



**UNODC**

United Nations Office on Drugs and Crime

# **Country Review Report of Bulgaria**

Review by Albania and Sweden of the implementation by Bulgaria of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

## I. Introduction

The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.

In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.

The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.

The review process is based on the terms of reference of the Review Mechanism.

## II. Process

The following review of the implementation by Bulgaria of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Bulgaria, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Albania, Sweden and Bulgaria, by means of telephone conferences, e-mail exchanges or any further means of direct dialogue in accordance with the terms of reference and involving the following experts:

### Bulgaria:

- Mr. Georgi Rupchev, State Expert, International Legal Co-operation and European Affairs Directorate, Ministry of Justice;
- Ms. Nadia Hringova, Senior Expert, International Legal Cooperation and European Affairs Directorate, Ministry of Justice; and
- Mr. Florian Florov, Junior Expert, International Legal Cooperation and European Affairs Directorate, Ministry of Justice;

### Albania:

- Ms. Helena Papa, Coordinator-Inspector, Department of Internal, Administrative, Control and Anti-Corruption, Council of Ministers; and
- Ms. Marsida Xhaferllari, General Director of Codification, Ministry of Justice.

### Sweden:

- Ms. Birgitta Nygren, Ambassador, Ministry for Foreign Affairs; and
- Ms. Katarina Fabian, Desk Officer, Ministry of Justice, Division for Criminal Cases and International and Judicial Cooperation.

A country visit, agreed to by Bulgaria, was conducted from 14 to 17 February 2011. A list of all the national experts who participated in the round-table discussions during that country visit, as well as the representatives from the civil society and private sector who also met the review team, is annexed to the present report.

### **III. Executive summary**

#### **I. Legal system**

*The United Nations Convention against Corruption (UNCAC) was signed on 10 December 2003 and ratified by the National Assembly on 15 August 2006. According to article 5, paragraph 4, of the Constitution, “International treaties, ratified in compliance with the constitutional procedure, published and entered into force for the Republic of Bulgaria are part of the domestic law and have supremacy over those domestic provisions which contradict them”. This rule has been applied consistently by Bulgarian courts. In principle, the Bulgarian competent authorities are in a position to directly apply the UNCAC provisions, except for the criminalization provisions.*

#### **II. Overall findings**

*There have been considerable efforts to adopt reforms of Bulgaria’s legal, and particularly, penal law system, to address issues of corruption. This is also attributed to the country’s anti-corruption initiatives having been subject to evaluation by other international and regional mechanisms with a mandate on anti-corruption related issues or issues linked to corruption (Council of Europe/GRECO; Council of Europe/MONEYVAL; OECD Working Group on Bribery in International Business Transactions; European Commission Cooperation and Verification Mechanism).*

*As a result, Bulgaria has adopted a number of significant improvements of penal procedures against corruption and can demonstrate a higher number of indictments for cases involving high-level corruption, although still few cases have been concluded in court.*

*Bulgaria’s institutional framework against corruption revolves around two main bodies: The Commission for Prevention and Counteraction against Corruption (CPCC), established in 2006, and the Centre for Prevention and Counteraction of Corruption and Organized Crime (BORKOR). The latter is still in process of institutionalization. The Commission is in charge of coordinating activities for the implementation of anti-corruption policies within the framework of the National Anti-Corruption Strategy and its action plan, adopted in 2009 and 2010 respectively. The main tasks of the BORKOR will be to conduct analysis, planning and development of measures aimed at preventing corruption practices.*

*The main challenge for the coming years will be to ensure that legal reforms are accompanied by administrative reforms geared towards enhancing inter-agency coordination and promoting effective implementation of relevant domestic laws. A core element for successful anti-corruption action will also be the identification of ways and means to address delays in investigations and judicial proceedings that may frustrate efforts to efficiently curb corruption-related offences. At the policy level, anti-corruption work will further benefit from more streamlined and coordinated mechanisms for the collection of relevant data and*

statistics, which are necessary for the design of ad hoc crime prevention and criminal justice strategies.

Another challenge which is currently encountered at the legislative level is to ensure that the working group for drafting a new Criminal Code, which began its work in November 2009, will produce substantive results. In this connection, the Bulgarian authorities welcomed the readiness of UNODC to provide, if needed and upon request, legislative expertise and advice, to support the deliberations and proceedings of the Working group.

### **III. Criminalization and law enforcement**

#### **A. Criminalization**

The provisions of the Bulgarian legislation incriminating corruption-related conducts have been amended in the past on several occasions to ensure compliance with international anti-corruption standards. In this connection, the substantive criminalization provisions of the Bulgarian legal framework comply, to a large extent, with the requirements set forth in the UNCAC. The majority of the UNCAC-based offences are established in the Criminal Code. The offence of embezzlement of property in the private sector is not stipulated as a separate crime in the Criminal Code, but prosecuted by analogy on the basis of the corresponding provisions on the embezzlement of property in the public sector, taking into account the capacity of the person as an official in the meaning of Article 93 of the Criminal Code, as well as the non-public nature of the embezzled property.

Illicit enrichment is also not incriminated as a separate crime per se. Constitutional limitations pertaining to the right to be presumed innocent until proven guilty under the law hinder the implementation of article 20 of the UNCAC in the Bulgarian legal order. Moreover, no plans exist to include such an offence in a future revised text of the Criminal Code. In a more general context, however, the concept of acquisition of illegal gains as a result of criminal acts related to corruption may lead to property sanctions, including seizure and confiscation of proceeds of crime or property derived from, or used in the commission of, such criminal acts. Legislation on declaration of assets and conflict of interest is in place covering a wide range of “persons holding public offices” and providing for administrative sanctions.

The concept of “official” is broadly defined domestically to include “any official holding responsible official position”. As to the nature of the “undue advantage”, there is no distinction of payments or gifts on the basis of the amount of money given: even a small payment as a bribe is punished.

The reviewers made the following remarks for the attention of the Bulgarian authorities:

- There is a need to define the offence of active bribery in the public sector, as well as, for purposes of consistency, that of trading in influence, in a way that expressly and unambiguously covers instances where the advantage is not intended for the official him/herself but for a third party (third-party beneficiary), whether a natural person or a legal entity. On this particular issue, the review team took into account the ongoing process of the Working Group for drafting a new Criminal Code and hopes that the Group would take appropriate measures to further clarify the application of the

concept of third-party beneficiary also in the cases of active bribery and trading in influence.

- Moreover, the specific incrimination of the conduct of an intermediary under Article 305a of the Criminal Code was seen as a remainder of past Bulgarian legislation which has nowadays become redundant after the amendment of the Bulgarian Criminal Code in 2002 whereby all the actions of bribery were included as objective elements of the relevant offence; further, its scope of application has been limited to cover cases where a bribe was given to an intermediary and that person failed to deliver it. The review team made these remarks bearing in mind the ongoing work of the Working Group for drafting a new Criminal Code and with the aim to facilitate this work.
- More efforts to continue to clarify the interpretation of the domestic legislation may be needed to define the difference between the objective elements of active and passive bribery, on the one hand, and their attempt, on the other, as well as to clarify the interpretation of legislative amendments relating to the inclusion of both material and non-material advantages in the bribery provisions of the Criminal Code.

The Bulgarian legislation does not limit the range of the predicate offences as a result of which proceeds have been generated that may become the subject of money-laundering offences. The relevant provision of the Criminal Code addresses all types of offences of both criminal and administrative nature as predicate offence, regardless of their gravity, thus going beyond the UNCAC requirements.

The Bulgarian authorities indicated that the existing money-laundering provision in the domestic legislation (article 253) is broadly formulated and permits the prosecution and punishment of an offender for both the predicate offence and the laundering of proceeds of crime

While noting Bulgaria's considerable efforts to achieve compliance of the national legal system with the UNCAC provisions in the criminalization area, the reviewers identified grounds for further improvement and, in this regard, highlighted the following issues for the attention of the competent authorities:

- Reconsider, the usefulness of maintaining the self-standing provision on the criminalization of the conduct of an intermediary in cases of bribery and, if deemed appropriate, trading in influence. In this connection, explore the possibility of making amendments in the text of the relevant provisions on bribery and trading in influence to include *expressis verbis* the phrase "directly or indirectly", in line with the UNCAC;
- Construe the offences of active bribery in the public sector, as well as trading in influence, in a way that unambiguously covers instances where the advantage is not intended for the official him/herself but for a third party (third-party beneficiary);
- Continue to clarify the interpretation of the domestic legislation relating to the inclusion of both material and non-material advantages in the bribery provisions of the Criminal Code;
- Continue to clarify the interpretation of the domestic legislation to define the difference between the objective elements of active and passive bribery, on the one hand, and their attempt, on the other, and, consequently, ascertain whether the provisions on attempt have – in principle – become irrelevant also in court practice;

- *Where deemed appropriate, taking into account the optional nature of article 28 of the UNCAC, as well as the relevant national jurisprudence, systematize and make best use of information related to how direct or circumstantial evidence is brought before the court and assessed by the judges;*
- *Continue to clarify, where deemed appropriate, the interpretation of domestic legislation to widen the scope of article 206 of the Criminal Code in line with article 22 of the UNCAC so that it includes as the object of embezzlement in the private sector “any property, private funds or securities or any other thing of value” and not only “a movable object of another”;*
- *Ensure that copies of the domestic laws giving effect to article 23 of the UNCAC (Laundering of proceeds of crime) and of any subsequent changes to such laws or a description thereof are furnished to the Secretary-General of the United Nations.*

*The Bulgarian authorities indicated as a challenge the implementation of article 282 of the Criminal Code (“criminal breach of trust”) which was designed to deal with other socio-political systems and economic conditions and is, thus, not applicable in cases where the benefit is intended for legal entities based on private capital. Cases of crimes under article 282 are often terminated or result in acquittals under the established court practice to exclude liability in this text to a wide range of persons that do not fall under the term “officials”. Therefore there is a need for a new criminal-law approach and legal regulation of the so called “crimes in office”.*

## **B. Law enforcement**

*The sanctions applicable to persons who have committed corruption-related offences in the public sector appear to be sufficiently dissuasive bearing in mind the maximum applicable penalty. The imposition of a fine is always an additional penalty. The general criminal law provides for statutory minima with regard to those sanctions. The maximum penalties applicable to corruption-related offences in the private sector are lower compared to those involving a public official, but still within the average level of punishment. Additional sanctions such as confiscation of property, deprivation of certain rights are also applicable to those offences or crimes.*

*Overall, the Bulgarian legislation was found in compliance with article 29 of the UNCAC on the statute of limitations, although not entirely comprehensive information was available regarding the statute of limitations regime applicable in civil and administrative law for legal persons, as well as the suspension of the statute of limitation period in cases where the alleged offender has evaded the administration of justice.*

*Bulgaria has chosen to put in place a legal framework for the establishment of administrative liability of legal persons involved in the commission of UNCAC-based offences. It was reported by Bulgaria that, despite the lack of statistical information on the application of the sanctions in practice, the monetary sanctions against legal persons were considered to be enough effective, proportional and dissuasive, especially in the light of the relatively low level of incomes. Moreover, the legislation provides expressly that the sanction cannot be inferior to the economic equivalent of the benefit, they appear to be relatively lower, compared to what is generally expected. The governmental experts suggested that the national authorities explore the possibility of increasing the level of monetary sanctions against legal persons for corruption-related offences in cases where the advantage accruing to the legal person as a*

result of foreign bribery is not “property”, or if the value of the advantage cannot be ascertained.

*The Constitution identifies persons who enjoy immunity from criminal prosecution for the performance of their functions, including the President and Vice-President of the Republic (except for high treason and violation of the Constitution); the members of the National Parliament (except for a serious criminal offence); the members of the Constitutional Court; the candidates for parliamentary, presidential, European Parliament and local elections (except for a serious criminal offence).*

*The Bulgarian Constitution explicitly provides for the independence of the judicial authorities. As part of the judicial system, the Prosecutor’s Office enjoys constitutionally-based independence from the impact of any external factors, which may influence the legal and impartial implementation of his/her functions and powers. The legal powers of the Prosecutor are provided in the Constitution, the Law on Judiciary and the Penal Procedure Code, which strictly specify the conditions for prosecution and basically do not foresee discretion for the prosecutor in discharging his/her functions or powers.*

*Special departments within the Prosecutor’s Office to counter corruption have been established. Since 2009, the Law on Judiciary has enabled the Chief prosecutor, together with the heads of ministries and state institutions, to establish specialized interdepartmental units, in order to assist the investigation under the procedural direction of a prosecutor chosen by him.*

*Bulgaria’s new strategy for the reform of the judiciary, while acknowledging the existing shortcomings of judicial practice, draws special attention to institutional strengthening and mobilization of the capacity of the judiciary to improve the quality of justice and the efficiency of the system. The strategy focuses on three priority objectives: better management and good governance within the judiciary, placing the citizens in the centre and countering corruption in the judicial system. It received broad support of politicians, the judiciary and civil society. The success of reform will depend on its effective implementation by all institutions involved.*

*Of crucial importance is the action to address shortcomings regarding the accountability of the judiciary. In recent cases of alleged corruption, trading in influence and mismanagement in the Bulgarian judiciary, a concrete reaction by disciplinary and judicial authorities was noted. The Bulgarian authorities are encouraged to build upon such reaction and continue to strengthen the accountability of the judiciary through a consistent and strict application of all legal and disciplinary means to sanction corruption.*

*Reforms in the Ministry of Interior were aimed at improving its effectiveness in the fight against corruption. The necessary institutional capacity was created for the prevention, detection, interception and investigation of corruption activities through the establishment of three specialized directorates. The Ministry of Interior is empowered to investigate 97 percent of the criminal offences under the Criminal Code. The latest amendments of the Penal Procedure Code that entered into force on May 2010 repeatedly strengthened the investigative capacity of the Ministry of Interior.*

*Through the Law on Forfeiture of Proceeds of Crime (LFPC) of 2005, Bulgaria has established the legal framework to freeze and forfeit the proceeds of crime. Most of the UNCAC-based offences fall within the scope of the law, with the exception of bribery in the*

private sector. In order to ensure the efficiency of relevant measures, a Commission on establishment of property acquired from criminal activity (CEPACA) under the LFP was created. The Commission has initiated 21 proceedings for the establishment of property belonging to persons who have committed a crime under the UNCAC.

Procedures for the protection of witnesses within the framework of criminal proceedings are established in accordance with the Criminal Procedure Code and the special Law on the Protection of Persons Threatened in Connection with Criminal Proceedings of 2004.

Rules for the protection of whistle-blowers are only included in the Law on Prevention and Disclosure of Conflict of Interest of 2008 without comprehensive provisions on the protection of persons providing relevant information on corruption-related acts. The existence of such legislation would significantly enhance domestic efforts to prevent and detect corruption and, therefore, is highly recommended.

The Bulgarian authorities indicated as good practice the way in which the national legislation provides for mechanisms permitting persons suffering damages from crime to initiate legal proceedings against the offender. Civil claim can be filed against the defendant and/or the persons who bear civil responsibility for his/her actions. Compensation is owed both for material and immaterial damages. The victim may establish him/herself as civil claimant only in the context of both court and pre-trial proceedings.

The cooperation of a perpetrator of a corruption-related offence with the law enforcement authorities is considered as a circumstance mitigating criminal liability in the criminal process. A special provision in the Criminal Code on active bribery stipulates that any person who has offered, promised or given a bribe is not punished if he/she has been blackmailed by the official, the arbitrator or by the expert to do that or if he/she has informed the authorities immediately and voluntarily. A similar approach is followed in the money-laundering provision, whereby the perpetrator is not punished when, before money-laundering is completed, puts an end to his/her participation and notifies the authorities thereof.

The lifting of bank secrecy is provided through court permission and where there is evidence of committed criminal offences, including corruption offences. In light of possible delays that may occur with respect to the obtaining of court orders for the lifting of bank secrecy, a relaxation of the relevant standards and procedures may need to be considered, taking into account the overall approach of the national legislation as to the valid authority to provide authorization.

The rules of criminal jurisdiction, as contained in the Criminal Code, apply to all bribery and trading in influence offences. Jurisdiction is established over acts committed within the territory of Bulgaria, acts committed by Bulgarian nationals, as well as acts committed abroad by foreigners affecting the interests of the Republic of Bulgaria or of a Bulgarian citizen and acts committed abroad by foreigners wherever stipulated by an international agreement to which the Republic of Bulgaria is a party. The jurisdiction is also established over offences committed only partly in Bulgaria.

Overall, with regard to the UNCAC requirements in the area of law enforcement, the following additional observations were made:



- *Explore the possibility of increasing the level of monetary sanctions against legal persons for corruption-related offences in cases where the advantage accruing to the legal person as a result of foreign bribery is not “property”, or if the value of the advantage cannot be ascertained;*
- *Explore the possibility of establishing a comprehensive system for the protection of reporting persons (whistle-blowers) who report in good faith and on reasonable grounds to the competent authorities any facts concerning UNCAC-based offences. In this connection, consider the following action:*
  - *Define a wide scope of relevant legislation to address such issues as institutional recognition of reporting, career protection of reporting persons and provision of psychological support to them, as well as their transfer within the same organization and relocation to a different organization; and*
  - *Enhance training for public officials to report suspicions of corruption within the public administration.*
- *Consider the expansion of the scope of legislation regulating the mitigation of punishment and/or exemption from criminal liability of collaborators with law enforcement authorities to cover specific instances of a broader range of UNCAC-based offences and not only those of active bribery and money laundering;*
- *Explore the possibility of entering into agreements or arrangements, in accordance with domestic law, with other States parties to allow the law enforcement authorities of those States to propose a mitigated sanction in exchange for substantial cooperation with regard to a corruption offence;*
- *Consider the expansion of the scope of the Law on forfeiture of proceeds of crime to cover bribery in the private sector as well;*
- *Ensure that all appropriate measures are in place to further reinforce the proper administration of frozen, seized or confiscated property derived from, used - or destined for use – in the commission of offences established domestically in accordance with the UNCAC;*
- *Where deemed appropriate, ensure further clarity of legislation regulating the re-assignment of public officials accused of an offence covered by the UNCAC, bearing in mind the need to respect the principle of the presumption of innocence;*
- *Ensure that the gravity of corruption-related offences are taken into account by the national authorities when considering the eventuality of early release or parole of persons convicted of such offences;*
- *Continue national efforts to combat corruption through independent law enforcement bodies focusing, in particular, on addressing implementation challenges in this field, as well as strengthening the accountability of the judiciary through a consistent and strict application of all legal and disciplinary means to sanction corruption;*
- *Ease the formal requirements for obtaining authorization to lift bank secrecy in the context of domestic investigation of corruption cases.*

#### **IV. International cooperation**

##### **A. Extradition**

*A two-tier system on extradition has been put in place in Bulgaria. With regard to other Member States of the European Union, the surrender of fugitives is carried out in line with the requirements of the European Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States of the*

European Union. The Framework Decision was domesticated in Bulgaria through an ad hoc law in 2005, while the part of the law on the execution of European Arrest Warrants entered into force after the accession of Bulgaria to the European Union.

With regard to other countries, although Bulgaria does not make extradition dependant on the existence of a treaty, it is bound by existing multilateral treaties, such as the Council of Europe Convention on Extradition and its two Additional Protocols and the United Nations Convention against Transnational Organized Crime. Bulgaria has also concluded bilateral agreements on extradition with Spain, Azerbaijan, China, Armenia, Lebanon, Uzbekistan, India, United States of America and South Korea.

Bulgaria recognizes the UNCAC as a legal basis for extradition, although no such request has been made. In the absence of an international treaty, the domestic extradition legislation shall apply on a basis of reciprocity.

Double criminality is always a requirement for granting extradition. Exceptionally, the double criminality requirement is not needed when executing a European Arrest Warrant, as the Framework Decision removes this condition in respect of a very broad list of offences, including corruption offences.

Bulgaria allows the surrender of its nationals only on the basis of a European Arrest Warrant on the condition that, after the trial in the issuing State, the person sought is to be returned to Bulgaria in order to serve the custodial sentence or detention order.

In cases where Bulgarian authorities deny to extradite a fugitive to serve a sentence solely on the ground of his/her nationality, the domestic law obliges them to submit the file to the respective prosecutor for the purposes of conducting a criminal prosecution, if there are grounds for doing so. It is also a common practice that the requested Bulgarian authorities advise the requesting State to file a request for international validity of the sentence on the basis of the Council of Europe Convention on international validity of criminal judgments.

In terms of actual cases of denial of extradition requests, indicative examples include refusals on the basis of the statute of limitations, as well as when extradition is sought for political offences.

A common extradition process in which Bulgaria is involved as a requested State may take up to two or three months to be completed, with the exception of complicated cases and always subject to the cooperation of the requesting State. With regard to the execution of a European arrest warrant, the domestic law prescribes shorter timeframes and the entire procedure should come to an end basically within 60 days.

## **B. Mutual legal assistance**

Mutual legal assistance in criminal matters is afforded in accordance with the provisions of the Penal Procedure Code, which contains a non-exhaustive list of types of assistance that can be provided in relation to investigations, prosecutions and judicial proceedings. The scope of mutual legal assistance is not limited by the law and encompasses all other forms of legal assistance that can be provided either pursuant to international agreements to which Bulgaria is a party or on the basis of reciprocity. Assistance can also be provided in relation to civil and administrative matters which may give rise to criminal proceedings. The provisions of the UNCAC on mutual legal assistance have direct application by virtue of

article 5, paragraph 4, of the Bulgarian Constitution. Bulgaria has concluded bilateral agreements for mutual legal assistance with United States of America and South Korea.

The Penal Procedure Code lists the grounds for refusal of a mutual legal assistance request, among which bank secrecy is not included. Additionally, double criminality is not a condition for the provision of assistance.

The designated central authority to deal with relevant requests is the Ministry of Justice. Requests for assistance need to be accompanied by a translation into Bulgarian or English.

So far, there have been no mutual legal assistance requests explicitly based on the UNCAC. The Unified Information System of 2008 ensures the registration of all requests. For the period before 2008, information is difficult to trace.

The timeframe for dealing with MLA requests varies depending on the applicable international instruments, the type of assistance and the complexity of the case. On average, it does take four to six months to execute MLA requests.

Amendments to the Penal Procedure Code with regard to the provisions concerning mutual legal assistance in criminal matters were drafted by a Special Working Group after an in-depth analysis of the existing international agreements in the field of international cooperation in criminal matters to which Bulgaria is a party. Specifically, Bulgaria has put in place measures to give practical effect to the requirements foreseen in article 46 of the UNCAC.

### **C. Other forms of international cooperation**

The transfer of sentenced persons is regulated by the following: Multilateral *ad hoc* conventions by which Bulgaria is bound (Council of Europe Convention on the Transfer of Sentenced Persons and its Additional Protocol) or agreements containing provisions on this form of cooperation, including the UNTOC and the UNCAC; European Union secondary legislation; bilateral agreements, such as those with Turkey and Lebanon; and national legislation (Penal Procedure Code). In the absence of international agreements the transfer of sentenced persons could be carried out on the condition of reciprocity.

The provisions on transfer of criminal proceedings have been assessed and modified as a result of the work of a Special Working Group on the amendment of the Penal Procedure Code. There have been no registered cases regarding transfer of proceedings on the basis of the UNCAC.

Bulgaria reported on the central role of the Ministry of Interior in facilitating and coordinating law enforcement cooperation. Among the existing channels of law enforcement cooperation used by Bulgaria are the European Judicial Network, Eurojust, Europol and Interpol. Direct channels of communication have been created between national prosecution offices and foreign counterparts aiming at facilitating secure and fast exchange of information.

During the period 2003-2010, Bulgaria has signed bilateral agreements in the field of police cooperation with Bosnia and Herzegovina, Romania (focusing specifically on corruption prevention and counteractions), Russian Federation, Poland and Austria.

*The UNCAC is treated as a legal basis for cooperation and its provisions shall apply in the absence of bilateral agreements. Bulgaria is a party to a range of multilateral agreements, which build up the necessary legal framework for conducting joint investigations in more than one country. In addition, bilateral agreements to carry out joint investigations have been concluded with Germany, Belgium, Spain, France, Norway, Romania, Turkey and the United Kingdom. Similar agreements are expected to be concluded with Serbia, Montenegro and the Former Yugoslav Republic of Macedonia. An agreement on exchange of law enforcement experience and trainings has been concluded with Estonia. Joint investigations can be carried out on a case-by-case basis after careful examination of the circumstances and the need for establishing of the team.*

*Bulgaria further reported on the international framework by which it is bound regarding the use of special investigative techniques, including the Convention implementing the Schengen Agreement of 1985; the 2000 EU Convention on Mutual Assistance in Criminal Matters; the second additional protocol to the European Convention on Mutual Assistance in Criminal Matters of 1959; and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. In each of the recent bilateral agreements mentioned above, there are provisions on the use of special investigative techniques. The Law on special intelligence means offers the domestic legal framework for the regulation of relevant issues. In addition, eleven controlled deliveries were carried out in 2007, three in 2008, and fourteen in 2009.*

*The following remarks are made with the intention to assist the national authorities in rendering international cooperation mechanisms more robust and effective:*

- While acknowledging that the domestic extradition system does not require as a prerequisite the existence of a treaty, continue to explore opportunities to actively engage in bilateral and multilateral extradition arrangements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of extradition;*
- Explore the possibility of relaxing the strict application of the double criminality requirement in cases of UNCAC-based offences that go beyond those relating to the execution of European Arrest Warrants, in line with article 44, paragraph 2, of the UNCAC;*
- Continue to ensure that any crime established in accordance with the UNCAC is not considered or identified as a political offence that may hinder extradition;*
- Continue to make best efforts to ensure that extradition proceedings are carried out in the shortest possible period;*
- Further strengthen the capacity and effectiveness of the Unified Information System as the centralized mechanism for gathering, processing and circulating information and statistics on the operational aspects of extradition and MLA proceedings and continue efforts to establish a new integration system for the prosecutorial authorities which will enable the compilation of statistics and the generation of thematic reports based on them;*
- Consider the allocation of additional resources to strengthen the efficiency and capacity of international cooperation mechanisms.*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

The United Nations Convention against Corruption (UNCAC) was signed on 10 December 2003 and ratified by the National Assembly on 15 August 2006 (promulgated SG, No. 66/15.08.2006, effective for the Republic of Bulgaria since 20.10.2006).

### **B. Legal system of Bulgaria**

A typical representative of the Romano-Germanic legal family, the Bulgarian legal system recognizes the Acts of Parliament as a main source of law. The Bulgarian jurisprudence does not regard the judicial precedent as a source of law. Nevertheless, the legal doctrine sometimes refers to the so called direct sources and indirect sources (or “subsidiary” sources) of law, such as case law (the practice of the courts), the legal doctrine and the legal customs. In terms of direct sources, the Bulgarian legal system is based on a strictly defined hierarchy of the sources of law as follows below.

