foreign officials are defined in Article 93 subparagraph 15. According to the Ministry of Interior, this definition includes UN officials and related auxiliary staff.[45] In relation to protection of diplomats, Bulgaria has no specific national legislation, but it has left the governance of the matter to international law. Under Bulgarian law foreign nationals (which include diplomatic and consular staff) enjoy immunities and protection according to international law—the two Vienna Conventions on Diplomatic and Consular Relations, a number of bilateral consular conventions, and others. Moreover, pursuant to Article 3 (2) of the Criminal Code:

> 'The issue of liability of foreign citizens who enjoy immunity with respect to the penal jurisdiction of the Republic of Bulgaria shall be decided in compliance with the norms of international law adopted by Bulgaria.' [46]

Therefore, according to Article 6 (2) of the Criminal Code Bulgaria has authorized its courts to exercise universal jurisdiction over attacks on internationally protected persons and diplomats.

Suppression of Terrorism

Bulgaria has been a party to the 1977 European Convention on the Suppression of Terrorism

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[44] Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, available at: http://untreaty.un.org/English/Terrorism/Conv4.pdf, 14 Dec. 1973 (entry into force 20 Feb. 1977).

[45] Letter from the Bulgarian Ministry of Interior 'Comments on the Report of Amnesty International "Bulgaria: End Impunity Through Universal Jurisdiction" within the remit of the Ministry of Interior' to the International Justice Project, Amnesty International, dated 28 November 2008.

[46] Criminal Code, Article 3(2). The original text reads as follows:

> 'Въпросът за отговорността на чужденци, които се ползуват с имунитет по отношение на наказателната юрисдикция на Република България, се решава съобразно с приетите от нея норми на международното право.'

since 18 May 1998.[47] This treaty requires states parties not to regard certain acts as a political offence or as an offence connected with a political offence or as an offence inspired by political motives, for the purposes of extradition (Article 1). State parties are also required to establish jurisdiction over persons suspected of such crimes who are present in its territory if they are not extradited (Article 6 (1)) and to submit the case to the competent authorities if they are not extradited (Article 7).[48]

Bulgaria has defined the crimes listed in Article 1 of the Convention in its Criminal Code. However, the Criminal Code does not specify that these acts shall not be regarded as political offences for the purposes of extradition. Nevertheless, pursuant to Article 6 (2) of the Criminal Code Bulgaria has authorized its courts to exercise universal jurisdiction over such crimes.

Hostage taking

Bulgaria has been a party to the 1979 International Convention against the Taking of Hostages since 10 March 1988.[49] This treaty requires states parties to define hostage taking, as defined in Article (1) of the Convention, as crimes under national law (Art. 2), to establish jurisdiction over persons suspected of such attacks who are present in its territory if they are not extradited (Art. 5 (1)), to take measures to ensure presence for prosecution or extradition (Art. 6 (1)) and to submit the cases to the competent authorities if they are not extradited (Art. 8).

Bulgaria has made a declaration regarding Article 9 (1) of the Convention stating that:

> 'The People's Republic of Bulgaria considers that article 9, paragraph 1 of the Convention should be applied in a manner consistent with the stated aims of the Convention, which include the development of international co-operation in adopting effective measures for the prevention, prosecution and punishment of all acts of hostage-taking as manifestations of international terrorism, including extradition of alleged offenders'.[50]

Bulgaria has defined hostage taking as a crime in Articles 96, 97a and 143a of the Criminal Code as well as in Article 412b under the War Crimes section of the Criminal Code. Therefore, pursuant to Article 6 (2) of the Criminal Code, Bulgaria has authorized its courts to exercise universal jurisdiction over the crime of hostage taking.

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[47] http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=090&CM=1&DF=6/5/2008&CL=ENG.

[48] European convention on the Suppression of Terrorism, 1977, available at: http://conventions.coe.int/Treaty/en/Treaties/Html/090.htm.

[49] International Convention against the Taking of Hostages (http://untreaty.un.org/English/Terrorism/Conv5.pdf), 17 Dec. 1979 (entered into force 3 June 1983).

[50] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty5.asp.

Theft of nuclear materials

Bulgaria has been a party to the 1979 Convention on the Physical Protection of Nuclear Material since 8 February 1987.[51] This treaty requires states parties to define theft of nuclear material and certain other acts as crimes under national law (Art. 7), to establish jurisdiction over persons suspected of such attacks who are present in its territory if they are not extradited (Art. 8 (2)), to take measures to ensure presence for prosecution or extradition (Art. 9) and to submit the cases to the competent authorities if they are not extradited (Art. 10).[52]

Bulgaria has defined theft of nuclear material and other acts prohibited in this treaty as crimes in Articles 337[53] and 339[54] of the Criminal Code. Article 339 refers to theft or robbery of nuclear materials (Article 7 (1)b of the Convention) and Article 337 of the Criminal Code generally covers the other acts stipulated in Article 7 (1)a, but it omits the

[51] http://www.iaea.org/Publications/Documents/Conventions/cppnm_status.pdf.

[52] Convention on the Physical Protection of Nuclear Material, Vienna, 26 Oct. 1979, available at: http://www.iaea.org/Publications/Documents/Infcircs/Others/inf274r1.shtml.

[53] Article 337 of the Criminal Code provides:

> 'A person who manufactures, processes, repairs, develops, stores, trades in, transports, imports or exports explosives, firearms, chemical, biological or nuclear weapons or ammunition, without having the right to do so by law, or without licence from the respective government body, or does so not in compliance with the licence given to him, shall be punished by deprivation of liberty for one to six years.'

The original text reads as follows:

> 'Който произвежда, преработва, поправя, разработва, съхранява, търгува, пренася, внася или изнася взривове, огнестрелни, химически, биологични или ядрени оръжия или боеприпаси, без да има право за това по закон или разрешение от надлежния орган на властта, или извърши това не съгласно с даденото му разрешение, се наказва с лишаване от свобода от една до шест години.'

[54] Article 339 (1) of the Criminal Code provides:

> 'A person who by any means whatsoever acquires, holds or gives to another explosives, firearms, chemical, biological or nuclear weapons or ammunitions, without due permit thereof, shall be punished by deprivation of liberty for up to six years.'

The original text reads as follows:

> 'Който придобие по какъвто и да е начин, държи или предаде другиму взривове, огнестрелни, химически, биологични или ядрени оръжия или боеприпаси, без да има за това надлежно разрешение, се наказва с лишаване от свобода до шест години.'

acts of receipt, alteration, disposal or dispersal of nuclear materials. However, according to a commentary made by the Bulgarian Ministry of Justice, despite the different phrasing used in the Criminal Code, these acts are incorporated in Articles 337, 339 (1) and 339 (3).

Article 356d (1) of the Criminal Code provides penalties for an official who orders or allows an action without, prior to obtaining or in violation of a permit and Article 356d (2) increases the penalty if the act has been committed a second time or an immediate danger has been created for the life or health of another. Article 356f defines as a crime the damaging of nuclear materials that causes substantial damage to the natural environment, or danger for the health and life of another. Article 339b of the Criminal Code and the Control of the Trade with Weapons, Commodities and Technologies with Possible Dual Use Act of 2004[55] regulate the production, transfer and acquisitions of weapons, products and technologies with dual use. According to Article 6 (2) of the Criminal Code Bulgaria has authorized its courts to exercise universal jurisdiction over crimes involving theft of nuclear material.

Attacks on ships and navigation at sea

Bulgaria has been a party to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation since 6 October 1999.56 This treaty requires states parties to define attacks on ships and navigation at sea as crimes under national law (Art. 5), to establish jurisdiction over persons suspected of such attacks who are present in its territory if they are not extradited (Art. 6 (4)), to take measures to ensure presence for prosecution or extradition (Art. 7 (1) and (2)) and to submit the cases to the competent authorities if they are not extradited (Art. 10).[57]

Bulgaria has defined attacks on ships and navigation at sea as crimes under national law in Article 340 (1) of the Criminal Code. In addition, it has authorized its courts to exercise universal jurisdiction over unlawful acts against the safety of maritime navigation pursuant to Article 6 (1) of the Criminal Code.

Use, financing and training of mercenaries

Bulgaria is not a party to the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries.[58] This treaty requires states parties to define the use, financing or training of mercenaries as crimes under national law (Art. 5 (3)), to establish jurisdiction over persons suspected of such attacks who are present in its territory if they are not extradited (Art. 9 (2)), to take measures to ensure presence for prosecution or extradition

[55] Control of the Trade with Weapons, Commodities and Technologies with Possible Dual Use Act of 2004, available in Bulgarian at http://www.bgstuff.net/content/view/805/536/.

[56] http://www.imo.org.

[57] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 10 March 1988, available at: http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=686.

[58] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty6.asp.

(Art. 10 (1)) and to submit the cases to the competent authorities if they are not extradited (Art. 12).[59]

Bulgaria has not expressly defined the use, financing or training of mercenaries as crimes under national law. However, Article 103 of the Criminal Code defines as criminal: 'A person who, in carrying out his duties of state office or commission to a foreign government or international organizations, conducts them deliberately to the detriment of the Republic…'[60] and Article 105 provides: 'A person who places himself in service of a foreign state or a foreign organization in order to serve it as a spy…'.[61] Based on these two articles, the Bulgarian National Assembly justified the administrative refusal of entry into Yugoslavia in 1999 of 16 Bulgarian men who were planning to participate as mercenaries in the Kosovo conflict. Under the circumstances of the time, the act of these men was considered as threatening the national interests because it was not in accord with Bulgaria's declared non-interference in the conflict.[62]

However, since Bulgaria is not a party to the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries and it has not expressly defined the recruitment, use, financing and training of mercenaries in its Criminal Code, it has not authorized its courts to exercise universal jurisdiction over such conduct.

Attacks on UN and associated personnel

Bulgaria has been a party to the 1994 Convention on the Safety of United Nations and Associated Personnel since 4 June 1998.[63] It has signed the 2005 Optional Protocol on 20 September 2006, but had not yet ratified it by 1 March.[64] The Convention requires states parties to define attacks on UN and associated personnel as crimes under national law (Art. 9 (2)), to establish jurisdiction over persons suspected of such attacks who are present in its

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[59] U.N. G.A. Res. 44/34, 4 Dec. 1989.

[60] Criminal Code, Article 103. The original text reads as follows:

> 'Който, изпълнявайки държавна служба или поръчение пред чуждо правителство или международна организация умишлено ги води във вреда на републиката'.

[61] Criminal Code, Article 105. The original text reads as follows:

> 'Който се постави в услуга на чужда държава или на чужда организация, за да й служи като шпионин, ако не е извършил деяние по предходния член, се наказва с лишаване от свобода от пет до петнадесет години.'

[62] Transcript of the 283rd Session of the 38th General Assembly of the Republic of Bulgaria, Sofia, 09/07/1999 available in Bulgarian at http://www.parliament.bg/kns/Pkontrol/38-BB-v/38-BB-v1037.htm.

[63] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty8.asp.

[64] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty9.asp.

territory if they are not extradited (Art. 10 (4)), to take measures to ensure presence for prosecution or extradition (Art. 13 (1)) and to submit the cases to the competent authorities if they are not extradited (Art. 14).[65] The Protocol expands the scope of protection found in the Convention and incorporates the same obligations.[66]

Bulgarian legislation does not expressly refer to UN and associated personnel. However, Article 116 (1) (1) of the Criminal Code states that the murder of a person enjoying international protection constitutes a qualifying circumstance and provides grounds for a more severe punishment of the perpetrator. Moreover, Article 93 subparagraph 15 defines the term 'foreign officials' which, as the Ministry of Interior has concluded, covers UN and associated personnel.[67] Therefore, it would appear according to Article 6 (2) of the Criminal Code, Bulgaria has authorized its courts to exercise universal jurisdiction over some attacks on UN and associated personnel.

Terrorist bombing

Bulgaria has been a party to the 1997 International Convention for the Suppression of Terrorist Bombings since 12 February 2002.[68] This treaty requires states parties to define terrorist bombing as a crime under national law (Arts. 4 and 5), to establish jurisdiction over persons suspected of such bombings who are present in its territory if they are not extradited (Art. 6 (4)), to take measures to ensure presence for prosecution or extradition (Art. 7) and to submit the cases to the competent authorities if they are not extradited (Art. 8).[69]

Bulgaria has defined terrorist bombing as a crime under national law. Article 108a of the Criminal Code contains a definition of terrorism, Article 109 defines as a crime organization and leadership of a terrorist group, Article 110 criminalizes preparation of terrorist activities, Article 320 (2) refers to open instigation towards terrorism and Article 320a defines the crime of threatening to commit a terrorist act. Therefore, according to Article 6 (2) of the Criminal Code Bulgaria has authorized its courts to exercise universal jurisdiction over terrorist bombings.

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[65] Convention on the Safety of United Nations and Associated Personnel, U.N. G.A. Res. 49/59, 9 Dec. 1994 (http://www.un.org/law/cod/safety.htm).

[66] U.N. G.A. Res. 60/42, 8 Dec. 2005.

[67] Letter from the Bulgarian Ministry of Interior 'Comments on the Report of Amnesty International "Bulgaria: End Impunity Through Universal Jurisdiction" within the remit of the Ministry of Interior' to the International Justice Project, Amnesty International, dated 28 November 2008.

[68] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp.

[69] 1997 International Convention for the Suppression of Terrorist Bombings, http://www.un.org/law/cod/terroris.htm.

Financing of terrorism

Bulgaria has been a party to the 1999 International Convention for the Suppression of Financing of Terrorism since 15 April 2002.[70] This treaty requires states parties to define financing of terrorist activities as a crime under national law (Arts. 4 and 5), to establish jurisdiction over persons suspected of such financing who are present in its territory if they are not extradited (Art. 7 (4)), to take measures to ensure presence for prosecution or extradition (Art. 9 (1) and (2)) and to submit the cases to the competent authorities if they are not extradited (Art. 10 (1)).

Bulgaria has defined financing of terrorist activities as a crime in Article 108a (2) of the Criminal Code while 114 (2) provides for confiscation of property in cases of terrorist activities or their financing. Therefore, according to Article 6 (2) of the Criminal Code Bulgaria has authorized its courts to exercise universal jurisdiction over financing of terrorist activities.

Transnational crime - Transnational organized crime

Bulgaria has been a party to the 2000 UN Convention against Transnational Organized Crime since 5 December 2001.[71] This treaty requires states parties to define certain transnational crimes which involve criminals acting in organized groups as a crime under national law (Arts. 5, 6, 8 and 23), authorizes them to establish jurisdiction over persons suspected of such crimes who are present in its territory if they are not extradited (Art. 15 (4)) and authorizes them to take measures to ensure presence for prosecution or extradition (Art. 16 (9)).[72]

Bulgaria has defined transnational organized crimes listed in this treaty as crimes under national law. Article 20 of the Criminal Code contains a definition of an organized crime group and Articles 142 (2) 8, 155 (5) 1, 156 (3) 1, 159 (5), 159c, 199 (1) 5, 242g, 354a (2)1 and 354c (3) contain specific provisions in cases where crimes are committed 'by an individual acting at the orders or in implementing a decision of an organized criminal group'.[73] Therefore, according to Article 6 (2) of the Criminal Code, Bulgaria has provided its courts with universal jurisdiction over all or most of the transnational crimes listed in this treaty.

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[70] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty12.asp.

[71] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty13.asp.

[72] U.N. G.A. Res. 55/25, 15 Nov. 2000, available at: http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf.

[73] Criminal Code, Articles 142 (2) 8, 155 (5) 1, 156 (3) 1, 159 (5), 159c, 199 (1) 5, 242g, 354a (2)1 and 354c (3).

Transnational crime - Trafficking of human beings

Bulgaria has been a party to the 2001 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime since 5 December 2001.[74] This treaty, which incorporates all of the jurisdictional requirements of the UN Convention against Transnational Organized Crime (Art. 2), requires states parties to define trafficking in human beings as a crime under national law (Art. 3).[75]

Bulgaria has defined trafficking in human beings as a crime under national law in Section IX Trafficking of People (Articles 159a-161) of the Criminal Code. Therefore, according to Article 6 (2) of the Criminal Code Bulgaria has provided its courts with universal jurisdiction over trafficking.

Transnational crime – Firearms

Bulgaria has been a party to the 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime since 6 August 2002.[76] This treaty, which incorporates all of the jurisdictional requirements of the UN Convention against Transnational Organized Crime (Art. 2), requires states parties to define certain firearms offences as crimes under national law (Art. 5).

Bulgaria has defined such offences as crimes under national law in Articles 195 (1) 10, 337, 338 (1), 338 (2), 339 (1) of the Criminal Code. Further definitions and detailed regulations are provided by the 1999, Control on Explosives, Firearms, and Ammunitions Act. However, in Bulgarian law there are no provisions concerning parts and components of firearms. Regarding explosives, firearms and ammunitions offences, Bulgaria has authorized its courts to exercise universal jurisdiction pursuant to Article 6 (2) of the Criminal Code.

Nuclear terrorism

Bulgaria signed the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism on 14 September 2005, but, as of 1 January 2009, it had not yet become a party to this treaty.[77] This treaty requires states parties to define acts of nuclear terrorism as a crime under national law (Arts. 5 and 6), to establish jurisdiction over persons suspected of

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[74] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty14.asp.

[75] U.N. G.A. Res. 55/25, 15 Nov. 2000, Annex II, available at: http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf.

[76] U.N. G.A. Res. 55/255, 8 June 2001, available at (http://www.unodc.org/pdf/crime/a_res_55/255e.pdf).

[77] U.N. G.A. Res. 59/290, 13 April 2005: http://www.un.org/Depts/dhl/resguide/r59.htm.

such financing who are present in its territory if they are not extradited (Art. 9 (4)), to take measures to ensure presence for prosecution or extradition (Art. 10 (1) and (2)) and to submit the cases to the competent authorities if they are not extradited (Art. 11 (1)).

Bulgaria has not explicitly used the term nuclear terrorism in its Criminal Code, but it has defined most of the criminal activities considered as nuclear terrorism according to Article 2 of the 2005 Convention under national law in Articles 242d, 337, 339, 356d (2), 356f, 356k, 415 (1) and 415a of the Criminal Code. Hence, under Article 6 (2) of the Criminal Code Bulgaria has authorized its courts to exercise universal jurisdiction over nuclear terrorist activities.

Prevention of Terrorism

Bulgaria has been a party to the 2005 Council of Europe Convention on the Prevention of Terrorism since 31 July 2006.[78] This treaty requires states parties to define public incitement to commit a terrorist offence, recruitment and training for terrorism, and other offences related to terrorism as crimes under national law (Art. 5, 6, 7 and 9), to establish jurisdiction over persons suspected of such attacks who are present in its territory if they are not extradited (Art. 14), to take measures to ensure presence for prosecution or extradition and to submit the cases to the competent authorities if they are not extradited (Art. 18).

Article 108a of the Bulgarian Criminal Code contains a definition of terrorism, Article 109 defines the organization and leadership of a terrorist group as a crime, Article 110 criminalizes preparation of terrorist activities, Article 320 (2) refers to open instigation towards terrorism and Article 320a defines the crime of threatening to commit a terrorist act. Therefore, according to Article 6 (2) of the Criminal Code Bulgaria has authorized its courts to exercise universal jurisdiction over crimes related to terrorism.

4.3. CRIMES UNDER INTERNATIONAL LAW

Bulgarian courts can exercise universal jurisdiction over crimes under international law (including such crimes defined or listed in treaties) under two provisions. Article 6 (1) of the Criminal Code provides for universal jurisdiction over 'crimes against peace and humanity', which according to the Bulgarian Criminal Code include planning, preparing or waging of aggressive war, propaganda and incitement towards armed attack, genocide, the crime against humanity of apartheid and war crimes (including grave breaches of the Geneva Conventions and Protocol I and torture) in international (and possibly in non-international armed conflict). In addition, pursuant to Article 6 (2) of the Criminal Code, Bulgarian courts can exercise universal jurisdiction over grave breaches of the Geneva Conventions and of Protocol I, apartheid and torture (when occurring in the context of an international or non-international armed conflict).

4.3.1. WAR CRIMES

Bulgaria is a party to the four Geneva Conventions of 1949 and it has ratified both Protocol I

[78] Council of Europe Convention on the Prevention of Terrorism, available at http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=196&CM=8&DF=11/11/2008&CL=ENG.

and II to those conventions. It has been a party to the Rome Statute since 11 April 2002. Bulgaria has defined a broad range of war crimes in international armed conflict and non-international armed conflict as crimes under national law in Chapter Fourteen, Section II of the Criminal Code (Outrage against the laws and the practice of waging war - Articles 410 to 415a), but, as explained below, because of the somewhat vague and general manner in which they are defined it is not always clear which war crimes under conventional and customary international humanitarian law are included. Therefore, until these provisions are amended to conform to the exact language used in international humanitarian law, there will be some doubt whether persons could be successfully prosecuted for certain conduct which clearly violates international law.

Bulgarian courts can exercise universal jurisdiction over war crimes committed by foreigners abroad during international and non-international armed conflict abroad based on Article 5 (4) of the Constitution and Articles 6 (1) and 6 (2) of the Criminal Code.

Article 410 of the Criminal Code, which was intended to implement the First Geneva Convention, provides:

> 'Anyone who, in violation of the international law for waging war:
>
> a) commits or orders committed against wounded, sick, shipwrecked or sanitary [medical] personnel homicide, torture or inhuman treatment, including biological experiments, or orders the infliction on such persons severe suffering, mutilation or other damages to the health;
>
> b) commits or orders committed substantial destruction or misappropriation of sanitary [medical] materials or installations, shall be punished by imprisonment of five to twenty years or by life imprisonment without a possibility of parole'.[79]

Article 410 does not expressly state whether it applies to both international and non-international armed conflict and, therefore, although the term 'waging war' might suggest

[79] Criminal Code, Article 410. The original text reads as follows:

> 'Който в нарушение на правилата на международното право за водене на война:
>
> а) извърши или заповяда да се извършат спрямо ранени, болни, корабокрушенци или санитарен персонал убийство, изтезания или нечовешко третиране, включително биологически експерименти, причини или заповяда да се причинят на такива лица тежки страдания, осакатявания или друго увреждане на здравето;
>
> б) (Изм. - ДВ, бр. 153 от 1998 г.) извърши или заповяда да се извършат значителни разрушения или присвоявания на санитарни материали или инсталации, се наказва с лишаване от свобода от пет до двадесет години или с доживотен затвор без замяна.'

international armed conflict, it could be interpreted as applying also to non-international armed conflict. Although, this article was designed to implement some of the grave breaches provisions of the first two Geneva Conventions, it leaves open a number of questions. Each of those two conventions contains an identical list of grave breaches against persons protected by the conventions:

'Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.'[80]

Article 410 does not define 'wounded, sick, shipwrecked or sanitary [medical] personnel', but it is reasonable to assume that it includes the four categories of protected persons under the first three Geneva Conventions.[81] It does not use the qualifying terms 'wilful', 'wilfully' and 'wantonly', each of which include the concept of reckless conduct in addition to intentional conduct.[82] However, these omissions could mean that the normal rules of *mens rea* (mental element), intent and negligeance, which are applicable to all crimes in the Criminal Code, apply.[83] Article 11 (5) of the Criminal Code provides that:

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[80] First Geneva Convention, art. 50; Second Geneva Convention, Article 51.