#### **a) EU law**

EU Law is a separate and independent legal order which constantly interacts with the national legislations of the member states. Some authors even consider it as unique system of legal norms, since it possesses some specific features which characterize EU Law as supranational legal order. The main characteristics of EU Law are the following: a) its supremacy over the internal legal provisions of the legislation of the member states (including their Constitutional provisions) which contradict it; b) its direct effect, e. g. EU Law directly embeds legal rights and liabilities for its addressees and therefore the national parliaments of the EU countries do not have to go through legal procedure for ratification of EU laws. In view of the above, it should be stated herein that EU Law has paramount importance in terms of depicting the hierarchy of the sources of Bulgarian law (see also two very important decisions of ECJ: *Van Gend en Loos* decision from February 5<sup>th</sup> 1963 and the *Costa vs. Enel* from July 15<sup>th</sup> 1964).

#### **b) Constitution**

The Bulgarian Constitution, effective as from July 12, 1991, is supreme internal legislative act. The Constitution provides for the basic rights of the citizens as well as it stipulates the form of the state government and structure, functions and collaboration between the branches of government, etc. Amendments to the Constitution may be adopted through a majority of three quarters of the National Assembly (the single-chamber Parliament); some of the major constitutional provisions may only be amended by a Grand National Assembly. The Constitution has been amended four times so far, never by a Grand National Assembly.

#### **c) Decisions of the Constitutional Court**

According to article 149, paragraph 1, p. 1, of the Constitution: “The Constitutional Court gives compulsory interpretations of the Constitution”. Among other powers, the

Constitutional Court is also entitled to declare provisions contained in an Act of Parliament anti-constitutional.

#### **d) International treaties**

According to article 5, paragraph 4, of the Constitution: “International treaties, ratified in compliance with the constitutional procedure, published and entered into force for the Republic of Bulgaria are part of the domestic law of the country and have supremacy over those provisions of the domestic law which contradict them”. This rule has been applied consistently by Bulgarian courts.

Accordingly, the United Nations Convention against Corruption has become an integral part of Bulgaria’s domestic law following ratification of the Convention by the National Assembly on 15 August 2006 and entry into force on 20.10.2006, in accordance with Article 68 of the Convention.

The Convention ranks high among statutory instruments, just below the Constitution but above other laws. Accordingly, the provisions of the Convention override any other contrary provision in domestic law.

In its decision 7/1992, the Constitutional Court of Bulgaria further specified that, depending on the subject of an international treaty, different action may be needed for its incorporation in the national legal order. Thus, for an international treaty containing provisions of substantive criminal law (e.g., criminalization), a simple ratification act is not enough and implementing legislation needs to be put in place establishing the required criminal offences, providing for the relevant sanctions and making, where necessary, appropriate amendments in existing domestic laws to ensure compliance with the international standards. On the other hand, provisions of international treaties on international cooperation may be domesticated in a more direct manner through the ratification of the international instrument, unless further amendments are indeed required to make such instrument an integral part of the Bulgarian legislation.

In the case of the UNCAC, implementing law 66/15.08.2006 was enacted as the legal framework for the adoption of the legislative measures needed to materialize and give practical effect to the requirements of the Convention. Such requirements are consistently treated as guiding principles for the interpretation of provisions of the domestic implementing legislation.

#### **e) Acts of Parliament and codifications**

The main sources of law, apart from the EU laws, are the Acts of Parliament. Legislative initiative is vested in any Member of Parliament, as well as in the Council of Ministers. Annual budgets bills can be drafted only by the Council of Ministers. Some major branches of the legal system are codified, even though codes (enacted by the Parliament) have no higher standing than but are equal with the Acts of Parliament.

#### **f) Delegated legislation**

The Constitution provides for and a number of Acts of Parliament delegate to the Council of Ministers, the Ministers separately, to other public bodies and/or officers the issuance of decrees, regulations, ordinances and instructions and thus the detailed regulation of specific areas of economic or social activity. If such subordinate statutory instruments contravene an Act of Parliament or the Constitution they can be appealed before (and possibly revoked by) the Supreme Administrative Court.

#### **g) The practice of the Courts**

The judgments issued by Bulgarian courts in individual proceedings have no universal applicability, i.e. they are binding on the parties involved. Thus court judgments are not case law. Even individual court judgments may have very significant practical value and are thus often of interest to practitioners and are cited in other legal proceedings. They remain, however, even in identical factual settings, only arguments in another, independent trial and hence they are at most a secondary source of law.

At the same time, three types of court decisions have a meaning, legal strength, and practical value very similar to that of a law. First, those judgments of the Supreme Administrative Court (SAC) by which it abrogates statutory instruments which contradict an Act of Parliament or the Constitution. Second, each of the Civil, Commercial or Criminal Colleges (each consisting of the justices belonging to the respective College) of the Supreme Court of Cassation (SCC) can issue Interpretative Decision, which are binding on other courts and on the executive branch of the government. Such are issued where the respective college finds that an interpretation of an Act of Parliament or of a statutory instrument is needed (because of the lower courts issuing flawed judgments by misinterpreting such Acts or instruments, or because of dissenting judgments of different courts on similar cases). Third, the justices in the Supreme Administrative Court can issue Interpretative Decrees, which are binding on the Judiciary and the Executive Branch of the Government (including the local authorities) as well as on all public bodies which are entrusted with the right to make delegated legislation (e.g. the Central Bank).

#### **h) The legal customs**

This is a subsidiary source of law the main characteristics of which are a continuous implementation by many persons and its “*opinion necessitatis*” i.e. the common understanding of its binding force.

### **C. Institutional framework of Bulgaria**

### **a) The legislative branch**

According to article 1, paragraph 1, of the Constitution, Bulgaria is a parliamentary republic, with the legislative branch taking supremacy. The National Assembly exercises the legislative power as well as the right to parliamentary control. An important prerogative of the Parliament is to elect the Prime-Minister and its cabinet. The mandate of the National Assembly is four years and it consists of 240 directly elected members.

A Grand National Assembly consists of 400 directly elected members. The Grand National Assembly is exclusively entitled to exercise the following powers: to adopt a new Constitution; to resolve on the matter concerning a change of the territory of the Republic of Bulgaria, and to ratify any international treaties providing for any such changes; to resolve on the matters concerning changes in the form of state governance (parliamentary republic) the structure of State (unitary state and not a federal state); and to amend and supplement certain other major constitutional provisions.

### **b) The executive branch**

The President is the Head of the State and is directly elected by popular vote for a term of five years. He can hold no more than two consecutive terms of office. The President is entrusted primarily with representative functions, but also with some important executive prerogatives such as: to veto Acts of Parliament, to conclude some of the international treaties specified by law; to afford asylum; to exercise the right of pardon etc. (see also art. 98 of the Constitution). A Vice-President, elected with the President normally assist with specific matters, e.g. the granting of Bulgarian citizenship.

The Prime-Mister is typically nominated by the largest parliamentary group, after which the President hands him a mandate for formation of cabinet.

The Government consists of Ministers who would normally be in charge of a Ministry. The number and names of Ministries change over time, sometimes even within the mandate of a single National Assembly. Ministries take charge of the respective sectors of economic or social life.

The Council of Ministers or the Government is the main body of the executive power, headed by the Prime-Minister. The Government conducts the internal and foreign policy of the State, secures public order and cares for the national security, exercises control over the public administration and the military forces and has legislative initiative.

### **c) The judicial branch**

The Bulgarian judiciary is independent of the other branches of government (article 117, paragraph 2, of the Constitution).



The judiciary is composed of three separate systems of law-enforcing or law-protecting authorities: the system of the courts; the system of the public prosecution and the system of the investigation offices (preliminary investigation).

The Supreme Judicial Council is the administrative body running the Judiciary. It is composed of 25 members, lawyers of high repute, of whom 11 are elected within the Judiciary, 11 by the National Assembly, and three are members by law: these are the presidents of the Supreme Cassation Court (SCC), the Supreme Administrative Court (SAC) and the Chief Prosecutor. According to article 129, paragraph 1, of the Constitution: “Judges, public prosecutors and investigating magistrates are appointed, promoted, reduced in rank, moved and discharged from office by the Supreme Judicial Council.”

As a matter of principle, the legal procedure in Bulgaria is a three-instance one, although there are many exceptions to this rule. The system of the courts is decentralized, i.e. courts of various ranks are distributed throughout the country. Only SCC and SAC are based in the capital city, Sofia.

The structure of the Public Prosecution follows that of the courts. Public prosecutors act for the State in criminal cases and defend the public interest in many administrative and civil cases.

Preliminary investigation magistrates carry out preliminary investigation proceedings in the criminal cases. In doing so, they cooperate with the Police (which are organized under the Ministry of the Interior) and other specialized agencies.

The Constitutional Court determines, among others, if laws and international agreements (before their ratification) are in compliance with the Constitution. The Constitutional Court consists of 12 judges. One-third of the constitutional judges are elected by the National Assembly, one-third are appointed by the President, and one-third are elected at a general meeting of the justices of the SCC and of the SAC. A case can be brought before the Constitutional Court at the initiative of at least one-fifth of the members of the National Assembly, of the President, of the Council of Ministers, of the Supreme Court of Cassation, of the Supreme Administrative Court, of the Prosecutor General and of the Ombudsman.

#### **D. Institutional framework for the fight against corruption in Bulgaria**

Currently, Bulgaria’s institutional framework dealing with the fight against corruption consists of two main bodies: The *Commission for Prevention and Counteraction against Corruption (CPCC)* and the *Center for Prevention and Counteraction of Corruption and Organized Crime (BORKOR)*. The latter is still in process of institutionalization.

The CPCC was created by Decision No 61 of the Council of Ministers of 02.02.2006. It is responsible for realizing control and coordination on the implementation of the Anti-corruption strategies.

CPCC is presided by the Vice Prime Minister and Minister of Internal Affairs. Vice Chairman is the Vice Prime Minister and Minister of Finance. The Ministers of Justice, of Education, Youth and Science, of Healthcare, of Economy, Energy and Tourism and of Regional

Development and Public Works are members of the Commission along with the Chairman of National Security State Agency and the Secretary of the Council for Control of EU Funds to the council of Ministers.

The execution of decisions of CPCC is assigned to central bodies of executive institutions and is proposed for execution to the organs outside executive authorities.

CPCC reports its activity to the Council of Ministers. Every year, by 31 March, CPCC presents an annual report for its activities to the National Assembly.

In all 28 district administrations, there are District Public Councils for Prevention and Counteraction against Corruption created by order of the respective district governor. Representatives of the local executive authorities, NGOs, local business and regional media participate in the councils. Every council has elaborated its own work rules. The sessions are conducted on a monthly basis.

CPCC elaborates the state anti-corruption policy. For the period 2009 - 2010 an *Integrated Strategy for Fight against Organized Crime and Corruption* was elaborated and adopted. The Strategy is executed via 2 instruments: 1) Action Plan for Implementation of the Strategy for Prevention and Counteraction of Organized Crime for 2010 – adopted by the Council of Ministers (CM) on March, 17th, 2010 and 2) Complex Model for Prevention and Counteraction of Corruption and Organized Crime, the so called Project BORKOR.

On July 29th 2010, an Ordinance of Council of ministers was adopted for the formation of a Center for Prevention and Counteraction of Corruption and Organized Crime. Regulation of the activity, structure, organization of the work and number of the personnel of the Centre was adopted on 24.11.2010. The Regulation is adapted to the Project goals. Thus, the legal and institutional framework of the Complex model BORCOR has been finalized.

The idea of the BORKOR Project is that representatives of various institutions involved in the fight against corruption unify their efforts in an integrated structure by proposing solutions of legislative, administrative and organizational nature in the area of prevention and counteraction of corruption. The Center is assigned with primarily analytical functions. Its main tasks are interconnected with analysis, planning and development of measures and complex decisions, aiming at preventing the possibility of establishment of corruption practices and counteraction of corruption as a whole. The Center is going to assist the central and decentralized administration by the elaboration and adoption of preventive measures. It will further assist the coordination efforts in this area between the state bodies, the civil society and the business.

The Administration of the Center will consist of around 40 persons and around 115 persons temporarily transferred from other institutions.

In view of securing the technical and logistical functioning of the Centre, there are on-going procedures for assignment of public procurements.

The activity of the Centre is under the guidance of an Advisory Council consisting of representatives of the legislative, the executive and judicial authorities. Chair of the Advisory Council is the Deputy Prime Minister and Minister of Interior.

The *Committee on “Professional ethics and prevention of corruption”* in the judicial system is a permanent subsidiary body of the Supreme Judicial Council. It consists of 10 members of

the Supreme Judicial Council, established by its decision. The Committee holds regular meetings every week. The Committee shall be convened by its chairman or at the request of one third of its members.

The purpose and activities of the Committee are aimed at preventing and combating corruption in the judiciary. This body carries out its activities on the basis of the Law on judiciary, the Rules for organization of the Supreme Judicial Council and its administration and the Internal Rules of the Committee approved with its decision Protocol № 3 of 19.11.2007 and further amended by Protocol № 49 of 29.11.2010.

The Committee is empowered to assign and investigate specific reports and complaints, to analyze information on the existence of corrupt practices and to develop and propose for approval by the SJC concrete measures to prevent and combat acts of corruption among magistrates. More specifically it is competent:

- to implement measures and activities set in the Strategy for Combating Corruption and the Program for its implementation;
- to investigate specific complaints and signals to alert the competent authorities and inform the Supreme Judicial Council for the results;
- to analyze information on the existence of corruption and corruption practices in the judiciary;
- to develop and propose for approval by the Supreme Judicial Council specific measures to prevent and combat acts of corruption in the judiciary;
- to enter into agreements for joint activities and exchange information with the Committee on anti-corruption, conflict of interests and parliamentary ethics of the National Assembly, Commission for Prevention and Counteraction against Corruption to the Council of Ministers, Bulgarian National Audit Office and other state and public bodies set up to combat corruption;
- to participate in joint activities of the Supreme Judicial Council and other state agencies, law enforcement authorities and legal non-profit organizations in connection with the problems of combating corruption.

The decisions of Committee, containing findings of the existence of corrupt behaviour by judges and administrative staff in the judiciary shall be reported promptly to the Supreme Judicial Council and bodies under Article 311 of the Law on judiciary for immediate disciplinary action.

The *Committee on anti-corruption, conflict of interests and parliamentary ethics* within the National Assembly was established in 2009 as a result of merging of three committees that had existed in the previous 40th National Assembly. The Committee carries out its activities in accordance with the Rules of Organisation and Procedure of the National Assembly and it is set up on a parity basis - one Member of Parliament from each parliamentary group and chaired alternately for two consecutive sessions by representatives of parliamentary groups outside the largest parliamentary group. It consists of 5 members. The Committee's activities are in three main fields: a) establishing and disclosure of conflict of interests; b) counteracting corruption and c) breach of ethical rules by MP's.

In pursuance of the Law on establishing and disclosure of conflicts of interest the Committee shall ex officio check the submitted conflicts of interests declarations of all Members of the

Parliament, high magistrates, members of regulatory and supervisory institutions, members of bodies wholly or partly elected by the National Assembly.

Furthermore, the Committee may consider also signals for conflict of interest relating to the activities of ministers, MPs and members of regulatory authorities. In each case, the Commission opens a file and within two months collects evidence relevant to the activity, for which it is alleged to be committed in conflict of interest. The work on the file ends in the adoption of report, which determines whether there is conflict of interests.

Signals from both citizens and the institutions are received by the Committee. They focus on the work of local authorities, the judicial system or executive authorities, both centrally and at district and municipal level. The Committee is entitled to initiate parliamentary control as a tool for achieving the objectives of the law in terms of visibility and transparency, which has proved its efficiency in practice.

The Committee deals also with signals relating to breach of ethical rules by MPs. The Regulation on the organization and operation of the National Assembly determines the parliamentary conduct by introducing a list of unacceptable actions, as well as the penalties and procedures for their enforcement. The president of the National Assembly may impose disciplinary measures for violation of ethical rules and norms in plenary.

## **E. Working group for drafting a new Criminal Code**

The work of the Working group for drafting a new Criminal Code began in November 2009. The group is composed of representatives of the legal doctrine (from the Sofia University “St Kliment Ohridski”, the Academy of the Ministry of Interior), the judicial practice (the Supreme Court of Cassation, the Supreme Cassation Prosecutor’s Office, the National Investigation Service), the Bar and experts from the Ministry of Justice.

In December 2010, the General Part of the new Act was drafted and on 19 January 2011 it was published on the Internet page of the Ministry of justice for opinions and notes.

The Working group is in session at least once a week and, where appropriate, twice a week. The work for drafting the particular provisions is distributed among the participants and when the whole group meets the provisions are discussed by all participants text by text. The good achievements of the Bulgarian criminal legislation and the commitments of the state under various multilateral agreements and conventions (including European and of the UN) are preserved in the process of drafting the provisions.

The recommendations of practicing lawyers addressed to the Minister of Justice and the proposals of other members of the Government are taken into consideration.

As reported during the country visit, in order to make it possible to present the future new Criminal Code in the National Assembly whose mandate expires in 2013, the Working group aimed at preparing the draft until January 2012 with a view to observing the requirements for coordination of the Act with all the institutions and administrations concerned.

## **F. Overall findings of the review team**

There have been considerable efforts to adopt reforms of Bulgaria's legal, and particularly, penal law system, to address issues of corruption. This is also attributed to the country's anti-corruption initiatives having been subject to evaluation by other international and regional mechanisms with a mandate on anti-corruption related issues or issues linked to corruption (Council of Europe/GRECO; Council of Europe/MONEYVAL; OECD Working Group on Bribery in International Business Transactions; European Commission Cooperation and Verification Mechanism).

As a result, Bulgaria has adopted a number of significant improvements of penal procedures against corruption and can demonstrate a higher number of indictments for cases involving high-level corruption, although still few cases have been concluded in court.

Bulgaria's institutional framework against corruption revolves around two main bodies: The Commission for Prevention and Counteraction against Corruption (CPCC), established in 2006, and the Centre for Prevention and Counteraction of Corruption and Organized Crime (BORKOR). The latter is still in process of institutionalization. The Commission is in charge of coordinating activities for the implementation of anti-corruption policies within the framework of the National Anti-Corruption Strategy and its action plan, adopted in 2009 and 2010 respectively. The main tasks of the BORKOR will be to conduct analysis, planning and development of measures aimed at preventing corruption practices.

The main challenge for the coming years will be to ensure that legal reforms are accompanied by administrative reforms geared towards enhancing inter-agency coordination and promoting effective implementation of relevant domestic laws. A core element for successful anti-corruption action will also be the identification of ways and means to address delays in investigations and judicial proceedings that may frustrate efforts to efficiently curb corruption-related offences. At the policy level, anti-corruption work will further benefit from more streamlined and coordinated mechanisms for the collection of relevant data and statistics, which are necessary for the design of ad hoc crime prevention and criminal justice strategies.

Another challenge encountered at the legislative level is to ensure that the working group for drafting a new Criminal Code, which began its work in November 2009, will produce substantive results. In this connection, the Bulgarian authorities welcomed the readiness of UNODC to provide, if needed and upon request, legislative expertise and advice, to support the deliberations and proceedings of the Working group.

## **V. Implementation of articles under review**

### **Article 15 Bribery of national public officials**

#### **Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

(a) *The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Article 15(a) of the UNCAC is implemented through Articles 304 and 304(a) of the Bulgarian Criminal Code. According to those provisions, the subject of active bribery may be any person, including a public official or any other person not holding public office. Furthermore, the offence can be committed only with direct intent.

Article 304, paragraph 1, of the Criminal Code establishes criminal liability for a person who offers, promises or gives a gift or any other benefit whatsoever to an official in order to fulfil or not an activity related to his office, or because he has fulfilled or not such activity. When the benefit is given for future act or omission, it is necessary that the bribe giver and the public official have agreed on the content of the act or omission.

Article 304, paragraph 2, of the Criminal Code covers cases where the perpetrator gives a gift or other benefit to a public official in order to persuade the latter to violate his official duties or to abuse its office. In these cases there is an ideal concurrence of crimes, where active bribery and incitement to abuse of office are committed by one and the same act. The type of the crime committed by the bribe giver shall be determined in accordance with the behaviour of the public official.

Bribery under Article 304, paragraph 2, of the Criminal Code is present when the person who offers, promises or gives a gift or any other benefit whatsoever to an official in order to fulfill or not an act that violates his/her official obligations and for which the penalty provided by the law is imprisonment of up to eight years and a fine of up to seven thousand when violation does not constitute a graver punishable crime.

The bribery under Article 304, paragraph 2, of the Criminal Code is completed at the moment, when the official has committed, or has started to commit, the *corpus delicti* of the other crime in office or when he/she has violated his/her official duties.

With regard to the perpetrator of the crime, article 93 of the Criminal Code, defines in broad terms the term “official”.<sup>1</sup>

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<sup>1</sup> Additional information provided after the country visit included the following:

Pursuant to Interpretative Decision of the Supreme Court of the Republic of Bulgaria № 73 of 23 December 1974 on criminal case № 66/74 , GAPC, the concept of “official, as provided for in Article 93, item 1 of the Criminal Code, includes persons performing:

a) the duties of an office in a state institution, with the exception of persons who carry out activities relevant solely to material production;

b) management work in a state enterprise, cooperative or other public organization; and

c) work related to safeguarding public property in a state enterprise, cooperative or other public organization. It is expressly provided at the beginning of Article 93 of the Criminal Code that the words and expressions including the concept of “official” shall be construed for the purpose of this Code to have the relevant meaning. That is why the definition of “official” applies to all the cases where it is used in the Criminal Code irrespective whether the official is a subject of a crime or an object of a violation.

The law requires the carrying out of the duties of the office or the work to be assigned to the official. The carrying out of this tasks or functions may be against remuneration or without pay, temporarily or permanently. The assignment, however, must be done in accordance with a procedure established or admitted in an act, regulations, statute, ordinance, etc. The assignment may be done by appointment, election, employment

agreement, authorization of an appropriate body, by virtue of an order of the authorities, etc.

The labour remuneration is not a necessary element of the concept of “official”. The condition if the payment is in the form of percentage of the acquired profit or is done in another way is irrelevant to the official capacity of the person. It is required, however, that the employee should be involved in the organizational structure of the enterprise or the institution. Officials in the meaning of the law are the citizens involved for the public benefit in the governance of the state, in the economic and the public administration.

It is not required that the person should carry out the duties of his office or the work permanently. He is an official even when he carries out his duties temporarily or periodically provided that available are the other requirements to a particular category of officials. Therefore, Article 93, item 1 of the Criminal Code provides a definition of “official” which is applicable both when the official is indicated by the law as a subject of a crime and when he is an object of a violation.

The official may be a subject of specific crimes: embezzlement (Articles 201-205), dereliction (Article 219), bribery (Article 302, item 1), crimes against marriage and the family (Article 176, paragraph 2), etc. only provided that available are the constituent elements of these crimes. Thus, it is required that in case of embezzlement the official should have a particular attitude towards the object of violation – the money - public or private, the objects or the valuables should be deposited with him in his capacity or entrusted to him for safekeeping and management; in case of dereliction – the official should have guiding and managing functions related to keeping or preservation of the property entrusted to him or should exercise control over such persons; in case of qualified corpus delicti of bribery – to hold a responsible official position; in case of a crime related to marriage and the family – the official should be a registrar of the civil status, etc.

In the meaning of Article 93, “a” of the Criminal Code, in principle all employees in a state institution are officials, with the exception of the persons who carry out activities relevant solely to material production. An activity relevant solely to material production should mean an activity which has no official functions assigned to the state enterprise in compliance with the relevant legal procedure. If, however, the persons who carry out activities relevant solely to material production are assigned with official functions, they shall become officials in the meaning of the law.

“Management work” is the work constituting an economic and regulatory, organizational and managerial or organizational and educational activity. In its purpose, such work involves in general the will of more persons either in the direction of the tasks or in their fulfillment. The official capacity of the person who carry out management work is not changed with the circumstances that in some cases the person acts within a collective body when making decisions.

Characteristic for the category of officials who carry out work related to safeguarding public property is the requirement that this safeguarding should be the content of the official’s duty, the essence of the work assigned to him. Even though Article 93, item 1, “b” of the Criminal Code indicates as an official only the person who carries out work related to safeguarding public property in a state enterprise, cooperative or other public organization, this does not exclude the category of officials under Article 93, item 1, “a” of the Criminal Code and those who carry out such work in a state institution if it is related to safeguarding public property. The special militia authorities and the guards in a state enterprise, cooperative or other public organization are obliged to safeguard the public property. That is why they are officials in the meaning of Article 93, item 1, “b” but the porter there to whom it is assigned to stay at the gateway, to check and control the taking out of the production is not an official.

It is necessary to distinguish between work related to “safeguarding” in the meaning of Article 93, item 1, “b” of the Criminal Code and the work to “safe-keep” envisaged in Article 201 of the Criminal Code. In the latter case, the official is authorized for particular objects, money or valuables which may be either public or private while the work related to safeguarding concerns public property.

The official capacity of a particular employee should be considered within the specifics of each particular case on the basis of assessment of all the circumstances in the case and on the law. Thus the shop-assistants, vendors in kiosks, yarn collectors, etc. who are appointed by an order but receive their labour remuneration under a contract as percentage of the acquired income, etc. are officials if they are involved in the organizational structure of the enterprise and have to keep public property entrusted to them. Such an answer should be given in relation to the guards, the waiters who receive money from the clients, the shepherds with herds entrusted to them, the drivers in institutions or state enterprises, cooperatives or other public organizations, etc. In order to determine whether these persons are officials or not, decisive should be the circumstance if they have public property entrusted to them for safeguarding or management. The attorneys-at-law and the soldiers have no official capacity except when they have public property entrusted to them for safeguarding or management or have official functions assigned to them. The workers in the auxiliary farms of institutions or establishments who are involved only in the material production are simply persons involved in the production and not officials on the grounds of Article 93, item 1 of the Criminal Code.

Regarding the “benefit”, the provisions on active bribery use expressly the wording “gift or any other benefit what so ever to...”, which covers tangible as well intangible benefits. As a result of the Prom. SG 2/2000, aiming at including intangible benefits as well, the word “property” has been dropped before the word “benefit”. There are no established legal criteria for the valuation of intangible benefit, but it is set out “other benefit whatsoever” as an alternative of the “gift”. The gift is material, but the benefit may be whatsoever, including also benefits, which may not always be expressed in a certain value, but their results are of any interest for the beneficiary.<sup>2</sup>

Under the Bulgarian law and jurisprudence, bribery is punished when it is committed “directly or indirectly” (i.e. through an intermediary). The Criminal Code provides also for a specific incrimination for mediation in a bribery offence (Article 305a). Thus, if the intermediation is successful, the intermediary shall be punished for complicity (i.e. for aiding or/and abetting the commission of bribery or trading in influence) under Article 20 of the Criminal Code. If the intermediation is not successful (i.e. the ultimate criminal outcome is not achieved) because of any reason, the intermediary shall be punished under Article 305a of the Criminal Code.<sup>3</sup> A similar provision exists under the private sector bribery offence of article 225c paragraph 4 CC.

In spite of the lack of specific reference in the active bribery provision (Article 304 of the Criminal Code), the briber should be punished in case of third party beneficiary as well. If the

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<sup>2</sup> After the country visit, Bulgaria provided information on case-law regarding the nature of the benefit as follows:

*Ruling № 2 of 9 June 1980 on criminal case № 2/80, Plenum of the Supreme Court (regarding application of Article 282 of the Criminal Code): “... The benefit may be material or any other benefit or profit. It concerns any favourable change in the perpetrator’s or other person’s status through acquiring a benefit.”*

*Judgment № 101 of 19 April 2006 of the Veliko Tarnovo Court of Appeal on appellate criminal case of general nature № 55/2006, Criminal division, reported by the Chairperson Violeta Mlekanova (Article 301, paragraph 2 in conjunction with paragraph 1 of the Criminal Code): “ In order to have committed the crime of bribery under Article 301, paragraph 2, in conjunction with paragraph 1 of the Criminal Code, the defendant, who is sent to court, should have requested or accepted a gift or any other undue benefit for violating his duties. It the prosecutor who has to prove the charge and not the defendant - his innocence. The court may find the defendant guilty when the indictment is proven undoubtedly because the sentence may not be founded on assumptions”.*

<sup>3</sup> After the country visit, Bulgaria provided the following examples of domestic case-law on punishment of active and passive bribery committed through intermediaries: a) Decision N 34 of the Supreme Court of 14 May 1984: The intermediary in offering, receiving, requesting or giving a bribe is accomplice of the perpetrator who gives or receives the bribe. When the intermediation is successful, the intermediary shall be criminally responsible for abetting or/and aiding the criminal offence committed by the person who accepts or receives the bribe (i.e. bribe-taker under Art.301-303 CC passive bribery) or the criminal offence of the person who gives a bribe (i.e. briber under Art.304 CC active bribery); Article 305a CC (intermediation) shall be applied only if the intermediation in offering, receiving, requesting or giving a bribe has not been successful, irrespective of the reasons for this. In such case the intermediary shall be responsible separately under Art.305a.

b) Decision N 111 of the Supreme Court of 28 December 1987: During the court proceedings it was indisputably proved that the convicted person A. has given to the convicted G. a bribe of 200 BGN. The regional court has reasonably accepted that the transfer of part of the amount-100 BGN, has taken place with the participation of the convicted I. who has received the money from A. and delivered it to G., and I. has been aware that G. receives the money in his quality of public official in order to violate his duties. The crime is committed under Art.305a CC if the person intentionally abets another in receiving or giving a bribe, as well as intentionally participates in receiving or giving a bribe. If the intermediation is successful and the gift is given or received, there shall be complicity in active or passive bribery according Art.20 CC (complicity).

c) Decision N 439 of the Supreme Court of 6 September 1984: The crime under Art.305a is committed if there is intermediation between the person who offers the bribe (briber) and the person who receives the bribe (bribe-taker), but only in a case where the final objective is not achieved. In case where the actions of bribery are committed (i.e. the bribery takes place), the intermediary shall be considered accomplice under the meaning of Art.20, para.4 CC (complicity/aiding)



corrupt official is punished when the bribe is given to another person (explicit provision of Article 303 of the Criminal Code), the briber also should be punished. The only exception of this rule could take place in case of successful application of “effective regret” defence (Article 306 of the Criminal Code). The regulation of “third party beneficiary” in the case of private bribery (Article 225c, paragraph 3, of the Criminal Code) just follows the concept already applied for the bribery in the public sector (Articles 301-304 of the Criminal Code), i.e. punishment of both passive and active bribery takes place also when the advantage is for a third person. The provisions of bribery in the private sector were introduced in 2002. Passive and active bribery in the private sector were covered by two separate paragraphs of one single article (225c of the Criminal Code) and in this case it was more convenient to insert “third party” beneficiary provision as paragraph 3 which covers both forms of private bribery.<sup>4</sup> These clarifications also apply to the implementation of articles 16 and 18 of the UNCAC20.

Bulgaria further provided information on case law, including three rulings (1981, 2008 and 2009) of the Supreme Cassation Court concerning certain issues of bribery offences.<sup>5</sup> Statistics on legal proceedings related to Articles 301-307 of the Penal Code for the periods 2003-2005 and 2006-2009 have been provided.

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<sup>4</sup> Examples of the Bulgarian case-law on punishment of active and passive bribery in case of third party beneficiaries include the following:

Decision N 847 of the Supreme Court of 4 January 1969 and Decision N 527 of the Supreme Court of 28 October 1976 deal with the application of the bribery provisions in case of third party beneficiary; Decision N 847 of the Supreme Court of 4 January 1969 (last sentence) expressly stipulates that in case when the bribe-taker is punished under Art.303 (explicit third beneficiary provision), the briber commits criminal offence under Art.304 and should be punished for active bribery. This decision was issued in 1969 (i.e. 4 years after the adoption of the Criminal Code), which means that from the very beginning consistent case-law has been established for punishment of active bribery in cases when the gift is transferred to third person.

<sup>5</sup> Ruling No. 8 of 30.11.1981 on criminal case № 10/1981 of the Plenum of the Supreme Court

“...1. Subject of bribery under art. 301 of the Criminal Code and art. 302 of the Criminal Code is an official within the meaning of art. 93, paragraph 1, letters “a” and “b” of the Criminal Code who can personally perform or fail to perform a respective action or inaction connected with his/her service which arises from his/her official competence or work assigned, for which he/she obtains a gift or another advantage. The official is a subject of bribery also where he/she is a member of a collective body or where in virtue of his/her official position he/she can assign the carrying out of the “the action connected with the service” to another person who is under his/her authority.

2. *“The action connected with the service” is implemented through action or inaction. It could be in compliance with the official requirements of the official, constitute a violation of the same or malfeasance (crime connected with service). The words “accept” and “obtain” used in art. 301, paragraphs 1 and 2 of the Criminal Code have identical content. ... An attempt to bribery under art. 301 – 303 of the Criminal Code is possible.*

...  
14. *Subject of bribery under art. 304 of the Criminal Code can be an official and a non-official person. Direct intent is necessary for the subjective part.”*

Ruling No. 336 of 7.10.2008 for CC No 268/2008, III N. O. of the Supreme Cassation Court

*“The presence of the corpus delicti in the deed under art. 304, par. 1 PC requires the establishment of both the official capacity, and that in accordance with the law the official has the powers to take or not to take official actions, relating to the administrative punishment of the customs offender and the seizure of the commodity, which is subject to the offence ”.*

Ruling No. 382 of 26.10.2009 for CC No 368/2009, P. C., II N. O. of the Supreme Cassation Court

*“... Correctly, the second instance pointed out that in accordance with the normative rules in force the coordination would not be possible without the positive opinion of this expert body. Of no importance or entirely in the field of speculations are the possibilities for the commission to adopt the opinion of the chairman or to reject it. The important thing is that the proposal for a gift was made in return for actions, which are part of the official powers of the defendant. He is also a suitable possible subject to a bribe in his capacity as a member of a collective body.”*

On the issue of assessing the effectiveness of the measures adopted to criminalize active bribery of national public officials, Bulgaria referred to the periodical review of the relevant articles of the domestic legislation within the context of the Council of Europe Group of States against Corruption (GRECO), the OECD Working Group on Bribery and the European Union Cooperation and Verification Mechanism (CVM).

**(b) Observations on the implementation of the article**

The reviewing experts noted the broadly defined concept of “official”, as prescribed in Article 93 of the Bulgarian Criminal Code, which also includes “any official holding responsible official position” mentioned in Article 304 of the Criminal Code. During the country visit and in response to a relevant request for clarification, the Bulgarian experts indicated that a “State institution”, as mentioned in Article 93, includes local and regional authorities as well.

The reviewing experts further observed that the elements of “offering”, “promising” and “giving” are expressly contained in the penal provisions concerning active bribery (Article 304, paragraph 1, of the Criminal Code) and that, further, the direct intent of committing a bribe is a necessary subjective element of the offence under this provision according to paragraph 14 of the Interpretative Ruling N° 8 of 30 November 1981 of the Plenary of the Supreme Court.

The reviewing experts took note of Bulgaria’s statement that, as a result of the 2002 amendments in the text of the Criminal Code, the provisions on active [and passive] bribery use expressly the wording “gift or any other benefit what so ever to...” with a view to covering both tangible and intangible benefits. In previous evaluations of the Bulgarian legal system under the GRECO Mechanism (Council of Europe), it had been observed that practice had not followed that development and continued to be diverging and often following the traditional “value-based” approach. Thus, a paradoxical situation had been highlighted, whereby bribery involving material advantages worth the equivalent of a few Euros can trigger criminal proceedings as indicated earlier, but bribery offences involving non-material advantages even when they would ultimately lead to significant material advantages (promotion, passing school or other selection procedures etc.) do not. To gain a better understanding of the issue, the governmental experts asked the Bulgarian authorities to provide more recent jurisprudence than the Interpretative Ruling 2/1980 of the Supreme Court. In response, the Bulgarian authorities referred, among others, to decision 101/2006 of the Court of Appeal and provided more information at a later stage (see footnote 2 above). The governmental experts stressed the need to continue to clarify the interpretation of the law following the 2002 amendments relating to the inclusion of both material and non-material advantages in the bribery provisions of the Criminal Code through additional case-law.

During the country visit, and in response to the questions whether the Bulgarian legislation imposes strict limits on the value of the individual gifts and the frequency or total value of gifts that an official may receive per year, the Bulgarian experts indicated that there was no distinction of payments or gifts on the basis of the amount of money given: even a small payment as a bribe is punished.

The specific incrimination of the conduct of an *intermediary* under Article 305a of the Bulgarian Criminal Code was extensively discussed during the country visit. It appeared that

this kind of incrimination has a concrete dissuasive but also practical function in the context of Bulgaria (persons sometimes take the initiative to spontaneously offer their services as intermediary or facilitator). Furthermore, the Bulgarian authorities explained that article 305a of the Criminal Code (and article 225c, paragraph 4) was introduced in 1982 in order to fill a gap since unsuccessful intermediation was not covered by the mechanism of complicity under article 20 of the Criminal Code before 2002. During the discussions held on site, it was argued that the provision under consideration facilitated the criminalization of the relevant conduct even at a very early stage of the mediation. It was also argued, however, that after the amendment of the Bulgarian Criminal Code in 2002 whereby all the actions of bribery were included as objective elements of the relevant offence, the scope of Article 305a as a self-standing provision was limited to include only cases where a bribe was given to an intermediary and that person failed to deliver it.

The review team, having in mind the work of the Working Group for drafting a new Criminal Criminal Code and with the aim to facilitate its work, called the national authorities to reconsider the usefulness of maintaining the self-standing provision on the criminalization of the conduct of an intermediary in cases of bribery; and explore the possibility of making amendments in the text of the relevant provisions on bribery to include *expressis verbis* the phrase “directly or indirectly”, in line with the UNCAC.

The reviewing experts raised during the country visit the issue that, contrary to the passive bribery provision, there is no specific reference to a *third-party beneficiary* in the active bribery provision. They took into account the explanations provided by the Bulgarian authorities and, particularly, the argument that by virtue of a theory of mirroring provisions, Articles 304 and 304a of the Criminal Code would implicitly contain the element of third party beneficiaries, corroborated by relevant case-law (see Decision No. 847 of the Supreme Court of 4 January 1969 and Decision No. 527 of the Supreme Court of 28 October 1976 in footnote 4 above). However, besides the fact that the pertinence of this earlier jurisprudence is not entirely clear in the current context, the governmental experts further argued that the reasoning of Bulgarian authorities seemed to allow by analogy the implementation in given cases of active bribery of another article dealing with the passive form of such bribery, which, in turn, appeared to be problematic from a dogmatic point of view. Moreover, such an interpretation may not suffice in cases of parallel proceedings on both active and passive bribery, whereby the criminal proceeding on passive bribery is closed (for any reason such as death) while the criminal proceeding on active bribery continues.

Therefore it was recommended, in an effort to facilitate the work of the Working Group for drafting a new Criminal Criminal Code, that the offence of active bribery in the public sector be construed in such a way as to unambiguously cover instances where the advantage is not intended for the official him/herself but for a third party.<sup>6</sup>

Based on the notion that under the Convention, active bribery (as well as passive bribery and trading in influence) should qualify as completed criminal offences (and not as attempted offences) even when the bribe-taker or bribe-giver does not respond positively to a proposition, the reviewing experts discussed with the Bulgarian experts during the country visit to what extent bribery is prosecutable also *without both parties necessarily reaching an illicit agreement*. The Bulgarian authorities explained that after the amendment of the Criminal Code in 2002 the elements of promising or offering a bribe were punishable as

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<sup>6</sup> This could be done, for example, through a legislative amendment adopting the approach followed in Article 225c of the Bulgarian Criminal Code on bribery in the private sector or introducing in the text of Article 304 the ad hoc language used in Article 15 of the UNCAC (“for the official himself or herself or another person or entity”).

unilateral acts, i.e. also in the absence of an agreement between the bribe-giver and the bribe-taker. The reviewing experts noted, in this regard, that Ruling No. 8 of 30.11.1981 of the Plenum of the Supreme Court on criminal case No. 10/1981, which stressed that attempt remained applicable in connection with bribery offences but without providing further explanations or guidance, still constituted a reference decision.

Therefore they recommended that the Bulgarian authorities continue to clarify the interpretation of domestic law to define the difference between promising or offering of an undue advantage and attempt of bribery and, consequently, ascertain whether the provisions on attempt have – in principle – become irrelevant also in court practice.

## **Article 15 Bribery of national public officials**

### **Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Article 15(b) of the UNCAC is implemented through Articles 301- 303 of the Bulgarian Criminal Code. In domestic legal practice, there is an established understanding that the subject of passive bribery offence according to Articles 301 and 302 of the Criminal Code, is an official who requests or accepts a gift or any other benefit whatsoever, which is not due, in order to perform or not an act on business or because he has or has not performed such an activity. The legal definition of the term “official” is contained in Article 93, paragraph 1, (a) and (b), of the Criminal Code.

Bribery is committed with direct intent. The official must not only be aware that he/she accepts or receives a gift or other benefit whatsoever which is not due, but also to do so in order to perform or not perform or he/she has already committed or not committed any act or omission in service. Therefore, in all cases the offense is committed with direct intent. For bribery, according to Article 301, paragraph 1, of the Criminal Code, it is enough for the official to accept gifts or other benefit whatsoever in order to perform or refrain from acting in service or has already committed or not committed such an act, without violating his/her official duties. It is not necessary for him/her to have actually committed the act or omission, for which he/she has received the gift or benefit whatsoever.

The qualified content of Article 301, paragraph 3, of the Criminal Code is materialized when the official receives a gift or a benefit, in order to commit another crime or when the official has already committed such crime, which is related to the execution of his/her duties.

Under "other crimes in connection with the service", it is meant any offense, which the official may commit while performing his/her duties regardless of its nature and whether it is lesser, equal to or more serious offense than bribery. In bribery, according to Article 301,

Article 3 of the Criminal Code, the perpetrator commits two crimes in real concurrence - bribery and another crime in connection with the office.

The legal practice has imposed the understanding that, while determining whether the official occupies a responsible position, pursuant to Article 302, paragraph 1, of the Criminal Code, the nature, content and scope of the duties he/she performs should be taken into account, along with the functions and powers to which he/she is entitled, the place he/she occupies in the official hierarchy and the nature of the entity, business or public organization in which he operates.

The bribery is completed through extortion by abuse of service duties, according to Article 302, paragraph 2, of the Criminal Code, when the perpetrator, in order to obtain the benefit whatsoever, forces another person to give a gift or other undue benefit whatsoever in order to prevent the performing of such official actions by the official, which would endanger or harm his or her legal rights and interests. Abuse of official duties can be done in various ways, including through the use of force and intimidation. It is sufficient to consider that the perpetrator occupies a certain official position that enables him to perform or not perform specific official act or omission, for which the blackmailed person has an interest; it is also sufficient that it has been made clear to that person, he cannot expect quick and favourable resolution of the issue, if he does not provide a gift or other benefit whatsoever.

Bulgaria further provided information on case law of the Supreme Cassation Court on issues related to the interpretation of relevant provisions of domestic legislation.<sup>7</sup> Ruling No. 8 of 30.11.1981 on criminal case № 10/1981 of the Plenum of the Supreme Court is also relevant.<sup>8</sup>

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<sup>7</sup> Ruling No. 354 of 20.10.2009 No. 361/2009, P.C., I N. O. of the Supreme Cassation Court

*".....This necessitates the interpretation of the provision of art. 304, par. 1 of the Criminal Code in its edition after the amendment in SG, 92/2002, in force during the perpetration of the incriminated deed, currently still in force. This amendment of art. 304, par. 1, as well as the one of art. 301, par. 1 of the PC, again criminalizes not only the act of "giving" or "accepting" a "gift or any kind of benefit" (understood as "property", benefit of a "property nature"), but also the act of "offering, promising, requiring, accepting of a proposal or promise" to give such a benefit (amendment, set in relation to the synchronization of our internal legislation with view to the commitments of the Republic of Bulgaria in the ratification of the UN Convention against transnational organized crime, SG, 42/2001, by the regulation of art. 2 and art. 8, sec. 1, 6. "a" and "6" of the latter, specifying the term "non-due benefit" in the criminal corpus delictis of bribery, re-confirmed also in the ratified by the RB, SG, 66/2006, UN Convention against Corruption, in art. 2 and art. 15, 6. "a" and "6" as "undue advantage" for an official). Such forms of the executive deed of the "active" under art. 304, par. 1 PC and the "passive" under art. 301, par. 1 of the PC bribery also existed in the revoked Criminal Code of the People's Republic of Bulgaria, n. "News", 13/1951, in art. 259 and art. 261 of the latter".*

Ruling No. 146 OF 6.4.2010 for c. c. No 35/2010, n. k., third n.o. of the Supreme Cassation Court

*"...In principle the passive bribe is completed at the moment of the factual receipt or accepting of the gift or other benefit..."*

<sup>8</sup> The following excerpts are of relevance:

*"... 4. The bribery is committed with direct intent for a venal goal.*

*5. For corpus delicti of the bribery under art. 301, paragraph 1 of the Criminal Code it is sufficient that the official has accepted or obtained the undue gift or other advantage without violating his/her official duties.*

*6. The official violates his/her duties within the meaning of art. 301, paragraph 2 of the Criminal Code where he/she carries out actions which are not in compliance with his/her rights and duties established by law, regulation, ordinance, order or another act.*

*7. Under "another crime connected with the service" under art. 310, paragraph 3 of the Criminal Code it is understood each crime which the official can commit during discharging his/her official duties regardless of whether it is less seriously, equally or more seriously punishable than the bribery. In the bribery under art. 301, paragraph 3 of the Criminal Code there is present a real aggregate of crimes -*

Statistics on legal proceedings related to Articles 301-307 of the Criminal Code for the periods 2003-2005 and 2006-2009 have been provided.

On the issue of assessing the effectiveness of the measures adopted to criminalize passive bribery of national public officials, Bulgaria referred to evaluation mechanisms mentioned above under Article 15(a) of the UNCAC.

**(b) Observations on the implementation of the article**

Similarly to what was discussed under the active bribery provisions, the reviewing experts discussed with the Bulgarian authorities the issue of differentiating between the solicitation of a bribe and attempt to receive a bribe. Therefore they recommended that the Bulgarian authorities continue to clarify the interpretation of domestic law to define the difference in question and, consequently, ascertain whether the provisions on attempt have – in principle – become irrelevant also in court practice.

Moreover, the reviewing experts noted that the issue raised under article 15(a) of the UNCAC regarding the conduct of intermediaries and the insertion of the phrase “ directly or indirectly” in the domestic legislative text is of relevance in the context of passive bribery as well. Thus,

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*aggravated bribery and another crime in relation to the service. The other crime could be under art. 282 of the Criminal Code (misuse of official duties) as well, where the offence or failure to discharge the official duties or abuse of power or rights has been expressed in another act of the official outside of obtaining of the bribe itself.*

*8. When establishing whether the official holds a responsible official position within the meaning of art. 302, sub-paragraph 1 of the Criminal Code, the nature, content and volume of the position or work performed by him/her, the functions and powers granted to him/her, the position he/she holds in the official hierarchy and the nature of the institution, the economic or public organization in which he/she works should be taken into consideration.*

*9. Blackmail through abuse of the official position within the meaning of art. 302, sub-paragraph 2 of the Criminal Code is present where the official for the purpose of acquiring advantage puts another person in conditions which compel him/her to give undue gift or another advantage in order to prevent performing of such actions or inactions connected with the service which would endanger or infringe his/her legitimate rights and interests. The blackmail through abuse of the official position can be made in different ways including by using force and threatening as well.*

*10. The bribery under art. 302, sub-paragraph 1 of the Criminal Code is made for a second time where the perpetrator receives a gift or another advantage after he/she has been convicted for bribery with a sentence that had entered into force.*

*11. The only criterion when determining whether the bribe under art. 302, sub-paragraph 4 of the Criminal Code is of large amount is only the money equivalent to the benefit which has been received.*

*12. Subject of bribery under art. 303 of the Criminal Code is an official within the meaning of art. 93, paragraph 1, letters “a” and “b” of the Criminal Code who does not receive for himself/herself the gift or another advantage for the actions or inactions performed by him/her in connection with the service under the conditions of art. 301 and art. 302 of the Criminal Code but agrees that the gift or the advantage be given to another person.*

*.....*  
*15. Bribery under art. 304, paragraph 2 of the Criminal Code is present where the perpetrator gives a gift or another advantage to an official and the latter violates his/her official duties or commits a crime connected with the service for which punishment of up to five years deprivation of liberty is provided for in the law. The bribery is completed where the official violates his/her official duties or commits or makes attempt to commit another crime connected with the service which is not more seriously punishable. Where the crime connected with the service committed by the official in connection with the bribery is punishable with deprivation of liberty for more than five years, the person who has given the bribe will be responsible for bribery under art. 304, paragraph 1 of the Criminal Code and for abetment to the other more serious crime.”*

the recommendation made in relation to the implementation of that article also needs to be taken into account to ensure full compliance with article 15(b) of the UNCAC.

## **Article 16 Bribery of foreign public officials and officials of public international organizations**

### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Article 16, paragraph 1, of the UNCAC is implemented through Article 304 of the Bulgarian Criminal Code. With regard to relevant case law, Bulgaria reported that so far there was only one conviction entered into force for foreign bribery. The text of the relevant court decision and the argumentation of the court have been provided. Information has also been provided on related legal cases or other processes, including investigations, prosecutions and pre-trial proceedings within the period 2006-2009.

On the issue of assessing the effectiveness of the measures adopted to criminalize passive bribery of national public officials, Bulgaria referred to evaluation mechanisms mentioned above under Article 15(a) of the UNCAC.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the foreign public officials were expressly covered by specific paragraphs in the provisions on active and passive bribery of public officials (Article 304/3 CC and Articles 301/5). Article 93 of the Criminal Code also provides for the definition of a “foreign official” as a “person performing duties in a foreign country’s office or agency; functions assigned by a foreign country, including by a foreign public enterprise or organization; duties, assignments or delegated tasks by international organization, as well as duties of an office in international parliamentary assembly or international court of justice. The constitutive elements of bribery to public official’s offences largely apply with regard to active and passive bribery of foreign public officials. Thus, the Bulgarian legislation is in conformity with article 16 of the UNCAC.

However, the issues raised under article 15(a) of the UNCAC regarding the conduct of intermediaries, on the one hand, and cases where the advantage is not intended for the official him/herself but for a third party beneficiary, on the other, are of relevance in this context as well. Thus, the pertinent remarks and recommendations made in relation to the implementation of that article need to be taken into account. The reviewing experts recommended that these remarks and recommendations be taken into account to ensure full compliance with article 16, paragraph 1, of the UNCAC.

## **Article 16 Bribery of foreign public officials and officials of public international organizations**

### **Paragraph 2**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

This provision is implemented through Article 301 of the Bulgarian Criminal Code. On the issue of assessing the effectiveness of the measures adopted to criminalize passive bribery of national public officials, Bulgaria referred to evaluation mechanisms mentioned above under Article 15(a) of the UNCAC.

#### **(b) Observations on the implementation of the article**

The same remarks are relevant here, as those mentioned under article 15 (a) of the UNCAC. The reviewing experts recommended that these remarks be taken into account to ensure full compliance with article 16, paragraph 2, of the UNCAC.

## **Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria reported this provision is implemented through Articles 201-205 and 282-283 of the Criminal Code. Embezzlement is one of the most commonly met crimes against property. The domestic legal practice treats as embezzlement the illegal ordering by an official for assets, which he is entrusted to by the occupied service position, being in interest of anyone else except the owners'. It is also necessary for the ordering to be executed in the same manner, as the perpetrator would give orders concerning his personal belongings. The order may be legal or factual and has a real result that the particular item or right stops being available to its owner. From the subjective side, the crime is only intentionally committed.

Statistics have been provided by Bulgaria on legal cases/proceedings regarding corruption offences.

#### **(b) Observations on the implementation of the article**



The reviewing experts noted that the information provided by the Bulgarian authorities indicated that article 17 of the UNCAC, concerning the category of benefits gained by the public official, had been transposed in a broad way into the Bulgarian legislation, including through the application of not only articles 201-205, but also articles 282-283 of the Criminal Code, which belong to Section II of Chapter 8 of the Code on crimes involving “criminal breach of trust”. Bearing this in mind, it was clarified during the country visit that the relevant observations on the application of articles 282-283 were to be considered when reviewing the implementation of article 19 of the UNCAC (“Abuse of functions”) at the domestic level (see below - full compliance with the UNCAC requirements, although a separate ad hoc provision on the criminalization of embezzlement etc. in the public sector might have also been of direct relevance).

## **Article 18 Trading in influence**

### **Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Trading in influence is criminalized in Article 304b of the Criminal Code both in its active (paragraph 2) and passive form (paragraph 1). Moreover, Article 305a incriminates mediation in the commission of a trading in influence offence. Trading in influence occurs when a person who has real or apparent influence on the decision-making of a public official exchanges this influence for an undue advantage. Almost all constitutive elements of bribery offences apply also with regard to active and passive trading in influence. The concept “trading in influence” is implemented in Article 304b of the Criminal Code by use of the words “asserts that she/he is able to exert influence over the decision-making of an official or a foreign public official”. Although, the term “*abuse his or her real or supposed influence*” is not explicitly transposed, the Bulgarian authorities (through the Ruling No. 413 of 17.11.2009 for c.c No. 455/ 2009 p.c, third no of the Supreme Cassation Court), clarified that it is not relevant whether the influence was actually exerted or if it led to the intended result. The court also evaluated the real and the supposed influence of the defendant and stated that the person exerting the influence could exert it himself or through another person..

### **(b) Observations on the implementation of the article**

The reviewing experts noted the recent jurisprudence mentioned above and the interpretation contained therein that the provision on active trading in influence (Art.304b, paragraph 2) provides that the advantage is offered, promised or given to a person who asserts (the Bulgarian word also includes the idea of “pretends”) that s/he is able to exert influence. They also noted the explanation provided by the Bulgarian authorities that this language does not imply any consideration as to whether the influence is exerted or not, and whether the supposed/pretended influence leads to the expected result.

The reviewing experts noted that the issues raised under article 15(a) of the UNCAC regarding the conduct of intermediaries and the insertion of the phrase “directly or indirectly” in the domestic legislative text, on the one hand, and cases where the advantage is not intended for the official him/herself but for a third party beneficiary, on the other are of relevance in this context as well. Thus, the pertinent remarks and recommendations made in relation to the implementation of that article need to be taken into account to ensure full compliance with article 18(a) of the UNCAC.