[81] For the definitions of these categories of protected persons, see First Geneva Convention, Article 13 (''wounded and sick'') and Articles. 24 to 27 (''medical personnel''); Second Geneva Convention, Articles. 13 (''wounded, sick and shipwrecked at sea'') and Articles 24 to 27 (''medical personnel'')

[82] B. Zimmermann, 'Article 85', in Y. Sandoz, C. Surinarsk: B Zimmermann, eds., *'Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949'*, Geneva, ICRC & Dordrecht, Martinus Nijhoff,1987, para. 3474; *Prosecutor v. Delalic*, Judgement, Case No. IT-96-ZI-T, Trial Chamber, 16 November 1998, para. 437.

[83] The basic principles of guilt are defined in Article 11 of the Criminal Code which reads as follows:

> 'The social dangerous act shall be considered criminal when it is committed deliberately or negligently.
>
> (2) The act shall be considered deliberate if the perpetrator has been aware of its socially dangerous nature, he has foreseen its socially dangerous consequences and has wanted or admitted the occurrence of these consequences.
>
> (3) The act shall be considered negligent when the perpetrator has not foreseen the occurrence of socially dangerous consequences, but he has been obliged and could have foreseen them, or when he has foreseen the occurrence of these consequences but he had intended to prevent them.
>
> (4) The negligent acts are punishable only in the cases stipulated by the law.
>
> (5) When the law qualifies the act as a more serious crime due to the occurrence of additional socially dangerous consequences, if no deliberation is required for these consequences, the perpetrator shall be charged for the more serious crime if

> 'When the law qualifies the act as a more serious crime due to the occurrence of additional socially dangerous consequences, if no deliberation is required for these consequences, the perpetrator shall be charged for the more serious crime if he has acted negligently with regard to them.'[84]

It is, however, unclear if this provision will enable prosecution of reckless conduct of war crimes. To avoid any doubt whether reckless conduct is included in the crimes in Articles 410 to 415a, this mental element should be expressly indicated in the definition of the particular crime as it is the case of murder – Article 155 of the Criminal Code criminalizes intentional murder, while Article 122 (1) defines murder by negligence.

Moreover, there is no requirement in Article 410 to prove that the destruction of property was not justified by military necessity.

According to the Bulgarian Ministry of Justice, however, although the first two Geneva Conventions define as a crime: 'and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly', Article 410 of the Criminal Code states: 'Anyone who, in violation of the international law for waging war commits or orders committed substantial destruction or misappropriation of sanitary [medical] materials or installations'. Therefore, the Ministry argues that the Bulgarian Criminal Code uses a broader definition which is more favourable for criminal prosecution as it does not contain the necessity of proof that 'the destruction and appropriation' are not justified by military necessity or have been carried out unlawfully and wantonly. To that extent, Article 410 provides for a higher level of protection than the Geneva Conventions, since it presents a broader definition. Indeed, Article 410 mentions only the requirement of 'violation of the international law of waging law.[85]

However, the scope of Article 410 is restricted in other areas. While the text of the Geneva

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> he has acted incautiously with regard to them.'

In regard to the omission of the term 'wilfully' the Bulgarian Ministry of Interior comments:

'The report mentions that the definition of individual crimes does not state explicitly whether they have been committed ''wilfully'' or not. The misunderstanding is perhaps due to the inaccurate presentation of the principles of guilt as an element of the *corpus delicti* and its forms.'

[84] Criminal Code, Article 11 (5). The original text reads as follows:

> 'Когато законът квалифицира деянието като по-тежко престъпление поради настъпването на допълнителни общественоопасни последици, ако не се изисква умисъл за тези последици, деецът отговаря за по-тежкото престъпление, когато по отношение на тях е действувал непредпазливо.'

[85] Letter from the Bulgarian Ministry of Justice 'Comments on the Report of Amnesty International"Bulgaria: End Impunity through Universal Jurisdiction" within the remit of the Ministry of Justice' to the International Justice Project, Amnesty International, dated 28 November 2008.

Conventions defines extensive destruction and appropriation of property as a grave breach, Article 410 (b) criminalizes only 'the commitment of substantial destruction or misappropriation of sanitary [medical] materials or installations`. Therefore, the protection provided by Article 410 (b) is limited only to medical materials and installations and does not extend to other types of property.

According to the Bulgarian Constitutional Court's Ruling No 7 of 1992 (See Section 2 above), once the crimes and the corresponding penalties are defined in domestic legislation, the phrases and terminology used in international documents can be used for further clarification of the crimes and their elements. Hence, the definitions in the Geneva Conventions and the Additional Protocols can be used to clarify the phrasing of the Criminal Code. Nevertheless, even though the Ministry of Justice claims that the broad scope of Article 410 offers better protection, there are also some restrictions that leave some doubts about the successful prosecution of war crimes.

Article 411 of the Criminal Code was intended to implement the Third Geneva Convention. It states:

> 'Anyone who, in violation of the rules of the international law for waging war:
>
> a) commits or orders committed regarding prisoners of war homicide, tortures or inhuman treatment, including biological experiments, inflicts or orders the inflicting to such persons severe suffering, mutilation or other damages to the health;
>
> b) compels a prisoner of war to serve in the armed forces of the hostile country or
>
> c) deprives a war prisoner of his right to be litigated [tried] in a regular court and under regular proceedings, (Amend., SG 153/98) shall be punished by imprisonment of five to twenty years or by life imprisonment without an option.'[86]

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[86] Criminal Code, Article 411. The original text reads as follows:

> 'Който в нарушение на правилата на международното право за водене на война:
>
> а) извърши или заповяда да се извършат спрямо военнопленници убийство, изтезания или нечовешко третиране, включително биологически експерименти, причини или заповяда да се причинят на такива лица тежки страдания, осакатявания или друго увреждане на здравето;
>
> б) принуди пленник да служи във въоръжените сили на неприятелската държава или
>
> в) (Изм. - ДВ, бр. 153 от 1998 г.) лиши пленник от правото му да бъде съден

Article 411 does not define the term 'prisoners of war', but it seems reasonable to assume that it was intended to incorporate the definition in the Third Geneva Convention.[87]

Article 412 of the Criminal Code implements the grave breaches provisions of the Fourth Geneva Convention. It reads:

> 'Who, in violation of the rules of the international law for waging war:
>
> a) commits or orders committed against the civilian population of homicide, torture, inhuman treatment, including biological experiments, inflicts or orders the inflicting of severe suffering, mutilation or other serious damages to the health;
>
> b) takes or orders the taking of hostages;
>
> c) commits or orders committed of illegal deportation, persecution or detention;
>
> d) compels a civilian to serve in the armed forces of a hostile country;
>
> e) deprives a civilian of his right to be litigated [tried] in a regular court and under the regular proceedings;
>
> f) illegally or arbitrarily commits or order committed of destruction or misappropriation of possessions in large size, (Amend., SG 153/98) shall be punished by imprisonment of five to twenty years or by life imprisonment without an option.'[88]

> от редовен съд и по редовна процедура, се наказва с лишаване от свобода от пет до двадесет години или с доживотен затвор без замяна.'

[87] Third Geneva Convention, Article 4 (prisoners of war).

[88] Criminal Code, Article 412. The original text reads as follows:

> 'Който в нарушение на правилата на международното право за водене на война:
>
> а) извърши или заповяда да се извършат спрямо гражданското население убийства, изтезания, нечовешко третиране, включително биологически експерименти, причини или заповяда да се причинят тежки страдания, осакатявания или други сериозни увреждания на здравето;
>
> б) вземе или заповяда да се вземат заложници;
>
> в) извърши или заповяда да се извършат незаконни депортирания, преследвания или задържания;

Article 413 of the Criminal Code prohibits misuse of the Red Cross emblem.[89] Article 414 of the Criminal Code protects cultural property.[90] It covers some of the items protected by the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, to which Bulgaria acceded on 7 August 1956, but this article may leave gaps as its very general

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г) принуди гражданско лице да служи във въоръжените сили на неприятелска държава;

д) лиши гражданско лице от правото му да бъде съдено от редовен съд и по редовна процедура;

е) (Изм. - ДВ, бр. 153 от 1998 г.) незаконно или произволно извърши или заповяда да се извършат разрушения или присвоявания на имущества в големи размери, се наказва с лишаване от свобода от пет до двадесет години или с доживотен затвор без замяна.'

[89] Article 413 of the Criminal Code reads:

'Who, without having right, bears the badge of the Red Cross or of the Red Crescent, or who misuses a flag or a sign of the Red Cross or of the Red Crescent, or of the colour determined for vehicles for sanitary [medical] evacuation, shall be punished by imprisonment of up to two years.'

The original text reads:

'Който без да има право, носи знака на Червения кръст или Червения полумесец или който злоупотреби с флаг или знак на Червения кръст или Червения полумесец, или с цвета, определен за транспортните средства за санитарна евакуация, се наказва с лишаване от свобода до две години.'

[90] Article 414 of the Criminal Code states:

'(1) Who, in violation of the rules of the international rule for waging war, destroys, damages or renders unfit cultural or historic monuments and objects, works of art, buildings and installations of cultural, scientific or other humanitarian importance shall be punished by imprisonment of one to ten years.

(2) The same punishment shall also be imposed on those who steal, misappropriate or conceals objects under the preceding para, or impose contribution or confiscation regarding such objects.'

The original text reads as follows:

'(1) Който в нарушение на правилата на международното право за водене на война унищожи, повреди или направи негодни културни или исторически паметници и предмети, произведения на изкуството, сгради и съоръжения с културно, научно или друго хуманитарно предназначение, се наказва с лишаване от свобода от една до десет години.

(2) Същото наказание се налага и на онзи, който открадне, противозаконно присвои или укрие предмети, посочени в предходната алинея, или наложи по отношение на такива предмети контрибуция или конфискация.'

language does not closely follow that of the 1954 Convention.[91] It also does not implement the 1954 First Hague Protocol for the Protection of Cultural Property in Armed Conflict, to which Bulgaria acceded on 9 October 1958.[92] In addition, Article 414 does not encompass the full range of protection of cultural property in the Rome Statute,[93] Protocol I[94] and Protocol II,[95] in particular, as it leaves out religious buildings and places of worship and buildings dedicated to education.

Article 415 specifically prohibits the use of nuclear, chemical, bacteriological, biological or toxic weapons. The general 'catch-all' phrase 'or other impermissible ways or means for waging war to be used' is vague and does not expressly cover the use of other prohibited weapons or weapons that may be prohibited in the future. However, according to the Bulgarian Ministry of Justice, this general phrase is the only legal technique for criminalization of prohibited weapons other than nuclear, biological, chemical, bacteriological or toxic weapons, including 'weapons that may be prohibited in the future'.[96]

4.3.2. CRIMES AGAINST HUMANITY

Bulgaria has been a party to the Rome Statute since 11 April 2002. As previously explained, according to Article 6 (1) of the Criminal Code Bulgaria can exercise universal jurisdiction over crimes against peace and humanity as listed in Chapter Fourteen of the Criminal Code. However, the list of crimes in this chapter is incomplete and, as explained below, the definitions of the crimes are not consistent with the definitions of crimes against humanity under international law. Bulgaria has not defined any crimes against humanity, apart from apartheid and torture (but only during armed conflict), as crimes under national law, which are subject to universal jurisdiction. Many acts that the Rome Statute identifies as crimes against humanity such as murder, rape, enforced prostitution, unlawful deprivation of liberty, extermination, sexual slavery, forced pregnancy, and enforced sterilization are defined only as ordinary crimes in Bulgarian criminal law and, therefore, are not subject to universal jurisdiction.

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[91] Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 U.N.T.S. 240, 14 May 1954. This convention contains a detailed definition of cultural property and sets out extensive obligations for enforcement.

[92] First Hague Protocol for the Protection of Cultural Property in Armed Conflict, 249 U.N.T.S. 358, 14 May 1954.

[93] Rome Statute of the International Criminal Code, available at: http://untreaty.un.org/cod/icc/statute/romefra.htm, Article 8 (2) (b) (ix). For example, this provision includes protection of buildings dedicated to religion and education.

[94] Protocol I, art. 53. This article includes protection of places of worship, which are not expressly included in Article 414.

[95] Protocol II, art. 16. This provision includes protection of places of worship.

[96] Letter from the Bulgarian Ministry of Justice: 'Comments on the Report of Amnesty International `Bulgaria: End Impunity through Universal Jurisdiction` within the remit of the Ministry of Justice` to the International Justice Project, Amnesty International, dated 28 November 2008.

In addition, the crimes of unlawful deportation and torture are identified only as war crimes. The crimes of slavery, enforced disappearances, forced pregnancy, enforced sterilization and extrajudicial executions are not expressly defined as offences in the Criminal Code. Nevertheless, the Bulgarian Ministries of Justice and Interior claim that some elements of these crimes, although phrased in a different manner, are to a certain extent covered in the Criminal Code. According to the Ministry of Interior:

> 'Although named differently, the crime is defined, regardless of the forms of the corpus delicti. Therefore, in order for the philosophy of the Bulgarian criminal law to be understood properly, it is not sufficient to translate their wording literally; they should be considered in their systemic interrelations and the additional features of both the subject and the object of the crime under the Criminal Code should be explained properly because they provide grounds for mitigation or for imposition of a more severe punishment.'[97]

Nonetheless, even if these serious crimes are to a certain extent defined in the Criminal Code, none of them, except apartheid and torture as a war crime, is listed in Chapter Fourteen 'Crimes against Peace and Humanity'. Instead, each of them is defined as an ordinary crime. This omission, combined with certain incomplete or ambiguous definitions of crimes against humanity in Bulgarian criminal law is very likely to mean that Bulgaria will be unable to perform its obligations to investigate and prosecute under the principle of complementarity, as reflected in Article 17 of the Rome Statute and to exercise universal jurisdiction over crimes against humanity as defined by international law.[98] Article 7 (1) of the Rome Statute defines crimes against humanity as follows:

'For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.'[99]

The weaknesses in Bulgaria's limited implementation of its obligations to define crimes against humanity are outlined in more detail below.

Murder

Article 2 (1) (a) of the Rome Statute identifies murder as a crime against humanity and Article 7 (2) (a) defines the crime against humanity of murder as follows:

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[97] Letter from the Bulgarian Ministry of Interior 'Comments on the Report of Amnesty International `Bulgaria: End Impunity through Universal Jurisdiction` within the remit of the Ministry of Interior' to the International Justice Project, Amnesty International, dated 28 November 2008.

[98] Daniela Boteva, 'Implementation of the Rome Statute in Bulgaria', 16 Finnish Yearbook of International Law, 2005, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=996515.

[99] Rome Statute of the International Criminal Court, Article 7 (1).

> 'Attack directed against any civilian population` means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.'[100]

Bulgaria has defined the crime against humanity of murder merely as an ordinary crime and not under Chapter Fourteen 'Crimes against Peace and Humanity' of the Criminal Code.

The Criminal Code defines murder in Chapter Two, Section One (Articles 115 to 127). Article 115 defines deliberate mureder as 'Anyone who deliberately kills another person shall be punished for murder by deprivation of liberty for ten to twenty years'[101] while Article 122 criminalize murder by negligence.

Article 116 of the Criminal Code provides for more severe penalties for certain particular cases such as where the murder is committed 'in a way or by means dangerous for the life of many' (Article 116 (1) (6) is 'committed by individual acting at orders or in implementing a decision of an organized criminal group' (Article 116 (1) (10), is 'performed with premeditation', committed 'by a person who has committed another intentional murder under the previous paragraph of this article, for which no sentence has been pronounced.' [102]

Some acts of murder as a crime against humanity when committed as part of a 'widespread and systematic attack' directed any civilian population, with knowledge of the attack' and 'multiple commission of acts' are defined under the Bulgarian Criminal Code in Articles 115 and 116 while other elements such as attacks 'pursuant to or in furtherance of a State policy' are omitted. However, as explained above in the introduction to Section 4.3.2, since murder is defined only as an ordinary crime Bulgarian courts cannot exercise universal jurisdiction over it.

Extermination

Articles 7 (1) (b) and (2) (b) of the Rome Statute define extermination as follows:

> '`Extermination` includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to

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[100] Rome Statute of the International Criminal Court. For the scope pf this crime against humanity, see Machteld Boot, Rodney Dixon and Christopher K. Hall, ''Article 7 (Crimes Against Humanity), in Otto Triffterer, ed., *Commentary on the Rome Statute of the International Criminal Court: Observers` Notes, Article by Article*, C. H. Beck, Munich; Hart, Oxford; and Nomos, Baden-Baden, 2nd ed., 2008, p. 183.

[101] Criminal Code, Article 115. The original text reads as follows:

> 'Който умишлено умъртви другиго, се наказва за убийство с лишаване от свобода от десет до двадесет години.'

[102] Criminal Code, Article 116 (1) (10).

bring about the destruction of part of a population.'[103]

Bulgaria has not defined the crime against humanity of extermination as a crime in its Criminal Code.

Some acts of extermination could be prosecuted under the Criminal Code as ordinary crimes, such as murder (Articles 115 and 116) and causing of suicide or an attempt of suicide 'through cruel treatment or systematic abasement of dignity of a person who was in material or other dependency' upon the perpetrator (Article 127 (3)).[104] However, as explained above in the introduction for Section 4.3.2, Bulgaria has not provided universal jurisdiction over the crime of extermination or its elements.

Enslavement

Article 7 (1) (c) and (2) (c) define enslavement as follows:

> ``Enslavement` means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.'[105]

Bulgaria has not defined the crime against humanity of enslavement as a crime in its Criminal Code.

Some acts of enslavement could be prosecuted under the Criminal Code as ordinary crimes such as trafficking of human beings (Article 159a of the Criminal Code). However, as explained above in the introduction to Section 4.3.2, Bulgaria has not provided universal jurisdiction over the crime of enslavement or its elements.

Deportation or forcible transfer of population

Article 7 (1) (d) and (2) (d) of the Rome Statute define deportation or forcible transfer of population as follows:

> ``Deportation or forcible transfer of population` means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds

[103] Rome Statute of the International Criminal Court. For the scope pf this crime against humanity, see Boot, Dixon and Hall, *supra* n. 100, at pp. 190-191, 237-243.

[104] Bulgarian Criminal Code, Article 127 (3).

[105] Rome Statute of the International Criminal Court. For the scope of the crime against humanity of enslavement, which includes all forms of contemporary slavery, servitude and forced or compulsory labours, see Boot, Dixon and Hall, *supra* n. 100 at pp. 191-194, 244-247.

> permitted under international law.'[106]

Bulgaria has criminalized deportation, but not forcible transfer of population, in Article 412 (c) the Criminal Code, which reads as follows:

> 'Who, in violation of the rules of the international law for waging war:
>
> c) commits or orders committed illegal deportation, persecution or detention;'[107]

The definition provided in the Bulgarian Criminal Code is incomplete and inconsistent with the text of the Rome Statute.

Although the crime is included in Chapter Fourteen 'Crimes against Peace and Humanity', it is listed under Section II – 'War Crimes' and the scope of the crime is limited to acts committed 'in violation of the rules of the international law for waging war'. Therefore, although Bulgaria has provided for universal jurisdictions over the crime of deportation or forcible transfer of population the scope of this jurisdiction is limited to the context of international or non-international armed conflict.

Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law

Article 7 (1) (e) of the Rome Statute lists imprisonment, but does not define it.[108]

Bulgaria has defined some conduct that constitutes the crime of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law as an ordinary crime under the Criminal Code. In Chapter II, Section IV of the Criminal Code entitled 'Abduction and Unlawful Deprivation of Liberty', Article 142 defines abduction, Article 142a criminalizes unlawful deprivation of liberty and Article 142a (2) specifies the penalty for an unlawful deprivation of liberty by an official or a representative of the public. It is reasonable to assume that the term 'deprivation of liberty' comprises the acts of arrest and detention. Nevertheless, as explained above in the introduction to Section 4.3.2, Bulgaria

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[106] Rome Statute of the International Criminal. For the scope of this crime against humanity, see Boot, Dixon and Hall, *supra* n. 100 at pp. 194-200, 247-251.

[107] Bulgarian Criminal Code, Article 412 (c). The original text reads as follows:

> 'Който в нарушение на правилата на международното право за водене на война:
>
> в) извърши или заповяда да се извършат незаконни депортирания, преследвания или задържания;'

[108] For the scope of this crime against humanity, see Boot, Dixon and Hall, *supra* n. 100 at pp. 200-205.

does not provide universal jurisdiction over this crime against humanity as it is not defined in Chapter Fourteen of the Criminal Code.

Torture

Article 7 (1) (f) and (2) (e) of the Rome Statute define torture as follows:

‘`Torture` means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions’[109]

Bulgarian legislation does not provide a definition of the crime against humanity of torture. However Bulgaria has criminalized torture in Article 410 (a) (against wounded, sick and shipwrecked), Article 411 (a) (against prisoners of war) and Article 412 (a) (against civilian population) of the Criminal Code. Although the crime is included in Chapter Fourteen ‘Crimes against Peace and Humanity’ it is listed under Section II – ‘War Crimes’. Therefore, although Bulgaria has provided for universal jurisdictions over the crime of torture the scope of this jurisdiction is limited to the context of international or non-international armed conflict.

Rape

Bulgaria has defined rape as an ordinary crime in Article 152 (1) of the Criminal Code, but not as a crime against humanity in Chapter Fourteen (Crimes against Peace and Humanity).

Sexual slavery

Bulgaria has not expressly defined sexual slavery in its Criminal Code. However, most of the elements of the crime are defined as ordinary crimes in Articles 155 (4) and 159a of the Criminal Code.

Enforced prostitution

Bulgaria has defined enforced prostitution as an ordinary crime in Article 152 (3)4, 155, 188 (1) of the Criminal Code.

Forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity

Article 7 (2) (f) of the Rome Statute defines forced pregnancy as follows.

‘`Forced pregnancy` means the unlawful confinement of a woman forcibly

[109] Rome Statute of the International Criminal Court. For the scope of this crime against humanity, see Boot, Dixon and Hall, *supra* n. 100 at pp. 205-206, 251-255.

> made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;'[110]

The crimes of enforced pregnancy and enforced sterilization are not expressly defined under the Bulgarian Criminal Code. However, it is possible that some aspects of these crimes could be prosecuted under Article 143 of the Criminal Code, with a maximum penalty of six years. Article 143 reads as follows:

> 'Anyone who compels another to do, to omit or to suffer something contrary to his will, using for that purpose force, threats or abuse of his authority, shall be punished by deprivation of liberty for up to six years.'[111]

Moreover, other forms of sexual violence of comparable gravity are not defined as crimes.