## **Article 18 Trading in influence**

### **Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The provision is implemented through Article 304b, paragraph 1, of the Bulgarian Criminal Code. According to the Bulgarian law trading in influence has at the same demand and supply sides. A briber is guilty of the offence if she/he offers, promises or gives an undue advantage to a person in order that the recipient exerts her/his influence on the decision-making of a public official. An influence peddler is guilty if she/he solicits or receives an undue advantage from a person in order that she/he exerts her/his influence on the decision-making of a public official.

Statistics on legal proceedings related to Article 304b of the Criminal Code have been provided.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted the recent jurisprudence mentioned under article 18(a) and the interpretation contained therein that the expression “in order to exert influence” used for passive trading in influence (Article 304b, paragraph 1, of the Criminal Code), implies that it does not matter whether the influence is exerted or not.

The reviewing experts noted that the issue raised under article 15(a) of the UNCAC regarding the conduct of intermediaries and the insertion of the phrase “directly or indirectly” in the domestic legislative text is of relevance in the context of passive trading in influence as well. Thus, the recommendation made in relation to the implementation of that article may<sup>9</sup> also need to be taken into account to ensure full compliance with article 18(b) of the UNCAC.

## **Article 19 Abuse of Functions**

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<sup>9</sup> In view of the optional nature of the offence.

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The provision is implemented through Article 282 of the Bulgarian Criminal Code, where criminal responsibility is envisaged for an official who violates or fails to fulfill his/her duties or authority or has exceeded his/her rights in order to secure for himself/herself or for another person a benefit or cause harm to another person. It was further noted that the offence under Article 282 of the Criminal Code relates to one of the most common crimes in service. It corresponds cumulatively to two main characteristics of the crime of corruption- particular subject and specific purpose - the pursuit of gain, which in turn can be tangible or intangible. Particular type of crime in service is contained in the provision of Article 282a of the Penal Code, where criminally liable is stipulated for an official who, in the presence of in-law conditions, necessary for granting a special permission for conduct of certain activity, refuses or delays beyond the legal time limits its granting.

Typical for the crimes described in Articles 282-285 of the Criminal Code, is the special purpose, consisting in obtaining for himself/herself or for other unlawful benefit or causing harm caused to another person. The crimes are intentional. Crime that reveals signs of corruption is contained in the provision of Article 283 of the Criminal Code, which provides punishment for an official who used his official position to obtain for himself or for another tangible or intangible benefit. This type of crime in service criminalizes the most drastic forms of intercession, by which the principles to which the activities of the state and the municipal authorities should be based are being replaced.

The Bulgarian authorities provided information on relevant jurisprudence.<sup>10</sup>

Furthermore, statistics on proceedings related to Articles 282, 283 and 387 of the Bulgarian Criminal Code for the periods 2003-2005 and 2006-2009 have also been provided

**(b) Observations on the implementation of the article**

The reviewing experts noted that all constituent elements of article 19 of the UNCAC on “abuse of function” had been transposed into the Bulgarian Criminal Code, thus ensuring full compliance with article 19 of the UNCAC, as follows:

- The concept of an offence committed intentionally (through article 21 CC);
- The performance of or failure to perform an act (through articles 282, paragraph 1, 383, 387, paragraph 1); this term is covered by “an official who violates or does not fulfill his official duties, or exceeds his authority or rights...” (article 282, paragraph 1), “who fails to fulfill his official duties or oversteps his powers...” (article 387), “who uses his official position...” (article 383);
- Definition of official (through art. 93 CC);
- For the purpose of obtaining an undue advantage (articles 282, paragraph 1, 283),

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<sup>10</sup> Judgment No. 184 of 25 February 2008 of the Military Court of Appeals of the Republic of Bulgaria on the criminal case of general nature № 155/2007; Judgement No. 187 of 21 March 2005 on the Appellate Criminal Case of General Nature No. 139/2004 of the Burgas Court of Appeals.

the term “undue advantage” is not explicitly transposed, but in several dispositions the following terms are used: benefits, cause damage (article 282), unlawful benefits (article 283); and

- Undue advantage for himself or herself or for another person or entity (articles 282, paragraph 1, 283).

**(c) Challenges, where applicable**

The Bulgarian authorities indicated as a challenge the implementation of article 282 of the Criminal Code (“criminal breach of trust”) which was designed to deal with other socio-political systems and economic conditions and is, thus, not applicable in cases where the benefit is intended for legal entities based on private capital. Cases of crimes under article 282 are often terminated or result in acquittals under the established court practice to exclude liability in this text to a wide range of persons that do not fall under the term “officials”. Therefore there is a need for a new criminal-law approach and legal regulation of the so called “crimes in office”.

**Article 20 Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The illicit enrichment is not incriminated as a separate crime in the Bulgarian legislation. However, it comes out as an eventual consequence of the criminal activity and leads to property sanction - seizure of property, acquired from criminal activity under Article 53 of the Criminal Code, when this is explicitly stipulated in the provisions of the Criminal Code.

In parallel, there is a special procedure for forfeiture of such property under the provisions of the Civil Procedure Code (CPC) and the Law on Forfeiture of Proceeds of Crime (LFPC). The forfeiture of the proceeds of crime presumes however, that the person, whose property is forfeited, has already been convicted, and the conviction is for an offence, explicitly envisaged in LFPC. Pursuant to Article 1, Paragraph 2 of LFPC, subject to forfeiture in the order of this law shall be property, acquired directly or indirectly from criminal activity, which has not been restored to the aggrieved or has not been seized in favour of the State or confiscated under other laws. In order to impose this procedure, the Law requires that the property is acquired as a result of crimes - pointed out in detail in Article 3 of the same Law. Pursuant to Article 3 of the LFPC, all bribery provisions fall within this range, as well as the greater part of corruption-related offences. For this reason, pursuant to the Law, upon involvement of the accused person in an offence, pursuant to Article 3 of the LFPC, including bribery, the supervising Public Prosecutor is obliged to inform the Commission on establishment of property acquired from criminal activity, which should undertake measures for the establishing of the property and the securing of the future forfeiture in compliance with the above pointed special law. The forfeiture of property by this order may be imposed also in regard to the heirs or the devisees of the person, who has acquired it, up to the extent of the acquired by them (Article 5 of the LFPC). Forfeiture may be conducted also when the

property has been included in the property of a corporate body, controlled by the checked person independently or jointly with other individual or corporate body, as well as in the cases of legal succession of the respective corporate body (Article 6). The property transferred to spouse, relatives of direct line without limitation in the degree, and of lateral line and by marriage - up to second degree inclusive, as well as property – consortium, are also subject to forfeiture under the conditions and by the order of this law is also, but only if those persons have known that it has been acquired from criminal activity (Article 8).

In accordance with the provision of Article 29 of the Law on civil servant, each civil servant shall disclose his/her property status to the appointing authority prior assumption of office and after than annually, before the 31st day of March. The form of the declaration is contained in Annex 6 to the Ordinance №1 dated 21.03.2000 regarding the documents needed for assumption of public office. The truthfulness of the statements contained in the declaration is verified by the inspectorates established within the ministries, directly reporting to the relevant minister. This is part of the administrative control exercised in each ministry. Non-submitting the declaration constitutes an administrative offence, since it contradicts with the duties of each public servant. Furthermore, declaring false information could constitute a crime under Art.313 CC.

Moreover, the control over the property status of magistrates is carried out in compliance with the requirements of the Law on Judiciary and the Law on Public Disclosure of Senior Public Official's Property. The latter shall apply also for property, income and expenses in the country and abroad of a number of persons which are not public officials, but which occupy a senior public office, such as the President of the Republic of Bulgaria and the Vice President, the members of the National Parliament, the ministers, the members of the political offices etc. The declarations shall be kept in a special public register established within the National Audit Office. This is also the competent institution that shall verify the truthfulness of facts declared.

For the purpose of the Law on Prevention and Disclosure of Conflict of Interest public officials are made equal to “public office holder”. Public office holders are bound to submit a declaration of private interests within 30 days after their election or appointment. The declaration shall be completed in a standard form. The public office holder<sup>11</sup> shall submit the declarations referred to in Article 12 to the electing or appointing authority. The control over the truthfulness of the declarations is carried out by the electing or appointing authorities and by the Committee on prevention and disclosure of conflicts of interests.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that article 20 of the UNCAC includes an optional criminalization requirement and therefore Bulgaria has as obligation only to consider adopting measures in compliance with its constitutional law in order to be in conformity with the

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<sup>11</sup> Officers obliged to submit their declarations to the Committee on prevention and disclosure of conflicts of interests include: the President and the Vice President, the Constitutional Court judges, the National Representatives, the Prime Minister, the Deputy Prime Ministers, the Ministers, the National Ombudsman and the Deputy Ombudsman, the members of the Supreme Judicial Council, including the Presidents of the Supreme Court of Cassation and of the Supreme Administrative Court and the Chief Prosecutor, the Chief Inspector and the inspectors of the Inspectorate to the Supreme Judicial Council, the President and the members of the National Audit Office, the Governor, the Deputy Governors and the members of the Managing Board of the Bulgarian National Bank, the Governor and the Vice Governor of the National Social Security Institute, the members of bodies who are elected in whole or in part by the National Assembly, ; the municipal councillors and the mayors.

Convention. That being said, Bulgarian authorities have not taken such measures in order to criminalize as a specific offence the illicit enrichment. In a more general context, however, the concept of acquisition of illegal gains as a result of criminal acts related to corruption may lead to property sanctions, including seizure and confiscation of proceeds of crime or property derived from, or used in the commission of, such criminal acts. Legislation on declaration of assets and conflict of interest is in place covering a wide range of “persons holding public offices” and providing for administrative sanctions.

During the country visit and upon invitation of the reviewing experts, the Bulgarian authorities explained that constitutional limitations pertaining to the right to the right to be presumed innocent until proven guilty under the law hindered the implementation of article 20 of the UNCAC in the Bulgarian legal order. The presumption of innocence is invoked because the crime of illicit enrichment hinges upon presuming that the accumulated wealth is corruptly acquired, unless the contrary is proved. The Bulgarian authorities further indicated that there were no plans to include an offence of illicit enrichment in a revised text of the Criminal Code as a result of the work of the relevant Working group (see above).

## **Article 21 Bribery in the private sector**

### **Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The provision is implemented through Article 225c of the Bulgarian Criminal Code. This article, incriminating the bribery in the private sector, is situated in Chapter six “Offences against the economy”, Section “General Economy Offences” of the Criminal Code, and the possibility for prosecuting and punishing such crimes was introduced after entering into force of the Amendment and Supplement Act of the Penal Code on 27.12. 2002.

The bribery in the private sector fully recreates the provisions of the active and passive bribery, relative to the public sector under Articles 301-307 of the Criminal Code. The recreation concerns both forms of bribery, as stipulated in Paragraphs 1 and 2. Paragraph 5 refers to the punitive sanction - seizure of the object of crime in favour of the State. In this case, the seizure may be imposed against the certain subjects - persons in fulfillment of a job for a corporate body or a sole entrepreneur, namely persons with decision-making or controlling powers within a business (see also article 26, paragraph 3 of the UNCAC).

Additional requirement is that these persons have received a gift or whatever benefit, in order to fulfil or not an act in violation of their obligations. It refers to a basic provision, different to the bribery in the public sector, where the real violation of the duties by the official, related to his office, is raised as a graver qualified indication of the crime, respectively with a more serious sanction envisaged. The described acts by the indicated persons are relevant only in

the field of the trading activity, therefore, besides as objects and sphere of activity – the corporate bodies with non-economic activities are excluded.

The Bulgarian authorities referred to case-law on the implementation of article 225c of the Criminal Code (Judgment No. 786, dated 27.12.2007 on the implementation of article 225c CC and the Decision No. 47 dated 19.02.2010 Criminal case 678/2009, Penal College, Penal Division 1 of the SCC).

Statistics on legal proceedings related to Articles 225 and 226 of the Penal Code for the period 2003-2009 have been provided.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the incrimination of active and passive bribery in the private sector under article 225c CC was in line with the requirements of the provision under review through the following constituent elements of article 225c of the Bulgarian Criminal Code:

- “Person who directs or works, in any capacity, for a private sector entities”: Article 225c of the Criminal Code uses the term “a person who works for a legal entity or sole proprietor” which seems to be in line with article 21(a) of the UNCAC;
- “...in breach of duties”: According to Article 225c of the Criminal Code, the briber recipient in private sector (active or passive) should have been acting or fail to act “in breach of duty”;
- “Acting and refraining from acting”, is explicitly mentioned in paragraph 1 of Article 225c;
- “Third party beneficiaries” are explicitly mentioned under Article 225c, paragraph 3;
- Although, the provisions do not expressly mention if the offence is committed “directly or indirectly”, Article 225c, paragraph 4, of the Criminal Code criminalizes the “persons who mediates”;
- The bribe can take the form of a gift or of an undue advantage.

The reviewing experts received during the country visit clarifications from the Bulgarian authorities that, with reference to the terms “*in the course of business activity*” and “*a person who works for a legal entity or sole proprietor*” used in the text of article 225c of the Bulgarian Criminal Code, non-governmental organizations or foundations fall within the scope of “legal entities” to the extent they are engaged in “economic, financial or commercial activities”.

Similarly to what was mentioned under article 15(a) of the UNCAC, the reviewing experts explored whether there is a differentiation between promising/offering a bribe and attempting to commit the bribery in the private sector even when the bribe-taker or bribe-giver does not respond positively to a proposition. Again, a recommendation on the need for continuing to clarify the interpretation of the domestic legislation to define such difference was made.

### **Article 21 Bribery in the private sector**

#### **Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The provision is implemented through Article 225c of the Bulgarian Criminal Code.

**(b) Observations on the implementation of the article**

Similarly to what was discussed under article 15(b) of the UNCAC, the reviewing experts raised the issue of differentiating in practice between soliciting a bribe and attempts of receiving a bribe. It was recommended that more efforts to continue to clarify the interpretation of the domestic legislation may be needed to make it clear that, through the inclusion of the acts of solicitation or acceptance as individual elements of the passive bribery offence, the provisions on attempt have – in principle – become irrelevant also in court practice.

**Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision with the clarification that in the Bulgarian legislation the embezzlement of property in the private sector is not stipulated as a separate offence in the Criminal Code. It is prosecuted by the order, provided for embezzlement of property in the public sector, stipulated in Articles 201 - 205 of the Criminal Code. In this case, what is of importance is the capacity of the person as an official in the meaning of Article 93, Item 1, letter “b” of the Criminal Code, as well as the type of the embezzled property, that is not public. Embezzlement is regulated through Articles 201 - 205 of the Criminal Code. In the Prosecutor’s Office of the Republic of Bulgaria there are no separate statistics about the pre-trial proceedings, initiated for embezzlement in the private sector. For this reason there are missing data in this regard.

Furthermore, the provision of Article 206 of the Criminal Code shall also apply. It shall be understood as an act of unlawfully appropriation of a movable object by one or more individuals to whom such object have been entrusted. In this type of criminal activity the movable object is attained lawfully and the embezzler has the right to possess it, but the object is then used for unintended purposes. According to Article 206, paragraph 2, of the Criminal Code, embezzlement shall also be considered to occur where only part of the object belongs to the perpetrator, as well as where the object is the property of the perpetrator, but it has been



burdened to become a pledge and perpetrator has illegally disposed thereof, failing to protect the rights of pledge creditors, or where perpetrator uses movable property of another as a pledge, thereby making it more difficult for creditors to obtain satisfaction.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the incorporation of article 22 of the UNCAC in the Bulgarian legal system is an optional requirement, which means that Bulgaria should only consider criminalizing the offence of “embezzlement of property in the private sector”. In this connection, they took into account that the applicable articles 201-206 of the Bulgarian Criminal Code identify the perpetrator of the crime as follows: in articles 201-205, as an “official”, who may also be a person assigned to carry out “management work and work related to safeguarding property belonging to others in ...another legal person or sole proprietor, as well as a notary and assistant-notary, private enforcement agent and assistant private enforcement agent” (article 93, Item 1, letter “b” of the Criminal Code); in article 206, as “a person”.

It was further noted that only article 206 of the Criminal Code could be considered as partially implementing article 22 of the UNCAC, because it seems to narrow the scope of the latter with regard to the object of embezzlement. It is recalled that article 22 refers to any property, private funds or securities or any other thing of value” and not only to “a movable object of another”, as mentioned in article 206. In this connection, reference should be made to the general provision of article 2(d) of the UNCAC on the concept of “property”, which includes “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets”. Moreover, the term “assets of every kind” is understood to include funds and legal rights to assets (see *Travaux Préparatoires* of the negotiations for the elaboration of the UNCAC, 2010, p. 53).

Given that the Bulgarian authorities clarified that there were no specific plans in future to incriminate separately the embezzlement in the private sector, the reviewing experts called the competent national authorities to ensure full compliance with article 22 of the UNCAC by clarifying, where deemed appropriate, the interpretation of domestic legislation to widen the scope of article 206 of the Criminal Code in line with article 22 of the UNCAC so that it includes as the object of embezzlement in the private sector “any property, private funds or securities or any other thing of value” and not only “a movable object of another”.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (a) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

- (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

### **Subparagraph 1 (a) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

- (a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

### **Subparagraph 1 (b) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

- (b) Subject to the basic concepts of its legal system:*

- (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of these provisions. In addition, it reported that under the Law on measures against money laundering, each of the following activities shall be considered as money laundering:

- a. transformation or transfer of possessions acquired through criminal activities or from an act of participation in such activity, in order to hide or cover the illegal origin of the possessions or in order to assist a person, participating in perpetration of such activity in order to avoid legal consequences of his/her act;
- b. hiding or covering of the essence, of the source, the location, the disposition, the movement or the rights with regard to the possession, acquired through a crime or an act of participation in such activity;
- c. acquisition, possession, keeping or use of possessions with the knowledge at the moment of receiving that they have been acquired through a crime or from an act of participation in such activity; and
- d. participation in any of the actions under items (a)-(c), association with the purpose of perpetration of such an act, trial to perpetrate such an act, as well as assisting, instigation, facilitation of perpetration of such an activity or its covering.

The same approach is to be seen in the provisions of Article 253 of the Criminal Code, which implements the provisions of Article 23, subparagraph 1 (a) (i), of the UNCAC.

Statistics on legal proceedings related to Article 253 of the Criminal Code for the periods 2003-2006 and 2007-2009 have been provided.

Bulgaria further provided information on relevant case law regarding interpretative aspects of money-laundering. In October 2008, an important sentence was pronounced and made public by the Supreme Cassation Court (the Supreme Court upheld the decisions of the Sofia District Court and the Sofia Appellate Court in money laundering case related to bank fraud) which brought clarity in the interpretation of the conditions needed to prove intention in money laundering: In this sentence the court states: "Differing from concealment, in case of money

laundering it is not necessary the predicate crime to be finally proven with the instruments existing under the Penal Procedure Code. Otherwise it would mean one to accept that money laundering could not be fulfilled.

For the predicate crime or other act dangerous to the public (Article 253, paragraph 1, of the Criminal Code), only general data must be established. This is because normally this activity is related to drug trafficking and/or trafficking in human beings or other actions for which there is no real evidence and which cannot be investigated under the normal penal procedure. The test for availability of evidence about a crime under Article 253 of the Criminal Code (money laundering) requires answers to several questions:

- Are there important money flows movements undertaken by the accused person?
- Could these movements be explained by commercial deals or deals of any type which may justify the origin of such large amount of money?
- In this respect, is the reason for a sudden wealth of the person explicable?
- Are there data about links between the person accused and persons from the criminal underground which could explain the origin of the assets as criminally acquired assets?

If the answers to the first and third questions are positive, and the answer to the second question is negative, the court should accept that the crime money laundering is fulfilled. In this case there is a sentence where the amount of the money from the predicate offence (the amount is smaller than the one from the money laundering) is established as a result of the gathered circumstantial/indirect evidence for the committed crime. The jurisprudence of the Supreme Cassation Court, without explicit provision in the Penal Procedure Code or the Criminal Code, makes clear that some kind of reversal of the burden of proof must be applied in cases of money laundering.

The effectiveness of the Bulgarian anti-money laundering legislation is periodically reviewed within the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL. The third round mutual evaluation report of Bulgaria was adopted at the Moneyval plenary on 1.04.2008. The first progress report of Bulgaria was adopted on 18.03.2009. In addition, the Bulgarian authorities are currently discussing amendments to the LMML in order to comply with the recommendations of the Moneyval evaluation report. The proposed amendments to the LMML include adjusting some of the categories of reporting entities to comply with legislation on financial institutions (Law on Credit Institutions) as well as with the Postal Services Law and to fully cover the scope of third AML directive in regard to accountants. Another proposed change is related to introducing the reporting of attempted suspicious transactions. Most of the other issues have been tackled through the introduction in Bulgarian legislation of the requirements of the third AML directive.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that Bulgaria has introduced in its domestic legislation definitions which are in line with the provisions of the UNCAC under review.

## Article 23 Laundering of proceeds of crime

### Subparagraph 1 (b) (ii)

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

### (a) Summary of information relevant to reviewing the implementation of the article

The provision is implemented through Articles 253a and 17-22 of the Bulgarian Criminal Code.

### (b) Observations on the implementation of the article

The reviewing experts noted that the Bulgarian criminal legislation was in compliance with the provision of the UNCAC under review.

## Article 23 Laundering of proceeds of crime

### Subparagraph 2 (a)

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

### (a) Summary of information relevant to reviewing the implementation of the article

The Bulgarian legislation does not limit the range of the predicate offences as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention. The provision of Article 253 of the Criminal Code addresses all types of offences (criminal or administrative) as predicate offence regardless of their gravity.

After the country visit, Bulgaria further provided statistics on money-laundering cases during the period 2006-2010.<sup>12</sup>

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<sup>12</sup> **Convictions and agreements, Sentenced Persons:**

2006 - 4 convictions and agreements, 4 persons convicted, the sentences are in force

2007 - 8 convictions and agreements, 9 persons convicted, the sentences are in force

2008 - 13 convictions and agreements, 25 persons convicted, the sentences are in force

2009 - 18 convictions and agreements, 36 convicted persons, 16 of the sentences are in force, for 32 persons the convictions are entered into force

2010 - 15 convictions and agreements, 29 convicted persons, 9 of the sentences are in force, for 18 persons the convictions are entered into force

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian criminal legislation was in compliance with the provision of the UNCAC under review, since the national legislator does not limit the range of the predicate offences as a result of which proceeds have been generated that may become the subject of an offence.

The relevant provision of the Criminal Code addresses all types of offences of both criminal and administrative nature as predicate offence, regardless of their gravity, thus going beyond the UNCAC requirements.

Moreover, it was also observed that the number of cases and convicted persons is growing, but the statistics available do not show if money laundering offences are related to corruption.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (b)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

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*total:*

58 convictions and agreements, 50 of which are in force

103 persons convicted, for 88 of the persons the sentences are in force

#### **Acquittals, acquitted persons:**

2006 - 3 acquittals, 3 acquitted persons with sentences entered into force

2007 - 2 acquittals, 4 acquitted persons with sentences entered into force

2008 - 2 acquittals, 3 acquitted persons, 1 of the sentences is entered into for 1 person

2009 - 1 acquittal, 3 acquitted persons

2010 - 6 acquittals, 15 acquitted persons, 2 of sentences are in force

*total:*

14 acquittals, 8 of them are in force

28 acquitted persons, for 12 persons the sentences are in force

#### **Amount of the seized property (its monetary equivalent) according to the report of the prosecution:**

2006 - around 350,000 Euro

2007 - around 415,000 Euro

2008 - around 286,000 Euro

2009 - Under the dispositive part of the convictions and agreements in 2009 /both entered and not entered into force/ property - subject of money laundering is seized in favour of the state, respectively defendants were sentenced to pay its equivalent, amounting to around 11.4 million Euro, where part of the property /money, cars, golden jewellery, etc. / has been already seized under the sentences, respectively under the court ruling when it had been secured during the investigation.

2010 - Under the dispositive part of the convictions and agreements /both entered and not entered into force/ property - subject of money laundering is seized in favour of the state, respectively defendants were sentenced to pay its equivalent, amounting to around 14,331,600 Leva and 396,250 Euro. Part of the property /money, cars, golden jewellery, etc. / has been already seized when it had been secured during the investigation.

This amount includes the amount of the conviction of the group of Mr. Mario Nikolov -12,838,033 leva.

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. According to the Article 253 of the Bulgarian Criminal Code, criminal offences established in accordance with UNCAC are considered as predicate offences.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian criminal legislation was in compliance with the provision of the UNCAC under review.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (c)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

**(a) Summary of information relevant to reviewing the implementation of the article**

By virtue of Article 253, paragraph 7, of the Bulgarian Criminal Code, money laundering shall be considered also in cases when the predicate offence has been carried out in a Member State of the European Union or in another country and does not come under the jurisdiction of the Republic of Bulgaria.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian criminal legislation was in compliance with the provision of the UNCAC under review.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that Bulgaria did not prove that copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof have been furnished to the Secretary-General of the United Nations. Therefore they called the national authorities to ensure that copies of the domestic laws giving effect to article 23 of the UNCAC (Laundering of proceeds of crime) and of any subsequent changes to such laws or a description thereof are furnished to the Secretary-General of the United Nations.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

The existing money laundering provision in Bulgaria (article 253) is broad enough formulated and permits the prosecution and punishment of an offender for both the predicate offence and the laundering of proceeds from that offence. Hence, the self-laundering is actually criminalized under the Bulgarian legislation and further discussions in this regard are not really needed (See also the Second 3rd Round Written Progress Report, adopted at MONEYVAL's 35<sup>th</sup> Plenary meeting ,Strasbourg, 11-14 April 2011, page 71).

## **(b) Observations on the implementation of the article**

The reviewing experts took into account the explanation provided by the Bulgarian authorities that an offender may be prosecuted and punished for both the predicate offence and the laundering of proceeds from that offence. No further comments were made in this regard.

## **Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

The provision is implemented through Article 215 of the Bulgarian Criminal Code. In case of concealment, the perpetrator pursues a special purpose, namely to obtain for himself/herself or for another person an economic benefit. To this end, the perpetrator hides, acquires or helps for the disposition of another person's movables, for which it is known or suspected of being acquired by another person through crime or other harmful act.

Statistics on convictions under Article 215 (and Article 212) of the Criminal Code have been provided.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that, according to article 215 of the Criminal Code, the Bulgarian authorities are in compliance with article 24 of the UNCAC, as they have transposed into their internal legislation a provision which criminalizes the act of a person which “acquires or helps for the appropriation of movable properties of another, for which he knows or supposes that they have been obtained by somebody through crime or another act which constitutes public danger”. The terms used in article 215 of the Criminal Code “crime or another act which constitutes public danger”, “Appropriation of movable properties” aim at covering the requirements of article 24 of the UNCAC.

## **Article 25 Obstruction of Justice**

### **Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The Bulgarian Criminal Code (Article 21, paragraph 1) has adopted the fundamental rule that the accomplices in a criminal offence are punished if the offence, in which they have taken part, has been committed. Therefore, if the criminal offence is not committed, abettors and accessories are not punished. As an exception to this rule, in the Special Part of the Criminal Code a separate text for abetting to perjury has been created. This text envisages the cases where abetting to perjury has not been successful and the abetted person has not committed perjury, regardless of the reasons. In this case, there is no reference to abetting where perjury has not been committed. It becomes clear that this is so from the grammatical interpretation of Article 293 of the Criminal Code. The text says “who abets” and not “who has abetted”. Hence a conclusion can be drawn that the abettor’s punishability does not fall away if the person abetted to perjury does not commit the crime. In this case, the abettor is punished for crime under Article 293 of the Criminal Code, as with the very abetting the abettor fulfills the *corpus delicti*. This legal approach is also confirmed by the court practice.

Abetting to a crime under Articles 290, 290a and 291 is present when the perpetrator incites another person to commit perjury. It is important that the decision to commit perjury has been taken due to the incitement. The perpetrator may exercise its influence by any act, which is able to form the intention for committing perjury, including by using physical force, threats or intimidation, by promising, offering or giving an undue advantage. Such deduction can be made because of the broad meaning of the term “abetting”. Furthermore, when the inciter under Article 293 uses physical force, threats or intimidation, he/she commits the crime



“coercion” under Article 143 of the Criminal Code. In this case the perpetrator shall be held liable for both crimes - coercion and abetting to perjury.

Relevant case law has also been provided by the State party under review.

Additional statistics on legal proceedings related to Articles 289-293 for the period 2003-2009 have been provided.

**(b) Observations on the implementation of the article**

The reviewing experts have not found it evident in the explanation or the legal text that all the instances specified by UNCAC are covered. It seems to be understood that this is included in the concept of abetting to perjury, but this had not been made explicit. Furthermore the reviewing experts noted that Bulgaria made reference to articles 20 §1 and 293 of the Criminal code. In the answer, articles 21, 22, 290, 290-a and 291 are also attached. Though, articles 20 to 22 define the incrimination of complicity and similar crimes; they do not refer specifically to the incrimination described under article 25(a) of the UNCAC. Articles 290 to 291 incriminate giving false testimony by persons who assert untrue statement or hold back the truth in an affidavit or experts who orally or in writing consciously give untrue conclusion. It is true that article 293 states that a person who abets another to a crime under Articles 290, 290a and 291 shall be punished. This article does not specify the concrete acts that fall under the definition. There is no evidence (jurisprudence, case law) that behaviours such as the one described in article 25 (a) of the UNCAC may be or have been punished under article 293. No description is made of positive acts that might fall under the incrimination of the said article.

After the country visit, the Bulgarian authorities specified that Articles 286-287 of the Criminal Code were applicable and provided the relevant text. However, Article 286 refers to a different crime (false accusation), whereas Article 287, as amended in 2004 and 2006, criminalizes the conduct of an official who takes unlawful coercive action against an indicted individual, a witness or an expert witness in order to extort confession, testimony, a conclusion or information therefrom, which, again, is not of relevance in the context of implementing article 25(a) of the UNCAC.

A separate set of clarifications were then provided. The Bulgarian authorities stressed that, in addition to the incriminations under articles 293 and in conjunction with art. 290, 290a, 291 CC, the use of coercive measures to interfere in the giving of testimony or production of evidence is covered by the general provision of coercion under article 143 CC. The text of this article is as follows:

***Coercion***

***Article 143***

*(1) (Previous Article 143, SG No. 62/1997) A person 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.*

(2) (New, SG No. 62/1997) *Where the act has been perpetrated by a person under Article 142, paragraph (2), subparagraphs 6 and 8, the punishment shall be deprivation of liberty for three to ten years.*

(3) (New, SG No. 62/1997, amended and supplemented, SG No. 103/2004, supplemented, SG No. 43/2005, amended, No. 27/2009) *Where in the cases under the preceding paragraph the act of coercion has been committed in respect of a judge, a prosecutor, an examining magistrate, a police body, an investigating officer, a public enforcement agent, a private enforcement agent and an assistant private enforcement agent, as well as on a Customs officer, a tax administration officer, an officer of the Forestry Executive Agency, or an officer of the Ministry of Environment and Waters performing a control activity, in the course of or in the event of carrying out his duties or functions, the punishment shall be deprivation of liberty for two to eight years.*

The reviewing experts found the last clarifications sufficient enough to guarantee compliance of the Bulgarian legislation with article 25(a) of the UNCAC.

## **Article 25 Obstruction of Justice**

### **Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

The provision is implemented through Article 289 of the Bulgarian Criminal Code, according to which punished is the one, who persuades an official, from the investigating authorities or prosecution or judicial authorities, to violate his official duty in relation with the administration of justice. The word incitement in the context of Article 289 excludes motivation through bribing, but reiterates illegal influence, thereby replacing the constitutional principle for precise and uniform application of law to all citizens and ultimately harming the public interest. Relevant case law<sup>13</sup> has also been provided.

Of relevance is also Article 269, paragraph 1, of the Criminal Code. The latter provision establishes as criminal offence *the use of force or threat for the purpose of compelling an authority body to do or to omit doing something within his duties or related to his functions*. The sanction provided for this offence is deprivation of liberty for up to six years. The provision of Article 269 is placed in Section I “Crimes against Order of Governance”, Chapter Eight “Crimes against Activities of State Institutions, Public Organisations and Persons Performing Public Functions” of the Criminal Code (in the same chapter are placed also

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<sup>13</sup> Sentence № 159 of 1 April 2009 of the Plovdiv Military Court on the criminal case of general nature № 159/2008.

Sections “Crimes against Justice” and “Bribery”). Under the definition of Article 93, paragraph 2, of the Criminal Code, “authority bodies” are the bodies of state power, the bodies of state government, the authorities of the judiciary, as well as the officials therein, who are entrusted with the exercise of functions of power. The provision of Article 269, paragraph 1, of the Criminal Code applies also in cases where the use of force or threat aims at interfering with the exercise of official duties by justice and law enforcement official in relation to the commission of corruption and other offences.

Additional statistics on legal proceedings related to Articles 289-293 for the period 2003-2009 have been provided.

## **(b) Observations on the implementation of the article**

In addition to the explanations provided during the on-site visit, the reviewing experts noted article 269 of the Criminal Code further supported the fact that the Bulgarian criminal legislation is in compliance with article 25 (b) of the UNCAC.

## **Article 26 Liability of legal persons**

### **Paragraph 1**

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

### **Paragraph 2**

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

The responsibility of legal persons with regard to criminal activity is regulated by the Amendment and Supplement Act of the Law on the Administrative Offences and Sanctions (New - SG 79/2005). The responsibility is *only administrative*, for the reason, that according to the Bulgarian legislation and the permanently settled principles in the legal doctrine, only a natural person could be a criminally responsible person (Article 5, Paragraph 3, of the Constitution of the Republic of Bulgaria and Article 9, Paragraph 1, of the Criminal Code). The Law on the Administrative Offences and Sanctions (LAOS) is a normative act, which defines the type and the size of the administrative sanctions for perpetrated violations of natural and legal persons. The provisions of Article 83a, Paragraph 1, of the LAOS that have been enriched by offences established in the Criminal Code, including those related to corruption, as well as offences committed under assignment or in execution of a decision of an organized criminal group.

The national Prosecutor’s Office has undertaken measures for the practical enforcement of the responsibility of legal persons under the special order of Article 83a and the following Articles of the LAOS. In order to facilitate and stimulate the prosecutors to apply the procedure provided in Article 83a- Art. 83f of the LAOS, the Prosecutor General of the Republic of Bulgaria has passed an Instruction № 230 /22.06.2010, which regulates

procedural rules to enforce the provisions of the LAOS. Within the territorial Prosecutor's Offices the relevant organization for this purpose is established, including also the maintenance of a special register on the number of the prosecutor's proposals to the District court under Article 83b of the LAOS and the results of the initiated court proceedings. Through the instruction's implementation, it is expected that prosecutors shall apply the norms referable to LPs in the LAOS in connection to their responsibility in the commitment of crimes.

Bulgaria also provided clarifications on action taken domestically to assess the effectiveness of measures taken to ensure compliance with the UNCAC requirements. It was reported, in this connection, that profound internal assessment is carried out when amending national laws and secondary legislative acts and that one example was the introduction of administrative liability for legal persons for a list of crimes in 2005 through the amendments of the Law on administrative offences and sanctions. This was the result of an internal assessment which is carried out by the Bulgarian institutions in order to comply with the existing international standards and instruments. The internal assessment is carried out on an ad-hoc basis, where practical difficulties or legislative gaps are identified. All the legislative amendments are carried out after broad consultations with practitioners, academics and governmental experts, in order to reflect their experience and to achieve maximum effectiveness.

After the country visit, Bulgaria provided additional statistical information. For the period 01.01.2010–31.12.2010, there were 11 notifications for ascertained circumstances under Article 83a-83e LAOS filed in the territorial prosecution offices and Sofia city prosecution office. Five of them were sent by the regional prosecution offices with regard to 4 cases for committed criminal offences under Articles 210 and 211 of the Criminal Code (qualified fraud) and 1 case for a crime under Article 212 of the Criminal Code (document fraud). The other 6 notifications fell within the competence of the district prosecutions offices and relate to tax offences – 1 case to Article 256 and 5 cases to Article 257 of the Criminal Code. All 11 cases are at the stage of verification and necessary evidence has been gathering for elaborating motivated proposal of the respective prosecutor to the district court for imposition of property sanctions to legal persons. The provided statistical information has preliminary character. Final statistics on the matter could be provided after the adoption of the Chief Prosecutor's annual report on the activity of prosecution and investigative authorities for 2010.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that Bulgaria's legal system was in compliance with the requirements set forth in paragraphs 1-2 of article 26 of the UNCAC and that the national choice made was to provide for the administrative liability of legal entities.

### **Article 26 Liability of legal persons**

#### **Paragraph 3**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

According to article 83 a, paragraph 3, of the LAOS, the property sanction shall be imposed without prejudice to the criminal liability of the perpetrator of the criminal act.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Bulgaria's legal system was in compliance with the requirement set forth in paragraph 3 of article 26 of the UNCAC.

## **Article 26 Liability of legal persons**

### **Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

In article 83a of the LAOS, the following sanctions against legal entities, enriched by crimes, are foreseen:

- property sanction up to 1 000 000 leva, but not less than the economic equivalent of the benefit, when it is in property terms; (The property sanction is imposed irrespective of the realization of the penal liability of the perpetrator of the crime.)
- When the benefit is not in the form of property or its amount cannot be estimated, the sanction is from 5000 to 100 000 leva.
- The benefit or its economic equivalent is seized in favour of the state, if it cannot be returned or restored or forfeited in accordance to the Criminal Code.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Bulgaria had chosen to put in place a legal framework for the establishment of administrative liability of legal persons involved in the commission of UNCAC-based offences. It was reported by Bulgaria that, despite the lack of statistical information on the application of the sanctions in practice, the monetary sanctions against legal persons were considered to be enough effective, proportional and dissuasive, especially in the light of the relatively low level of incomes. Moreover, the legislation provides expressly that the sanction cannot be inferior to the economic equivalent of the benefit, they appear to be relatively lower, compared to what is generally expected. The governmental experts suggested that the national authorities explore the possibility of increasing the level of monetary sanctions against legal persons for corruption-related offences in cases where the advantage accruing to the legal person as a result of foreign bribery is not "property", or if the value of the advantage cannot be ascertained.

## **Article 27 Participation and attempt**

### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Bulgarian Criminal Code does not contain a legal definition of the term “complicity”. The legal doctrine defines it as a joint and cooperative act of two or more persons in order intentionally to commit a crime. It should be understood by its forms - participation, aiding and abetting or instigation, which are defined in Articles 20-22 of the Criminal Code. All accomplices shall be punished by the punishment provided for the perpetrated crime, with due consideration of the nature and degree of their participation. The ground for this legislative decision is due to the fact that each of the accomplices contributes to the commission of crime by the perpetrator and intentionally contributes to the affection and endangering of the relevant public relations.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that Articles 20-22 of the Criminal Code define clearly the concept of complicity. More specifically, Article 21 states that all accomplices shall be punished by the punishment provided for the perpetrated crime, with due consideration of the nature and degree of their participation. Accordingly, the legislation is in compliance with article 27, paragraph 1 of the UNCAC.

## **Article 27 Participation and attempt**

### **Paragraph 2**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The provision of Article 18, paragraph 1, of the Bulgarian Criminal Code provides for the legal definition of the term “attempt”. The attempt to commit any crime (including the offences established in accordance with UNCAC) is considered to be a punishable criminal behavior. Under Article 18, paragraph 2, of the Criminal Code, the perpetrator shall be punished for an attempt by the punishment provided for the completed crime.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that, although adopting provisions foreseen in article 27, paragraph 2, of the UNCAC is not a mandatory requirement, article 18, paragraph 1 of the Bulgarian Criminal Code states that the attempt to commit any crime (including the offences

established in accordance with UNCAC) is considered to be a punishable criminal behaviour and that the perpetrator shall be punished by the punishment provided for the completed crime. Accordingly, the legislation is in compliance with article 27, paragraph 2, of the UNCAC.

## **Article 27 Participation and attempt**

### **Paragraph 3**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The legal definition of the term "preparation" is contained in Article 17, paragraph 1, of the Bulgarian Criminal Code. In comparison to complicity and attempt, the preparation for committing a crime is punishable only in cases where this is explicitly provided in the Penal Code. For example, preparation is criminalized for money laundering (Article 253a). Bulgaria has further provided information on relevant case law.<sup>14</sup>

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that, although the requirement set forth in article 27, paragraph 3, of the UNCAC is optional, the Bulgarian Criminal Code (article 17, paragraph 1) defines the preparation of a crime and punishes the acts preparatory to crimes. However, paragraph 2 of that article introduces a limitation by stipulating that "Preparation shall be punishable only in the cases provided for by the law". The Bulgarian authorities clarified that the concept of preparation is established by art. 17 CC and is applicable to specific offences, where, due to the characteristics and the way of commission of the offence, there is a need to incriminate the preparatory activities of the perpetrator (e.g. money-laundering, counterfeiting, terrorism, kidnapping, homicide etc.). Corruption crimes are not considered to be offences where preparation is subject to specific criminalization.

## **Article 28 Knowledge, intent and purpose as elements of an offence**

*Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

According to the Bulgarian Penal Procedure Code, the explanations of the accused are oral objective forms of evidence. The investigative bodies and the court pay great attention to the explanation of the accused since it is a source of direct evidence. It can provide important additional information about all the circumstances regarding the investigated crime. The explanation of the accused party can be considered also as a part of his/her right of defence as provided by the law, through which the accused may state facts which are in his/her favour

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<sup>14</sup> Decision of criminal section of Supreme Court of 1978: "The preparation is punishable only in the cases provided for by the law. Without giving the payment order the executing action of embezzlement has not started."

and refute the accusation. It should be noted that the accused is entitled but not obliged to give an explanation. The refusal of providing explanations cannot be interpreted in his/her harm. Confession of the accused is also form of evidence. Article 116, paragraph 1, of the Penal Procedure Code states that nobody can be convicted solely on the basis of his/her confession. The value of confession consists in the fact that it establishes the possibility to gather new evidences. Confession could serve as a basis for issuance of a conviction only when it is supported by objective facts established in the course of the criminal proceedings.

#### **(b) Observations on the implementation of the article**

The reviewing experts took into account the rationale behind article 28 of the UNCAC, namely its use as an “interpretation guide” when assessing the subjective elements (“*mens rea*”) of the UNCAC offences.<sup>15</sup>

In relation to the response of the Bulgarian authorities, the governmental experts further noted that, according to paragraph 14 of the Interpretative Ruling N° 8 of 30 November 1981 of the Plenary of the Supreme Court, bribery can only be committed with direct intention. For example, in the case of active bribery, if the perpetrator gives, promises or offers an advantage to an official in order that the official performs or refrains from performing an act connected with his/her function, or because he/she has performed or has not performed such an act (paragraph 14 of the Interpretative Ruling № 8 of 30.11.1981 of the Plenary of the Supreme Court on the court practice related to the issues of bribery offence). However, the explanations and applicable laws provided were satisfactory only for the legislative part. In order to assess whether this provision of the UNCAC, although of an optional nature, is fully implemented in the Bulgarian legal system, there may be a need to systematize and make best use of information related to how direct or circumstantial evidence is brought before the court and assessed by the judges. Such information would be useful in order to respond to such questions as whether there is a proper balance between confession/explanations of the accused person and other evidence; or whether there is a legal basis for circumstantial evidence to be used in a criminal process.

#### **Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

In the Bulgarian criminal legislation, prescription periods are settled in Chapter IX of the Criminal Code, entitled “Lapse of Criminal Pursuit and Imposed Penalty” (articles 79 - 84). There are several types of prescription periods: prescription period for criminal pursuit and prescription period for execution of the penalty.

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<sup>15</sup> On the negotiation of the Article, see the *Travaux Préparatoires* of the negotiations for the elaboration of the UNCAC, 2010, pp. 243-245. Moreover, the Legislative Guide to the UNCAC (2006) indicates that national drafters may wish to take into consideration Article 28 so that evidentiary provisions in domestic laws enable such interference with regard to the mental state of the offender, rather than requiring direct evidence, such as a confession, before the mental state is deemed proven (see p. 128, para. 368).



The prescription period for criminal pursuit is a term defined by law, after the expiration of which criminal responsibility for the performed crime can not be sought. The duration of this term depends on the type and the size of the penalty for the relevant crime provided in the Criminal Code. According to article 80, paragraphs 3 and 4, of the Criminal Code, "Criminal prosecution shall be excluded by prescription where it has not been instigated in the course of:

3. ten years with respect to acts punishable by imprisonment for more than three years;
4. (amended, SG No. 62/1997) five years in respect of acts punishable by imprisonment for more than one year."

The longest prescription term - 35 years - concerns qualified cases of murder (of two or more persons). The prescription for crimes punishable by life imprisonment without substitution or life imprisonment is 20 years. The shortest term is three years for acts punishable with less than one year of imprisonment or other penalties.

Most of the crimes established in accordance with UNCAC are punishable with deprivation of liberty for more than three years and only few of them are punishable with deprivation of liberty for more than one year. In compliance with the general rules of Article 80, the statute of limitation expires after ten years or five years respectively. For example, the punishment for passive bribery of foreign officials according to article 301, paragraph 5, in connection with paragraph 1, of the Criminal Code is imprisonment up to six years and a fine to the amount of five thousand leva; the punishment for money laundering according to article 253, paragraph 1, of the Criminal Code is imprisonment up to six years and a fine to the amount of three to five thousand leva. For both examples the prescription period shall be 10 years. The prescription of prosecution shall commence as from the completion of the crime, in the case of attempt and preparation - as from the day of completion of the last action, and for continuous crimes as well as for crimes in progress - as from the moment of their termination. The abovementioned rules for prescription concern the bribery of foreign officials as well.

The prescription period for execution of penalty is also a legally defined term, after the expiration of which the verdict, if not already executed, is not carried out. The particular terms are defined in article 82 of the Criminal Code.

**Suspension and interruption of prescription:** In accordance with article 81, paragraph 1, and paragraph 2, of the Criminal Code, the prescription period is suspended when the commencement or the continuation of the criminal pursuit depends on the solution of any preliminary issues through a judicial act that has entered into force. The prescription is interrupted by every action of the relevant bodies concerning the prosecution but only with regard to the person who is subject of such prosecution. After the performance of the action which has interrupted the prescription, a new prescription period starts. According to article-81, paragraph 3, of the Criminal Code, notwithstanding the termination or interruption of prescription, criminal proceedings will be precluded provided a term has expired, which exceeds by one half the term provided under Article 80 of the Criminal Code, namely:

- fifteen years for acts punishable with imprisonment for more than three years, and
- seven years and six months for acts punishable by imprisonment for more than one year.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the statute of limitation for the prosecution of criminal offences is determined by the severity of sanctions applicable and it varies from 3 years (since the last amendments of April 2010) to 35 years. As a result, all bribery and trading in influence offences are subject to a prosecution time limit of 5 to 15 years, which is in line with the obligation of article 29 of the UNCAC. The only situation where the basic prosecution time limit is too short is for offences falling within the scope of Article 225c paragraph 4 of the Criminal Code (mediation in connection with private sector bribery), where it is three years (since the last Criminal Code amendments of April 2010); this results from the maximum term of imprisonment which is up to (and not more than) one year, since the statute of limitation is determined by the level of penalty applicable. The statute is interrupted by every procedural act of the prosecution, and it is therefore extendable by up to half of the initial time limit (article 81 paragraphs 2 and 3 of the Criminal Code).

Overall, the reviewing experts were of the view that the Bulgarian legislation is in compliance with article 29 of the UNCA, although not entirely comprehensive information was available regarding the statute of limitations regime applicable in civil and administrative law for legal persons, as well as the suspension of the statute of limitation period in case where the alleged offender has evaded the administration of justice.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision for all crimes established in accordance with UNCAC. The duration of the imprisonment depends on the gravity of the offence and the public danger of the offender. All referred crimes are considered to be of grave nature since for them the law stipulates a punishment of imprisonment of more than five years. The grounds for determining the severity of the penalty and the individualization of its type and size are regulated in Chapter V of the General Part of the Criminal Code.

For the crimes covered by the UNCAC (bribery – articles 301-307, money laundering – articles 253-253b -, embezzlement – articles 201-206- , concealment – articles 212 and 215 - obstruction of justice – articles 290.-293 etc.), the Criminal Code foresees one or more of the following sanctions:

- custodial sentence;
- deprivation of the right to occupy certain public position or another position of state;
- deprivation of the right to practice certain profession or work;
- confiscation of the property of up to one half of the culprit's property (embezzlement); and
- fine.

The confiscation according to Bulgarian criminal law is foreseen as a punishment against the perpetrator of the certain crime related to the available property (article 37, paragraph 3, and article 44 of the Criminal Code and the concrete texts of the Specific part of the Criminal Code). For the majority of the crimes falling within the scope of UNCAC, the object of the crime is seized in favour of the State. If the object of the crime is missing, its economic equivalent is seized in favour of the State.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that, in general, the sanctions applicable to persons who have committed a bribery offence involving a person from the public sector (articles 301, 302, 303, 304, 304a, 307 of the Criminal Code) appear to be sufficiently dissuasive bearing in mind the maximum applicable penalty (up to 10 years' imprisonment for the active or passive bribery offence). Moreover, the fine is always an additional penalty. There is no lower limit to the prison sentence or fine (except under article 302 of the Criminal Code), but the general criminal provisions provide for statutory minima (3 months for imprisonment and BGN 100 for fines, according to articles 39 and 47 of the Criminal Code). In contrast, the maximum penalties applicable to the offences of bribery in the private sector (article 225c of the Criminal Code), intermediation (article 305a of the Criminal Code) and trading in influence (article 304b of the Criminal Code) are noticeably lower but still within the average level of punishment. The fact that intermediation in private sector bribery offences under article 225c paragraph 4 of the Criminal Code is subject to a maximum penalty of only one year' imprisonment is a minor exception. Additional sanctions such as confiscation of property, deprivation of certain rights are also applicable to those offences or crimes. Therefore the Bulgarian law appears to be in conformity with the requirement set forth in article 30, paragraph 1, of the UNCAC.

On the issue of sanctions against legal persons, the reviewing experts made reference to their observations with regard to the implementation of article 26, paragraph 4, of the UNCAC.

### **Article 30 Prosecution, adjudication and sanctions**

#### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The persons who enjoy immunity are identified in the Constitution of the Republic of Bulgaria and these are the members of the National Parliament (Article 70), the president of the country (Article 103, paragraph 4), the judges -members of the Constitutional Court (Article 147, paragraph 6), judges, prosecutors, investigating magistrates, whose immunity from investigation and prosecution was also limited to functional immunity after the amendments to the Constitution (2003) and Law on Judiciary (2004). According to Article 220, paragraph 1 of the Penal Procedure Code, an individual who enjoys immunity shall not be constituted as accused party. The criminal

prosecution against such individuals for the same crime shall be instituted once the immunity gets waived, if no other bars thereto are present. The procedural immunity does not cover the institution of the preliminary criminal proceedings nor the investigation but may be applied only in relation to the bringing of charge/accusation against a magistrate and to the arrest of a magistrate. It means that the special investigative techniques may be used in order to collect data for the requests to lift immunity.

Moreover, Bulgaria indicated that issues of immunities and/or jurisdictional or other privileges accorded to public officials had not been addressed in any official documents because public officials other than those mentioned in the Bulgarian Constitution do not enjoy immunities.

Following the discussion on the issue of immunities and the questions raised during the on-site visit, the Bulgarian authorities provided the following clarifications and additional information concerning Art.30, para.2 of UNCAC: Under the Bulgarian Constitution and law, the following categories of persons enjoy immunities with regard to the investigation, prosecution and adjudication of the offences established in accordance with UNCAC:

- members of Parliament (Article 70 of the Constitution);
- the President and the Vice President of the Republic (Article 103 of the Constitution);
- members of the Constitutional Court (Article 147, paragraph 6, of the Constitution);
- candidates for parliamentary, presidential, European Parliament and local elections (Article 103 of the Election Code).

The scope of the immunity and the procedure for the lifting of immunities of the above-mentioned categories are established, as follows:

#### Members of Parliament

Under Article 70, paragraph 1, of the Constitution, members of Parliament may not be detained and prosecuted, except for criminal offences, and then only with authorization of the National Assembly or, if it is not convened, with authorization of the Chairperson of the National Assembly. No authorization for detention shall be required where a member of Parliament is arrested in the act of committing a serious criminal offence (*in flagrante delicto*), but in such a case the National Assembly or the Chairperson of the National Assembly, shall be notified immediately. Under Article 70, paragraph 2, of the Constitution, authorization for criminal prosecution is not required if the member of Parliament concerned grants his/her consent in writing. The procedure for the lifting of the immunity of Members of Parliament is established by Article 123 of the Rules of Organization and Procedure of the National Assembly.

#### President and Vice President of the Republic

Under Article 103, paragraph 1, of the Constitution, the President and the Vice President of the Republic may not be held liable for acts committed in the performance of their duties, except for high treason and violation of the Constitution. In such cases procedure of impeachment is provided for (Article 103, paragraphs 2 and 3, of the Constitution). The President and Vice President cannot be detained nor can criminal proceedings be initiated against them (Article 103, paragraph 4, of the Constitution). The procedure of impeachment before the Constitutional Court is regulated by the Constitution (Article 103, paragraphs 2 and 3), Law on Constitutional Court (Articles 23 and 24) and some provisions of the Rules of Procedure of the Constitutional Court (Articles 16, paragraph 1 (10), 24, 27, 29).

### Members of the Constitutional Court

Under Article 147, paragraph 6, of the Constitution, members of the Constitutional Court enjoy the same inviolability-immunity as members of Parliament. The immunity may be lifted by secret ballot of 2/3 of all members of the Constitutional Court (Article 148, paragraph 2, of the Constitution). The criminal proceedings can not be initiated against the members of the Constitutional Court before lifting the immunity (Article 9, paragraph 1, of the Law on Constitutional Court). The immunity of the member of the Constitutional Court may be lifted by the Constitutional Court, provided that the General Prosecutor submits sufficient information about commission of the respective criminal offence (Article 9 of the Law on Constitutional Court). Before the ballot, the Member of the Constitutional Court concerned shall be provided with the opportunity to present personal explanations before the Court. The Member of the Court concerned shall not vote (Article 25, paragraph 2, of the Law on Constitutional Court).