All of the offences listed in Article 7 (1) (g) of the Rome Statute as crimes against humanity - rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, where defined, are simply defined as ordinary crimes under the Bulgarian Criminal Code, and therefore, are not subject to universal jurisdiction.

Persecution

Article 7 (1) (h) of the Rome Statute defines persecution as a crime against humanity while Article 7 (2) (g) defines persecution as follows:

> '`Persecution` means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;'[112]

Bulgaria has defined persecution against individuals on national, racial, religious or political grounds as an ordinary crime in Article 162 of the Criminal Code. Article 162 (1) refers to

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[110] Rome Statute of the International Criminal Court. For the scope of this crime against humanity, see Boot, Dixon and Hall, *supra*, n. 100, at pp. 206-216, 255-256.

[111] Criminal Code, Article 143. The original text reads as follows:

> 'Който принуди другиго да извърши, да пропусне или да претърпи нещо, противно на волята му, като употреби за това сила, заплашване или злоупотреби с властта си, се наказва с лишаване от свобода до шест години.'

[112] Rome Statute of the International Criminal Court. For the scope of this crime against humanity, see Boot, Dixon and Hall, *supra*, n. 100, at pp. 216-221, 256-263.

incitement to 'national hostility or hatred or to racial discrimination'[113] and Article 162 (3) deals with 'anyone who forms or leads an organization or group which has set itself the objective of committing acts under the preceding paragraphs'.[114] However, there are no provisions criminalizing the persecution of groups or collectivities or criminalizing persecutions on ethnic, cultural, gender, or other grounds. Moreover, as explained above in the introduction to Section 4.3.2, Bulgaria has not provided for universal jurisdiction over the crime of persecution against groups or collectivities on political, racial, national and religious grounds.

Apartheid

Bulgaria has been a party to the 1973 Convention for the Prevention and Punishment of the Crime of Apartheid (Apartheid Convention) since 18 July 1974.[115] That treaty requires states parties to take legislative or other measures necessary to suppress the crime of apartheid as practiced in Southern Africa (Art. IV (a)), obligates them to adopt legislative and judicial measures to bring to justice 'in accordance with their jurisdiction' those responsible for this crime whether or not such persons are residents or nationals of the state party or another state or are stateless (Art. IV (b)) and permits the courts of any state party which acquires jurisdiction over a person suspected of this crime to try that person (Art. V).[116]

Apartheid is also listed as a crime against humanity in Article 7 (1) (j) of the Rome Statute and defined, for the purposes of the Statute, in Article 7 (2) (h) as follows:

> '"The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.'[117]

Bulgaria has defined apartheid a crime in Articles 417 and 418 under the chapter Crimes against Peace and Humanity of the Criminal Code (see Section 4.3.2 below). Bulgarian courts can exercise universal jurisdiction over apartheid abroad based on Article 5 (4) of the Constitution and Article 6 (1) and 6 (2) of the Criminal Code.

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[113] Criminal Code, Article 162 (1).

[114] Criminal Code, Article 162 (3).

[115] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty9.asp.

[116] International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted and opened for signature, ratification by General Assembly resolution 3068 (XXVIII) of 30 November 1973 entry into force 18 July 1976, in accordance with article XV, available at: http://www.unhchr.ch/html/menu3/b/11.htm.

[117] Rome Statute of the International Criminal Court. For the scope of this crime against humanity, see Boot, Dixon and Hall, *supra*, n. 100, at pp. 227-229, 263-266.

The Criminal Code proscribes much of the conduct identified as apartheid in the Apartheid Convention as crimes in Chapter Fourteen (Crimes against Peace and Humanity). Article 417 of the Criminal Code prohibits causing death or severe bodily injury or imposing living conditions that cause complete or partial liquidation of a racial group when these acts are done with the aim of establishing or maintaining domination or systematic oppression of one racial group by another:

> 'A person who with the aim of establishing or maintaining domination or systematic oppression of one racial group of people over another racial group of people:
>
> a) causes death or severe bodily injury to one or more persons of such a group of people, or
>
> b) imposes living conditions of such a nature as to cause complete or partial physical liquidation of a racial group of people, shall be punished for apartheid by deprivation of liberty for a term of from ten up to twenty years or by life imprisonment without substitution.'[118]

In addition, Article 418 of the Criminal Code prohibits deprivation of liberty, forced labour, limits on participation in society, segregation of persons in racial groups and deprivation of rights of opponents of apartheid when done for the purpose identified in Article 417:

> 'A person who for the purpose under the preceding article:
>
> a) unlawfully deprives of liberty members of a racial group of people or subjects them to compulsory labour;
>
> b) puts into operation measures for hindering the participation of a racial group of people in the political, social, economic and cultural life of the country, and for intentional creation of conditions hampering the full development of such a group of people, in particular by depriving its members of the basic freedoms and rights of citizens;

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[118] Criminal Code, Article 417 The original text reads as follows:

> 'Който с цел да бъде установено или поддържано господство или систематическо подтисничество на една расова група хора над друга расова група хора:
>
> а) причини смърт или тежка телесна повреда на едно или повече лица от тази група хора или
>
> б) (Изм. - ДВ, бр. 153 от 1998 г.) налага условия на живот от естество да причинят пълно или частично физическо унищожаване на расова група хора, се наказва за апартейд с лишаване от свобода от десет до двадесет години или доживотен затвор без замяна.'

c) puts into operation measures for dividing the population by racial features through setting up of reservations and ghettos, through the ban of mixed marriages between members of different racial groups or through expropriation of real property belonging thereto;

d) deprives of basic rights and freedoms organisations and persons, because they are opposed to apartheid, shall be punished by deprivation of liberty for five to fifteen years.'[119]

Articles 417 and 418 cover the acts identified as constituting the crime of apartheid in Article II of the Apartheid Convention, but they are broader as they are not limited to conduct similar to that practiced in South Africa under apartheid.[120] The Criminal Code does not

[119] Criminal Code, Article 418. The original text reads as follows:

'Който с целта по предходния член:

а) незаконно лиши от свобода членове на расова група хора или ги подлага на принудителен труд;

б) поставя в действие мерки за възпрепятствуване участието на расова група хора в политическия, социалния, икономическия и културния живот на страната и за преднамерено създаване на условия, които препятствуват пълното развитие на такава група хора, в частност, като лишава нейните членове от основните свободи и права на гражданите;

в) постави в действие мерки за разделяне населението по расов признак чрез създаване на резервати и гета, чрез забрана на смесени бракове между членове на различни расови групи или чрез експроприация на принадлежаща им поземлена собственост;

г) отнема основни права и свободи на организации или лица, понеже те се противопоставят на апартейда,

се наказва с лишаване от свобода от пет до петнадесет години.'

[120] Article II of the Apartheid Convention provides:

'For the purpose of the present Convention, the term ''the crime of apartheid'', which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

(i) By murder of members of a racial group or groups;

(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting

expressly prohibit the ancillary forms of the crime of apartheid listed in Article III of the Apartheid Convention.[121] However, some of these ancillary crimes would be prohibited under general principles of law in the Criminal Code in Sections II (Preparation and Attempt) and III (Implication). These include attempt in Articles 18 and 19 and abetting and accessory responsibility in Articles 20 through 22 (also see Section 4.3.3).

Enforced disappearance of persons

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them to torture or to cruel, inhuman or degrading treatment or punishment;

(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.'

[121] Article III of the Apartheid Convention states:

'International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they:

(a) Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the present Convention;

(b) Directly abet, encourage or co-operate in the commission of the crime of apartheid.'

See Section 4.3.6 below.

4.3.3. GENOCIDE

Bulgaria has been a party to the 1948 Convention for the Prevention and Punishment of the Crime of Genocide (Genocide Convention) since 21 July 1950.[122] It has defined genocide as a crime under national law in Article 416 in Chapter Fourteen (Crimes against Peace and Humanity) of the Criminal Code with a definition that is based on Article II of the Genocide Convention, but differs from it in certain important respects. It has not expressly defined ancillary crimes of genocide listed in Article III of the Genocide Convention (conspiracy, direct and public incitement to commit, attempt and complicity) as crimes under national law. However, it has provided for universal jurisdiction over genocide according to Articles 6 (1) and 6 (2) of the Criminal Code.

Article 416 of the Criminal Code states:

> 'Art. 416. (1) Who, with the purpose of annihilating entirely or partially a definite national, ethnic, racial or religious group:
>
> a) causes death, severe bodily injury or permanent mental disorder to a person belonging to such a group;
>
> b) places the group in such living conditions which lead to its complete or partial physical extermination;
>
> c) undertakes measures aimed at the obstruction of the childbirth in such a group;
>
> d) forcibly transfers children from one group to another, (Amend., SG 153/98) shall be punished for genocide by imprisonment of ten to twenty years or by life imprisonment without an option.
>
> (2) (Prev. text of art. 147 - SG 95/75) Who carries out preparation for a genocide shall be punished by imprisonment of two to eight years.
>
> (3) (Prev. text of art. 418 - SG 95/75) Who apparently and directly instigates genocide shall be punished by imprisonment of one to eight years.'[123]

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[122] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty1.asp#N20.

[123] Official English translation of the Bulgarian Criminal Code, available at http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf. The original text reads as follows:

> '(1) Който с цел да унищожи изцяло или отчасти определена национална, етническа, расова или религиозна група:

The definition in Article 416 of the Criminal Code is broader in scope in some ways and significantly more restrictive in others, than the definition in Article II of the Genocide Convention.[124]

The official translation into English of the genocide definition in the Bulgarian Criminal Code has a number of problems which suggest that the government interprets certain aspects of Article 416 restrictively and, as discussed below, there are also some problems with the original Bulgarian text.

First, in the English translation provided by the Bulgarian Ministry of Interior,[125] the word

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> а) причини смърт, тежка телесна повреда или постоянно разстройство на съзнанието на лице, принадлежащо към такава група;
>
> б) постави групата в такива условия на живот, които водят към нейното пълно или частично физическо унищожение;
>
> в) предприема мерки, насочени към възпрепятстване раждаемостта сред такава група;
>
> г) насилствено предава деца от една група в друга, (изм. - ДВ, бр. 153 от 1998 г.) се наказва за геноцид с лишаване от свобода от десет до двадесет години или с доживотен затвор без замяна.
>
> (2) (Предишен чл. 417 - ДВ, бр. 95 от 1975 г.) Който извърши приготовление към геноцид, се наказва с лишаване от свобода от две до осем години.
>
> (3) (Предишен чл. 418 - ДВ, бр. 95 от 1975 г.) Който явно и пряко подбужда към геноцид, се наказва с лишаване от свобода от една до осем години.'

[124] Article II of the Genocide Convention provides:

> ''In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;
>
> (e) Forcibly transferring children of the group to another group.''

[125] Criminal Code of the Republic of Bulgaria, English translation, available at: http://www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf.

'definite' used in paragraph (1) of the Bulgarian definition in Bulgarian can meant both definite and given (or certain). This ambiguity is problematic because it is not clear if the meaning is 'a given group' or a clearly defined group in terms of nationality, ethnicity, race or religion. In the latter case, the definition in the Bulgarian Criminal Code would limit protection against genocide and it would not be consistent with the language of the Genocide Convention because there is no requirement to the group to be 'clearly defined', which adds on extra burden of proof for the prosecutor. Second, the word 'destruction', used in the Genocide Convention, is replaced by the words 'annihilating' and 'extermination (in paragraph (1) and subparagraph (b)) while in the original Bulgarian text is used a word whose most accurate meaning in English is destruction. As the terms 'annihilation' and 'extermination' in English language connotate a complete destruction, the text of the Genocide Convention uses only the word 'destruction'. Hence, the English translation of the definition of genocide in the Bulgarian Criminal Code is inaccurate and creates confusion about the scope of the definition of genocide in Article 416 of the Bulgarian Criminal Code.

Although the ambiguities discussed above may be caused by inaccurate translation and linguistic disagreements, a comparative analysis between the text of the Genocide Convention and Article 416 in Bulgarian reveals other inconsistencies, related to additional wording, that restrict the scope of the Bulgarian definition. Subparagraph (a) of Article 416 requires that the mental disorder caused to the member of the group has to be 'permanent'. This is not a requirement in the Genocide Convention where the wording used is 'serious bodily or mental harm'. According to the Bulgarian Ministry of Justice, the phrasing used in the Convention does not differ in meaning from the definition in the Bulgarian Criminal Code since under Bulgarian law in regard to mental harm, a serious bodily harm involves a 'long-lasting mental disorder' (Article 128 (2) of the Criminal Code).

Decree № 3 of 27 September 1979 of the Plenary Session of the Supreme Court on some issues of court practice concerning the signs and differences of the various types of bodily harms under the Criminal Code, states that 'a mental disorder constitutes a serious bodily harm when it is long-lasting. Such is a disorder that persists over a long period of time, excluding temporary and permanent illnesses. The continuity of the mental disorder could be of an indefinite period of time, but it is not required that it last forever so that to judge on the existence of the crime'.[126] However, there is no requirement in the Genocide Convention that the harm last for a long time, only that it be serious.

Since the decree expressly excludes temporary illnesses, the text of Article 416 of the Bulgaria Criminal Code should be amended in order to avoid any confusion or impunity gap by following precisely the wording of the Genocide Convention.

One positive aspect of Article 416, defining genocide, is that some key terms are omitted

[126] Decree No. 3, dated 27 September 1979 of the Plenary Session of the Supreme Court on some issues of court practice concerning the signs and differences of the various types of bodily harms under the Criminal Code, cited in the letter from the Bulgarian Ministry of Justice 'Comments on the Report of Amnesty International `Bulgaria: End Impunity through Universal Jurisdiction` within the remit of the Ministry of Justice' to the International Justice Project, Amnesty International, dated 28 November 2008.

from the Bulgarian Criminal Code definition, thus broadening its scope. In subparagraph (b) the word 'deliberately', which is present in the wording of the Genocide Convention, is omitted in the Bulgarian text.

The ancillary crimes of genocide listed in Article III of the Genocide Convention (conspiracy to commit, direct and public incitement to commit, attempt to commit and complicity in genocide)[127] are to a certain extend covered in Article 416 and some of these ancillary crimes could be punishable under general principles of law provided in the Criminal Code in Sections II (Preparation and Attempt) and III (Implication).

Bulgarian law provides for some aspects of conspiracy to commit genocide under the concept of 'preparation'. Article 416 (2) of the Criminal Code provides that, 'Who carries out preparation for genocide shall be punished by imprisonment of two to eight years.'[128]

The term 'preparation' is defined in the general principles of criminal law in the Criminal Code as including some, but possibly not all, conduct amounting to conspiracy. Article 17 (1) of the Criminal Code reads as follows:

'Preparation is the provision of resources, finding accomplices and, in general, creation of conditions for committing the planned crime before its fulfilment.'[129]

Article 416 of the Criminal Code, defining genocide also provides for the ancillary crime of direct and public incitement. Article 416 (3) reads as follows:

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[127] Article III of the Genocide Convention states:

'The following acts shall be punishable:

(a) Genocide;

(b) Conspiracy to commit genocide;

(c) Direct and public incitement to commit genocide;

(d) Attempt to commit genocide;

(e) Complicity in genocide.''

[128] Criminal Code, Article 416 (2). The original text reads as follows:

'Който явно и пряко подбужда към геноцид, се наказва с лишаване от свобода от една до осем години.'

[129] Criminal Code, Article 17 (1). The original text reads as follows:

'Приготовление е подготвянето на средства, намирането на съучастници и изобщо създаването на условия за извършване на намисленото престъпление, преди да е почнало неговото изпълнение.'

'Who apparently and directly instigates genocide shall be punished by imprisonment of one to eight years.'[130]

The general principles of law in the Criminal Code provide a range of provisions involving attempt in Articles 18 and 19. Article 18 of the Criminal Code provides:

> '(1) The attempt is the started commitment of a deliberate crime whereas the act has not been completed or, though completed, the social dangerous consequences of this crime stipulated by the law or wanted by the perpetrator have not occurred.
>
> (2) For an attempt the perpetrator shall be punished by the penalty stipulated for the committed crime, taking into consideration the degree of fulfilment of the intention and the reasons for which the crime has remained unfinished.
>
> (3) The perpetrator shall not be punished for an attempt when, by his own motives:
>
> a) he has given up to complete the commitment of the crime or
>
> b) has prevented the occurrence of the criminal consequences.'[131]

Article 19 reads as follows:

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[130] Criminal Code, Article 416 (3). The original text reads as follows:

> 'Който явно и пряко подбужда към геноцид, се наказва с лишаване от свобода от една до осем години.'

[131] Criminal Code, Article 18. The original text reads as follows:

> '(1) Опитът е започнатото изпълнение на умишлено престъпление, при което изпълнителното деяние не е довършено или макар и да е довършено, не са настъпили предвидените в закона и искани от дееца общественоопасни последици на това престъпление.
>
> (2) При опит деецът се наказва с наказанието, предвидено за довършеното престъпление, като се взема предвид степента на осъществяване на намерението и причините, поради които престъплението е останало недовършено.
>
> (3) При опит деецът не се наказва, когато по собствена подбуда:
>
> а) се е отказал да довърши изпълнението на престъплението или
>
> б) е предотвратил настъпването на престъпните последици.'

> 'In the cases of art. 17, para 3 and art. 18, para 3, if the act in which the preparation or the attempt have been expressed, contains the signs of another crime the perpetrator shall be responsible for this crime.'[132]

Bulgarian law provides for complicity in Articles 20 through 22 of the Criminal Code. Article 20 defines complicity as follows:

> '(1) Accomplices in a deliberate crime are: the perpetrators, the abettors and the accessories.
>
> (2) Perpetrator is the one who participates in the very commitment of the crime.
>
> (3) Abettor is the one who has deliberately persuaded somebody else to commit the crime.
>
> (4) Accessory is the one who has deliberately facilitated the commitment of the crime through advice, explanations, promise to provide assistance after the act, removal of obstacles, providing resources or in any other way.'[133]

Pursuant to Article 6 (1) and Articles 416, 417, 418 of the Criminal Code (in the section 'Crimes against Peace and Humanity') Bulgaria has authorized its courts to exercise universal jurisdiction over genocide.

4.3.4 TORTURE

Bulgaria has been a party to the 1984 Convention against Torture and Other Cruel, Inhuman

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[132] Criminal Code, Article 19. The original text reads as follows:

> 'В случаите на чл. 17, ал. 3, и 18, ал. 3 , ако деянието, в което са се изразили приготовлението или опитът, съдържа признаците на друго престъпление, деецът отговаря за това престъпление.'

[133] Criminal Code, Article 20. The original text reads as follows:

> '(1) Съучастници в извършването на умишлено престъпление са извършителите, подбудителите и помагачите.
>
> (2) Извършител е този, който участвува в самото изпълнение на престъплението.
>
> (3) Подбудител е този, който умишлено е склонил другиго да извърши престъплението.
>
> (4) Помагач е този, който умишлено е улеснил извършването на престъплението чрез съвети, разяснения, обещание да се даде помощ след деянието, отстраняване на спънки, набавяне на средства или по друг начин.'

or Degrading Treatment or Punishment (Convention against Torture) since 16 December 1986.[134] This treaty requires states parties to define acts of torture as a crime under national law (Art. 4), to establish jurisdiction over persons suspected of committing acts of torture who are present in its territory if they are not extradited (Art. 5 (2)), to take measures to ensure presence for prosecution or extradition (Art. 6 (1) and (2)) and to submit the cases to the competent authorities if they are not extradited (Art. 7 (1)).

Bulgaria has not adequately defined all acts of torture as crimes under national law, contrary to its obligations under Article 4 of the Convention against Torture.[135] The Committee against Torture, the expert body established under treaty to monitor its implementation, expressed its concern in 2004 about '[t]he absence in domestic law of a comprehensive definition of torture as set out in article 1 of the Convention' and it recommended that Bulgaria

> 'adopt a definition of torture that covers all the elements contained in article 1 of the Convention and incorporate into the Criminal Code a definition of a crime of torture that clearly reflects this definition. Furthermore, the Committee invites the State party to consider the advisability of incorporating into law the provisions of Ministry of the Interior instruction No. I-167.'[136]

Despite pledges to do so, as of 1 January 2009, Bulgaria had not yet implemented this recommendation.[137] There is no definition of torture in the Criminal Code. The sole Criminal Code provision relating to torture outside the War Crimes section is Article 36 (2):

> 'The punishment may not have as purpose the causing of physical

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[134] http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty14.asp.

[135] Some acts of torture, limited to those causing physical harm, are punishable as ordinary crimes under Chapter II (Offences against the person), Section II (Bodily harm) (Articles 128 to 135) of the Criminal Code.

[136] Conclusions and recommendations of the Committee against Torture: Bulgaria, U.N. Doc. CAT/C/CR/32/6, 11 June 2004, paras. 5 (a) and 6 (a).

[137] It its 2003 report to the Committee against Torture, Bulgaria stated:

> 'The new Criminal Code is expected to contain text to the effect that acts of torture are offences under criminal law. The Ministry of Internal Affairs, as the main government body concerned with the implementation of the Convention provisions, takes a particular interest in this matter. Lecturers and researchers at the Academy of the Ministry of Internal Affairs have already drafted texts on torture and will insist, in accordance with the established procedure, that they be included in the future Criminal Code, but if it is delayed a procedure will be initiated to include this offence in the present Criminal Code as an amendment.'

Third periodic report of Bulgaria to the Committee against Torture, U.N. Doc. CAT/C/34/Add.16, 13 Oct. 2003, para. 72.

> suffering or crushing of human dignity.'[138]

Apart from this article, torture is criminalized only as a war crime.

Bulgarian courts can exercise universal jurisdiction over some acts of torture – torture in an international or non-international armed conflict -, based on Article 5 (4) of the Constitution and Articles 6 (1) and 6 (2) of the Criminal Code.

4.3.5. EXTRAJUDICIAL EXECUTIONS

Extrajudicial executions 'are unlawful and deliberate killings, carried out by order of a government or with its complicity or acquiescence'.[139] The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions make clear that states must not only bring to justice persons responsible for such killings in territory under their jurisdiction, but also wherever the killers are located.[140]

Extrajudicial executions are not expressly defined as crimes under national law. These killings could be prosecuted as homicide or related crimes under Articles 115 to 124 or, if committed during an international armed conflict, as a grave breach of the Geneva Conventions (see Section 4.3.1 above), or if an act of genocide, as genocide (see Section 4.3.3 above). However, these ordinary crimes are subject to all the restrictions applicable to these crimes, such as statute of limitations. In any event, Bulgarian courts cannot exercise universal jurisdiction over extrajudicial executions unless they are grave breaches of the Geneva Conventions or genocide.

4.3.6. ENFORCED DISAPPEARANCES

Bulgaria has signed the 2005 International Convention for the Prevention of Enforced Disappearance on 24 September 2008 but as of 1 January 2009 has not yet ratified it. This treaty requires states parties to define enforced disappearance as a crime under national law (Arts. 3, 4 and 6),[141] to establish jurisdiction over persons suspected of enforced

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[138] Criminal Code, Article 36 (2). The original text reads as follows:

> 'Наказанието не може да има за цел причиняване на физическо страдание или унижаване на човешкото достойнство.'

[139] Amnesty International, *Disappearances and Political Killings – Human Rights Crisis of the 1990s: A Manual for Action*, AI Index: ACT 33/01/94, February 1994, p. 86.

[140] Principle 18 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions declares:

> 'Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.'

[141] The Convention has defined enforced disappearance in Article 2 as:

disappearance who are present in its territory if they are not extradited (Art. 9 (2)), take measures to ensure presence for prosecution or extradition (Art. 10 (1) and (2)) and submit the cases to the competent authorities if they are not extradited (Art. 11 (1)).

Although enforced disappearance is not expressly listed as a crime under national law some of the crime's components are listed in the Bulgarian Criminal Code. In Chapter II, Section IV of the Criminal Code entitled 'Abduction and Unlawful Deprivation of Liberty', Article 142 defines abduction, Article 142a criminalizes unlawful deprivation of liberty and Article 142a (2) specifies penalties for an unlawful deprivation of liberty by an official or a representative of the public. It is reasonable to assume that the term 'deprivation of liberty' comprises the acts of arrest and detention. The components of the crime are listed solely as ordinary crimes rather than crimes against humanity. Such ordinary crimes, however, are subject to all the restrictions applicable to these crimes, such as statutes of limitations. Therefore, Bulgaria still cannot exercise universal jurisdiction over enforced disappearances.

4.3.7. THE CRIME OF PLANNING, PREPARING OR WAGING AN AGGRESSIVE WAR

Bulgaria has defined the crime under international law of planning, preparing or waging an aggressive war as a crime in its Criminal Code in Chapter Fourteen (Crimes against Peace and humanity). The crime under international law of planning, preparing, initiating or waging aggressive war has been recognized as a crime under international law since it was incorporated in the Nuremburg Charter in 1945.[142] It is expressly listed as a crime in Article 5 of the Rome Statute over which the International Criminal Court shall exercise jurisdiction once a provision is adopted defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.[143] Article 409 of the Criminal Code criminalizes the planning, preparation and waging of an aggressive war, but does not provide a definition of the crime of aggressive war. Bulgarian courts can exercise universal jurisdiction over this crime, based on Article 6 (1) of the Criminal Code.

> 'the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law'.

[142] Charter of the International Military Tribunal, annexed to the London Agreement (Nuremberg Charter), 8 Aug. 1945, Art. 6 (a) ('CRIMES AGAINST PEACE: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing[.]')

[143] Rome Statute of the International Criminal Court, Art. 5 (2).

5. CIVIL JURISDICTION OVER TORTS

Bulgaria permits civil claims to be made in criminal proceedings based on universal jurisdiction. In contrast, universal civil jurisdiction in civil proceedings is only possible in limited circumstances. Victims of a crime of a general nature can participate in criminal proceedings as private prosecutors and civil claimants if they request it before the beginning of trial proceedings. However, prosecution of crimes of genral nature can be only be initiated by the prosecutor. Prosecution of crimes of specific nature is initiated by the victim or heirs of the victim (see Section 2.4).

There are a number of restrictions on the scope of private prosecutions and civil claims including the condition that the civil claim for damages resulting from tort has to contain an element that links it to Bulgaria in order to be admitted in court. A table illustrating the complex legislative scheme authorizing victims or their heirs to pursue civil claims in criminal proceedings is included in the Annex to this paper.

A brief note on the right to reparations

The right of victims and their families to recover reparations for crimes under international law, whether during peace or armed conflict, has been confirmed in provisions of a number of international instruments adopted over the past two decades since the Convention against Torture was adopted in 1984. These instruments do not restrict this right geographically or abrogate it by state or official immunities. They include the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,144 the 1998 Rome Statute of the International Criminal Court145 and two instruments adopted in April 2005 by the Commission on Human Rights, the first of which was adopted subsequently in December of that year by the UN General Assembly, the UN Basic Principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and international humanitarian law (Van Boven-Bassiouni Principles)146 and the UN Updated set of principles for the protection and promotion of human rights through action to combat impunity (Joinet-Orentlicher Principles).[147] Both instruments, which were designed to reflect international law obligations, have been cited by Pre-Trial Chamber I of the International

[144] GA Res. 40/34, 29 Nov. 1985.

[145] Rome Statute of the International Criminal Court, Article 75. Its reach is potentially universal as the Security Council can refer a situation involving crimes in any state to the Prosecutor.

[146] UN Comm'n Hum. Rts Res. E/CN.4/2005/35, 13 April 2005; GA Res. A/RES/60/147, 16 Dec 2005.

[147] UN Comm'n Hum Rts Res E/CN.4/2005/81, 15 April 2005.

Criminal Court in its determination that the harm suffered by victims of crimes under international law includes emotional suffering and economic loss.[148] Most recently, the UN Human Rights Council adopted by consensus the International Convention for the Protection of All Persons from Enforced Disappearance with a very broad definition of the right to reparations and referred it to the UN General Assembly for adoption at its 61st session in 2006.[149] This right is inherent in the right to a remedy, as guaranteed in Article 2 of the International Covenant on Civil and Political Rights (ICCPR), adopted four decades ago in 1966.[150] Indeed, the international community recognized the rights of victims to civil recovery directly against foreign states for war crimes a century ago in Article 3 of the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land.[151]

Legislation providing for compensation and protection of victims and witnesses

Article 75 of the Criminal Procedure Code defines the main rights of victims, including the right for protection of the victim and persons close to the victim. Moreover, Article 67 (1) gives additional protection to victims:

'Upon a proposal of the prosecutor with the consent of the victim or upon a request of the victim, the respective first-instance court may prohibit the accused to approach directly the victim.'[152]

Article 123 of the Criminal Procedure Code provides for the protection of witnesses and their ascendants, descendants, brothers, sisters, spouse, or of persons that he or she is in particularly close relations with.

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[148] Situation of the Democratic Republic of the Congo, Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, Case No. ICC-01/04, Pre-Trial Chamber I, 17 January 2006, para. 115.

[149] UN Human Rights Council Res. A/HRC/1/L.2), 29 June 2006, art. 24.

[150] See Human Rights Committee, General Comment No. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (no suggestion that the right to a remedy under the ICCPR is geographically restricted).

[151] 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, reprinted in Adam Roberts & Richard Guelff, *Documents on the Laws of War* , Oxford: Oxford University Press, 3rd ed., 2000 p. 67; Hisakazu Fujita, Isomi Suzuki and Kantato Nagano, *War and the Rights of Individuals, Renaissance of Individual Compensation*, Tokyo: Nippon Hyoron-sha Co. Ltd. Publishers, 1999, expert opinions by Frits Kalshoven, p. 31; Eric David, p. 49; Christopher Greenwood, p. 59.

[152] Criminal Procedure Code last amended on December 2008, Article 67 (1) (translation by Amnesty International) available at http://www.vks.bg/vks_p04_03.htm. The original text reads as follows:

> 'По предложение на прокурора със съгласие на пострадалия или по искане на пострадалия съответният първоинстанционен съд може да забрани на обвиняемия да доближава непосредствено пострадалия.'

Further detailed conditions and provisions of programmes of protection of victims and witnesses (when they cannot be protected by the means provided in the Criminal Procedure Code) are defined in the 2005 Law for the Protection of Persons Endangered in Connection with the Criminal Proceedings. The scope of persons entitled to special protection is defined in Article 3 and includes:

> '1. Participants in criminal proceedings - witnesses, private prosecutors, civil parties, the accused, defendants, expert witnesses, certifying witnesses;
>
> 2. Convicts;
>
> 3. Individuals directly related to the individuals under items 1 and 2, e.g. their ascendants, descendants, brothers, sisters, spouses or the individuals who are very closely related to them.'

Article 4 defines the scope of crimes to which persons have to be related in order to be entitled to protection:

> 'Individuals at risk may receive special protection where the testimony, explanations or depositions of individuals under Article 3, items 1 and 2 provide evidence of significant importance to criminal proceedings for serious public prosecution criminal offences of intent under Chapter One, Chapter Two, and Chapter Six, Article 242, paras 2, 3 and 4, Chapter Eight, Title IV, Chapter Eleven, Article 330, 333, 354a - 354c , and Chapter Fourteen of the Criminal Code, as well as for all criminal offences committed at the orders or in implementation of a decision made by an organised criminal group.'

Therefore, protection is provided for victims and witnesses related to crimes against peace and humanity as defined under Chapter Fourteen if the Criminal Code. Other crimes covered by Article 4 of the 2005 Law for the Protection of Persons Endangered in Connection with the Criminal Proceedings are:

- Criminal offences of intent as regulated in Chapter One and Two of the Criminal Code,

- Narcotics trafficking, including trafficking of precursors, or installations of materials for the production of narcotics (Chapter Six, Article 242, paras 2, 3 and 4 of the Criminal Code).

- Bribery (Chapter Eight, Title IV of the Criminal Code).

- Crimes committed in generally dangerous manner or by generally dangerous means as regulated in Chapter Eleven, in particular arson (Articles 330, 333 of the Criminal Code) and manufacturing and distribution of narcotics (Articles 354a – 354c).

Therefore, victims and witnesses of crimes against humanity, apart from apartheid, and

crimes listed in *aut dedere aut judicare* treaties, apart from narcotics trafficking are not eligible for special protection.

The 2007 Law on Support and Financial Compensation to Crime Victims provide for psychological, legal, health, support as well as the possibility of provision of financial compensation from the state to the victims, who have suffered damages from the following crimes: terrorism; deliberate homicide; deliberate serious bodily harm; sexual molestation and rape, as a result of which serious health damages have been caused; trafficking in human beings; crimes, committed by an order or in fulfilment of a decision of an organised criminal group, as well as other serious deliberate crimes as a result of which death or serious bodily harm have been caused as corpus delicti consequence.

Other laws providing for support of victims are the 2003 Law on combating trafficking in human beings, the 2004 Regulation for the asylums for temporary accommodation and the centres for protection and help for the victims of illegal traffic of people, the 2005 Law on protection against the domestic violence, the Law on the legal aid, the Law for Protection of the Child and the Law on the mediation.

5.1. LEGISLATION PROVIDING FOR UNIVERSAL JURISDICTION OVER TORTS IN CIVIL CASES

In principle, pursuant to Article 2 of the Bulgarian Civil Procedure Code a plaintiff who does not have a permanent residence in Bulgaria can bring an action against a respondent who also does not have a permanent residence in Bulgaria:

> 'The Courts shall review every request for the protection and facilitation of personal and proprietary rights entered before them.'[153]

However, pursuant to Articles 4 and 18 of the Code on Private International Law, Bulgarian courts have jurisdiction over civil claims for damages resulting from torts when:

- the plaintiff is a Bulgarian citizen or is registered in Bulgaria, or
- the respondent is resident, seated or performs its activities in Bulgaria, or
- the tort is committed in Bulgaria, or the damages have taken effect in Bulgaria.[154]

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[153] Civil Procedure Code, Article 2. The original text reads as follows:

> 'Съдилищата са длъжни да разгледат и разрешат всяка подадена до тях молба за защита и съдействие на лични и имуществени права.'

[154] Code of Private International Law, last amended July 2007, available at: http://lex.bg/laws/ldoc.php?IDNA=2135503651, Article 4:

> 'The Bulgarian courts and other bodies have international jurisdiction when:
>
> 1. The respondent is resident, has its statutory seat or performs its activities in

Therefore, a civil claim for damages resulting from tort would only be admitted by the Bulgarian courts if there is an element that links this claim to Bulgaria. There is no requirement for such a link in international law to exercise universal civil jurisdiction. Hence, the scope of universal civil jurisdiction in civil proceedings in Bulgaria is extremely limited in contrast to universal civil jurisdiction over civil claims presented in criminal proceedings (see Section 5.2 below).

5.2. LEGISLATION PROVIDING FOR RAISING CIVIL CLAIMS IN CRIMINAL CASES INITIATED BY A PROSECUTOR OR INVESTIGATING JUDGE

Bulgaria allows civil claims to be considered as part of criminal proceedings according to Articles 75 and 84 of the Criminal Procedure Code. The person who has filed a civil claim and has been granted the right to participate actively in criminal proceedings has the status of a civil claimant. Consequently, if a civil claim is brought in a criminal proceeding for crimes over which Bulgaria can exercise universal jurisdiction, the court can exercise universal civil jurisdiction. As explained below, in Section 5.3, a civil claimant is different from a private prosecutor and a private claimant.

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the Republic of Bulgaria;

2. The plaintiff or petitioner is a Bulgarian citizen or a legal person registered in the Republic of Bulgaria.'

The original text reads as follows:

'Международната компетентност на българските съдилища и други органи е налице, когато:

1. ответникът има обичайно местопребиваване, седалище според устройствения си акт или местонахождение на действителното си управление в Република България;

2. ищецът или молителят е български гражданин или е юридическо лице, регистрирано в Република България.'

Article 18 (1) of the Code on Private International Law:

'The Bulgarian courts have jurisdiction over claims for damages resulting from torts in the cases under Article 4 and when the tort is committed in the Republic of Bulgaria or the damages or part of them have taken effect in the Republic of Bulgaria.'

The original text reads as follows:

'Българските съдилища са компетентни по искове за вреди от непозволено увреждане освен в случаите по чл. 4 и когато вредоносното деяние е извършено в Република България или вредите или част от тях са настъпили в Република България.'

Civil Claimant

According to Article 84 (1) of the Criminal Procedure Code a civil claim can be made in the criminal proceeding:

> 'The victim or his or her heirs and the legal entities which have sustained damages from the criminal offence may file in the judicial proceedings a civil claim for compensation of the damages and be constituted as civil claimants'.[155]

The main conditions for filing a civil claim in criminal proceedings are that:

- it has not already been filed in a civil proceeding pursuant to the Civil Procedure Code (Article 84 (2)) and

- it is filed (orally or in writing) no later than the beginning of criminal proceedings (the first court session before the court of first instance where the rights of victims are announced) (Article 85 (3).[156]

A Bulgarian court may refuse jurisdiction on the basis of Articles 4 and 18 of the Code on Private International Law, as explained in Section 5.1. Unlike the private prosecutor (see Section 5.3 below), the civil claimant is not given the right to appeal the decision of the court (Article 271 (6) of the Criminal Procedure Code).[157]

A civil claim can be filed in criminal proceedings of both general and specific nature.[158] A

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[155] Code of Criminal Procedure, Article 84 (1). The original text reads as follows:

> 'Пострадалият или неговите наследници, както и юридическите лица, които са претърпели вреди от престъплението, могат да предявят в съдебното производство граждански иск за обезщетение на вредите и да се установят като граждански ищци."
>
> "Пострадалият или неговите наследници, както и юридическите лица, които са претърпели вреди от престъплението, могат да предявят в съдебното производство граждански иск за обезщетение на вредите и да се установят като граждански ищци.'

[156] The civil claim in judicial proceedings will be examined pursuant the provisions of the Criminal Procedure Code, and, where there are no relevant rules, the provisions of the Civil Procedure Code will be applied (Article 88 (1)).

[157] Article 271 (6), which provides for the right of appeal of the refusal of admission of new parties to the proceedings, mentions only the private prosecutor as a participant who has the right to appeal the court`s decision. See also Nikola Manev, 'New Provisions of the Criminal Procedure Code about the Participation of Citizens in Criminal Proceedings', *Contemporary Law*, Issue 2, 2006.

[158] As explained in Section 2.4 above, under Bulgarian law Crimes of specific nature are those where penal prosecution is instituted on the basis of complaint by the victim (private complainant). They are found in the Special Provisions sections of the Criminal Code, - for example, trivial bodily injury, insult,

civil claim in a criminal proceeding may be filed both against the defendant in court and against other individuals who carry civil responsibility for the damages caused by the crime (Article 86 of the Criminal Procedure Code). Under Bulgarian law only persons who suffer damages can bring an action in a criminal proceeding. The claim can cover material and moral damages, the estimated amount of which should be indicated individually.[159] The damages must result directly from the crime (indirect damages will not be considered by the court). Material damages can be claimed by the victim's heirs, but it is the right of the court to decide on which of the victim's heirs that can claim moral damages. Civil liability is distinct from criminal liability.

According to Article 87 (1) of the Criminal Procedure Code, the civil claimant has the following rights:

> 'take part in judicial proceedings; demand security for the civil claim; examine the case-file and obtain excerpts that he or she needs; produce evidence; make requests, comments and raise objections, as well as to file appeal from acts of the court which infringe upon his or her rights and legal interests.'[160]

Pursuant to Article 87 (2):

> 'The civil claimant shall be allowed to exercise the rights under paragraph 1 inasmuch as he or she needs to substantiate his or her civil claim, in terms of basis and scope.'[161]

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slander, theft or injury by relatives (spouse, brother or sister). Crimes of general nature are all the offences that are not considered crimes of private nature, i.e., serious offences.

[159] Under Bulgarian law, material damages constitute material loss or damage, such as the value of stolen goods or the cost of the repairs of a damaged vehicle. Immaterial damage is damage to life, health or reputation. For example, immaterial damage includes physical pains of the victim caused by the injury or psychological suffering (anguish, grief) caused by the loss of a beloved person or damaging of dignity or reputation. See also Margarita Chinova, 'The Victim under the New Criminal Procedure Code', Contemporary Law, Issue 1, 2006, at 53 and the Union of Judges in Bulgaria website, http://www.judgesbg.org/index.php?iid=7.

[160] Criminal Procedure Code. Article 87 (1). The original text reads as follows:

> 'Гражданският ищец има следните права: да участва в съдебното производство; да иска обезпечаване на гражданския иск; да се запознава с делото и да прави необходимите извлечения; да представя доказателства; да прави искания, бележки и възражения и да обжалва актовете на съда, които накърняват неговите права и законни интереси.'

[161] Criminal Procedure Code, Article 87 (2). The original text reasds as follows:

> 'Гражданският ищец упражнява правата по ал. 1 в пределите, необходими за доказване на основанието и размера на гражданския иск.'

As the civil claim is a procedure that is part of a criminal proceeding initiated by the prosecutor, it cannot continue after the prosecutor decides to terminate the proceedings. However, for crimes of general nature, victims and their heirs can file a civil claim in a criminal proceeding and simultaneously participate as a private prosecutor (see Section 5.3 below). The private prosecutor can maintain the prosecution after the public prosecutor has made a statement that he or she will not maintain it any further.

5.3. PRIVATE PROSECUTIONS BY VICTIMS OR OTHERS ACTING ON THEIR BEHALF, *ACTIONS CIVILES* OR *ACTIO POPULARIS*

Bulgaria permits a private prosecution by victims or others acting on their behalf in two ways: (1) as a private prosecutor with regard to crimes of a general nature and (2) as a private complainant with regard to offences of a specific nature. Such a private prosecution, however, can only be initiated after the public prosecution has been initiated. It then proceeds jointly with the public prosecutor but it can continue even if the public prosecutor decides to abandon the public prosecution.

Private Prosecutor

The rules governing the public prosecutor are listed in Chapter 8, Section II (Articles 76 to 79) of the Criminal Procedure Code.

Private prosecutor can be a victim (following the death of the victim the right passes to his or her heirs) who has sustained material or immaterial damage from a crime of general nature. [162] The request for participation as a private prosecutor has to be filed no later than the beginning of criminal proceedings before the court of first instance.

The court has to provide reasons for a refusal of permiting private prosecution and its decision can be appealed by the victim or his or her heirs (Article 271 (6) of the Criminal Procedure Code). [163]

Under Bulgarian law, for crimes of general nature, a prosecution can be only initiated by a prosecutor. A request for participation as a private prosecutor cannot either initiate

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[162] The Union of Judges in Bulgaria website, http://www.judgesbg.org/index.php?iid=7.

[163] Criminal Procedure Code, Article 271 (6):

> 'The court shall rule on the requests made for the constitution of new parties to the proceedings. A ruling whereby the refusal of admission of a new private prosecutor may be appealed in pursuance of Chapter Twenty-two.'

The original text reads as follows

> 'Съдът се произнася по направените искания за конституиране на нови страни в производството. Определението, с което се отказва допускането на частен обвинител, може да се обжалва по реда на глава двадесет и втора.'

prosecution or define the scope of the prosecution.

However, pursuant to Article 79 of the Code of Criminal Procedure, the private prosecutor has the rights to:

'examine the case-file and obtain the excerpts he or she needs; to produce evidence; to take part in judicial proceedings; to make requests, comments and to raise objections, as well as to file appeal from acts of the court where his or her rights and legal interests have been infringed.'[164]

Moreover, pursuant to Article 78 of the Criminal Procedure Code a private prosecutor 'shall conduct the prosecution in court along with the prosecutor' (Article 78 (1)). Unlike the civil claimant the private prosecutor is a figure independent prom the public prosecutor and therefore, 'may continue the prosecution after the prosecutor has made a statement that he or she will not maintain it any further' (Article 78 (2)). [165]

Private Complainant

For an offence of specific nature (for example trivial bodily injury, insult, slander; for more information see Section 3 above) criminal proceedings can be instituted only on the basis of a complaint by the victim. According to Article 80 of the Criminal Procedure Code, in this kind of proceedings the victim (after the death of the victim the right is transferred to his or her heirs) takes part in the proceedings as a private complainant.[166] The rights and

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[164] Criminal Procedure Code, Article 79. The original text reads as follows:

> 'Частният обвинител има следните права: да се запознае с делото и да прави необходимите извлечения; да представя доказателства; да участва в съдебното производство; да прави искания, бележки и възражения и да обжалва актовете на съда, когато са накърнени неговите права и законни интереси.' sd

[165] Criminal Procedure Code, Article 78. The original text reads as follows:

> '(1) Частният обвинител поддържа в съда обвинението наред с прокурора.
>
> (2) Частният обвинител може да поддържа обвинението и след като прокурорът заяви, че не го поддържа.'

[166] The Union of Judges in Bulgaria website, http://www.judgesbg.org/index.php?iid=7. See also Bulgarian Criminal Procedure Code, Article 80:

> 'An individual who has suffered from a criminal offence prosecuted following a complaint of the victim may bring charges and maintain the accusation before court as a private complainant. After the death of the individual, said rights shall be transferred to his or her heirs.'

The original text reads as follows:

> 'Пострадалият от престъпление, което се преследва по тъжба на

conditions for the status of a private complainant are listed in Chapter 8, Section III (Articles 80 – 83) of the Criminal Procedure Code.

Pursuant to Article 81 (3):

> 'The complaint must be filed within six months from the date when the victim has become aware that a criminal offence has been committed or from the day on which the victim has received notice for termination of pre-trial proceedings on grounds that the offence is prosecuted following a complaint of the victim.'[167]

The rights of the private complainant are listed in Article 82 of the Criminal Procedure Code:

> '(1) The private complainant shall have the following rights: to examine the case-file and obtain the excerpts he or she needs; to produce evidence; to take part in judicial proceedings; to make requests, comments and to raise objections, as well as to file appeal from acts of the court which infringe upon his or her rights and legal interests, and to withdraw his or her complaint.
>
> (2) The private complainant may also be constituted in the course of judicial proceedings as a civil claimant in the cases and pursuant to the procedure herein specified.'[168]

Unlike the civil claimant and the private prosecutor, the private complainant initiates the prosecution and has the main responsibility of producing evidence, finding witnesses and

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> пострадалия, може да повдига и да поддържа обвинение пред съда като частен тъжител. След смъртта на лицето това право преминава върху неговите наследници.'