### Candidates for parliamentary, presidential, European Parliament and local elections

Under Article 103, paragraph 1, of the Election Code (“Inviolability”), from the date of their registration the candidates for parliamentary, presidential, European Parliament and local elections can not be detained or charged with criminal offence, except if arrested in the act of committing a serious criminal offence (*in flagrante delicto*). When the registration of the candidate is deleted, the above inviolability is terminated from the date of deletion (paragraph 2). The inviolability may not be applied if the registered candidates have been detained or charged with criminal offences before the date of their registration for elections (Article 103, paragraph 3, of the Election Code).

Following the amendments to the Constitution of 2006, judges, prosecutors and investigating magistrates do not enjoy immunity with regard to the investigation, prosecution and adjudication of the offences established in accordance with UNCAC (in Article 132, paragraph 1, of the Constitution, it is explicitly provided that the functional immunity of the magistrates is not applicable with regard to the criminal offences committed intentionally, i.e. also with regard to corruption offences).

According to statistical information provided after the country visit, for the period 2006-2010, totally 16 requests for authorization for undertaking of criminal prosecution against members of Bulgarian National Assembly for committed crimes of general nature have been prepared and sent by the Chief Prosecution Office to the National Assembly on the basis of Art.70, para.1 of the Constitution of the Republic of Bulgaria. 15 of them were upheld. In 2010 the Chief Prosecution Office has filed no requests to the National Assembly for authorization for undertaking of criminal prosecution against members of National Assembly.

### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation seems to be in compliance with the UNCAC provision under review, as the Bulgarian authorities during 2006 have undertaken further steps in order not only in order to reduce the category of officials enjoying immunity but also the scope of its application.

## Article 30 Prosecution, adjudication and sanctions

### Paragraph 3

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

#### (a) Summary of information relevant to reviewing the implementation of the article

The Bulgarian authorities provided an overview of the legal powers of the prosecutorial authorities explaining the provisions of the Bulgarian legal system which define the framework of their action. The legal powers of the Prosecutor are provided in the Constitution of the Republic of Bulgaria (Articles 126-127), the Law on Judiciary (Articles 136-147), and the Penal Procedure Code, which, as explained during the country visit, strictly specify the conditions for prosecution and do not foresee a discretionary manner in which a prosecutor should discharge his/her functions or powers (see, however, below on the implementation of article 37, paragraphs 1 and 2, of the UNCAC). The measures described below are applicable for all the crimes, including corruption-related ones, as in this way the legislator guarantees a higher efficiency of the legal actions against these offences.

The Bulgarian legislation contains extensive regulations, ensuring the independence of the judicial authorities in the exertion of their constitutional powers and competence. The Bulgarian Constitution (Ren. SG, 56/13 July 1991, as amend. and suppl. SG 12/6.02.2007) explicitly regulates the independence of judicial authority. Thus, pursuant to Article 117, paragraph 2, of the Constitution of the Republic of Bulgaria, the judiciary is independent and in the performance of their functions, all judges, court assessors, prosecutors and investigating magistrates shall be subservient only to the law. The same principle can be found in the provision of Article 10 of the Penal Procedure Code, where it is stated that while carrying out their functions, the judges, Court jurors, the prosecutors and the investigating bodies shall be independent and shall be subservient only to the law. Furthermore, when delivering their acts the judges, the prosecutors and the investigators shall stand on the law and on the evidence collected in the lawsuit. (Article 3 of the Law on Judiciary). In the Law on Judiciary (Ren., SG, 64/7.08.2007, last amend. and suppl., 33/30.04.2009) (LJ), the constitutional principle of magistrates' independence is reproduced and further developed in the provisions of articles 2, 4 and 6 regarding the legal and impartial application of the law by magistrates. The correct and impartial application of laws is further guaranteed by article 8 of the LJ on the principle of equal application of the laws toward all citizens, regardless of the nationality or race, religion or other beliefs or status. The LJ also stipulates provisions for incompatibility of magistrates' positions with holding, respectively practicing other professions and activities. (Chapter Nine "Statute of judges, prosecutors and investigators", Section III „Incompatibility, art.195 LJ). Magistrates shall be dismissed on the grounds of article 165, section 7, of the LJ, if such incompatibility is discovered. An additional guarantee for the magistrates' independence are the rules, set out in the general Code of ethics of the magistrates (from the year 2009), which forbids all unwarranted contacts. The LJ provides for the possibility of bearing disciplinary responsibility, including imposing the most severe disciplinary penalty – dismissal for violating the rules of the Code of ethics. The legal principle of independence is further guaranteed by means of random assignment of files and cases in the courts, prosecutor's offices and investigation services by the Life Choice software, developed by the Supreme Judicial Council (SJC).

According to the Bulgarian legislation, the independence of the judiciary is perceived as non-commitment of any officials and citizens inside and outside the trial, which means, that in regard to these authorities no one can give compulsory directions how to be formed their position on one or another matter of substantial importance for the case. The independent, autonomous procedural status of the prosecutor is established in view of his/her procedural capacity in the criminal process, including both the pre-trial and the trial phase of the criminal proceedings.

The Prosecutor's Office of Bulgaria is part of the judicial system. Therefore the Constitution also guarantees the Prosecutor's Office's independence from the impact of any external factors whatsoever, which might influence the legal and impartial implementation of the prosecutor's functions and powers under art.127 of the Constitution, including in the investigations. The principle of independence of the prosecutor in the criminal process introduced in the Bulgarian legislation, appears to be a prerequisite for the introduction of Article 14 of the Penal Procedure Code - building of a procedural autonomy in terms of which decisions are taken on inner conviction. This means that the prosecutor takes his decisions on inner conviction, when they are based on objective, thorough and complete investigation of all the circumstances of the case, under the guidance by law.

In compliance with these basic principles of the Bulgarian legislation, the prosecutor performs his/her functions to bring and maintain the accusation in crimes of general nature during both phases of the criminal process (article 46 of the Penal Procedure Code). The legislator has provided in the Penal Procedure Code the frames within which the prosecutor carries out his/her functions and powers in the trial - Article 23, Article 46, Paragraph 1 - Paragraph 4, Article 52 Paragraph 3, Article 102-103, Article 161, Paragraph 1, Article 165, Paragraph 2, Article 173 in conjunction with Article 172, Article 196; Article 207; Article 212; Article 219; Article 234 ; Articles 242 - 246.

Independence and decision-making by inner conviction at the performing of the legal powers of the prosecutor, provided in the Bulgarian legislation, are not uncontrolled. The exercise of these powers are guaranteed by the forms of procedural control provided in the Penal Procedure Code, which ensures the validity and legality of the procedural acts and actions of the prosecutor – both at a higher prosecutorial level and judicial level. Such a control on procedural acts and actions of the prosecutor is provided in both phases of the criminal process, namely pre-trial proceedings and the court process.

In the phase of the pre-trial proceedings which includes two stages - investigation and actions of the prosecutor after the finalization of the investigation (article 192 of the Penal Procedure Code), the prosecutor issues decrees (article 199 of the Penal Procedure Code). Pursuant to article 200, paragraph 2, of the Penal Procedure Code, the decrees of the prosecutor, which are not subject to court control, may be appealed before a prosecutor of the higher prosecutor's office, whose decree can not be a subject to appeal.

At a refusal of the prosecutor to initiate pre-trial proceedings, on his/her own initiative (ex officio) or on a complaint of the victim or his/her heirs, the injured legal person or the person that has reported for the crime, a prosecutor at the higher prosecutor's office may cancel the

decree and may order initiation of pre-trial proceedings and starting of investigation (article 213, paragraph 2m of the Penal Procedure Code).

After the finalization of the investigation, the prosecutor has the power to consider how to rule, namely: to discontinue; to suspend the penal procedure; to bring proposal for relief from criminal liability by imposing an administrative punishment or a proposal for agreement on the outcome of the case or may bring accusation by an act of indictment, if grounds for such do appear (article 242, paragraph 1, of the Penal Procedure Code).

The decree, by which the prosecutor has discontinued the criminal proceedings, may be subject of court control under article 243, paragraphs 3 and 4, of the Penal Procedure Code. This is valid in cases where the prosecutor has found out that the crime is not committed or the committed act does not present the corpus delicti of a crime, or if the prosecutor finds, that the charges are not proven (art.243, paragraph 1, of the Penal Procedure Code). Pursuant to article 243, paragraph 9, of the Penal Procedure Code, the decree for the discontinuation of the criminal proceeding, which has not been appealed by the defendant or the victim or his/her heirs, or by the damaged legal person, may be revoked ex-officio by a prosecutor of a higher prosecution.

Grounds for the suspension of the criminal proceedings by the prosecutor are provided for in Article 244, Paragraph 1, Items 1, 2 and 3 of the Penal Procedure Code (where, following the commitment of the offence, the defendant person has fallen into a brief mental disorder, which excludes sanity, or in case he/she suffers from another severe disease, which impedes carrying out the proceedings; if the hearing of the case in the absence of the defendant would impede detection of the objective truth; the perpetrator is a person, enjoying immunity) and Article 26 of the Penal Procedure Code (in case of crimes committed in complicity, where the requirements for splitting do not appear, the penal procedure may be suspended with regard to one or several accused persons, if that would not impede the detection of the objective truth; where the perpetrator of the crime has not been detected; if it is impossible to interrogate the only eyewitness, including through assignment, via video or telephone conference).

#### **(b) Observations on the implementation of the article**

The reviewing experts took into account the legal provisions listed above and the explanations provided during the country visit above. They were of the view that, for purposes of maximizing the effectiveness of implementation of the UNCAC provision under review, it is important to ensure that, especially in corruption-related cases, the investigation and prosecution of pertinent offences are the norm, while the dismissal of proceedings are an exception to be justified, taking, of course, into consideration the rule-of-law principles and with due regard to the rights of the defence.

### **Article 30 Prosecution, adjudication and sanctions**

#### **Paragraph 4**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the*



*rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria reported that coercive measures, exhaustively listed in the Penal Procedure Code (PPC), may be imposed on the accused party or the defendant within the framework of the instituted criminal proceedings. These measures aim at ensuring the normal course of pre-trial and trial stages of criminal proceedings by limiting certain rights of some of the participants in the proceedings. Coercive measures are divided in two groups: restraining measures and other coercive measures.

Restraining measures shall only be imposed on the accused party for cases of general matter. Along with the requirement that the case shall be of general matter, it is important that it can be reasonably assumed that the accused party has committed the crime and that he/she may abscond and escape criminal liability; may commit a crime or frustrate trial proceedings and the execution of a final sentence. When defining the remand measures, the following shall be taken into consideration: the degree of public risk; the evidences against the accused party; his/her health condition; family status; and occupation, age and other data of his/her personality. Where the accused party is in default on obligations related to the imposed remand measure, a more severe one may be imposed.

The Bulgarian authorities further made reference to remand measures such as the prohibition to leave the territory of the Republic of Bulgaria and the dismissal of office.

**(b) Observations on the implementation of the article**

The reviewing experts underlined that the explanations provided by the Bulgarian authorities proved compliance with the Convention regarding the said article. They further argued, in this regard, that the assessment on the practical implementation of the UNCAC provision under review at the domestic level could best be supported through concrete information on judicial cases where in criminal proceedings related to the offences covered by UNCAC the right to defense in court was not ensured and the higher courts identified this breach of defense right.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision and stated that the conditions for application of the early release are set forth in Articles 70 et seq. of the Criminal Code. This alternative is regulated in the common provisions of the Criminal Code and is applicable to all of the offences contained in the special part of the Code. While taking the decision for imposition of early release, the court is bound by the conditions set forth in Article 70 of the Criminal Code. During the country visit, and upon request of the governmental experts, it was

explained that the gravity of the offence was taken into account when the decision of the court is taken regarding the application of the abovementioned provisions of the Criminal Code (entitlement to early release upon completion of half of the sentence imposed and, in cases of re-offending, upon completion of two thirds of the sentence). However, there was no clarification whether the gravity of the offence is taken into consideration when the earlier release/parole is granted.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian authorities did not provide adequate information on whether the gravity of the offence is taken into account while the early release/parole is granted by the responsible authorities. Therefore they stressed the need for the competent national authorities to ensure that the gravity of corruption-related offences be taken into account when considering the eventuality of early release or parole of persons convicted of such offences.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 6**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision.<sup>16</sup> The text of article 69 of the Penal Procedure Act has been provided. In addition, it was indicated that the Bulgarian Criminal Code also envisages deprivation of the right to hold a certain state or public office and deprivation of the right to exercise a certain vocation or activity as types of criminal sanctions (Article 37, paragraph 1, sub-paragraphs 6 and 7). The deprivation of rights can be imposed separately or with another punishment. According to the provisions of Article 49 of the Criminal Code, deprivation of rights shall be pronounced for a specified term of up to three years within the limits established in the special part of the Code. Where the deprivation of such rights is imposed together with deprivation of liberty, its term may exceed the term of the latter by at most three years, unless otherwise provided in the Special Part of the Criminal Code.

Deprivation of rights can be adjudicated for passive bribery (Article 301, paragraph 4; articles 302 and 302a of the Criminal Code), embezzlement (Articles 201, 202, 203, 205, paragraph 1, items 2, 3, 4 of the Criminal Code), malfeasances (Article 283 of the Criminal Code), abuse of functions (Articles 282, 282a, 283a of the Criminal Code), money laundering (Article 253, paragraph 5, of the Criminal Code), concealment (Article 215 of the Criminal Code), obstruction of justice (Article 291 of the Criminal Code).

Articles 7, 100 and 103 of the Bulgarian Law on civil servants also stipulate that the public official shall be removed or suspended by the appropriate authority where the public official

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<sup>16</sup> See also responses under article 30, paras. 1 and 4, of the UNCAC.

has been sentenced to deprivation of liberty for a crime of general nature. Moreover, legal prerequisite for the appointment as a public official is not to have been sentenced to deprivation of liberty for a crime of general nature.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the explanations of the Bulgarian authorities indicated that the domestic legislation is in conformity with the requirements of article 30, paragraph 6, of the UNCAC. However, they recommended that further clarity be needed with regard to the legislation regulating the re-assignment of public officials accused of an offence covered by the UNCAC, bearing in mind the need to respect the principle of the presumption of innocence.

**Article 30 Prosecution, adjudication and sanctions**

**Subparagraph 7 (a)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office; and*

**(a) Summary of information relevant to reviewing the implementation of the article**

The provision is implemented through Articles 37 and 49-51 of the Bulgarian Criminal Code.

**(b) Observations on the implementation of the article**

According to the information provided and more specifically referring to articles 37, 49-50-51 of the Criminal Code, the Bulgarian legislation seems to be compliant with the UNCAC provision.

**Article 30 Prosecution, adjudication and sanctions**

**Subparagraph 7 (b)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision.<sup>17</sup>

**(b) Observations on the implementation of the article**

The reviewing experts took into account the information provided with regard to the implementation of article 30, paragraphs 1, 4 and 6, of the UNCAC and did not indicate issues of non-compliance. However, they noted that jurisprudence may be necessary to delineate the concept of “enterprise owned in whole or in part by the State”, which is not defined in legislation. The Bulgarian authorities explained during the country visit that it would be difficult to provide concrete judicial cases on this matter. Nevertheless, they mentioned as an example of disqualification that falls within the scope of article 30, paragraph 7(b), of the Convention the prohibition of doctors to work in state hospitals.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 8**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. In addition, the text of Article 89 of the Law on Civil Servants has been provided. Para. 4 of Article 89 stipulates that “*any civil servant shall incur disciplinary liability, irrespective of whether his or her act may be ground for incurrance of another type of liability as well*”.

**(b) Observations on the implementation of the article**

The reviewing experts were satisfied with the explanations provided regarding compliance with this provision of the UNCAC. Nevertheless, they highlighted the need for national authorities to ensure that the administrative sanctions imposed as a result of the exercise of disciplinary powers against civil servants take into account the gravity of the act and the related infringement.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. One of the purposes of the punishment according to Article 36 of the Criminal Code is to correct and re-educate the convicted person to comply with the laws and rules of community. This purpose is further developed in the provisions of the Law on Execution of Penalties and Detention (LEPD), where it is

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<sup>17</sup> See responses under article 30, paragraphs 1, 4 and 6, of the UNCAC.

proclaimed that social activity and educational work are among the basic means for re-socialization of the persons, deprived of liberty. The social activity and the educational work in the places for deprivation of liberty include the following: diagnostic and individual correction activity; programmes for diminishing the recidivism and risk of substantial harm; education, training and qualification of the persons deprived of liberty; and creative, cultural and sports activities and religious support (Article 152 LEPD). The text of the main provisions of the Law has been provided.

**(b) Observations on the implementation of the article**

The reviewing experts stated that the explanations provided and the legal provisions attached proved full compliance with the Convention regarding the provision under review. They noted, however, that domestic capacity to gather concrete statistical information on examples of implementation of the domestic measures foreseen in those provisions would be helpful and of assistance in enhancing their effectiveness.

**Article 31 Freezing, seizure and confiscation**

**Subparagraph 1 (a)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. According to article 53, paragraph 2 letter "b" of the Bulgarian Criminal Code, proceeds of crime derived from criminal acts shall be seized in favour of the State, if they do not have to be returned or restored. In addition, through the Law on forfeiture of proceeds of crime (LFPC) entered into force in 2005, Bulgaria has established the necessary civil legal framework to effectively freeze and forfeit the proceeds of crime, as defined in the article 31(a) of the UNCAC. In order to ensure the efficiency of tracing, freezing and forfeiture of such proceeds, the Commission for establishing of property acquired from criminal activity (CEPACA) has been set up.

The Commission is a specialized state authority in charge of inspecting the property of significant value of persons, against whom criminal prosecution has been undertaken in connection with the criminal offences listed in Article 3 LFPC. The grounds for forfeiture of assets acquired through criminal activities are thoroughly listed in Section I of the LFPC. Most of the corruption crimes referred to in UNCAC fall within the scope of the law, including bribery offenses under Articles 301-307 of the Criminal Code, and therefore foreign bribery, theft in large size under Article 215, paragraph 2, p. 1 of the Criminal Code, offences of misuse of European funds (article 254b of the Criminal Code), documentary fraud affecting the State budget (article 256 of the Criminal Code), money laundering (Article 253 of the Criminal Code), embezzlement (Articles 201-203), crime in service under Article 282, paragraph 5, of the Criminal Code). However, bribery in the private sector (Article 225 b and c of the Criminal Code) does not fall herein. The procedures under this law shall also be conducted when:

- there are sufficient data about property of significant value about which an assumption based on reasonable grounds may be made that it has been acquired from criminal activity; and
- the penal procedure has not started, or the started one has been suspended, because the perpetrator has deceased or has fallen into durable mental disorder excluding sanity or an amnesty has followed, or the penal procedure has been discontinued pursuant to article 25 of the Penal Procedure Code.

The rules of LFPC shall apply for the purpose of identifying criminal assets both in the country and overseas. Subject to forfeiture according to the Law shall be property, acquired directly or indirectly from criminal activity, which has not been restored to the victim of the crime or has not been seized in favour of the State, or confiscated under the Criminal Code. New legislation on illegal assets forfeiture is expected to deal with technical issues of valuation of such assets,

Upon receiving information from the pre-trial authorities and the courts, the territorial bodies of the Commission approach its members and, subject to the evidence presented, a decision is made to start a legal procedure for establishing of property with significant value, acquired from criminal activity. In case enough evidence is available, the Commission comes up with a decision to take into court a motivated application for imposing injunction orders. The court imposes the injunction orders under the conditions set out within the Civil Procedure Code. After the entry into force of the indictment and on the basis of the evidence gathered, the Commission may come up with a decision to take into court a motivated application for the forfeiture in favour of the State of the property acquired from criminal activity. The procedure for forfeiture of proceeds of crime is carried out under the provisions of Civil Procedure Code. The decisions of the court shall be subject to appeal.

The Commission on the establishment of property acquired from criminal activity has so far initiated 21 proceedings for the establishment of property belonging to persons who have committed a crime under the UNCAC. One may notice an upward trend in the number of the procedures engaged on this ground. In 2006 and 2007 there were two proceedings of this kind per year. In 2008 the Commission engaged seven and in 2009 - eight. In the period from 01/01/2010 and 01/05/2010, CEPACA initiated proceedings against two other persons prosecuted for crimes of bribery. It should be noted that the number of civil proceedings initiated by CEPACA is tributary of the number of criminal proceedings for crimes of bribery. And concerning the actual deprivation of property, it is possible only after a final conviction enters into force.

The statistics show that annually between 3 and 5 per cent of the injunction orders imposed by the courts following CEPACA proceedings concern crimes as pointed out in the UNCAC. Only in 2009 this led to the freezing of property for 16 255 540 BGN (approximately 8,000,000 EUR). From 01/01/2006 to 01/05/2010, CEPACA has initiated nine procedures for divestment of property, acquired by persons convicted for acts of corruption. To date, these cases are still pending before the courts.

The effectiveness of the implementation of the provisions of the UNCAC in the their part concerning the work of the Commission, is subject to continuous monitoring from both national and international institutions (see. For example, the annual reports of the European Commission to the European Council and the European Parliament under the Cooperation and Verification Mechanism, the ongoing Phase 3 of the peer evaluation of the implementation of

the Convention on Combating Bribery of Foreign Officials in International Business Transaction and GRECO).

For the correct application of the law and for achieving maximum possible cooperation between the CEPACA and the authorities responsible for confiscation of assets (Prosecutor's Office, Ministry of Interior and Ministry of Finance), Instructions for Cooperation were issued on 25.09.2006 (Instructions for cooperation between the authorities for detecting property, acquired through criminal activity, the authorities of the Ministry of Interior, the authorities of the Ministry of Finance, the Prosecutor's Office and the Investigation Services). The instructions have been issued, pursuant to Article 16, Paragraph 3 of the LFPC and stipulate the order and manner of conducting the cooperation between the authorities, responsible for the application of the LFPC. The cooperation is carried out among the national and regional structures of the corresponding institutions - Prosecutor's Office of the Republic of Bulgaria, Ministry of Interior, and Ministry of Finance represented by the National Income Agency, Customs Agency and the CEPACA.

**(b) Observations on the implementation of the article**

The reviewing experts observed that the explanations provided by the Bulgarian authorities, as well as the legal provisions cited, demonstrated full compliance with the Convention provision under review. They recommended, however, that consideration be given to the expansion of the scope of the Law on forfeiture of proceeds of crime (LFPC) to cover bribery in the private sector as well. Moreover, the governmental experts took into account the explanations provided by the Bulgarian authorities, upon request for further clarification, that the elaboration of a new Illegal Assets Forfeiture Act, which is in an advanced phase, intends to deal with technical aspects of the valuation of confiscated assets. The draft suggests introducing a non-conviction based civil seizure and forfeiture of assets derived from illegal activities, based on a combined system of criminal and civil law. It also provides for the increase of the competence of the agency in charge of carrying out investigations and forfeiture procedures and extending the target group to which the law applies. The draft law has been concurred with the Council of Europe Venice Commission's statement.

**Article 31 Freezing, seizure and confiscation**

**Subparagraph 1 (b)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The common prerequisites for seizure in favour of the State of the instruments and the subject of the deliberate crime are set out in Article 53 of the Bulgarian Criminal Code. It should be noted that what can be seized are only chattels which belong to the perpetrator of the crime and chattel, object or means of the crime the possession of which is prohibited by the law.

Since 2010, separate statistics have been collected also about the value of the property seized according to article 53 of the Criminal Code. For the first half of 2010, the value of the seized

property upon conviction with regard to bribery offences is 259,6 BGN. Different types of movable property are seized such as guns, cars etc.

Bulgaria further provided information on relevant case law (two decisions of the Supreme Court).<sup>18</sup>

#### **(b) Observations on the implementation of the article**

The reviewing experts stated that the explanations provided and the legal provisions attached proved full compliance with the Convention regarding the provision under review.

### **Article 31 Freezing, seizure and confiscation**

#### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

According to the Bulgarian Criminal Code confiscation is a punishment, envisaged in Article 37, paragraph 1, item 3. The definition is provided in Article 44, Paragraph 1, as follows: *“Confiscation is a compulsory and ex gratia requisition of a property or a part of it, of definite property of the convict or parts of such properties in favour of the state.”*

The Bulgarian Criminal Code (Article 53, Paragraph 1) also provides for an obligation to seize in favour of the State regardless of the criminal responsibility in the following cases:

- (a) the chattel belongs to the delinquent and has been used for committing deliberate crime;
- (b) the chattel belongs to the delinquent and has been subject to deliberate crime - in the cases explicitly stipulated by the special part of this Code.

and, according to paragraph 2 of the same Article, to seize in favour of the State in cases of:

- (a) prohibited possession of the chattel, object or means of the; and
- (b) acquisition through the crime, if not subject to return or recovery.

When the acquisition is missing or has been expropriated its equal value shall be adjudicated. The establishment of the property to be confiscated under Article 44, paragraph 1 of the Criminal Code, and the establishment of the chattels to be seized under Article 53 of the Criminal Code, is performed within the pre-trial investigation and is imposed always by the verdict of the court.

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<sup>18</sup> Decision № 86 dated 17.03.2009 of the Supreme Court of Cassation on criminal case № 14/2009, II Criminal Section; Decision № 450 dated 26.10.2009 of the Supreme Court of Cassation on criminal case № 445/2009, I Criminal Section.



Data concerning the number of requests for imposing measures to secure fines, confiscation and seizure of property, brought to court by the Prosecutor's Office in compliance with Article 72 of the Penal Procedure Code. For 2007 the number of prosecution requests pursuant to Article 72 is 57, 126 for 2008, 136 for 2009, and 84 for the first half of 2010. The data refers to the investigations in total.

According to Article 72 of the Penal Procedure Code, measures for securing fine, confiscation and seizure of chattels in favour of the State are taken upon a request of the prosecutor, by the respective Court of first instance, following the provisions of the Civil Procedure Code. The security measures imposed by the court of first instance are provisional – within the term for the finalization of the criminal procedure. The types of the specific security measures are set out in Part Four, Chapter Thirty Five, Art. 397, Paragraph 1 of the Civil Procedure Code.

Confiscation or seizure of chattels in favour of the State is possible only by the court's sentence, as the imposition of security measures is always a provisional measure, which under certain conditions envisaged in the Penal Procedure Code can be lifted at a request of the prosecutor or the affected persons before the completion of the criminal procedure.

In compliance with art. 103 of the Penal Procedure Code, the burden of proof in cases of general nature, including for corruption-related crimes, falls onto the prosecutor and investigative officers who need to prove the following:

- the commitment of the crime and the participation of the accused therein;
- nature and amount of the damage caused by the perpetration; and
- other circumstances relevant to the penal responsibility of the accused, including the circumstances of his/her family and property status (Article 102).