[167] Criminal Procedure Code, Article 81 (3). The original text reads as follows:

> 'Тъжбата трябва да бъде подадена в шестмесечен срок от деня, когато пострадалият е узнал за извършване на престъплението, или от деня, в който пострадалият е получил съобщение за прекратяване на досъдебното производство, на основание че престъплението се преследва по тъжба на пострадалия.'

[168] Criminal Procedure Code, Article 82. The original text reads as follows:

> '(1) Частният тъжител има следните права: да се запознае с делото и да направи необходимите извлечения; да представя доказателства; да участва в съдебното производство; да прави искания, бележки и възражения; да обжалва актовете на съда, които накърняват неговите права и законни интереси, и да оттегля тъжбата си.
>
> (2) Частният тъжител може да се установи в съдебното производство и като граждански ищец в случаите и по реда, установени в този кодекс.'

proving the guilt of the accused. Pursuant to Article 83 of the Criminal Procedure Code:

> 'The victim and the accused shall have the right to request cooperation by the bodies of the Ministry of Interior for the collection of information which they themselves cannot collect.'[169]

5.4. RESTRICTIONS ON PRIVATE PROSECUTIONS AND CIVIL CLAIMS PROCEDURES

The victim may bring a civil action during a criminal proceeding in oral or written form. However, a civil action can only be brought by the prosecutor at the pre-judicial stage or by the judge at the judicial stage, if the civil claim will not delay substantially the criminal procedure. In principle, the prosecutor or the judge cannot refuse to launch a civil action in the criminal proceeding without providing reasons. Nevertheless, according to Article 271 (6) of the Criminal Procedure Code, the rejection of the court of first instance to allow a civil claim in the criminal proceeding cannot be appealed by the victim or his or her heirs. As explained in Section 5.2, Bulgarian courts may refuse jurisdiction on the filing of a civil claim in criminal proceedings, on the basis of Articles 4 and 18 of the Code on Private International Law.

Concerning the time limits for filing a claim as a private prosecutor and civil complainant the Bulgarian Criminal Procedure Code contains conflicting provisions that may lead to violations of the rights of victims and their heirs. Although Article 77 (3) and 85 (3) of the Criminal Procedure Code sets the deadline at 'the beginning of criminal proceedings before the court of first instance', under Article 255 (2), the victim or his or her heirs may file requests to be constituted as private prosecutor and civil claimant within seven days after service of notice of the scheduled court hearing. The provisions listed in Article 255 (2) significantly reduce the time limit for filing a request and may cause confusion and lead to a denial of victims` rights.[170]

In addition, Bulgarian courts are limited to providing damages for civil claims and generally cannot award the other forms of reparations to which victims and their families are entitled under international law and standards.

Recognition of Judgments

Bulgaria has been a member of the European Union since 1 January, 2007 and as such has integrated EU legislation in its domestic law. Hence, Bulgaria is bound by regulation No.

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[169] Criminal Procedure Code, Article 83. The original text reads as follows:

> 'Пострадалият и подсъдимият имат право да искат съдействие от органите на Министерството на вътрешните работи за събиране на сведения, които сами не могат да съберат.'

[170] Nikola Manev, 'New Provisions of the Criminal Procedure Code about the Participation of Citizens in Criminal Proceedings', *Contemporary Law*, Issue 2, 2006.

44/2001 of January, 2001 of the Council of the European Union, requiring its member states to recognize judgments in civil and commercial matters of courts of other member states, many of which have universal criminal jurisdiction, granting civil recovery during criminal proceedings. [171] The regulation does not contain any requirement that the forum state had to be linked to the tort or underlying crime. It also applies to any judgment, even a judgment in a criminal proceeding.[172]

In addition, under Article 117 of the International Private Law Code, judgements and acts of foreign courts will be recognized and enforced in Bulgaria if all the requirements stipulated in Article 117 (paragraphs 1 to 5) are satisfied. These requirements are as follows:

> '1.the foreign court or authority had jurisdiction according to the provisions of Bulgarian law but not if the nationality of the plaintiff or the registration thereof in the State of the Court seized was the only ground for the foreign jurisdiction over disputes;
>
> 2. the defendant was served a copy of the statement of action, the parties were duly summonsed, and fundamental principles of Bulgarian law, related to the defence of the said parties, have not been violated;
>
> 3. if no effective judgment has been given by a Bulgarian court based on the same facts, involving the same cause of action and between the same parties;
>
> 4. if no proceedings based on the same facts, involving the same cause of action and between the same parties, are brought before a Bulgarian court earlier than a case instituted before the foreign court in the matter of which the judgment whereof the recognition and enforcement is sought;
>
> 5. the recognition or enforcement is not contrary to Bulgarian public policy;'[173]

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[171] Council Regulation (EC) No. 44/2001, O.J. (L 12/1) (January 16, 2001), Articles 4 and 5, available at: http://curia.europa.eu/common/recdoc/convention/en/c-textes/2001R0044-idx.htm.

[172] Article 32 of Council regulation (EC) No. 44/2001 defines for purposes of the regulation, ''judgement'' as:

> 'For the purposes of this Regulation, ''judgment'' means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.'

[173] Code of Private International Private Law Code, Article 117. The original text reads as follows:

> 'Решенията и актовете на чуждестранните съдилища и други органи се признават и изпълнението им се допуска, когато:

Therefore, Article 117 applies to judgments in criminal proceedings awarding civil recovery.

However, according to Article 92 (1) of the Civil Procedure Code each Bulgarian court is entitled to determine whether its jurisdiction covers the case and if the court decides that it is not competent on the case in question the judge has to terminate the litigation procedure.

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1. чуждестранният съд или орган е бил компетентен според разпоредбите на българското право, но не и ако единственото основание за чуждата компетентност по имуществени спорове е било гражданството на ищеца или неговата регистрация в държавата на съда;

2. на ответника е бил връчен препис от исковата молба, страните са били редовно призовани и не са били нарушени основни принципи на българското право, свързани с тяхната защита;

3. ако между същите страни, на същото основание и за същото искане няма влязло в сила решение на български съд;

4. ако между същите страни, на същото основание и за същото искане няма висящ процес пред български съд, образуван преди чуждото дело, по което е постановено решението, чието признаване и изпълнение се иска;

5. признаването или допускането на изпълнението не противоречи на българския обществен ред.'

6. OBSTACLES TO THE EXERCISE OF CRIMINAL OR CIVIL JURISDICTION

6.1. FLAWED OR MISSING DEFINITIONS OF CRIMES UNDER INTERNATIONAL LAW, PRINCIPLES OF CRIMINAL RESPONSIBILITY OR DEFENCES

Definitions of crimes - general

Generally, definitions of crimes under international law are either missing in the Bulgarian Criminal Code or are inconsistent with international standards.

As indicated above, some definitions of crimes subject to universal jurisdiction under Bulgarian law are inconsistent with international law. Furthermore, many crimes under international law are defined in Bulgarian law as ordinary crimes and certain internationally recognized offences are not expressly defined, even though some elements of the crimes are covered in national legislation.

Although some of the conduct amounting to crimes under international law can be prosecuted as ordinary crimes, this alternative is not entirely satisfactory as it leaves gaps where conduct amounting to crimes under international law is not subject to criminal responsibility under national law. Moreover, under Bulgarian law ordinary crimes (offences not listed in Chapter Fourteen) are not subject to prosecution based on universal jurisdiction. In addition, conviction for an ordinary crime, even when it has common elements, does not convey the same moral condemnation as if the person had been convicted of the crime under international law and does not necessarily involve as severe a punishment.

The fundamental distinction between crimes under international law, which are an attack on the entire international community, and ordinary crimes under national law, which are a concern of the state where the crime was committed, was vividly demonstrated in the decision by the International Criminal Tribunal for Rwanda (ICTR) in 2006, to refuse to transfer a case involving charges of genocide to Norway, where the accused would have faced only a charge of murder as an ordinary crime. The Trial Chamber explained:

> 'In this case, it is apparent that the Kingdom of Norway does not have jurisdiction (ratione materiae) over the crimes as charged in the confirmed Indictment. In addition, the Chamber recalls that the crimes alleged – genocide, conspiracy to commit genocide and complicity in genocide – are significantly different in term of their elements and their gravity from the crime of homicide, the basis upon which the Kingdom of Norway states that charges may be laid against the Accused under

> its domestic law. The Chamber notes that the crime of genocide is distinct in that it requires the 'intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such'. This specific intent is not required for the crime of homicide under Norwegian criminal law. Therefore, in the Chamber's view, the ratione materiae jurisdiction, or subject matter jurisdiction, for the acts alleged in the confirmed Indictment does not exist under Norwegian law. Consequently, Michel Bagaragaza's alleged criminal acts cannot be given their full legal qualification under Norwegian criminal law, and the request for the referral to the Kingdom of Norway falls to be dismissed.'[174]

The Appeals Chamber affirmed, stating that it fully appreciated that

> '...Norway's proposed prosecution of Mr. Bagaragaza, even under the general provisions of its criminal code, intends to take due account of and treat with due gravity the alleged genocidal nature of the acts underlying his present indictment. However, in the end, any acquittal or conviction and sentence would still only reflect conduct legally characterized as the 'ordinary crime' of homicide. . . . Furthermore, the protected legal values are different. The penalization of genocide protects specifically defined groups, whereas the penalization of homicide protects individual lives.'[175]

Definition of crimes – genocide

Bulgaria has defined genocide under national law in Article 416 in Chapter Fourteen (Crimes against Peace and Humanity) of the Criminal Code and therefore, has provided for universal jurisdiction over the crime of genocide. However, as discussed in Section 4.3.3 the definition in the Bulgarian Criminal Code is inconsistent with the definition of genocide under international law as provided in the 1948 Convention for the Prevention and Punishment of the Crime of Genocide. The definition in Article 416 of the Criminal Code is broader in scope in some ways and significantly more restrictive in others, which could lead to problems if persons responsible for genocide are prosecuted in Bulgarian courts or their extradition is requested.

Definition of crimes – war crimes

Bulgaria has defined a broad range of war crimes in Articles 410 to 415a in Chapter Fourteen (Crimes against Peace and Humanity). However, as discussed in Section 4.3.1 the general language of the definitions and omission of certain key terms makes them inconsistent with international humanitarian law. Although, according to the Bulgarian

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[174] *Prosecutor v. Bagaragaza*, Decision on the Prosecution Motion for Referral to the Kingdom of Norway – Rule 11 *bis* of the Rules of Procedure and Evidence, Case No. ICTR-2005-86-11 *bis*, Trial Chamber, 19 May 2006, para. 16 (emphasis added).

[175] *Prosecutor v. Bagaragaza*, Decision on Rule 11 *bis* Appeal, Case No. ICTR-05-86- AR11 *bis*, Appeals Chamber, 30 August 2006, para. 16 (emphasis added).

Ministry of Justice, the general definitions are more favourable for criminal prosecution, there are still doubts that the vague and at places restrictive language of the war crimes definitions could be problematic when applied in court.

Definition of crimes – crimes against humanity

As noted in Section 4.3.2 the only crime against humanity defined in Chapter Fourteen of the Bulgarian Criminal Code is apartheid. Many offences which are crimes against humanity under the Rome Statute, such as murder, extermination, rape, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, enforced prostitution, and persecution are defined as ordinary crimes in the Criminal Code and are not subject to universal jurisdiction. Other crimes against humanity, according to the Rome Statute, such as enslavement, sexual slavery, enforced pregnancy, enforced sterilization, are not expressly defined in the Bulgarian legislation, although some elements of the crimes are to a certain extend covered under the Criminal Code. Certain crimes against humanity, such as deportation and torture are criminalized only as war crimes.

Since many crimes against humanity are either defined as ordinary crimes or missing in the Criminal Code, Bulgaria may be unable to perform its obligations to investigate and prosecute under the principle of complementarily as reflected in Article 17 of the Rome Statute. Furthermore, as illustrated above (for example, by the ICTR in its decision in the Bagaragza case regarding the crime of genocide), prosecution of persons for ordinary crimes rather than for crimes under international law does not fully reflect the moral condemnation attached and, in some cases, the punishment.

Definition of crimes – torture

As indicated in Section 4.3.2. and Section 4.3.4. in Bulgarian law torture is defined solely as a war crime in Chapter Fourteen of the Criminal Code. The definition of torture as reflected in Section II Outrage against the Laws and the Practice of Waging War, (Articles 410 (a), 411 (a) and 412 (a)) is more general and broad than the definition of torture as reflected in Article 1 of the Convention against Torture but basically covers the acts of torture listed in the Convention.

Nevertheless, as of 1 January 2009 Bulgaria has not implemented the recommendation of the UN Committee against Torture to incorporate into the Criminal Code a definition of torture that clearly reflects the definition in Article 1 of the Convention against Torture.

Definition of crimes – extrajudicial executions

As indicated in Section 4.3.5. extrajudicial execution is not defined as a crime in the Criminal Code, although this crime under international law could be prosecuted as murder or related crimes under Articles 115 to 124 or, if committed during an armed conflict, as a grave breach of the Geneva Conventions, or if an act of genocide, as genocide. However, if an extrajudicial execution is not committed in war time or is not an act of genocide, it can be prosecuted only as an ordinary crime which is subject to restrictions, such as statute of limitations.

Definition of crimes – enforced disappearances

As noted in Section 4.3.6, enforced disappearance is not expressly defined as crime under Bulgarian law, although some aspects of this crime are covered in the Criminal Code. Article 142 defines abduction, Article 142a criminalizes unlawful deprivation of liberty and Article 142a (2) specifies penalties for an unlawful deprivation of liberty by an official or a representative of the public. However, all these offences are ordinary crimes that are subject to restrictions, such as statute of limitations.

Principles of criminal responsibility

There are certain differences between principles of criminal responsibility in Bulgarian law and the Rome Statute and other international law. However, the principle of superior responsibility is the sole one that could be significantly problematic and lead to narrower criminal responsibility.

Article 419 of the Criminal Code defines superior responsibility for crimes under international law. However, that definition is too narrow and not consistent with the customary international law principle of superior responsibility with regard to such crimes, which is recognized in Articles 86 and 87 of Protocol I to the Geneva Conventions and Article 6 of the 1996 Draft Code of Crimes against the Peace and Security of Mankind[176]. It is also not consistent with the principle as incorporated in Article 28 (Responsibility of commanders and other superiors) of the Rome Statute.

Article 419 of the Criminal Code provides for the punishment of any person who 'consciously allows his subordinate to commit a crime provided for in this chapter.'[177] Not only is the definition of the offence broad and incomplete (it does not cover the element of the commander's knowledge, or obligation to prevent the criminal act or to submit the matter to the competent authorities), but it only applies to the offences listed in Chapter Fourteen, Crimes against Peace and Humanity. As discussed above the crimes listed in Chapter Fourteen of the Bulgarian Criminal Code do not entirely correspond to crimes against peace and humanity as defined in international law.

Defences

Defences, justifications, excuses and other grounds for excluding criminal responsibility are spelled out in the Criminal Code of Bulgaria, including defences that are contrary to international law or are not appropriate defences with regard to crimes under international law, even if they may be taken into account in mitigation of punishment. They include a

[176] The two-level principle of superior responsibility in Article 28 of the Rome Statute, with a less strict standard for superiors than for commanders, was included as a result of a political compromise designed to encourage certain states to ratify the Rome Statute. It falls short of the customary and conventional international law principle and is applicable only in trials before the International Criminal Court.

[177] Criminal Code, Article 419.

broad defence of superior orders to all crimes, duress, necessity and defence of property.

Defences – superior orders

Article 16 of the Criminal Code provides that superior order is a defence under Bulgarian law:

> 'The act shall not be considered delinquent if it has been committed in fulfilment of an illegitimate official order, given by the established order, if it does not suppose a crime obvious to the perpetrator.'[178]

The defence of superior orders has been contrary to international law since Nuremberg, although it may properly be taken into account in mitigation of punishment.[179] This defence has been excluded in numerous international instruments for more than half a century, including the Nuremberg Charter, Allied Control Council Law No. 10, the ICTY Statute, the ICTR Statute, the Regulation establishing the Special Panels for East Timor and the Cambodian Law establishing the Extraordinary Chambers.[180]

The defence of superior orders in the Bulgarian Criminal Code is broader than the defence

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[178] Criminal Code, Article 16. The original text reads as follows:

> 'Не е виновно извършено деянието, което е осъществено в изпълнение на неправомерна служебна заповед, дадена по установения ред, ако тя не налага очевидно за дееца престъпление.'

[179] Amnesty International, *The international criminal court: Making the Right Choices – Part I: Defining the crimes and permissible defences*, AI Index: IOR 40/01/1997, 1 January 1997, Sect. VI.E.6.

[180] Charter of the International Military Tribunal, annexed to the London Agreement (Nuremberg Charter), 8 Aug. 1945, art. 8 ('The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.'); Allied Control Council Law No. 10, Punishment of persons guilty of war crimes, crimes against peace and against humanity (Allied Control Council Law No. 10), 20 Dec. 1945, art.II (4) (b) ('The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation.'), (published in the Official Gazette of the Control Council for Germany, No. 3, Berlin, 31 Jan. 1946); ICTY Statute, art. 7 (4) ('The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.'); ICTR Statute, art. 6 (4) ('The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.'); Draft Code of Crimes against the Peace and Security of Mankind, art. 5; UNTAET Regulation 2000/15 (establishing the Special Panels for Serious Crimes, Dili, East Timor), 6 June 2000, sect. 21; Statute of the Special Court for Sierra Leone (Sierra Leone Statute), art. 6 (4); Cambodian Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 Oct. 2004 (NS/RKM/1004/006), art. 29. Although Article 33 of the Rome Statute permits the defence of superior orders, for war crimes, it is narrowly circumscribed and does not apply to genocide or crimes against humanity. It is applicable only to trials in the International Criminal Court and contrary to every other international instrument adopted, including instruments subsequently adopted, such as the Statute of the Special Court for Sierra Leone and the Cambodian Extraordinary Chambers Law.

provided in Article 33 of the Rome Statute as it applies to all crimes, not just to war crimes. Thus, it is likely that persons on trial in Bulgaria could have impunity for the worst imaginable crimes in the world based on a plea that they merely were following orders.

Defences – ignorance and mistake of law

There is no defence of ignorance of the law in the Criminal Code. The defence of mistake of fact in national law is provided in Article 14 of the Criminal Code:

> '(1) The unawareness of the actual circumstances belonging to the *corpus delicti* excludes the deliberation regarding this crime.
>
> (2) This provision also regards the negligent acts when the very unawareness of the actual circumstances itself is not due to negligence.'[181]

The defence of mistake of fact in Bulgarian law seems to be approximately the same as the defence of mistake of fact in Article 32 (1) of the Rome Statute:

> 'A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.'[182]

Defences – insanity and mental deficiencies

The defence of insanity as spelled out in national law in Article 33 of the Criminal Code:

> '(1) Criminally responsible shall not be the person who acts in a state of insanity, when to a mental underdevelopment or continuous or short-term mental disorder could not have understood the quality or the importance of the act or to handle his conduct.
>
> (2) Punishment shall not be imposed to a person who have committed a crime when, until the verdict, he lapses into a mental disorder, as a result of which he cannot realise the quality or the importance of his

[181] Criminal Code, Article 14. The original text reads as follows:

> '(1) Незнанието на фактическите обстоятелства, които принадлежат към състава на престъплението, изключва умисъла относно това престъпление.
>
> (2) Тази разпоредба се отнася и за непредпазливите деяния, когато самото незнание на фактическите обстоятелства не се дължи на непредпазливост.'

[182] Rome Statute of the International Criminal Court.

> conduct or handle it. Such a person shall be subject to punishment if he recovers.'[183]

It seems that the defence of insanity in Bulgarian law is broader than the ground for excluding criminal responsibility because of a mental disease or defect in Article 31 (1) (a) of the Rome Statute:

> 'In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:
>
> (a) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law.'184

The defence in Bulgarian law is broader since it excludes criminal responsibility if the person suffers from a mental illness not only at the time of the conduct, but also after the conduct and before the verdict.

Defences – intoxication

There is no defence of intoxication in the Criminal Code. On the contrary, for some crimes (for example, offences defined in Articles 123 (3), 134 (3), 343 (3) of the Criminal Code) intoxication may call for a more severe penalty than crimes committed because of negligence. No specifications about voluntary or involuntary intoxication have been made in the Criminal Code. Therefore, in respect to intoxication, Bulgarian law provides for stricter liability than the Rome Statute (Article 31 (1) (b)) and there would be no risk of acts criminalized under the Statute being legal under Bulgarian law.

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[183] Criminal Code, Article 33. The original text reads as follows:

> '(1) Не е наказателноотговорно лицето, което действува в състояние на невменяемост - когато поради умствена недоразвитост или продължително или краткотрайно разстройство на съзнанието не е могло да разбира свойството или значението на извършеното или да ръководи постъпките си.
>
> (2) (Изм. - ДВ, бр. 95 от 1975 г.) Не се налага наказание на лице, което е извършило престъпление, когато до произнасяне на присъдата изпадне в разстройство на съзнанието, вследствие на което не може да разбира свойството или значението на своите постъпки или да ги ръководи. Такова лице подлежи на наказание, ако оздравее.'

[184] Rome Statute of the International Criminal Court, Article 31 (1).

Defences – Compulsion, duress and necessity

As Amnesty International has argued, compulsion, duress and necessity should not be defences to crimes under international law, but should simply be grounds for mitigation of punishment.[185] However, in a regrettable political compromise, Article 31 (1) (d) of the Rome Statute permits, in strictly limited circumstances and only in trials before the International Criminal Court, defences of duress in response to threats from another person and of necessity (called 'duress') in response to threats from circumstances beyond a person's control.[186]

The defence of duress is defined in Bulgarian law in Article 12 of the Criminal Code:

'(1) The act of justifiable defence shall not be considered socially dangerous - in order to defend against an immediate illegal attack state or public interests, the personality or the rights of the defender or of somebody else by causing damage to the aggressor within the frames of the necessary limits.

(2) It is considered as excessive of the requirements of justifiable defence, when the defence obviously does not correspond to the nature and the danger of the assault.'[187]

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[185] *Making the Right Choices – Part I*, *supra*, n. 179, at Sect. VI.E.3 and 4.

[186] Rome Statute of the International Criminal Court, Article 31 (1) (d):

> '[i]n addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:
>
> ...
>
> (d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:
>
> (i) Made by other persons; or
>
> (ii) Constituted by other circumstances beyond that person's control.'

[187] Criminal Code, Article 12. The original text reads as follows:

> '(1) Не е общественоопасно деянието, което е извършено при неизбежна отбрана - за да се защитят от непосредствено противоправно нападение държавни или обществени интереси, личността или правата на отбраняващия се или на другиго чрез причиняване вреди на нападателя в рамките на необходимите предели.

The defence of necessity is reflected in Article 13 of the Criminal Code:

'(1) The act committed by someone in case of paramount necessity is not socially dangerous - to save state or public interests, as well as his own or somebody else's personal or proprietary wealth from immediate danger, which the perpetrator could not have avoided in any other way, if the damages caused by the act are less considerable than the prevented.

(2) No paramount necessity exists when the very avoiding of the danger represents a crime.'[188]

The defence of necessity/duress in Bulgarian law is broader than the much narrower, but still unsatisfactory, one reflected in Article 31 (1) (d) of the Rome Statute, since it includes any state or public interest and mere personal or proprietary wealth. Although the current provisions relating to these defences are wider than those in the Rome Statute, the requirement of proportionality could substantially limit its scope for application, making its application narrower than the defence in the Rome Statute. The prospect that these defences can be applied for crimes under international law is nevertheless unsatisfactory for the reason that it leaves a risk that criminal responsibility under Bulgarian law would be narrower than that under the Rome Statute. This is because it would continue to permit compulsion, duress and necessity to be defences to the worst imaginable crimes, instead of simply being factors that can be taken into account in mitigation of punishment.

Defences – Defence of person or property

As Amnesty International has explained, self-defence and defence of others can be defences to crimes under international law in certain limited circumstances, but only when the response is reasonable and proportionate and, if deadly force is used, only when retreat is not possible.[189] Unfortunately, in another political compromise, the Rome Statute provides very broad defences of self, others and property, but these defences apply only in trials before the International Criminal Court. Bulgarian law, however, in some respects contains an even

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(2) Превишаване пределите на неизбежната отбрана има, когато защитата явно не съответствува на характера и опасността на нападението.'

[188] Criminal Code, Article 13. The original text reads as follows:

'(1) Не е обществеоопасно деянието, което е извършено от някого при крайна необходимост - за да спаси държавни или обществени интереси, както и свои или на другиго лични или имотни блага от непосредствена опасност, която деецът не е могъл да избегне по друг начин, ако причинените от деянието вреди са по-малко значителни от предотвратените.

(2) Няма крайна необходимост, когато самото отбягване от опасността съставлява престъпление.'

[189] Amnesty International, *Making the right choices*, *supra*, n. 179, sect. VI.E.5.

broader definition of self-defence, without strict limits of reasonableness and proportionality and the duty to retreat if possible.

The defence of person or property in Bulgarian law is defined in Article 12 of the Criminal Code:

> '(1) The act of justifiable defence shall not be considered socially dangerous - in order to defend against an immediate illegal attack state or public interests, the personality or the rights of the defender or of somebody else by causing damage to the aggressor within the frames of the necessary limits.
>
> (2) It is considered as excessive of the requirements of justifiable defence when the defence obviously does not correspond to the nature and the danger of the assault.
>
> (3) It will not exceed the requirements of justifiable defence if: the assault has been carried out through entering by force or by burglary into a house.
>
> (4) The perpetrator shall not be punished when he commits the act by exceeding the requirements of justifiable defence if this is due to scare or confusion. '[190]

The defence of person or property does not contain any specific or additional provisions excluding crimes under international law. Therefore, the broad general provisions of the defence as reflected in Article 12 would apply to genocide, war crimes, crimes against humanity, and other serious crimes under international law. The provisions for the defence of

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[190] Criminal Code, Article 12. The original text reads as follows:

> '(1) Не е общественоопасно деянието, което е извършено при неизбежна отбрана - за да се защитят от непосредствено противоправно нападение държавни или обществени интереси, личността или правата на отбраняващия се или на другиго чрез причиняване вреди на нападателя в рамките на необходимите предели.
>
> (2) Превишаване пределите на неизбежната отбрана има, когато защитата явно не съответствува на характера и опасността на нападението.
>
> (3) (Изм. - ДВ, бр. 62 от 1997 г., изм. - ДВ, бр. 75 от 2006 г., в сила от 13.10.2006 г.) Няма превишаване пределите на неизбежната отбрана, ако нападението е извършено чрез проникване с насилие или с взлом в жилище.
>
> (4) (Предишна ал. 3 - ДВ, бр. 62 от 1997 г., изм. - ДВ, бр. 28 от 1982 г., в сила от 01.07.1982 г.) Деецът не се наказва, когато извърши деянието при превишаване пределите на неизбежната отбрана, ако това се дължи на уплаха или смущение.'

person and property does not satisfy Bulgaria`s obligations under international law because it leaves a risk that the defence is applied beyond what would be consistent with the Rome Statute and it does not include such requirements as the impossibility of retreat. Moreover, it is difficult to imagine a situation in which committing genocide, crimes against humanity or war crimes would be justifiable in self-defence or in defence of property.

6.2. PRESENCE REQUIREMENTS IN ORDER TO OPEN AN INVESTIGATION OR REQUEST EXTRADITION

There appear to be no provisions expressly requiring the presence of a suspect in Bulgaria to initiate an investigation of a crime. There is no requirement that the suspect ever was present in Bulgaria for an extradition request (See Section 7.1.1.2 below).

A preliminary criminal investigation can be launched by a prosecutor, even against an unknown perpetrator, as long as there is a legal ground and justified reason to believe that a crime has been committed (Article 201 (1) of the Criminal Procedure Code).

However, the presence of the accused is important on later stages of investigations. Bulgarian criminal procedure is based on adversarial principles and the right of defence. After the suspect has been identified, he or she is summoned to provide evidence and defend himself or herself (Article 219 (1) of the Criminal Code). Therefore, at this stage it may be necessary that the suspect be in Bulgaria. However, according to Article 206 (1) Of the Criminal Procedure Code investigations can proceed without the accused if this will not prevent the discovery of the objective truth.

In practice it is necessary that the suspect must be present before the prosecutor can open a formal investigation. The prosecutor may terminate the criminal proceedings before the formal accusation if the absence of the accused can prevent the discovery of the objective truth (Article 25 (2) and Article 244 (1) (1) of the Criminal Procedure Code). This ruling can be appealed before the court of first instance or a superior prosecutor (Article 200 of the Criminal Code).

Even if the prosecutor brings a formal accusation, the judge may terminate the criminal proceedings on the same grounds. This is likely to be done since pursuant to Article 269 (1) of the Criminal Procedure Code the presence of the accused in the court hearings is mandatory in cases of indictment for grave crimes, such as crimes falling under universal jurisdiction. The right of the accused to be present at trial is guaranteed also in Articles 55 (1), 25 (2) of the Criminal Procedure Code.

Thus, Bulgaria is able to open an investigation immediately as soon as it learns that a person suspected of genocide or other crimes under international law is on his or her way to Bulgaria or about to change planes at a Bulgarian airport. There is no need to wait until the suspect has entered the country on a visit that would be too short to permit an investigation to be completed and an arrest warrant issued and implemented. The absence of a presence requirement also means that Bulgaria can accept cases transferred by the ICTY or ICTR more easily by completing an investigation before the transfer and issuing an arrest warrant before the transfer. If Bugaria were able to request extradition of a person suspected of a crime committed abroad (see below in Section 7), the absence of a presence requirement would mean that it could also help shoulder the burden when other states fail to fulfil their

obligations to investigate and prosecute crimes under international law. Indeed, this possibility was envisaged as an essential component of the enforcement provisions of the four 1949 Geneva Conventions, each of which provide that any state party, regardless whether a suspect had ever been in its territory, as long as it 'has made out a prima facie case', may request extradition of someone suspected of grave breaches of those Conventions.[191] If the presence of the suspected perpetrator were to be necessary for an effective investigation, respect of the rights of the accused and discovery of the objective truth in a particular case and the person cannot be extradited to Bulgaria, it is very unlikely that a prosecutor would decide to open a formal investigation.

6.3. STATUTES OF LIMITATION APPLICABLE TO CRIMES AND TORTS UNDER INTERNATIONAL LAW

There are no statutes of limitations applicable to genocide, crimes against humanity and war crimes, as defined under the Criminal Code. However, statutes of limitations apply to other crimes under national law. They also apply to civil claims.

Statutes of limitations applicable to crimes

Bulgaria has been a party to the 1968 Convention on Non-Applicability of Statutory Limitations for War Crimes and Crimes against Humanity since 21 May 1969. That treaty provides that no statutory limitation shall apply to war crimes, particularly grave breaches of the Geneva Conventions, or to crimes against humanity, including apartheid and genocide (Article I), and requires states parties to enact legislation ensuring that statutes of limitation do not apply to these crimes and where such limitations exist, to abolish them (Article IV). In addition, statutes of limitation for crimes under international law are prohibited under customary international law.[192]

Bulgaria does not have a statute of limitations specific to crimes under international law. Since international treaties are part of the Bulgarian legal system, the general statute of limitations, as defined in Article 79 (1) of the Criminal Code, would be expected to apply. However, pursuant to Article 31 (7) of the Constitution and Article 79 (2) of the Criminal Code, the criminal prosecution and the serving of sentences for crimes against peace and humanity in Chapter Fourteen cannot be barred by a statute of limitations. As discussed above, the crimes against peace and humanity spelled out in the Bulgarian Criminal Code do not fully comply with the list of these crimes under international law.

For all offences other than crimes against peace and humanity, the general statute of limitations applies.

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[191] First Geneva Convention, Article 49; Second Geneva Convention, Article 50; Third Geneva Convention, Article 129; Fourth Geneva Convention, Article 146.

[192] See, for example, Ruth Kok, *Statutory Limitations in International Criminal Law* (London: Blackwell 2008; Amnesty International, *The Prohibition of Statutory Limitations for Crimes under International Law* (forthcoming 2009).

Criminal prosecutions for crimes not listed in Chapter Fourteen (Crimes against Peace and Humanity) and the serving of sentences shall be barred where (i) the perpetrator has died; (ii) where the term of statutory prescription has expired; (iii) where an amnesty has followed (Article 79 (1) of the Criminal Code).

Prosecution for such crimes can be barred by a statute of limitations where (i) no prosecution has been commenced in the course of twenty years for acts punishable by life imprisonment without parole or life imprisonment and in the course of 35 years for murder of two or more persons, or (ii) no prosecution has been commenced in the course of 15 years for acts punishable by deprivation of liberty for more than ten years (Article 80 of the Criminal Code).[193]

Statute of limitations applicable to torts

Bulgaria has a statute of limitations applicable to torts, defined in Chapter 7, Section II of the Code of Civil Procedure. Civil claims are time-barred five years after the claim arose. However, a civil claim filed in connection with a criminal proceeding is not time-barred until the statute of limitations for the underlying crime has expired. Pursuant to Article 62 (2) of the Civil Procedure Code a tolling principle apply if it can be proven that the delay is caused by specific unforeseeble circumstances that could not have been overcome.

6.4. DOUBLE CRIMINALITY

In contrast to extradition case (see Section 7.1.2.3 below), there is no requirement of double criminality for prosecution of universal jurisdiction cases. If the Bulgarian Criminal Code is applicable, the determination whether a crime occurred will be based solely on Bulgarian law.

6.5. IMMUNITIES

According to Articles 69, 70, 103, 132 and 147 of the Bulgarian Constitution, members of parliament, the president and the vice-president of Bulgaria, judges, prosecutors, criminal investigators, and judges in the Constitutional Court enjoy immunity from criminal prosecution in Bulgarian courts. Members of parliament, the president, and the vice-president enjoy full immunity from prosecution in Bulgarian courts, whereas magistrates' immunity covers only their official acts.[194]

According to Article 3 (2) of the Criminal Code, the immunity of foreign nationals, such as diplomatic, consular staff, foreign heads of state, is guaranteed according to international law—the two Vienna Conventions on Diplomatic and Consular Relations and a number of

[193] The punishment imposed is not served (i) where twenty years have elapsed from imposition, if the punishment was life imprisonment without substitution or life imprisonment, or (ii) where 15 years have elapsed from imposition, if the punishment was deprivation of liberty for more than ten years (Article 82 of the Criminal Code).

[194] Daniela Boteva, 'Implementation of the Rome Statute in Bulgaria', 16 Finnish Yearbook of International Law, 2005, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=996515.

bilateral consular conventions:

> 'The issue of liability of foreign citizens who enjoy immunity with respect to the penal jurisdiction of the Republic of Bulgaria shall be decided in compliance with the norms of international law adopted by Bulgaria.' [195]

In addition, Article 5 of the Criminal Procedure Code provides that:

> 'With regard to persons who enjoy immunity from the criminal jurisdiction of the Republic of Bulgaria, procedural actions provided by this Code may be applied, only in compliance with the norms of international law.'[196]

Pursuant to Article 220 of the Criminal Procedure Code, no formal accusation can be brought against a person who has immunity. Criminal proceedings in respect of the same person on account of the same crime can be instituted after he or she is divested of immunity, if no other barriers exist. There is no provison, however, clarifying the conditions or the barriers to the prosecution of a person divested of immunity.

Immunities are, accordingly, regulated through a reference to international law. Every single instrument adopted since the Second World War by the international community expressly involving crimes under international law has rejected immunity from prosecution for such crimes for any government official. Those instruments articulated a customary international law rule and general principle of law. These immunities were rejected by the Nuremberg Charter in 1945[197] and the Tokyo Charter in 1946.[198]

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[195] Criminal Code, Article 3(2). The original text reads as follows:

> 'Въпросът за отговорността на чужденци, които се ползуват с имунитет по отношение на наказателната юрисдикция на Република България, се решава съобразно с приетите от нея норми на международното право.'

[196] Criminal Procedure Code, Article 5. The original text reads as follows:

> 'Спрямо лица с имунитет по отношение на наказателната юрисдикция на Република България процесуалните действия, предвидени в този кодекс, се извършват в съответствие с нормите на международното право.'

[197] Charter of the International Military Tribunal, art. 8 ('The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.').

[198] The Charter for the International Military Tribunal of the Far East, established by military order in contrast to the Nuremberg Charter established by treaty, provided in Article 6 (Responsibility of Accused):

> 'Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of

Several of the international instruments adopted over the past half century were expressly intended to apply to international or national courts or both, including the 1945 Allied Control Council Law No. 10, the 1946 General Assembly resolution on the affirmation of the principles of international law recognized by the Charter of the Nuremberg Tribunal, the 1948 Convention for the Prevention and Punishment of the Crime of Genocide (Genocide Convention), the 1950 Nuremberg Principles prepared by the International Law Commission, the 1954 Draft Code of Offences against the Peace and Security of Mankind (1954 Draft Code of Offences), 1973 Convention for the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention) and the 1991 and 1996 Draft Codes of Crimes against the Peace and Security of Mankind.[199]

The International Law Commission has explained why the official position of a person accused of core crimes should not be a bar to criminal responsibility:

> '[C]rimes against the peace and security of mankind often require the involvement of persons in positions of governmental authority who are capable of formulating plans or policies involving acts of exceptional gravity and magnitude. These crimes require the power to use or to authorize the use of the essential means of destruction and to mobilize the personnel required for carrying out these crimes. A government official who plans, instigates, authorizes or orders such crimes not only provides the means and the personnel required to commit the crime,

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> itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.'

However, it was the only instrument to permit the official position to be taken into consideration in mitigation of punishment.

[199] Allied Control Council Law No.10, art. II (4) (a) ('The official position of any person, whether as Head of State or as a responsible official in a Government Department, does not free him from responsibility for a crime or entitle him to mitigation of punishment.'); U.N. G.A. Res. 95 (i), 11 Dec. 1946; 1948 Genocide Convention, art. IV ('Persons committing genocide or any of the acts enumerated in Article III [conspiracy to commit, direct and public incitement to commit, attempt to commit and complicity in genocide] shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals'); 1950 Nuremberg Principles, principle III ('The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.'); 1954 Draft Code of Offences, art. 3 ('[t]he official position of an individual who commits a crime against the peace and security of mankind, even if he acted as head of State or Government, does not relieve him of criminal responsibility or mitigate punishment.'); 1973 *Apartheid* Convention, art. III ('International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State . . . '); 1991 Draft Code of Crimes, art. 13 (Official position and responsibility) ('The official position of an individual who commits a crime against the peace and security of mankind, and particularly the fact that he acts as head of State or Government, does not relieve him of criminal responsibility.'); 1996 Draft Code of Crimes, art. 6 (Official position and responsibility) ('The official position of an individual who commits a crime against the peace and security of mankind, even if he acted as head of State or Government, does not relieve him of criminal responsibility or mitigate punishment.').

> but also abuses the authority and power entrusted to him. He may therefore, be considered to be even more culpable than the subordinate who actually commits the criminal act. It would be paradoxical to allow the individuals who are, in some respects, the most responsible for the crimes covered by the Code to invoke the sovereignty of the State and to hide behind the immunity that is conferred on them by virtue of their positions particularly since these heinous crimes shock the conscience of mankind, violate some of the most fundamental rules of international law and threaten international peace and security.'[200]

The International Law Commission explained that not only is an official position not a defence, but it cannot be a procedural immunity:

> '[T]he author of a crime under international law cannot invoke his official position to escape punishment in appropriate proceedings. The absence of any procedural immunity with respect to prosecution or punishment in appropriate judicial proceedings is an essential corollary of the absence of any substantive immunity or defence. It would be paradoxical to prevent an individual from invoking his official position to avoid responsibility for a crime only to permit him to invoke this same consideration to avoid the consequences of this responsibility.'[201]

Moreover, even international instruments establishing international criminal courts, including the Rome Statute of the International Criminal Court (Rome Statute), Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY Statute),[202] Statute of the International Criminal Tribunal for Rwanda (ICTR Statute),[203] the UNTAET Regulation establishing the Special Panel for Serious Crimes in Dili, Timor-Leste,[204] the Statute of the

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[200] 1996 ILC Report, commentary on Article 7, pp. 26-27.

[201] *Ibid.*, 27.

[202] ICTY Statute, Article 7.

[203] ICTR Statute, Article 6

[204] Article 15 (Irelevance of official capacity) of UNTAET Regulation 2000/15 provided:

> '15.2 The present regulation shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under the present regulation, nor shall it, in and of itself, constitute a ground for reduction of sentence.
>
> 15.2 Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the panels from exercising its jurisdiction over such a person.'

Special Court for Sierra Leone[205] and the Law on the Extraordinary Chambers of Cambodia[206] envisaged that the same rules of international law reiterated in those instruments applied with equal force to prosecutions by national courts. In particular, Article 27 (Irrelevance of official capacity) of the Rome Statute provides:

> '1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
>
> 2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.'[207]

The inefficiencies in Bulgarian legislation and the implementation of international law concerning immunities and universal jurisdiction were demonstrated in the case of the Serbian colonel from the Yugoslavian army Chedomir Brankovic. In April 2005 Colonel Brancovic, who has entered Bulgaria as a part of an official Serbian military delegation, was arrested by Bulgarian police at the request of the Croatian bureau of Interpol. The Serbian colonel was accused of committing of war crimes – arson of Catholic churches and killings of civilian population in Croatia during the armed conflict in the former Yugoslavia. In May 2005, the Sofia Court of Appeals confirmed the earlier ruling of the Sofia City Court and released Colenel Brankovic because of his immunity under the 1969 Convention on Special Missions. Bulgarian courts did not take into consideration customary international law discussed above regarding assertions of immunity with respect to crimes under international law. Moreover, Bulgaria failed to exercise universal jurisdiction as provided in Article 6 (1) of the Criminal Code (the crimes of which Colonel Brankovic is accused are defined in Chapter Fourteen 'Crimes against Peace and Humanity' in Articles 414 (1) and 412 (a)).

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[205] Statute of the Special Court for Sierra Leone, art. 6 (Individual criminal responsibility) (2) ('The official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.'). However, Sierra Leone has not yet revoked the amnesty for crimes under international law in the Lomé Accord.

[206] Article 29 of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006) provides: 'The position or rank of any Suspect shall not relieve such person of criminal responsibility or mitigate punishment.' The Extraordinary Chambers are a mixed international and national court.

[207] Under the principle of complementarity set out in Article 17 of the Rome Statute, the International Criminal Court acts as a court of last resort when states fail to investigate and, where there is sufficient admissible evidence, to prosecute.

6.6. BARS ON RETROACTIVE APPLICATION OF INTERNATIONAL CRIMINAL LAW IN NATIONAL LAW OR OTHER TEMPORAL RESTRICTIONS

States have recognized for more than six decades that the prohibition of retroactive criminal laws does not apply to national criminal legislation enacted after that conduct became recognized as criminal under international law.[208]

According to Article 5 (4) of the Bulgarian Constitution, international treaties are considered part of Bulgarian law. Therefore, in principle, bars on retroactive application of criminal law will apply to crimes under international law, unless otherwise provided in international law. However, in its Decision 7 of 1992, the Constitutional Courts stated that even if they have been ratified and promulgated, international treaties cannot be directly applied unless their provisions are incorporated into the Criminal Code. The Constitutional Court based its decision on Article 5 (3) of the Bulgarian Constitution which defines the principle of non-retroactivity:

> 'No one shall be convicted for action or inaction which at the time it was committed, did not constitute a crime.'[209]

Hence, international criminal law does not have a retroactive application in Bulgarian law. Crimes defined under international law cannot be prosecuted in Bulgarian courts unless they are incorporated into the Criminal Code.

Nevertheless, Article 7 of the the European Convention on Human Rights, to which Bulgaria is a party since 7 October 1992, expressly states:

> '1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was

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[208] Article 11 (2) of the Universal Declaration of Human Rights declares:

> 'No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.'

[209] Constitution of the Republic of Bulgaria, Article 5. The original text reads as follows:

> 'Никой не може да бъде осъден за действие или бездействие, което не е било обявено от закона за престъпление към момента на извършването му.'

committed, was criminal according to the general principles of law recognised by civilised nations.'

Article 15 of the ICCPR, to which Bulgaria has been a party since 23 March 1976, contains a similar provision.[210]

Therefore, nothing in either article prevents Bulgaria from enacting legislation incorporating crimes under international law into national law and permitting prosecutions for those crimes committed prior to the legislation enactment, but after they were recognized as crimes under international law.

6.7. NE BIS IN IDEM

The prohibition of double jeopardy (*ne bis in idem*) is a fundamental principle of law recognized in international human rights treaties and other instruments, including the ICCPR, the American Convention on Human Rights, Additional Protocol I and constitutive instruments establishing the ICTY, ICTR, the Special Panels for Serious Crimes, Dili, Timor-Leste and the Special Court for Sierra Leone.[211] However, apart from the vertical exception between international courts and national courts, the principle only prohibits retrials after an acquittal by the same jurisdiction.[212] This limitation on the scope of the principle can serve

[210] Article 15 of the ICCPR reads:

'(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.'