The general provisions of the Criminal Code do not provide for concrete corpora delicti of offenses, but rather highlight the purposes and the action limits of the Penal Code, define the concepts of crime, the criminally responsible persons, punishments, principles for determining punishments etc. The Special Part of the Criminal Code provides the concrete corpora delicti of the different types of crimes.

“Confiscation” and “fine” as types of punishment by Article 37, paragraph 1, items 3 and 4, and respectively Articles 44-47 of the general provisions of the Criminal Code, are contained in the sanction part of the Special Part. It is also the case concerning some of the objects liable to seizure “in favour of the state” as a measure to be imposed, regardless of the criminal responsibility provided for by Article 53 of the General Part of the Criminal Code (...the chattel belonging to the delinquent and have been used for committing deliberate crime) in the cases explicitly provided for in the Special Part of the Criminal Code (Article 53, paragraph 1, letter “b”). For instance, apart from the cases in which the Criminal Code provides confiscation for corruption related crimes (Article 302 – qualified cases of passive bribery; Article 201, paragraph 1 – misappropriation in public office; Article 202, paragraphs 1 and 2, read in conjunction with paragraph 3 – misappropriation in public office of particularly large size or representing an especially serious case), the temporary protective measures are imposed in all cases where protected shall be objects liable to confiscation in favour of the

state – especially objects of the crime. Regarding all elements of bribery under Articles 301-305a of Chapter eight, Section IV of the Criminal Code, in compliance with the provisions of Article 307a (New, SG 28/82; Amend., SG 92/02), the legislator has provided for seizure of the object of the crime in favour of the state concerning all offenses falling in this section, and where it is missing, its equivalent shall be adjudicated. The seizure of the object of the crime in favour of the state is provided also for corruption crimes under Article 224, paragraphs 1 and 2, of the Criminal Code. Such measure has also been provided for the object of the crime of bribery in the private sector under Article 225c, paragraph 5, of the Criminal Code.

According to the Bulgarian law “Seizure in favour of the state” (Article 53 of the Criminal Code) is a measure different from the punishment “confiscation”. This measure is provided for by Article 37, paragraph 1, item 3, of the Criminal Code.

#### **(b) Observations on the implementation of the article**

The reviewing experts stated that the explanations provided by the Bulgarian authorities seem to cover the basic requirements of the Convention set forth in the provision under review.

### **Article 31 Freezing, seizure and confiscation**

#### **Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. In cases of frozen property, article 72 of the Penal Procedure Code stipulates that the procedure provided in the Civil Procedure Code shall be applicable. The securing measures are imposed on request of the prosecutor. Material evidence is secured and administrated in accordance with the provisions of articles 111 and 112 of the Penal Procedure Code. The court enacts a ruling on the application of article 53 of the Criminal Code (seizure of property). The administration of property seized under article 53 is carried out by the National Revenue Agency, following the entry into force of the conviction according to article 416, paragraph 3 of the Penal Procedure Code.

#### **(b) Observations on the implementation of the article**

The reviewing experts took into account the explanations provided by the Bulgarian authorities, upon request during the country visit, that, according to legislation, the equivalent value of confiscated assets is deposited to a State account the National Revenue Agency, whereas in cases where there is a danger of destruction of the confiscated property, the court may rule in favour of storing such property in sealed places. In general, the governmental experts observed that the provisions of the Bulgarian legislation provided an adequate legal framework for the implementation of the provision of the UNCAC under review, although more information was needed with regard to the administration of confiscated property. As a conclusion, the reviewing experts called the competent authorities to ensure that all appropriate measures are in place to further reinforce the proper administration of frozen,

seized or confiscated property derived from, used - or destined for use – in the commission of offences established domestically in accordance with the UNCAC.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 4**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

When the property acquired through the crime is missing or has been expropriated, the Bulgarian Criminal Code allows for the seizure of its equal value (article 53, paragraph 2, letter b). The LFPC also provides for the possibility that transformed or converted property acquired through criminal activity is forfeited under specific circumstances.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the legislative texts made available demonstrated that when the property acquired through the crime is missing or has been expropriated, the seizure of its equal value is possible. Furthermore, transformed or converted property acquired through criminal activity may be forfeited under specific circumstances. Thus, the Bulgarian legislation is in compliance with the UNCAC. They recalled, however, that bribery in the private sector does not fall within the scope of LFPC and the impact that this might have in relation to the proceeds of such crime transformed or converted into other property.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 5**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision clarifying that it is a basic principle established by the law that subject of seizure (Article 53 of the Criminal Code) and forfeiture (civil confiscation) can be only that part of the property which was proven to be acquired through criminal activity. In cases where the court within its verdict imposes confiscation as a punishment, the size of such confiscated property is determined by the court in compliance with the provision of Article 44, paragraph 1, of the Bulgarian Criminal Code.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the legislative texts made available demonstrated compliance of the domestic legislation with the UNCAC provision under review. They recalled, however, that bribery in the private sector does not fall within the scope of LFPC

and the impact that this might have in relation to the proceeds of such crime intermingled with property acquired from legitimate sources.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 6**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. See the response under article 31, paragraph 1, of the UNCAC. More specifically, Article 53, paragraph 2(b) of the Criminal Code disposes that “(Notwithstanding the penal responsibility), seized in favour of the state shall (also) be: ...b) objects acquired through the crime, if they do not have to be returned or restored. Where the acquired objects are not available or have been disposed of, an equivalent amount shall be adjudged”.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the domestic legislation satisfactorily complies with the UNCAC provision under review. They recalled, however, that bribery in the private sector does not fall within the scope of LFPC and the impact that this might have in relation to the income or benefits derived from proceeds of such crime.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 7**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The provision of Article 31, paragraph 7, of the UNCAC is implemented through Article 159 of the Penal Procedure Code, according to which, upon request of the court or the pre-trial authorities, all institutions, legal persons, officials and citizens shall be obligated to preserve and hand over all objects, papers, computerized data, including traffic data, that may be of significance to the case. This includes also commercial records. Search and seizure of bank, financial or commercial records are carried out in accordance with provisions of Articles 160-165 of the Penal Procedure Code.

Upon request by the stakeholder, the court or the body entrusted with pre-trial proceedings shall issue a certificate thereto, by virtue of which the state and public bodies, legal persons

shall be obligated to supply such person with the necessary documents within their competence.

In accordance with the Law on Commercial Register, information contained in the Commercial register is public and anyone has the right to request a check-up as regards the existence or lack of an entered circumstance or disclosed act in the Commercial Register (Article 32).

The access of the prosecutors and investigative authorities to bank secrecy is committed according to the proceedings prescribed by the Law on credit institutions (LCI) after a court approval has been issued. Pursuant to article 62, paragraph 6, point 1, of the LCI, the court may lift bank secrecy upon prosecutors' request if there is data for committed crime, including bribery. If data is available for organized crime or money laundering, the law provides for the possibility that the Chief prosecutor, or a substitute authorized by him, requests bank information directly (article 62, paragraph 10, of the LCI). By the law amendments of the LCI from 2008 and 2009, in accordance with the structure changes committed within the executive, possibilities and obligations for access to bank secrecy are set forth. The access to information representing professional secrecy is set forth in articles 63-66 of the LCI.

The access of the prosecution and the investigative bodies to "tax secrecy" is committed according to the provisions of the Tax Insurance Procedure Code (TIPC) on the condition that data on a committed crime is available:

- upon explicit written request made by the Chief prosecutor (article 74, paragraph 1 TIPC) The same procedure applies for other bodies as SANS, CFPACA, NRA etc.;
- after court approval has been issued in connection with existing preliminary investigation or criminal proceedings (article 74, paragraph 2, point 2 and article 75, paragraphs 1 and 2 TIPC)

#### **(b) Observations on the implementation of the article**

The reviewing experts observed that from the combination of provisions of both the Penal Procedure Code and the Law on Credit Institution it follows that that courts or prosecuting authorities (as well as other state authorities subject to certain conditions) are empowered to request any information related to crimes foreseen in the Convention. Concerning commercial records, they noted that article 31, paragraph 7, of the UNCAC does not limit the concept of commercial records to those usually listed in commercial registers, as prescribed in the Bulgarian legislation.

### **Article 31 Freezing, seizure and confiscation**

#### **Paragraph 8**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision stating that in cases of civil confiscation under the procedure of LFPC, there is a reversed burden of proof for the accused person. The accused person is required to complete a declaration in writing in order to prove the legal nature of the property he/she possesses. The declaration shall be submitted to competent authorities under the LFPC within 14 days. If the person fails to submit a declaration or submits an incomplete declaration, or refuses to submit a declaration, the assets which are not declared shall be presumed to have been derived from criminal activity until otherwise proven. The text of the relevant legal provision (Article 17 of the Law on forfeiture of the proceeds of crime) has been provided.

**(b) Observations on the implementation of the article**

The reviewing experts took note of the fact that the Bulgarian legislation provides for a reversed burden of proof in article 17 of the Law on Forfeiture of the Proceeds of Crime. This provision satisfactorily complies with the UNCAC. They recalled, however, that bribery in the private sector does not fall within the scope of LFPC and the impact that this might have in relation to how the burden of proof is regulated in related cases.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 9**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

The rights of bona fide third parties are sufficiently guaranteed in the Bulgarian legislation through the provisions of Article 53 of the Bulgarian Criminal Code and Articles 4 -10 of the LFPC (see the text of these provisions under responses regarding article 31, paragraph 1(a) and (b), of the UNCAC) .

**(b) Observations on the implementation of the article**

The reviewing experts observed that the information provided by the Bulgarian authorities did not demonstrate any positive disposition stating the principle of protection of the rights of bona fide third parties. However, based on *a contrario* reasoning, it derives from Article 53 of the Criminal Code and Articles 4 -10 of the LFPC that only the convicted or culprit can be subject to measures such as confiscation, seizure or freezing of assets. Accordingly, the domestic legislation satisfactorily complies with the UNCAC requirement.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 1**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

## **Subparagraph 2 (a)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

## **Subparagraph 2 (b)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of these provisions. With respect to the constitutionally established principles of inviolability of personal privacy of citizens and protection against any attack on their honour, dignity, and reputation, the Bulgarian legislation establishes procedures for the protection of witnesses within the framework of criminal proceedings in accordance with the rules of the Penal Procedure Code, as well as beyond this framework - in accordance with special provisions of the Law for the Protection of Persons Threatened in connection with Criminal Proceedings (LPPTCP, State Gazette No. 103 dated November 23, 2004). The provisions in the indicated legal acts are in compliance with the requirements of the Resolution of the Council of EU from 23 November 1995 for protection of the witnesses in the fight against the international organized crime and are transposing the Framework Decision of the CEU from 15, March 2001 on the protection of the victims in the criminal proceedings. The procedures settled within the Penal Procedure Code and the Law for the Protection of Persons Threatened in connection with Criminal Proceedings apply in cases where there are sufficient grounds to assume that, as a result of testimony, a real threat has arisen or may arise to the life, health or property of the witness, his/her ascending and descending relatives, brothers, sisters, spouse or individuals with whom he is in a particularly close relationship. Within the Criminal Procedure Code and the Law of Protection of persons, threatened in connection with criminal procedure, there are provisions on the protection of witnesses.

According to Article 75 of the Bulgarian Penal Procedure Code, the victim has the rights in the pre-trial procedure to be notified of his/her rights in the penal procedure and to acquire defence of his/her safety and the safety of his/her close persons.

Article 67 of the Bulgarian Penal Procedure Code provides as a measure of procedural compulsion different from the restraining measures the “prohibition to approach the victim”. The measure is applied upon a proposal of the prosecutor with the consent of the victim or upon a request of the victim, in connection with which the respective first-instance Court may prohibit the defendant to approach directly the victim. The Court immediately pronounces on the proposal or the request in an opened session, hearing the prosecutor, the defendant and the victim. The determination of the Court is final. The prohibition should be cancelled after

closing the case with effective verdict or where the procedure is discontinued on another ground. The victim may at any time require from the Court cancellation of the prohibition.

The legal regulation of the protection of the witness under the Penal Procedure Code is provided in Articles 123, чл.123a (new - SG 32/2010) and Article 124 (amend.- SG 32/2010). According to these provisions, the prosecutor, the reporting judge or the Court, on the witness's request or with the latter's consent, shall take measures to protect him/her, where there are sufficient reasons to presume that, as a result of testifying, a real danger for the life, health or property of the witness, of his or her ascendants, descendants, brothers, sisters, spouse or of persons that he/she is in particularly close relations, has arisen or may arise. The protection of the witness shall be temporary and shall be achieved through:

- providing personal physical guarding by the bodies of the Ministry of Interior.
- keeping secret his/her identity;

The measure for personal physical guarding of ascendants, descendants, brothers or sisters, spouse or persons, that the witness is in particularly close relations with, should be taken with their consent or with the consent of their legal representatives.

The measures to protect the witness may be lifted on a request of the person with regard to whom they have been taken or where there is no more need to apply them, by an act of the above indicated competent bodies.

For the protection of life, health or property of the persons who are protected as witnesses special intelligence means may be used.

Within a thirty-day-period from the taken measure of protection, the prosecutor or the reporting judge may propose to include the witness and his/her ascendants, descendants, brothers or sisters, spouse or persons, that the witness is in particularly close relations with, into the Programme of protection under the conditions and following the order of the Law on Protection of the Persons Threatened in Connection with Criminal Procedure.

The Law on Protection of the Persons Threatened in Connection with Criminal Procedure stipulates the conditions and the procedure for providing special protection on behalf of the state to persons, threatened in connection with criminal procedure, and to persons, directly related to them in those cases where they cannot be protected by the means provided in the Penal Procedure Code. The objective of this Law is to support the fight against serious intentional crimes and organized crime by ensuring the safety of the persons, whose evidence, explanations or information are of essential importance to the criminal procedure.

Special protection under this Law can be provided to victims of crime and violence as participants in criminal procedure, in their capacity as witnesses injured by the crime (defined in article 75 of the Penal Procedure Code), private prosecutors (defined in Article 76 of the Penal Procedure Code), private complainant (defined in Article 80 of the Penal Procedure Code) and the civil claimant (defined in Article 84 of the Penal Procedure Code), as well as persons, directly related to them, namely ascending, descending, brothers, sisters, spouse or persons with whom they are in particular close relations.

The threatened persons can get special protection in those cases where the evidence, the explanations or the information which they provide in the criminal proceedings, presents proof of essential importance for the criminal procedures for serious intentional unqualified crimes of the Criminal Code, exhaustingly indicated in Article 4 of this Law, and of all crimes, committed upon instruction or in fulfillment of decision of an organized criminal group. The threatened persons are involved in a Programme for protection of threatened



persons. The Programme is a set of measures, undertaken by certain state bodies with regard to persons, who have acquired status of protected persons under this Law. The measures under the Programme for protection shall be obligatory for all state bodies and officials as well as for all legal and natural persons. The following measures are included in the Programme:

- personal physical security;
- property guarding;
- temporary accommodation in a safe place;
- change of residence, working place or education establishment, or
- accommodation in another place for the purpose of serving the sentence; and
- complete identity change.

The Programme for protection may also include activities related to providing social, medical, psychological, legal or financial assistance.

Physical security of a protected person is the activity intended for protection of the physical integrity against illegal infringements, which may be day and night, for defined hours or intended for specific cases. Property guarding is the activity intended for its physical protection against illegal infringements. Temporary accommodation in a safe place is the immediate transfer of the protected person to another address, different from the permanent residence, for a short period of time. Change of residence, working place or education establishment, or accommodation in another place for the purpose of serving the penalty is applied till the threat of the person, that has a procedural participation in the criminal proceeding, disappears.

For the purpose of implementing the Programme, the Minister of Justice has established a Council for protection of threatened persons, and the measures under the Programme for protection are applied by the Bureau for protection of threatened persons. The Council for protection consists of a Chairman - a deputy minister of justice and members: the head of the Bureau for protection, a judge from the Supreme Court of Cassation, a public prosecutor from the Supreme Cassation Prosecutor's Office, an investigating magistrate from the National Investigation Service, and one representative at the position of a Director of Directorate from the Ministry of Interior and from the State Agency "National Security". The members of the Council for protection may not disclose information which has become known to them in relation to fulfillment of the Programme for protection. The resources, necessary for implementing the Programme for protection, are provided from the budget of the Ministry of Justice. The Bureau for protection is a specialized department of the General Directorate "Security" to the Ministry of Justice. The General Director of the General Directorate "Security" appears to be the head of the Bureau for protection.

In fulfillment of the decision of the Council for protection for inclusion in the Programme for protection the Bureau for protection:

- Informs the threatened person about the opportunities of the Programme for protection;
- Concludes agreement with the threatened person for inclusion in the Programme for protection, notifying thereof the prosecutor or the reporting judge, who has made the proposal for protection;
- Appoints an employee for contact with the threatened person;
- Implements the respective measures of the Programme for protection on the basis of the concluded agreement, by using a guarding team, formed exclusively for this case.

The inclusion in the Programme for protection is carried out upon proposal, by the district prosecutor and in court proceedings by the reporting judge, to the Council for protection. The proposal for rendering protection is made officially or upon request by the threatened person, the investigating body and the supervising prosecutor. The Council for protection considers the proposal of the district prosecutor or the reporting judge, assessing whether the evidence, the explanations or the information of the threatened person are of essential importance to the criminal procedure, as well as the objectivity and the degree of the threat, and if the conditions, provided in this Law exist, it takes decision for providing protection, which is sent immediately to the Bureau for protection. If the conditions, provided in this Law do not exist, it takes decision by which providing protection is not admitted. The decisions of the Council for protection are not subject to appeal.

The effect of the Programme for protection is terminated by decision of the Council for protection:

- in case the protected person passes away;
- after dropping of the grounds for its application;
- upon elapse of the term, provided in the agreement;
- in case the protected person does not fulfill his/her obligations under the agreement without valid reason.

The effect of the Programme for protection can also be terminated upon request by the protected person, directed to the Council for protection through the employee for contact.

The pre-trial proceedings authorities and the court interrogate the witness with secret identity and take all possible measures to keep his identity secret, including cases where the interrogation is made of a witness outside of the country through video or phone conferences. The same procedure shall apply for the interrogation of persons in respect of whom a measure “temporary placement in a safe location”, “change in the place of residence, workplace, or educational establishment or placement in another facility for the service of a sentence” or “full change of identity” has been effected under the LPPTCCP. During interrogation the testimony of the protected persons shall be reflected in a record, drawn in two copies - the original and a copy. Only the identification code of the witness shall be entered in the record to substitute for his/her identity data. The witness shall sign only the original copy of the record which is then given in a sealed envelop to the judge. The copy shall be attached to the case-file and submitted forthwith to the accused party and to his/her defence counsel thereof. The accused party and his/her council may put questions to the witness in writing. The interrogation shall be conducted by altering the voice, and through videoconferencing - by altering also the image of the witness. Before starting the interrogation a judge from the Court of first instance at the location of the witness shall verify that the interrogated person is the same that has been given an identity number.

Only the respective pre-trial authorities and the court shall have direct access to the protected witness, while the defence counsel and the counsel may have such access only if the witness has been summonsed upon their request. (article 123, paragraph 5, of the Penal Procedure Code).

Statistics on the protection of witnesses for the period 2006-first half of 2010 have been provided.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation provides for a large variety of protective measures for witnesses against retaliation, intimidation and other similar acts specially within the Criminal Procedure Code and the Law of Protection of persons, threatened in connection with criminal procedure. The information provided by the Bulgarian authorities demonstrated satisfactory compliance with the UNCAC requirements on the protection of witnesses.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 3**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

In compliance with Article 26 of the Law on Protection of the Persons Threatened in Connection with Criminal Procedure, the Bureau for Protection can require and render cooperation for implementing the protection, provided in this Law, on the basis of international agreement, to which the Bulgaria is a party, or under the conditions of the principle of mutuality, as follows:

- carry out moving (relocation) of a protected person in the other state
- if his/her protection may not be provided in Bulgaria;
- require ensuring of temporary stay of the protected person for a set period of time in the other state as well as personal physical security, where necessary;
- ensure stay of a person, moved to Bulgaria within the framework of the Programme for protection upon request by the other state;
- ensure temporary stay in Bulgaria of a foreign protected person for a period of time, pointed out in the application of the other state, as well as personal physical security, where necessary.

The Protection Bureau has concluded international agreements for cooperation in the field of protection of witnesses with four states and at the same time three new agreements are under preparation.

## **(b) Observations on the implementation of the article**

The reviewing experts observed that, in compliance with Art. 26 of the Law on Protection of the Persons Threatened in Connection with Criminal Procedure, on the basis of international agreement, to which the Republic of Bulgaria is a party, or under the conditions of the principle of mutuality, the Bureau for Protection can require and render cooperation for implementing the protection of witnesses through permanent or temporary relocation measures. Although the Bulgarian authorities did not provide concrete information on cooperation agreements in this field, it is stated that four of them have been concluded and three more are under preparation. In general, compliance with the UNCAC provision under review was demonstrated.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 4**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

### **Paragraph 5**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of these provisions. Under Bulgarian legislation on victims, the provisions of the Penal Procedure Code apply only if the victim has a procedural capacity as witness in the criminal procedure (see Articles 74, 75, 118 and 123, paragraph 1 of the Penal Procedure Code. Under the procedure of the Law of Protection of Persons threatened in connection with Criminal Proceedings, special protection is obtained by a broader scope of persons (see Article 3).

#### **(b) Observations on the implementation of the article**

According to the information provided, the reviewing experts noted that the Bulgarian legislation seems to be in compliance with provisions of the UNCAC under review.

## **Article 33 Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

In Bulgaria, there is no law specifically devoted to provide protection to persons who give signals for corruption and other violations of law. However, this issue is regulated by different pieces of legislation. More specifically, Article 8, paragraph 1, of the Code for the conduct of the employees in the state administration (prom. SG. 53/22 Jun 2004) obliges public officials to oppose corruption acts and other unlawful acts in the state administration. The text creates obligation for “reporting” upon suspicion for crimes falling within the scope of UNCAC. There is no superiority of the loyalty obligation over this one. The provision of Article 205 of the Penal Procedure Code should also be taken into consideration, as it stipulates that citizens and officials are obliged to inform competent institutions in case they became aware of a committed crime of general nature.

Moreover, Article 130 of the Law for the civil servant stipulates that the inspectors under the meaning of the law have to keep in secret the confidential data which have become known to them in connection with exercising the control and to keep in secret the source, from which signal has been received for violation of the official legal relation. Inspectors carry out the so-

called “Alert function”, according to which they are obliged to notify the prosecution violations, data about committed crime or other violation of law (Article 132).

Similar rules with regard to the employees are contained in the relevant provisions of the Labour Code (Articles 403, 406 and 407). Overall control of the observance of labour legislation in all sectors and activities is exercised by the Executive Agency "Chief labour inspectorate" to the Minister of Labour and Social Policy. When the controlling bodies establish violations involving data of a criminal offence or other violations of the law, they must inform the public prosecutor's office.

The procedure for admission and examinations of signals made by citizens and organizations to the administrative bodies, as well as to other bodies, which carry out public and legal functions are laid down in the Administrative Procedure Code (Articles 1, 107 et seq. and 119 et seq.). Organization of the work with the proposals and the signals is determined in the structural regulations of the bodies. The signals shall be filed to the bodies, which directly manage and control the bodies and the official, whose unlawful or inexpedient actions or inactions is announced for. Anonymous signals shall not be taken in notice by the relevant bodies. The decision upon the signal shall be taken no later than two months period after its receipt. If there is sufficient evidence that crime has been committed, the competent authority referred with the signal shall immediately inform the prosecutor's office.

Concerning the protection of whistle blowers working in the private sector, the Declaration against corruption shall apply. The Declaration was adopted on 23.02. 2005 by the Bulgarian international business association, the Bulgarian forum of business leaders and the Bulgarian bureau for business and congress tourism and has gained support from more than 360 Bulgarian companies. Part II, point 6 of the document contains the following appeal towards Bulgarian business “To encourage and to ensure protection of Bulgarian employees and partners who report corruption practices on any level”.

The Law on Protection of Persons Threatened in connection with Criminal Proceedings (LPPTCCP) gives further guarantees to the safety of the following persons:

- participants in criminal proceedings - witness, private prosecutor, civil plaintiff, defendant, defendant, expert chargeable person;
- convicted persons;
- persons directly connected with the persons above; and
- ascendants, descendants, siblings, spouses or persons who are in a particularly close relationship.

The threatened persons can receive special protection in those cases where their testimonies, explanations or the information prove to be of essential importance in criminal procedures for serious intentional crimes of general nature, including bribery (Chapter Eight - Section IV of the Criminal Code).

In many cases, corruption practice could cover conflict of interest as well. The protection of persons who submit signals for conflict of interest is expressly provided in Article 32 of the Law on Prevention and Disclosure of Conflict of Interest (LPDCI). For fulfillment of the current legal framework public officials within the Inspectorates existing to the central public authorities (in accordance with art. 46 LA) are designated to accept signals for conflict of interest and corruption practices. They are acquainted with the provisions of the LPDCI and the Administrative Procedure Code and are obliged not to disclose both the identity of the persons who give the signals and the information which the signals contain.

The actual application of LPDCI is defined as the core of the anti-corruption action. The Bulgarian government has demonstrated a will to bind its pronounced intolerance towards corruption activities with practical actions – the first indictments against representatives of the former government are already a fact, moreover, the first proceedings against a minister of the present cabinet have taken place. Over 170 signals for conflict of interest were submitted in the system of the administration from August 2009 till May 2010, the performed inspections were more than 190 and over 30 officials bore disciplinary sanctions. The release of official duties upon proven conflict of interest is already a fact. For the same period the Prosecutor's Offices throughout the country have initiated 651 pre-trial proceedings for corruption crimes, 449 pre-trial proceedings have been solved, 229 prosecutor's acts have been submitted to court, 285 persons were accused, 155 were convicted and the verdicts have entered into force for 112 persons.

#### **(b) Observations on the implementation of the article**

The reviewing experts took into account the explanations provided by the Bulgarian authorities that, although there is no law specifically devoted to provide protection to persons who give signals for corruption and other violations of law, the issue is regulated by different pieces of legislation. The pieces of legislation provided by Bulgaria proved indeed that officials have a quasi obligation, subject to certain conditions, to report violations of laws in their respective sectors of responsibilities. It was noted, for example, that rules for the protection of whistleblowers were introduced by the Law on Prevention and Disclosure of Conflict of Interest of 2008.

However, there does not seem to be any specific protective measure for citizens reporting misbehaviors or alleged offences that fall under the Convention and the legislation seems to be very general. In that sense, article 33 of the Convention is considered to be only partially implemented in the Bulgarian legal system. Thus, taking into account the optional nature of the said article, the reviewing experts invited the Bulgarian authorities to explore the possibility of establishing a comprehensive system for the protection of reporting persons (whistle blowers) who report in good faith and on reasonable grounds to the competent authorities any facts concerning UNCAC-based offences, including through the enactment of legislation with more comprehensive provisions on the protection of reporting persons with a view to significantly enhancing domestic efforts to prevent and detect corruption. Such legislation may cover such issues as institutional recognition of reporting, career protection of reporting persons and provision of psychological support to them, as well as their transfer within the same organization and relocation to a different organization. Moreover, efforts could be made to further promote training for public officials to report suspicions of corruption within the public administration.