[211] ICCPR, Article 14 (7); American Convention on Human Rights, Article 8 (4); Additional Protocol I, Article 75 (4) (h); ICTY Statute, Article 10 (1); ICTR Statute, Article 9 (1); UNTAET Reg. 200/15, Article 11; Statute of the Special Court for Sierra Leone, Article 9.

[212] The Human Rights Committee has concluded that Article 14 (7) of the ICCPR 'does not guarantee *non bis in idem* with regard to the national jurisdictions of two or more States. The Committee observes that this provision prohibits double jeopardy only with regard to an offence adjudicated in a given State.' *A.P. v. Italy*, No. 204/1986, 2 November 1987, 2 Selected Decisions of the Human Rights Committee under the Optional Protocol 67, UN Doc. CCPR/C/OP/2, U,N. Sales No. E.89.XIV.1. This was also recognized during the drafting of Article 14 (7) of the ICCPR. See Marc J. Bossuyt, *Guide to the* ''Travaux Préparatoires'' *of the International Covenant on Civil and Political Rights*, Dordrecht, Martinus Nijhoff, 1987, pp. 316-318; Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR* Commentary, Kehl am Rhein, N.P. Engel, 1993, pp. 272-273; Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political* Rights, Oxford, Clarendon Press, 1991.

international justice by permitting other states to step in when the territorial state or the suspect's state fails to conduct a fair trial.

The principle of *ne bis in idem* (that one cannot be tried twice for the same crime) is provided in Bulgarian law by Article 24 (1) (6) of the Bulgarian Criminal Procedure Code:

> 'Criminal prosecution shall not be conducted and if conducted shall be terminated where:
>
> (6) In relation to the same person for the same crime there is a pending criminal prosecution, a sentence that has entered into force, or an ordinance, or a ruling or a directive in force closing the case'.[213]

There is no provision clarifying if, apart from internal court decisions, the principle of *ne bis in idem* is applicable to the rulings of international courts and courts of foreign countries. Therefore, it appears that a person can be tried in Bulgaria even though that person was tried in another country or by an international tribunal for the same conduct.

However, at the present time, as an exception to the general rule, the principle of double jeopardy (*ne bis idem*) may apply to a large extent to judgments from certain other states. Regulation No. 44/2001 of January, 2001 of the Council of the European Union, binds Bulgaria to recognize judgments in civil and commercial matters of courts of other European Union member states. In addition, under Article 117 of the International Private Law Code, judgments and acts of foreign courts will be recognized and enforced in Bulgaria if all the requirements stipulated in Article 117 (paragraphs 1 to 5) are satisfied (See Section 5.1).

The Trial Chamber in the *Tadić* case reached the same conclusion:

> 'The principle of *non-bis-in-idem*, appears in some form as part of the international legal code of many nations. Whether characterized as *non-bis-in-idem*, double jeopardy or autrefois acquit, autrefois convict, this principle normally protects a person from being tried twice or punished twice for the same acts. This principle has gained a certain international status since it is articulated in Article 14 (7) of the International Covenant on Civil and Political Rights as a standard of fair trial, but it is generally applied so as to cover only double prosecution in the same State.'

Prosecutor v. Dusko Tadic, Case No IT-94-1-A, July 15, 1999.

[213] Criminal Procedure Code, Article 24 (1) (6). The original text reads as follows:

> 'Не се образува наказателно производство, а образуваното се прекратява, когато:
>
> 6. спрямо същото лице за същото престъпление има незавършено наказателно производство, влязла в сила присъда, постановление или влязло в сила определение или разпореждане за прекратяване на делото[.]'

6.8. POLITICAL CONTROL OVER DECISIONS TO INVESTIGATE AND PROSECUTE

In Bulgaria decisions to investigate and prosecute are made by the prosecutor. Pursuant to Article 52 (2) of the Criminal Procedure Code, the investigating bodies operate under the guidance and supervision of a prosecutor.

According to Article 27 (1) (4) of the Judicial System Act, prosecutors and investigating bodies are appointed by the Supreme Judicial Council. The Supreme Judicial Council is composed of 25 members 11 of whom are appointed by the National Assembly, 11 are elected from whithin the Judiciary and three are members by law - the Presidents of the Supreme Court of Cassation, the Supreme Administrative Court and the Chief Prosecutor (Articles 16 (2),16 (3) and 17 (1) of the Judicial System Act). Pursuant to Article 1 (2) of the Judicial System Act, the judiciary in Bulgaria is independent.

These provisions indicate that there is no direct political control over decisions to investigate and prosecute and these decisions cannot be overruled by political actors.

6.9. RESTRICTIONS ON THE RIGHTS OF VICTIMS AND THEIR FAMILIES

The rights of the victims or their families are limited to reporting about a crime, providing evidence throughout the criminal proceedings and seeking protection. Such persons cannot initiate investigations and prosecutions for crimes of general nature (all crimes except certain minor crimes). For these serious offences the criminal proceedings are led by the prosecutor. However, if victims or their heirs have applied prior of the start of the criminal proceeding,[214] they can participate as private prosecutors and conduct the prosecution along with the prosecutor. The rights of the victims or their families are not limited with regard to their civil claims for crimes of specific nature.

6.10. AMNESTIES

Amnesties and similar measures of impunity for crimes under international law are prohibited under international law.[215] Bulgaria has not expressly prohibited the application of its amnesty provisions to crimes under international law, but it has not used these provisions for such crimes.

The National Assembly can grant an amnesty to an individual found guilty of a crime in a Bulgarian court. Bulgaria has not granted amnesties for crimes against peace and humanity or for crimes under international treaties. Prosecution and the serving of punishment is excluded where an amnesty has been granted pursuant to Article 79 of the Criminal Code. An amnesty cancels the criminal nature of a certain kind of perpetrated acts or exempts from

[214] The request for the status of a private prosecutor has to be made no later than the beginning of the criminal proceeding before the court of first instance (written request) or during the first session of the court of first instance (oral request). However, there are some other provisions in the Code of Criminal Procedure that can lead to denial of victims` rights under international law and standards (See Section 5.4).

[215] See, for example, Amnesty International, *Sierra Leone: Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law*, AI Index: AFR/012/2003, 31 October 2003.

criminal responsibility and from the consequences of conviction for certain crimes (Article 83 of the Criminal Code).

In case of an amnesty in Bulgaria or in the state in which the judgment has been issued, the execution of punishment under foreign sentence accepted for execution is terminated (Article 460 of the Criminal Procedure Code). There is no exception for persons securing sentences for crimes under international law.

7. EXTRADITION AND MUTUAL LEGAL ASSISTANCE

7.1 EXTRADITION

Bulgaria is a party to several extradition treaties including the European Convention on Extradition and its protocols, and a number of bilateral agreements on extradition, such as the bilateral agreement on extradition between Bulgaria and the United States of September 2007 and between Bulgaria and India of October 2003. It has also signed and ratified a number of international treaties providing for extradition (see Section 4.2). It also enforces European Arrest Warrants.

Extradition is regulated by the Law on Extradition and European Arrest Warrant published in the Official Journal No 46 of 3 June 2005 and amended by Official Journal No 52 of 6 June 2008. The first four chapters of the law (Articles 5 – 34) concern extradition while the fifth chapter (Articles 35 – 65) contain provisions regulating European arrest warrants.

7.1.1. INAPPROPRIATE LIMITS ON MAKING EXTRADITION REQUESTS

There appear to be no inappropriate limits on the making of extradition requests in Bulgarian law, but the numerous bilateral extradition treaties have not been analyzed.

7.1.1.1. Political control over the making of extradition requests

According to Article 23 of the Law on Extradition for a defendant whose sentence has already entered into force the extradition request is made by the Chief Prosecutor. In a case the extradition is proposed by an appropriate court the request is made by the Minister of Justice, a political official.

7.1.1.2. Presence

There is no requirement that a suspect ever has been in Bulgaria in order for Bulgaria to seek that person's extradition (See Section 6.2 above).

7.1.2. INAPPROPRIATE BARS TO GRANTING EXTRADITION REQUESTS

As explained below, there are a number of inappropriate bars to the granting of extradition requests based on universal jurisdiction for persons suspected of crimes under international law, including the prohibition of the extradition of Bulgarian nationals.

7.1.2. 1. Political control over the granting of extradition requests

There is no political control over the granting of extradition requests. According to Article 16

of the Bulgarian law on extradition, decisions whether to grant an extradition are made by the regional court of the area where the suspect is located.

7.1.2.2. Nationality

Article 4 (2) of the Criminal Code, as amended in 2006, provides:

> 'Article 4 (2) No citizen of the Republic of Bulgaria can be transferred to another state or an international court of justice for the purposes of prosecution, unless this has been provided for in an international agreement, which has been ratified, published and entered into force in respect to the Republic of Bulgaria.'[216]

Similar provisions are specified in Article 25 (4) of the Constitution.[217] Therefore, there is an exception of the prohibition to the extradition of Bulgarian nationals – when it is provided in an international treaty to which Bulgaria is a party. Presumably, this article does not require that the international treaty expressly state that nationals of state parties must be extradited, but simply that the state party must extradite or try persons. However, there does not appear to be any jurisprudence expressly confirming this interpretation.

Article 6 (1) (1) of the Law on Extradition and European Arrest Warrant also provides that extradition of a Bulgarian citizen shall be refused, except where required in an international treaty, in force, to which Bulgaria is a party.

The Bulgarian Ministry of Justice contends that the prohibition of the extradition of Bulgarian nationals is not inappropriate for two reasons. First, it contends that none of the state parties to the European Convention on Extradition allows extradition of its nationals. However, some state parties to this treaty do permit the extradition of its nationals. Second, the ministry says

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[216] Criminal Code, Art. 4 (2), the original code reads as follows:

> 'Гражданин на Република България не може да бъде предаден на друга държава или на международен съд за целите на наказателно преследване, освен ако това е предвидено в международен договор, ратифициран, обнародван и влязъл в сила за Република България.'

[217] Constitution of the Republic of Bulgaria, Article 25 (4):

> 'No Bulgarian citizen may be surrendered to another State or to an international tribunal for the purposes of criminal prosecution, unless the opposite is provided for by international treaty that has been ratified, published and entered into force for the Republic of Bulgaria.'

The original text reads as follows:

> 'Гражданин на Република България не може да бъде предаден на друга държава или на международен съд за целите на наказателно преследване, освен ако това е предвидено в международен договор, ратифициран, обнародван и влязъл в сила за Република България.'

that the prohibition is not absolute.218 Indeed, nacionality is not included in the conditions under wich a European Arrest Warrant is rejected, listed in Article 39(*) of the Law on Extradition. Moreover Bulgaria has amended Article 25 (4) of its Constitution in order to make possible the extradition of nationals when requested with European Arrest Warrant or other international treaty.

Since Bulgaria has already amended its Constitution and has expressly made an exception for the European Arrest Warrant it will be appropriate to use the same principle in relation to crimes against humanity and war crimes. In any event, the prohibition of the extradition of a state`s nationals for that reason alone, is not appropriate when the conduct involved constitutes a crime under international law.

7.1.2.3. Double criminality and territorial jurisdiction

Pursuant to Article 5 of the Law on Extradition and European Arrest Warrant, extradition is allowed only when:

- the act is a crime under Bulgarian law and under the law of the requesting country and

- this crime is punishable by deprivation of liberty of not less than a year or other more serious punishment.

Extradition is also possible to serve a sentence of deprivation of liberty of at least four months imposed by the requesting country.

There are no exceptions to the principle of double criminality for certain crimes in case of extradition to countries that are not part of the European Arrest Warrant system. This could be problematic given that some crimes under international law are not defined under Bulgarian law.

On the other hand there is exception of the principle of double criminality for certain serious crimes in the provisions concerning European Arrest Warrant (Article 36 (2) and (3)). According to the Bulgarian Ministry of Justice:

'the principle of double criminality is a standard basis for the refusal of extradition pursuant to the European Convention on Extradition and practice has shown that this principle does not cause problems.'[219]

Nevertheless, as exceptions are provided for the principle of double criminality in the case of

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[218] Letter from the Bulgarian Ministry of Justice 'Comments on the Report of Amnesty International `Bulgaria: End Impunity through Universal Jurisdiction` within the remit of the Ministry of Justice' to the International Justice Project, Amnesty International, dated 28 November 2008.

[219] Letter from the Bulgarian Ministry of Justice ''Comments on the Report of Amnesty International `Bulgaria: End Impunity through Universal Jurisdiction` within the remit of the Ministry of Justice'' to the International Justice Project, Amnesty International, dated 28 November 2008.

European Arrest Warrant it would be appropriate for the same exceptions to be applied for extradition in cases of crimes against humanity and war crimes, so that the risk of impunity of serious crimes is avoided in the future.

According to Article 8 (5) of the Law on Extradition, extradition may be refused when the crime was committed outside the territory of the requesting country when Bulgarian law does not allow the initiation of criminal proceeding for such a crime. This ground for refusal is inappropriate with respect to conduct constituting a crime under international law.

Consequently, there is a serious whether states seeking to exercise universal jurisdiction can obtain extradition for international crimes which are not defined in Bulgarian law.

7.1.2.4. Political offence

Extradition is refused for a political crime or a related offence, except the offences, which by virtue of a law or an international treaty to which Bulgaria is a party, are not considered political (Article 7 (1) of the Law on Extradition). However, the scope of the term 'political offence' is not defined in Bulgarian legislation. Therefore there is a risk that, unless a party has expressly stated that a crime is not a political crime, that Article 7 (1) could bar extradition.

7.1.2.5. Military offence

Extradition is refused for a military crime which is not a crime under general criminal law (Article 7 (2) of the Law on Extradition. The scope of the term 'military offence' is not defined in Bulgarian legislation.

7.1.2.6. *Ne bis in idem*

Extradition shall be refused when sentence of a Bulgarian court has entered into force against the same person for the same crime (Article 7 (7) of the Law on Extradition).

Extradition may be refused if the criminal proceeding in Bulgaria for the same crime against the same person was terminated (Article 8 (2) of the Law on Extradition) and a criminal proceeding in Bulgaria for the same crime against the same person is pending (Article 8 (3) of the Law on Extradition).

7.1.2.7. Non-retroactivity

In the Law on Extradition and European Arrest Warrant there is no express requirement that the conduct have been a crime in Bulgaria at the time it occurred as a crime in the requesting state, but there does not appear to be any jurisprudence on this point.

7.1.2.8. Statutes of limitation

Extradition shall be refused if prosecution would be barred by a statute of limitation either under Bulgarian law or the law of the requesting country (Article 7 (6) of the Law on Extradition).

7.1.2.9. Amnesties, pardons and similar measures of impunity

Extradition shall be refused in case of an amnesty under Bulgarian law or the law of the requesting country (Article 7 (6) of the Law on Extradition). According to the Bulgarian Ministry of Justice, amnesties are universal grounds for the refusal of extradition.[220] Crimes under international law, however, have a different status from ordinary crimes under national legislation and therefore, refusal of extradition in case of amnesty should not apply to crimes against humanity and war crimes.

7.1.3. SAFEGUARDS

There are several provisions in Bulgarian law that are intended to protect the rights of the suspects, including the right to fair trial, the right to be free of torture or other ill-treatment and the right to life, as well as provisions ensuring that only the crimes mentioned in the extradition request are prosecuted.

Additional sageguards are provided in Article 6 (1) of the Law on Extradition, extradition shall be refused in case of:

- a person who is granted asylum in Bulgaria,
- a person that cannot be criminally responsible under Bulgarian law.

Whether a person is a Bulgarian citizen, refugee or benefits from immunity, is determined at the moment when the request for extradition is received (Article 6 (2) of the Law on Extradition).

Morover, according to Article 7 (4) of the Law on Extradition, extradition shall be refused if it is aimed at punishment on the basis of race, religion, citizenship, sex, marital status or political convictions or it is determined that there is a risk of aggravating the person`s situation, based on one or more of these grounds.

7.1.3.1. Fair trial

According to Article 7 (5) extradition shall be refused if the rights of the accused in the judicial proceedings under international law are not guaranteed in the requesting country.[221]

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[220] Letter from the Bulgarian Ministry of Justice 'Comments on the Report of Amnesty International `Bulgaria: End Impunity through Universal Jurisdiction` within the remit of the Ministry of Justice' to the International Justice Project, Amnesty International, dated 28 November 2008.

[221] Law on Extradition and European Arrest Warrant, last amended June 2008, available at: http://lex.bg/bg/laws/ldoc/2135504378, Article 7 (5) (translation by Amnesty International):

'Extradition shall be refused:

. . .

Pursuant to Article 8 (4) of the Law on Extradition, extradition may be refused if the person whose extradition is requested was sentenced in the requesting country in his or her absence and the person did not know about the prosecution against him or her, unless the requesting state gives sufficient guaranties that the person will be provided with second hearing of the case with right of defence.[222]

Extradition shall be refused where the person sought faces trial in an extraordinary court of the person whose extradition is requested (Article 7 (3) of the Law on Extradition).[223]

> 'Where the person will be subjected by the requesting state to violence, torture or to a cruel, inhuman or degrading punishment or his or her rights in relation to criminal proceedings and the enforcement of his or her sentence are not guaranteed in accordance with international law;'

The original text reads as follows:

> 'Екстрадиция се отказва:…
>
> ако лицето ще бъде подложено в молещата държава на насилие, изтезание или на жестоко, нечовешко или унизително наказание, или не са гарантирани правата му, свързани с наказателното производство и изпълнението на наказанието съгласно изискванията на международното право[.]'

[222] Law on Extradition and European Arrest Warrant, Article 8 (4):

> 'Where the conviction was rendered in absentia and the person was not aware of the prosecution against him or her, unless the requesting state gives sufficient guaranttes that the person will be afforded a retrial of the case wherein his or her right to defence will be exercised; '

The original text reads as follows:

> 'ако присъдата е била постановена задочно и лицето не е знаело за наказателното преследване срещу него, освен ако молещата държава даде достатъчно гаранции, че на лицето се осигурява повторно разглеждане на делото с право на защита[.]'

[223] Law on Extradition and European Arrest Warrant, Article 7 (3):

> 'Extradition shall be refused: …
>
> Where the person whose surrender is requested will be tried by an extraordinary tribunal in the requesting state or where a sentence issued by such a tribunal will be enforced against him or her;'

The original text reads as follows:

> 'Екстрадиция се отказва: …
>
> ако лицето, чието предаване се иска, ще бъде съдено от извънреден съд

7.1.3.2. Torture and other cruel, inhuman or degrading treatment or punishment

Extradition shall be refused in case of evidence that the person will be subject to violence torture or cruel, inhuman or humiliating penalty (Article 7 (5) of the Law on Extradition).

7.1.3.3. Death penalty

Extradition shall be refused if death sentence could be imposed by the requesting country, except if the applying state gives sufficient legal guarantees that the death sentence shall not be imposed, or if it had been imposed – shall not be executed or shall be replaced by a different penalty (Article 7 (8) of the Law on Extradition).[224]

7.1.3.4. Humanitarian concerns

There are no provisions barring extradition based on humanitarian concerns.

7.1.3.5. Speciality

Article 31 (1) of the Law on Extradition and European Arrest Warrant provides for the principle of speciality and sets the conditions where the principle is not applied:

> 'The person who has been extradited by another country, may be judged only for the offence for which the person has been surrendered, except:
>
> 1. a subsequent consent of the other country is granted also for another offence, committed before his or her surrender, or

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> в молещата държава или ако срещу него ще бъде приведена в изпълнение присъда, постановена от такъв съд[.]'

[224] Law on Extradition and European Arrest Warrant, Article 7 (8):

> 'Extradition shall be refused: ...
>
> Where the law of the requesting state envisages a death penalty or such a penalty has been imposed, unless the requesting state gives sufficient guarantees that the death penalty will not be imposed or, where it has been imposed, that it will not be carried out or will be substituted for another.'

The original text reads as follows:

> 'ако за престъплението законът на молещата държава предвижда или е наложено смъртно наказание, освен ако молещата държава даде достатъчно гаранции, че смъртното наказание няма да бъде наложено или ако е наложено - няма да бъде изпълнено или ще бъде заменено с друго.'

2. the person had the ability to leave the territory of the Republic of Bulgaria and he/she did not leave up to 45 days after his/her final discharge and has returned back on it, after he or she has left it.'[225]

Article 61 (*) (1) of the law provides for speciality in case of an European arrest warrant. Article 61(*) (2) defines the conditions when the principle of speciality is not applied:

'1. the surrendered person had the opportunity to leave the territory of the Republic of Bulgaria and did not leave up to 45 days after his/her final discharging, or has returned again on it after he/she had left it.

2. for the offence no imprisonment or life sentence is stipulated;

3. the prosecution does not require imposing of a measure limiting the personal freedom,

4. the required person has rejected the application of the principle of peculiarity before the executing body simultaneously with the giving of consent to surrender in the Republic of Bulgaria;

5. after the surrender in the Republic of Bulgaria , the required person has explicitly rejected application of the principle of peculiarity for offences committed before the surrender;

6. the executing body has given a consent not to apply the principle.'[226]

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[225] Law on Extradition and European Arrest Warrant, Article 31 (1). The original text reads as follows:

'Лицето, предадено от друга държава, може да бъде съдено само за престъплението, за което е предадено, освен ако:

1. е последвало съгласие на другата държава за съденето му и за друго престъпление, извършено преди предаването му, или

2. то е имало възможност да напусне територията на Република България и не го е направило до 45 дни от окончателното му освобождаване или се е завърнало отново на нея, след като я е напуснало.'

[226] Law on Extradition and European Arrest Warrant, Article 61 (*) (1). The original text reads as follows:

'1. предаденото лице е имало възможност да напусне територията на Република България и не го е направило до 45 дни от окончателното му освобождаване или се е завърнало отново на нея, след като я е напуснало;

2. за престъплението не се предвижда наказание лишаване от свобода или доживотен затвор;

3. наказателното производство не изисква вземане на мярка, която

7.2. MUTUAL LEGAL ASSISTANCE

The conditions and restrictions on mutual legal assistance between Bulgaria and other states or international courts are defined in the Law on Extradition and European Arrest Warrant, as well as in Chapter Thirty Six, Section III of the Bulgarian Code of Criminal Procedure, entitled 'International Legal Assistance in Criminal Cases'.

Pursuant to Article 471 (1) of the Code of Criminal Procedure, rendering of international legal assistance to other states or international courts has to be governed by the provisions of a international treaty to which Bulgaria is a party or based on the principle of reciprocity.

Article 471 (2) defines international legal assistance as a term comprising the following:

- Service of process
- Acts of investigation
- Collection of evidence
- Provision of information

Other forms of legal assistance, provided for in an international treaty to which Bulgaria is a party or imposed by the principle of reciprocity.

There are no specific provisions regulating the cooperation with international courts.

Bulgaria is party to a number of multilateral and bilateral treaties relating to mutual legal assistance.[227]

ограничава личната свобода;

4. исканото лице се е отказало пред изпълняващия орган от прилагане на принципа на особеността едновременно с даване на съгласие да бъде предадено в Република България;

5. след предаването му в Република България исканото лице изрично се е отказало от прилагане на принципа на особеността за престъпления, извършени преди неговото предаване;

6. изпълняващият орган е дал съгласие принципът да не се прилага.'

[227] In assition to the treaties discussed in Section 4.2, these treaties include 1956 Agreement with the Federal Republic of Yugoslavia for Mutual Legal Assistance, entered into force 26 January 1957; The European Convention of 20 April 1959 on Mutual Legal Assistance in Criminal Matters; 1988 Agreement with Yemen for Legal Assistance on Civi and Criminal Matters, entered into force 22 January 1989 (SG 58/1988); UN Convention of 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; The European Convention of 8 November 1990 on laundering, search, seizure and confiscation of the proceeds from crime; Agreement with the Republic of Azerberjan for Legal Assistance on Criminal Matters, 29 June 1995; The Convention of 29 May 2000 on mutual legal assistance in criminal matters between EU Member States and Protocol of 16 October 2001 on the Convention on Mutual Legal

7.2.1 UNAVAILABLE OR INADEQUATE PROCEDURES

There do not appear to be any unavailable or inadequate procedures in legislation, but bilateral mutual legal assistance treaties have not been analyzed for this paper.

7.2.2 INAPPROPRIATE BARS TO MUTUAL LEGAL ASSISTANCE

Article 472 of the Bulgarian Code of Criminal Procedure provides for refusal of international legal assistance if:

> '... the implementation of the request could threaten the sovereignty, the national security, the public order and other interests, protected by law.'[228]

According to the Bulgarian Ministry of Justice, these reasons for refusal of legal assistance are universal and are 'included in all relevant international instruments on these matters'. Consequently the Ministry finds that 'these grounds for refusal are fully justified and necessary'.[229]

However, some of the grounds for refusal of international legal assistance in cases threatening to the sovereignty of Bulgaria could lead to a denial of justice if other states attempt to exercise universal jurisdiction with regard to crimes committed on Bulgarian territory or by Bulgarian citizens. Moreover, the vague and broad phrasing of these conditions creates potential of confusion and inappropriate refusal of international legal cooperation.

As Amnesty International has indicated in its paper, The international criminal court: Making the right choices, AI Index: IOR 40/13/97, none of the wide variety of grounds for states to deny mutual assistance to other states, with respect to ordinary crimes, are relevant to international assistance by states with respect to crimes under international law. The concept of national sovereignty is no longer seen as permitting states unrestricted license, but as describing their rights and concomitant obligations within an international framework of law. Therefore, the standard grounds for refusal – infringement of national sovereignty, security, public order or other national interest, permitted to states by mutual assistance instruments are not applicable to crimes under international law.

7.2.3. SAFEGUARDS

Bulgarian law provides several safeguards for the rights of the suspect. These include recognition and enforcement of a foreign court sentence only if the sentence has been issued in full compliance with the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms and the additional Protocol, to which Bulgaria is a party (Article

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Assistance in Criminal Matters between EU Member States; Agreement with India for Mutual Legal Assistance, September 2007.

[228] Criminal Procedure Code, Article 471.

[229] Letter from the Bulgarian Ministry of Justice: 'Comments on the Report of Amnesty International `Bulgaria: End Impunity through Universal Jurisdiction` within the remit of the Ministry of Interior' to the International Justice Project, Amnesty International, dated 28 November 2008.

463 (4) of the Criminal Procedure Code) and the offender has not been sentenced for a political or military offence (Article 463 (4) of the Criminal Procedure Code). [230] Moreover, according to Article 464 (4) and (5), foreign courts` decisions are not recognized and enforced if there are sufficient grounds to believe that a sentence has been imposed or aggravated due to racial, religious, national or political considerations and the execution of the sentence stands in contradiction to international obligations of the Republic of Bulgaria.[231]

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[230] Criminal Procedure Code, Article 463 (3). The original text reads as follows:

> 'Влязла в сила присъда, постановена от чуждестранен съд, се признава и изпълнява от органите на Република България в съответствие с чл. 4, ал. 3, когато: …
>
> 3. присъдата е постановена в пълно съответствие с принципите на Конвенцията за защита на правата на човека и основните свободи и на протоколите към нея, по които Република България е страна.
>
> 4. деецът не е осъден за престъпление, което се счита за политическо или за свързано с политическо престъпление, или за военно престъпление.'

[231] Criminal Procedure Code, Article 464 (4) and (5). The original text reads as follows:

> 'Искане на друга държава за признаване и изпълнение на присъда, постановена от неин съд, се отхвърля, когато:…
>
> 4. има достатъчно основания да се смята, че присъдата е наложена или утежнена по расови, религиозни, национални или политически съображения.
>
> 5. изпълнението противоречи на международните задължения на Република България.'

8. SPECIAL POLICE OR PROSECUTOR UNIT

There is no special police/prosecutor unit dealing with crimes under international law. According to the Bulgarian Ministry of Interior pursuant to Article 194 of the Criminal Procedure Code, the competent authorities to investigate crimes committed abroad are the investigators from the National Investigation Service.[232] However, the Ministry of Interior did not indicate that there was a specific unit within the National Intelligence Services staffed with persons trained and experienced in the investigation of crimes under international law with a specific mandate to do so. In addition, it appears that there is no similar unit of prosecutors.

There are, however, special police units for other serious crimes such as terrorism and organised crime. Therefore, a similar unit has to be created for crimes under international law, such as genocide, war crimes and crimes against humanity.

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[232] Letter from the Bulgarian Ministry of Interior 'Comments on the Report of Amnesty International `Bulgaria: End Impunity through Universal Jurisdiction` within the remit of the Ministry of Interior' to the International Justice Project, Amnesty International, dated 28 November 2008.

9. JURISPRUDENCE

There is no relevant jurisprudence involving the exercise of universal jurisdiction by Bulgarian courts over foreigners suspected of committing crimes abroad against foreigner. The case of a Serbian colonel of the former Yugoslav army, Chedomir Brankovic, who was arrested by the Bulgarian police by request of the Croatian bureau of Interpol for the alleged commission of war crimes, has been discussed above in Section 2.2.

RECOMMENDATIONS

Bulgaria should take the following steps so that it is not a safe haven for persons responsible for the worst crimes in the world and so that it can cooperate effectively with other states in the investigation and, where there is sufficient admissible evidence, prosecution of such crimes in fair trials without the death penalty or other human rights violations.

Substantive law

Ratify, without any limiting reservations:

- The 2006 International Convention for the Protection of All Persons from Enforced Disappearance, which requires states to extradite or prosecute persons suspected of committing enforced disappearances, and make declarations under Articles 31 and 32 recognizing the competence of the Committee to receive complaints from individuals and states concerning alleged violations of the Convention.

- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Define crimes under international law as crimes under international law or amend current legislation to address the concerns mentioned in Section 4 above with regard to the following crimes, including:

- genocide
- crimes against humanity;
- war crimes in both international and non-international armed conflict;
- torture in both armed conflict and peacetime;
- extrajudicial executions; and
- enforced disappearances,

in accordance with the strictest standards of international law.

Ensure that crimes under international law, expressly defined in accordance with the strictest standards of international law, are included in Chapter Fourteen (Crimes against Peace and Humanity) of the Criminal Code to ensure that Bulgarian courts can exercise universal jurisdiction over them.

Define principles of criminal responsibility in accordance with the strictest standards of international law and, in particular, ensure in Article 419 of the Criminal Code that the same strict standards of criminal responsibility apply both to commanders and to other superiors.

Define defences in accordance with the strictest standards of international law and, in particular, amend the Criminal Code to exclude as permissible defences superior orders, duress and necessity, but permit them to be taken into account in mitigation of punishment. In addition, the defence of property should be excluded for genocide, war crimes, crimes against humanity and any other crime under international law.

Jurisdiction

Provide that courts have universal criminal jurisdiction over conduct amounting to crimes under international law.

Provide that Bulgaria has an *aut dedere aut judicare* obligation to extradite a person in territory subject to its jurisdiction who is suspected of committing a crime under international law, provided that the suspect will receive a fair trial without the death penalty or other human rights violations, or submit the case to its prosecution authorities for the purpose of prosecution.

Where Bulgaria has not yet defined a crime under international law as a crime under national law, ensure that its courts can exercise universal criminal and civil jurisdiction over that crime under international law.

Bulgarian law enforcement and authorities

Ensure that Bulgaria can open an investigation of anyone suspected of a crime under international law even if that suspect has never entered territory subject to Bulgaria's jurisdiction by codifying that police units can act in cases where foreign law enforcement authorities inform Bulgarian authorities that a suspect is planning to visit Bulgaria. Expand this position to include cases where the police receive information from other reliable sources, such as victims or their families. Ensure that the Law on Extradition and European Arrest Warrant expressly provides that Bulgaria can issue an arrest warrant and seek extradition of anyone suspected of a crime under international law, even if that suspect has never entered territory subject to Bulgaria's jurisdiction. In addition, to ensure that all states can effectively share the responsibility of investigating and prosecuting persons suspected of crimes under international law, make it clear that Bulgaria can open an investigation of a crime under international law committed abroad even when the suspect is not present, either with a view to a possible prosecution in Bulgaria or to assist law enforcement officials in other states seeking to prosecute the suspect.

However, the law should ensure that the person suspected of such crimes is in territory of the forum state subject to its jurisdiction a sufficient time before the start of a trial in order to prepare for trial.

Ensure that legislation provides that the first state to exercise jurisdiction, whether universal, territorial, active or passive personality or protective, to investigate or prosecute a person has

priority over other states with regard to the crimes, unless a second state can demonstrate that it is more able and willing to do so in a prompt and fair trial without the death penalty or other serious human rights violations.

Procedure related to suspects and accused

Establish rapid, effective and fair arrest procedures to ensure that anyone arrested on suspicion of committing crimes under international law will appear for extradition, surrender or criminal proceedings in Bulgaria.

Ensure that the rights of suspects and accused under international law and standards related to a fair trial, including those reflected in Article 55 of the Rome Statute of the International Criminal Court, are fully respected.

Ensure that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or other human rights violations.

Ensure that suspects and accused are not extradited to states where they risk death penalty, torture or other cruel, inhuman or degrading treatment.

Procedure related to victims

Ensure that victims and their families are able to institute criminal proceedings based on universal jurisdiction over crimes under international law through private prosecutions, actions civiles, actio popularis or similar procedures.

Ensure that there is a provision in the Criminal Procedure Code enabling victims and their families to initiate prosecution in cases where a crime under international law has been reported to a prosecutor and the prosecutor has declined to act.

Ensure that victims and their families are able to file civil claims for all five forms of reparations (restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition) in civil and in criminal proceedings based on universal jurisdiction over crimes under international law.

Ensure that victims and their families are fully informed of their rights and of developments in all judicial proceedings based on universal jurisdiction concerning crimes under international law.

Removal of legal, practical and political obstacles

Legal -

Amend Article 220 of the Criminal Code in order to provide expressly that any claimed state or official immunities will not be recognized with regard to crimes under international law.

Provide that statutes of limitation do not apply to prosecutions or civil proceedings concerning crimes under international law no matter when they were committed. Abolish any

statutes of limitations that apply to crimes under international law no matter when they were committed.

Provide and clarify that the principle of *ne bis in idem*, in Article 24 (1) (6) the Criminal Code, does not apply to proceedings in a foreign state concerning crimes under international law.

Reverse Decision No. 7 of 1992 of the Constitutional Court and ensure that courts can exercise jurisdiction over all conduct that was recognized under international law as a crime at the time that it occurred even if it occurred before it was defined as crime under national law.

Amend Article 79 of the Criminal Code and Article 460 of the Criminal Procedure Code to provide expressly that amnesties and similar measures of impunity granted by a foreign state with regard to crimes under international law have no legal effect with respect to criminal or civil proceedings.

Political –

Ensure that the criteria for prosecutors to use in deciding whether to investigate or prosecute crimes under international law are developed in a transparent manner in close consultation with civil society, made public, are neutral and exclude all political considerations.

Amend Article 129 (1) of the Constitution to ensure that promotions and disciplinary proceedings for prosecutors are conducted by professional prosecutors or by independent bodies with no executive or judicial membership.

Ensure that decisions whether to extradite persons suspected of crimes under international law and to provide mutual legal assistance are made in accordance with neutral criteria and exclude all inappropriate criteria, such as the prohibition of the extradition of nationals and dual criminality.

Ensure that the final decision whether to request extradition under Article 23 of the Law on Extradition or to provide mutual legal assistance is taken by an independent prosecutor, subject to judicial review, and not by a political official.

Practical –

Improvements in investigation and prosecution in Bulgaria

Since there are special police units for other serious crimes such as terrorism and organised crime, a similar special unit of police and prosecutors should be created for crimes under international law committed abroad.

Ensure that such a unit:

- has sufficient financial resources, which should be comparable to the resources devoted to other serious crimes, such as "terrorism", organized crime, trafficking in

persons, drug trafficking and money laundering,

- has sufficient material resources,
- has sufficient, experienced, trained personnel, and
- provides effective training on a regular basis of all staff in all relevant subjects, including international criminal law, human rights and international humanitarian law.

Establish a special immigration unit with sufficient staff and other resources to screen foreigners seeking to enter the state, including immigrants, visa applicants and asylum seekers, to determine whether they are suspected of crimes under international law.

Ensure that such a unit cooperates fully with police and prosecuting authorities in a manner that fully respects the rights of all persons to a fair trial, including the right not to be compelled to confess or testify against oneself.

Ensure that all judges, prosecutors, defence lawyers and others in the criminal and civil justice systems are effectively trained in relevant subjects, including crimes under international law, particularly crimes of sexual violence and crimes against children.

Improve the victim and witness protection and support unit, based on the experience of such units in international criminal courts and national legal systems, so that it is able to protect and support victims and witnesses involved in proceedings in the state, in foreign states and in international criminal courts, including through relocation.

Improvements in cooperation with investigations and prosecutions in other states

Ensure that there are no obstacles to requests from foreign states for mutual legal assistance in investigating and prosecuting crimes under international law, provided that the proceedings in the requesting state are fully consistent with international law and standards concerning the right to a fair trial and that cooperation is not provided when there is a risk that it could lead to the imposition of the death penalty, torture or other cruel, inhuman or degrading treatment or punishment or other human rights violations.

Ensure that requests for mutual legal assistance by foreign states can be transmitted directly to the police, prosecutor or investigating judge directly, without going through cumbersome diplomatic channels, but ensure that such requests are not complied with when there is a risk that it could lead to the imposition of the death penalty, torture or other cruel, inhuman or degrading treatment or punishment, unfair trial, or other human rights violations.

Improve procedures in Bulgaria for conducting investigations abroad, including through the use of joint international investigation teams, with all the necessary areas of expertise.

Eliminate in law and practice any unnecessary procedural obstacles that would delay or prevent the introduction of admissible evidence from abroad. Exclude any evidence that cannot be demonstrated as having been obtained without the use of torture or other cruel, inhuman or degrading treatment.

Appoint a contact point responsible for crimes under international law, as provided in EU European Council Decision, if this has not yet been done, who will be required to participate for in the European Network of Contact Points on Genocide, War Crimes and Crimes against Humanity, meetings of the Interpol Expert Meetings on Genocide, War Crimes and Crimes against Humanity and other international and bilateral meetings.

Cooperate with Interpol in the maintenance of the database on crimes under international law.

Take steps, in cooperation with other states, to draft, adopt and ratify promptly a new multilateral treaty under the Council of Europe and UN auspices providing for extradition of persons suspected of crimes under international law and mutual legal assistance with regard to such crimes, excluding inappropriate grounds for refusal and including bars on extradition and mutual legal assistance where there is a risk of the death penalty, torture or other ill-treatment, unfair trial or other serious human rights violations.

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ANNEX – CIVIL CLAIMS IN CRIMINAL PROCEEDINGS

CIVIL CLAIMS IN CRIMINAL PROCEEDINGS				
Features of each procedure	Plaintiff in civil proceedings	Civil Claimant	Private Prosecutor	Private Complainant
Who may invoke procedure	■ Anyone suing a Bulgarian resident or someone seated in Bulgaria or someone performing its activities in Bulgaria regarding any tort anywhere. ■ Anyone suing anyone regarding a tort in Bulgaria. ■ Anyone suing anyone regarding a tort anywhere when the damages were suffered in Bulgaria. (Code of private International Law Articles 4 and 18).	■ victim who suffered damages from the crime (Crim. PC 84 (1)) ■ heirs of the victim who suffered damages from the crime (Crim. PC 84 (1)) ■ legal entity who suffered damages from the crime (Crim. PC 84 (1))	■ Victim or heir of victim who has suffered direct material or moral damage from a crime of general nature (Article 76 of the Crim. PC).	■ Victim or heir of victim who has suffered damages from a crime which is prosecuted following a complaint of a victim. (Article 80 of the Crim. PC).
For which crimes	■ civil, commercial, labour and family matters.	■ general nature (all but certain minor crimes) ■ specific nature (certain minor crimes)	■ Crimes of general nature (all but certain minor crimes).	■ Crimes of specific nature (certain minor crimes).

CIVIL CLAIMS IN CRIMINAL PROCEEDINGS				
Features of each procedure	Plaintiff in civil proceedings	Civil Claimant	Private Prosecutor	Private Complainant

CIVIL CLAIMS IN CRIMINAL PROCEEDINGS				
Features of each procedure	Plaintiff in civil proceedings	Civil Claimant	Private Prosecutor	Private Complainant
Who may initiate prosecution and conduct investigations	■ The civil proceeding is initiated by a complaint of the plaintiff.	■ *For crimes of general nature* – prosecution can only be initiated by the prosecutor. Investigations are conducted by the prosecutor and the investigating bodies. The victim can collect additional evidences but is not obligated to do so. ■ *For crimes of specific nature* – prosecution is initiated by the victim or his or her heirs. Investigations are conducted by the victim or his or her heirs. They can seek the assistance of the bodies of the Ministry of Interior for information they cannot collect themselves.	■ Prosecution can only be initiated by the prosecutor. Investigations are conducted by the prosecutor and the investigating bodies. The victim can collect additional evidences but is not obligated to do so.	■ Prosecution is initiated by the victim or his or her heirs. Investigations are conducted by the victim or his or her heirs. They can seek the assistance of the bodies of the Ministry of Interior for information they cannot collect themselves.
Jurisdiction	■Active personality jurisdiction ■Passive personality	■ Same as for all other criminal proceedings	■ Same as for all other criminal proceedings	■ Same as for all other criminal proceedings

CIVIL CLAIMS IN CRIMINAL PROCEEDINGS				
Features of each procedure	Plaintiff in civil proceedings	Civil Claimant	Private Prosecutor	Private Complainant
	jurisdiction ■ Protective jurisdiction			
Conditions		■ The same claim has not already been filed in a civil proceeding pursuant to the Civil Procedure Code (Article 84 (2) of the Crim. PC). ■ The claim is filed (orally or in writing) no later than the beginning of criminal proceedings (the first court session before the court of first instance) (Article 85 (3) of the Crim. PC).	■ The request for participation as a private prosecutor has to be filed no later than the beginning of criminal proceedings before the court of first instance.	■ The complaint must be filed within six months from the date when the victim has become aware that a criminal offence has been committed or from the day on which the victim has received notice for termination of pre-trial proceedings on grounds that the offence is prosecuted following a complaint of the victim.

CIVIL CLAIMS IN CRIMINAL PROCEEDINGS				
Features of each procedure	Plaintiff in civil proceedings	Civil Claimant	Private Prosecutor	Private Complainant
Rights	■ To have a defence lawyer ■ To be informed about all the act of the court and the other parties. ■ Make requests, comments and objections ■ Produce evidence file appeal ■ Summon third parties. ■ Define the scope of the complaint.	■ take part in civil proceedings (Crim. PC 87 (1)) ■ demand security for the civil claim (Crim. PC 87 (1)) ■ examine the case file and obtain excerpts (Crim. PC 87 (1)) ■ produce evidence (Crim. PC 87 (1)) ■ make requests, comments and objections (Crim. PC 87 (1)) ■ file an appeal from prejudicial acts of court during proceedings (Crim. PC 87 (1))	■ Examine the case file and obtain excerpts (Crim. PC 79) ■ Produce evidence (Crim. PC 79) ■ Take part in proceedings (Crim. PC 79) ■ Make requests, comments and raise objections (Crim. PC 79) ■ Appeal from acts contrary to interests (Crim. PC 79) ■ Conduct prosecution alongside prosecutor (Crim. PC 78 (1)) ■ Continue the prosecution after prosecutor terminates it (Crim. PC 78 (2). ■ Appeal the court`s decision to deny participation as a private prosecutor.	■ Examine the case file and obtain excerpts (Crim. PC 82 (1)). ■ Produce evidence (Crim. PC 82 (1)). ■ Take part in proceedings (Crim. PC 82 (1)). ■ Make requests, comments and raise objections (Crim. PC 82 (1)). ■ Appeal from acts contrary to interests (Crim. PC 82 (1)). ■ Withdraw the complaint (Crim. PC 82 (1)). ■ Be constituted in the course of judicial proceedings as a civil claimant. ■ Request cooperation by the bodies of the Ministry of Interior for the collection of information that they themselves cannot collect.

CIVIL CLAIMS IN CRIMINAL PROCEEDINGS				
Features of each procedure	Plaintiff in civil proceedings	Civil Claimant	Private Prosecutor	Private Complainant
Remedies	■ direct (not indirect) material damages (right extends to victim's heirs) ■ direct (not indirect) moral damages (discretion of the court to award to heirs of the victim).	■ direct (not indirect) material damages (right extends to victim's heirs) ■ Direct (not indirect) moral damages (discretion of the court to award to heirs of the victim).	■ Cannot claim remedies for the damages. In order to claim any compensation the private prosecutor has to request to be simultaneously constituted as a civil claimant.	■ Cannot claim remedies for the damages. In order to claim any compensation the private complainant has to request to be simultaneously constituted as a civil claimant.

CIVIL CLAIMS IN CRIMINAL PROCEEDINGS				
Features of each procedure	Plaintiff in civil proceedings	Civil Claimant	Private Prosecutor	Private Complainant
Restrictions	■ Discretionary – Court may refuse jurisdiction under Articles 4 and 18 of the Code of Private International Law. Courts cannot exercise universal jurisdiction in civil proceedings.	■ Discretionary – Court can refuse private prosecution under Articles 4 and 18 of Code PIL. ■ No right to appeal the court`s decision of denial of the civil claim (Crim. PC 271 (6)) ■ The civil claim cannot cause the delay of the criminal proceedings (Article 88 (2) of the Crim. PC). ■ Civil claim cannot continue if the prosecutor terminates criminal proceedings but the claim can be filed again before a civil court (Article 88 (3) of the Crim. PC). However, a victim or victim's heir could avoid this risk if the crime is one of a general nature and had become a private prosecutor.	■ A request for participation as a private prosecutor cannot either initiate prosecution or define the scope of prosecution.	■ No right to appeal the court`s decision of denial of participation as a private complainant (Crim. PC 271 (6))

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