#### **Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The general provisions which apply to all transactions are those of articles 26-33 of the Contracts and Obligations Act (COA). There are also special legal provisions for invalidity in COA (articles 40, 94, 113, 135 etc.), as well as in other laws which concern specific cases, for example article 77a of the Concessions Act and article 41 b of the Public Procurements Act (PPA). COA divides transactions with vices to two types: void *ab initio* and voidable.

According to article 26 of the COA, null and void shall be all transactions that contradict law, circumvent law, contradict good morals, lack subject, grounds or form, contracts on future inheritance and simulative contracts. Void transactions do not cause the legal consequences aimed by the parties and as of the moment of conclusion they lack legal action. Every legal subject may plead nullity and in all pending cases the court is obliged to pronounce nullity (if it exists) regardless of the will of the parties. It is not necessary to establish the vice leading to nullity via court proceedings, however in another procedure the court may be approached with a negative establishing claim aiming at establishing that no legal consequences followed the conclusion of a null transaction. Nullity may be full or partial, depending on whether the vice concerns the entire transaction.

Voidable transactions are regulated in articles 27-33 of the COA. These are transactions bearing vices concerning the statement of will such as lack of legal capacity, mistake, fraud, threatening, inability of a person to understand the meaning of his actions, and contracts concluded upon financial duress and obviously unprofitable conditions. The grounds are not exhaustively enlisted in the abovementioned provisions; there are many other provisions which stipulate grounds for voidance of transactions, i.e. the abovementioned articles 77 a of the COA and 41 b of the PPA. According to Bulgarian legislation, the party whose statement has vices is entitled to cause *ex tunc* abolishment of legal consequences from a voidable transaction via court claim. It is up to the bearer of the right to decide whether to exercise this right but once this is done the legal status of such transaction is the same as the one of the void ones - it is considered that the transaction has not led to legal consequences.

The Bulgarian Public Procurement Act, in its article 47, paragraph 1, sub-paragraph 1 b, stipulates cases for exclusion of candidates from participation in public procurements for persons who have been convicted by an effective sentence for “bribery under Articles 301 to 307 of the Criminal Code”. In addition, under article 41 b of the abovementioned Act, the following contracts shall be ineffective in respect of the candidates:

- Any contract which is concluded as a result of a legally non-conforming application of the grounds of Article 4, Article 12 (1), Article 13 (1), Article 90 (1) or Article 103 (2) herein;
- Any contract which is concluded before the entry into effect of any of the decisions of the contracting authority issued in connection with the procedure and an infringement is ascertained which has affected the chances of:
  - an interested party submitting a request to participate or a tender;
  - a candidate concerned submitting a tender;
  - a candidate or tenderer concerned taking part in the selection of a contractor.

Article 77 a, paragraph 1, sub-paragraphs 4-7 of the Concession Act provides that a concession agreement shall be invalid where it has been concluded either:

- Under a procedure which is inadmissible pursuant to this Act; or

- In violation of Article 62(1) or (2), combined with an infringement of this Act which has impaired the possibility for the interested person to be appointed as concessionaire; or
- Under the circumstances referred to in Article 59a(1) and, regardless of the existence of said circumstances, the concession granting procedure has not been suspended; or
- Under the circumstances of a suspended procedure, in violation of Article 59a(4).

Furthermore, in accordance with Article 16, paragraph 2, sub-paragraph 3, of the Act, “A legal person may not participate independently or as part of a combination in a concession granting procedure where: a manager or a member of the managing body of the said person, or in case a legal person is a member of the managing body, the representative of the said legal person in the respective managing body, has been convicted by an enforceable sentence of any property offences, any economic offences, any offences against the financial, tax or social security system (money laundering or fraud), or of official malfeasance or of bribery (corruption), as well as of any offences related to participation in a criminal organization.”

Although there’s no express clause providing consequences of corruption in both the Public Procurement Act and the Concession Act, the cited provisions are, in accordance with the general principles of law and the judicial practice, sufficient to warrant that no contract for public procurement or concession shall be concluded or, if concluded, shall be deemed invalid or void in case of non-conformity of the candidates and breaches of the procedure, particularly in cases of bribery with intent to win a tender.

After the country visit, the Bulgarian authorities clarified that, pursuant to articles 46 and 47 of the Law on Public Procurement (LPP), there is an obligation to announce the compulsory requirements and the possibility of removing candidates, convicted for specific categories of crimes. Article 47, paragraph 1, of the LPP explicitly prohibits the participation in public procurement of persons who have been convicted with an effective sentence of specific categories of crimes. A similar provision is contained in article 16 of the Law on Concessions, which sets forth the conditions for granting concessions. The Bulgarian legislation in this field has been brought in line with the requirements of Directive 2004/18/EEC.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that it is manifest from the explanations given and the texts attached that, according to the Bulgarian legislation, corruption is considered to be a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument, render public procurement contracts ineffective or take any other remedial action. Thus, Bulgaria satisfactorily complies with the dispositions of the UNCAC at least in relation to concessions and public procurements.

### **Article 35 Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*



#### **(a) Summary of information relevant to reviewing the implementation of the article**

The Bulgarian Penal Procedure Code provides for mechanisms permitting persons suffering damages from the crime to initiate legal proceedings against the offender. Civil claim can be filed against the defendant and/or the persons who bear civil responsibility for his/her actions. Compensation is owed both for material and immaterial damages. Subject of the civil claim can be also interests. The purpose of the procedure derives from the common civil obligation to redress the damage he has faultily caused to another person in accordance to Article 45 of the Law on obligations and contracts.

A civil claim may not be lodged in the course of court proceedings where it has already been lodged pursuant to the Civil Procedure Code (CPC). The victim may establish him/herself as civil claimant only in the Court procedure after the submission of the case in court. When the prosecutor terminates the criminal proceedings or rejects to initiate such the victim has the right to claim for compensation under the common civil order pursuant to the CPC. Another important prerequisite for considering the civil claim in the trial proceedings is that the damages are direct and immediate consequence of the crime no matter if the crime is pursuit under the general order or upon private complaint.

The Penal Procedure Code allows the victim who has been constituted as civil claimant to exercise at the same time the procedural function of private claimant or witness (argument from article 118, paragraph 1, item 2). The text of relevant provisions of the Penal Procedure Act (Articles 84-88) has been provided.

#### **(b) Observations on the implementation of the article**

The reviewing experts observed that, in general, Bulgaria demonstrated adequately that the domestic legislation, and more specifically the Penal Procedure Code, provides for mechanisms permitting persons suffering damages from the crime to initiate legal proceedings against the offender. They also took into account the additional explanations provided, upon relevant request during the country visit, by the Bulgarian authorities on the following issues:

- According to article 73, paragraph 2, of the Penal Procedure Code, the victim is entitled to the right of securing a forthcoming civil claim for damages in the course of pre-trial proceedings;
- The general provisions on compensation of victims apply specifically in cases of damages caused by corruption-related offences, as the Bulgarian legislation is also in compliance with the Council of Europe Civil Law Convention on Corruption.

#### **(c) Successes and good practices**

The Bulgarian authorities indicated as good practice the way in which the national legislation provides for mechanisms permitting persons suffering damages from crime to initiate legal proceedings against the offender. Such mechanisms are considered to be operative and efficient in practice, based on comprehensive procedural provisions which ensure restitution of victims' rights and their compensation for damage they suffered from criminal acts related to corruption.

## Article 36 Specialized authorities

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

### (a) Summary of information relevant to reviewing the implementation of the article

Bulgaria confirmed implementation of this provision providing detailed information on the relevant institutional framework domestically in place. In particular: In the Prosecutor's Office, there are special departments, established by an internal organizational order, issued by the General Prosecutor (№ - LS 3202/2008). The same order also defines the competence of each one of the departments and the sectors in them. Departments of the same kind have been established in the first instance prosecutor's offices, where it is possible with respect to the available positions (Sofia City Prosecutor's Office and the larger district prosecutor's offices within the country). The prosecutors in these departments have specialized in specific financial and corruption crimes, as they are constantly a subject to trainings and update of knowledge.

Since 2009, the Law on Judiciary (article 138, sub-paragraph 5, SG, 33/2009) enables the Chief prosecutor, together with the heads of ministries and state institutions, to establish specialized interdepartmental units, in order to assist the investigation under the procedural direction of a prosecutor, chosen by him.

In accordance with article 476, paragraph 3, of the Penal Procedure Code, the prosecutor's office may establish joint teams for investigation with other countries. In compliance with the existing normative organization, a practice was adopted during the last two years to establish permanent and ad hoc acting teams of prosecutors, investigative authorities and experts. The organization was elaborated in connection with the use and application of Special Means of Intelligence in relation to the international cooperation in criminal matters (By chapter fourth „b” of the Law on the Special Intelligence Means (SG, 88/2009) article 34, LSIM).

A reform has been conducted in the Ministry of Interior to improve effectiveness in the fight against organized crime and corruption. The necessary institutional capacity was created for prevention, detection, interception and investigation of corruption activities. There are, in particular, three structures specialized in combating corruption:

- In the General Directorate “Combating Organized crime”, there is specially formed unit for counteraction against corruption in the judiciary system, state and local authorities;
- In the Directorate “Internal Security”, which operates within the Ministry of Interior, is also in charge of addressing corruption cases. The Directorate is headed by director and it is consisted of departments;
- The Directorate “Inspectorate” is an administrative structure within the Ministry of Interior for counteractions against the corruption among the Ministry of Interior officials. The Directorate is under the direct supervision of the Minister of Interior.

During the investigation of corruption cases, teams are formed, consisting also of operative officers who focus primarily on documenting and curbing these crimes. If necessary, officials

of the State Agency “National security” (SANS) could be involved in the investigation. According to the latest amendments of the Penal Procedure Code, investigating officers of the Ministry of Interior are also empowered to investigate cases upon signals of the SANS. The investigative work is considered as a priority in regard to quality and terms.

According to the amendments in the Penal Procedure Code of 2006, the Ministry of Interior is empowered to investigate 97 percent of the criminal offences under the Criminal Code. The latest amendments of the Penal Procedure Code that entered into force on May 2010 repeatedly strengthened the investigative capacity of the Ministry of Interior. Updated and improved variant of the National Methodology for investigating crimes against the financial system of the European Union is in its final stage. There is also a sustainable legislative trend for establishing broad-based and enhanced opportunities for investigation, which are reflected in the amendments in Draft Law on the Ministry of Interior.

To further optimize the work of the Ministry of Interior, structures on cases of high public interest and of high-level corruption have been put in place, including:

- A standing working group consisting of representatives of General Directorate Pre-trial Proceedings and General Directorate Criminal Police collects, which compiles and analyzes information and controls the activities carried out on each case; and
- A group of prosecutors assigned by an order of the Prosecutor-General, which works on concrete case files and pre-trial proceedings as a priority.

The State agency for national security (SANS) was established by the Law on the state agency for national security (in force from 01.01.2008). The main function of the Agency is the protection of national security by means of protection of national interests, human rights and freedoms, territorial integrity, independence, sovereignty, democracy and constitutional order in Bulgaria. The Agency operates against the classic intelligence and non-traditional threats and risks and provides high government authorities with information needed for the decision making in the national security sphere. Among others, the Agency performs tasks of surveillance, detection, counteraction and prevention of involvement of senior public officials in acts of corruption and risks and threats to the economic and financial security of the State. State Agency for National Security incorporates within its structure a specialized administrative directorate for financial intelligence. The Financial Intelligence Directorate (FID) collects, stores, investigates, analyzes and discloses financial intelligence under the terms and procedures of the Measures Against Money Laundering Act and Measures Against the Financing of Terrorism Act. The Directorate is the Financial Intelligence Unit of Bulgaria under Article 2, paragraphs 1 and 3 of the Decision of the Council of the EU from 17 October 2000. The Directorate holds responsibility for the protection of the shared intelligence on the website of the EGMONT GROUP and the security of the site itself. It performs functions of detection and prevention against money laundering and financing of terrorism, as well as with regard to capital flows, corruption, bribery in international trade transactions and confiscation. In the fulfillment of its functions the Financial Intelligence Directorate closely interacts with the Bulgarian security and public order services and its foreign counterparts. Since 1 October 2009, the work of the joint permanently acting teams against organized crime and corruption on higher governmental levels has started.

The overlapping of responsibilities of the Ministry of Interior and the SANS has been resolved at the legislative level. The work of the SANS has been cleared of any investigative functions in the pre-trial proceedings. The setting up of the Internal Security Directorate and

the provisions for the work of the Inspectorate Directorate in practice implement an integral anti-corruption model within the Ministry of Interior system.

The Supreme Judicial Council (SJC) enlarged the monitoring on cases of high public interest and, as a result, there are finalized proceedings on different judicial instances. Moreover, monitoring was conducted and conclusions were made on the use of expedited procedures, whereas some amendments in the text of the Criminal Code were made on the basis of these conclusions.

The Strategy to continue the judicial system reform in line with the conditions of European Union membership was drawn up by the Ministry of Justice in partnership with leading non-governmental organizations. The strategic goals of the Strategy include the improvement of management of the judicial system; ensuring quality in justice system and placing the citizens' point of view in the focus of the debate about the judicial reform; and combating corruption in the judiciary. The priorities which will make the achievement of the strategic goals of the reform realistic were also formulated.

The amendments to the Judiciary System Act which are prepared at present and which aim at strengthening the independence and effectiveness of the judiciary, as well as introducing high criteria for professional qualification and transparency of the judicial system, are in compliance with the abovementioned priorities.

The focus of the discussion about the continuation of the judicial reform has become the issue raised sharply by the Minister of Justice in September 2009 about the deficiency in impartiality, publicity and transparency of the process of election of administrative heads which leads to an abrupt drop in confidence in the judiciary as a whole. The pretext was the doubts for magistrates' connections with trading in influence. Two of the SJC members handed in their resignations, 20 disciplinary proceedings against magistrates were initiated and dismissal was imposed in 3 out of the 18 finalized cases. This has been the first case which, in essence and in practice, has seen the implementation of the new Code of Ethics of the magistrates as an instrument to resolve cases related to the confidence in the system and to the public's ultimate expectation that only people of impeccable professional and personal image will work in it.

The actions of the institutions in this case, as well as the started checks in another widely discussed case - doubtful actions of magistrates against benefiting with estates on the sea coast - were the grounds for the Judiciary System Act's amendments aiming at the provision of a legal regulation of the Professional Ethics and Prevention of Corruption Commission of the Supreme Judicial Council. Its functions on the assessment of the magistrates' moral qualities are consolidating which is a purposeful action to the advantage of the improvement of the whole judicial system's image - one of the aims of the Strategy to continue the judicial reform. The SJC adopted a new Ordinance on Appraisal of magistrates in which the requirements for the moral qualities of magistrates are for the first time explicitly defined, together with the real qualitative and quantitative measurements for their professional preparedness.

Regarding the selection and training of staff, in 2007 the Law on Judiciary (LJ) improved and developed an elaborate acting judicial system as a further development of the priorities of judicial reform. The new law sets the purpose of consolidation of independence and effectiveness of judiciary whose reform is aiming to ensure full protection of the principles of

the constitutional state and effective application of European standards in jurisdiction including with requirements for transparency and high level of professional qualification. The law introduces additional guarantees for the independence of judiciary, stipulates the permanent activity of the Supreme Judicial Council (SJC), and further creates legal opportunities to ensure reporting, transparency and effectiveness in the activities of judiciary. SJC approves decisions for election, promotion and release of magistrates based on the proposals of the Permanent Commission on Proposals and Attestation of Judges, Prosecutors and Investigators, criteria for attestation being settled in the law for the purpose of transparency and control over career growth of magistrates.

The new LJ also creates a permanent Inspectorate within the SJC as a new structure which observes the activities of all organs of the judiciary without affecting the essence of their judicial activities. This structure is independent both from legislative and executive authorities. The underlining of the independence is displayed firstly in the way of election of the Chief Inspector and other inspectors with the Inspectorate, in the election and incompatibility requirements. The choice of inspectors by the National Assembly introduces balance and collaboration between legislative and judicial authorities for the purpose of better reporting in front of the society. The Inspectorate, without being an element from the structure of SJC, supports the realization of SJC's activities by being responsible for the provision of essential information for the fulfillment of its disciplinary, organizational and personnel rights and duties. The verification and analysis do not represent an intervention in the performance of judiciary and the functions of its organs because it relates to issues already solved with final judiciary acts. There would have been intervention and lesion of judiciary independence in case the verification and issuance of statements were performed on pending cases, but not upon examinations and summarizing of judicial practice after the cases have been finalized. The verification and analysis of the activities of the judiciary by the Inspectorate (article 132a, paragraphs 8 and 9, of the Constitution) perform another important function: elaboration of greater transparency for society regarding the accomplished and pending activities by the judiciary. By the Inspectorate's verification and analysis of judicial activities the public announcement of information for judiciary work makes such judiciary activities more transparent and known to society.

Bulgaria also provided information on training activities organized by the National Institute of Justice (NIJ), concerning the fight against money laundering, crimes against the tax, financial and security systems, bribery, fraud, as well as trainings on the new Unified Magistrate's Code of Ethics. In view of increasing the professional qualification of the prosecutors in performing their functions and powers in regard to prosecuting the offences of corruption, 8 training seminars were organized in 2010, at which 136 prosecutors and 9 investigators have been trained on topics related to counteracting corruption and organized crime. Moreover, 27 prosecutors have participated in training courses and events with international participation, organized with the aim of prevention and increasing the efficiency of the fight against corruption and organized crime.

#### **(b) Observations on the implementation of the article**

The reviewing experts took note of the information provided by the Bulgarian authorities with regard to the implementation of article 36 of the UNCAC, as well as the reported national efforts to promote the reform of the judiciary. In particular:

The Bulgarian Constitution explicitly provides for the independence of the judicial authorities. As part of the judicial system, the Prosecutor's Office enjoys constitutionally-

based independence from the impact of any external factors, which may influence the legal and impartial implementation of his/her functions and powers. The legal powers of the Prosecutor are provided in the Constitution, the Law on Judiciary and the Penal Procedure Code, which strictly specify the conditions for prosecution and basically do not foresee discretion for the prosecutor in discharging his/her functions or powers.

Special departments within the Prosecutor's Office to counter corruption have been established. Since 2009, the Law on Judiciary has enabled the Chief prosecutor, together with the heads of ministries and state institutions, to establish specialized interdepartmental units, in order to assist the investigation under the procedural direction of a prosecutor chosen by him.

Bulgaria's new strategy for the reform of the judiciary, while acknowledging the existing shortcomings of judicial practice, draws special attention to institutional strengthening and mobilization of the capacity of the judiciary to improve the quality of justice and the efficiency of the system. The strategy focuses on three priority objectives: better management and good governance within the judiciary, placing the citizens in the centre and countering corruption in the judicial system. It received broad support of politicians, the judiciary and civil society. The success of reform will depend on its effective implementation by all institutions involved.

Of crucial importance is the action to address shortcomings regarding the accountability of the judiciary. In recent cases of alleged corruption, trading in influence and mismanagement in the Bulgarian judiciary, a concrete reaction by disciplinary and judicial authorities was noted. The Bulgarian authorities are encouraged to build upon such reaction and continue to strengthen the accountability of the judiciary through a consistent and strict application of all legal and disciplinary means to sanction corruption.

Reforms in the Ministry of Interior were aimed at improving its effectiveness in the fight against corruption. The necessary institutional capacity was created for the prevention, detection, interception and investigation of corruption activities through the establishment of three specialized directorates. The Ministry of Interior is empowered to investigate 97 percent of the criminal offences under the Criminal Code. The latest amendments of the Penal Procedure Code that entered into force on May 2010 repeatedly strengthened the investigative capacity of the Ministry of Interior.

However, the reviewing experts also focused on a series of allegations of corruption, trading of influence and mismanagement that the Bulgarian judiciary had faced since July 2009. In response to the case concerning alleged trading in influence in high-level judicial appointments, the SJC imposed disciplinary sanctions against 18 magistrates for illegitimate contacts. However, no criminal investigations against the involved magistrates were launched. Two elected members of the SJC, who were involved in the case, submitted their resignations and returned to the previously held positions. An amendment to the Judicial System Act (JSA) of December 2009 introduced the legal basis for disciplinary responsibility of members of the Supreme Judicial Council in the same way than for ordinary magistrates. The SJC initiated disciplinary proceedings against the two of its members. In another large scale case regarding allegations of trading in influence in relation to securing valuable real-estate property by magistrates' relatives, the Ethics Commission of the SJC initiated disciplinary proceedings against all magistrates concerned. Criminal investigations were launched in parallel.

Bearing these in mind, the reviewing experts welcomed the national efforts to address the aforementioned cases and, in general, enhance professionalism, accountability and efficiency in the judiciary. In this connection, they welcomed the establishment, for example, of the Professional Ethics and Prevention of Corruption Commission and the permanent Inspectorate

within the Supreme Judicial Council. They further encouraged the Bulgarian authorities to continue and streamline efforts to strengthen the accountability of the judiciary through a consistent and strict application of all legal and disciplinary means to sanction corruption. The amendments to the Judiciary System Act, which are currently discussed within the Government, should be considered as an inherent component of Bulgaria's new strategy for the reform of the judiciary, which focuses on the development of human resources within the judiciary to address many of these weaknesses. The amendments to the Judiciary System Act should also lead to considerable strengthening of the role and responsibilities of the Supreme Judicial Council. If adopted, the Act will require the SJC to prepare an annual analysis of workload and authorize the Council to re-balance personnel and open or close courts on the basis of workload data gathered. The amendments will also increase the transparency of appointment decisions and improve accountability by introducing an open vote and detailed reasoning of decisions and by concentrating all disciplinary powers with the SJC. In addition, members of the Council will now explicitly be prohibited from voting in situations where they could be in a conflict of interest.

Bearing in mind the sustainability as a crucial element of the national efforts in this area, the reviewing experts called the Bulgarian authorities to continue these efforts to combat corruption through independent law enforcement bodies focusing, in particular, on addressing implementation challenges in this field, as well as strengthening the accountability of the judiciary through a consistent and strict application of all legal and disciplinary means to sanction corruption.

### **(c) Challenges, where applicable**

Despite national efforts to combat corruption through independent law enforcement bodies, there are some practical concerns which are also recognized by the Bulgarian authorities themselves.

Thus, the Bulgarian authorities reported that, in the process of application of legal provisions regarding competitions and attestations, it became clear that it was necessary to undertake amendments in the text of the Law On Judiciary, given that competitions for junior judges and junior prosecutors, the initial appointing and the career growth of magistrates as well as attestation were not regulated. The current competition procedure is to some extent a guarantee for access of good professionals to the judicial system. However, there is no mechanism for verification of moral qualities of newcomers as well as for magistrates already engaged in the system in the process of their professional growth. At the same time another serious issue was determined arising out of the ungrounded mixture of the competition for career growth of the magistrates with the legal figure of their attestation including upon nomination of administrative heads of judiciary organs and their substitutes. The attestation approach upon a particular ground - for promotion in position or transfer, for promotion in rank, for appointment of administrative heads and substitutes showed negative consequences as well. This approach does not give the results expected considering the formal carrying out of the attestation. Attestation in all cases stated above by the Permanent Commission on Proposals and Attestation with the SJC is mostly performed without all the necessary information for full and objective evaluation of the attested. This in the predominant number of cases leads to receiving of maximum complex grades from attestation meanwhile magistrates' activities not giving the required results. All issues stated above are subject to discussions by the working group created in 2010 with the purpose to prepare amendments and supplements in LJ including more effective regulation of the matter regarding attestation and competitions.

## Article 37 Cooperation with law enforcement authorities

### Paragraph 1

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

The cooperation with the law enforcement authorities (Article 37 of the UNCAC) refers to the possibility for the perpetrator of a corruption-related offence to cooperate with authorities involved in the pre-trial proceedings and the judicial authorities to reveal the objective truth, including by confession and giving explanations on actions of other persons in the criminal activities. This cooperation is considered, according to the Bulgarian legislation, as a circumstance mitigating criminal liability in the criminal process and is taken into account when adjudicating the punishment of the perpetrator and his/her individual treatment. In this case, an opportunity is present to mitigate punishment of the defendant, including by application of Article 55 of the Bulgarian Criminal Code (imposing punishment below the minimum provided for in the Criminal Code for the respective criminal offence or replacement by a lesser one). National legislation provides also for a possibility, where cooperation is provided by the defendant, to solve the case by agreement applying the privilege under Article 55 of the Criminal Code. This can also apply in summary prosecution where the defendant confesses entirely guilty in the case and does not question the circumstances in the indictment. In this case, the court does not hold hearings in the general way but the verdict is pronounced based on the evidence collected in the pre-trial proceedings. There is a special provision in the Bulgarian Criminal Code with reference to active bribery (Article 306 of the Criminal Code), according to which a person who has offered, promised or given a bribe is not punished if he has been blackmailed by the official, the arbitrator or by the expert to do that or if he/she has informed the authorities immediately and voluntarily. A similar approach is followed in the money-laundering provision of the Criminal Code, whereby the perpetrator is not punished when, before money-laundering is completed, puts an end to his/her participation and notifies the authorities thereof (see the response under article 37, paragraph 2, of the UNCAC).

#### **(b) Observations on the implementation of the article**

The reviewing experts took note of the explanations provided by the Bulgarian authorities that the cooperation with the law enforcement authorities is considered as a circumstance mitigating criminal liability in the Bulgarian legislation and is taken into account when adjudicating the punishment of the perpetrator. Specifically with regard to active bribery, such a mitigating factor is foreseen in the context of a special defence which, according to the authorities, is aimed at encouraging the reporting of bribery: Article 306 of the Criminal Code establishes a system of effective regret which entails total exemption from liability when a bribe-giver is forced (“blackmailed”) to commit the act. Since 2002, the two safeguards are cumulative: First, the briber must have been forced to act; and, second,, he/she should report the offence without delay and voluntarily. The expression “without delay” is interpreted strictly as meaning within 24 hours before any initiative is taken by the authorities (in



accordance with case law). In principle, the defence is not applicable when the offender has committed an offence.<sup>19</sup> Furthermore, there is a consistent court practice on such elements as reporting without delays, not seeking revenge against an official etc.<sup>20</sup>

The reviewing experts were of the view that the Bulgarian legislation was, in general, in compliance with the UNCAC provision under review. Nevertheless, they encouraged the national authorities to consider the expansion of the scope of legislation regulating the mitigation of punishment and/or exemption from criminal liability of collaborators with law enforcement authorities to cover specific instances of a broader range of UNCAC-based offences and not only those of active bribery (article 306 of the Bulgarian Criminal Code) and money laundering (article 253a of the Bulgarian Criminal Code).

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 2**

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. See the response under article 37, paragraph 1, of the UNCAC with reference to Article 306 of the Criminal Code on active bribery. A similar approach entailing exemption from criminal liability of the perpetrator who notifies the law enforcement authorities is followed in the money-laundering provision of the Criminal Code (article 253a, paragraph 4), whereby the perpetrator is not punished when, before money-laundering is completed, puts an end to his/her participation and notifies the authorities thereof.

#### **(b) Observations on the implementation of the article**

The reviewing experts reiterated that the Bulgarian legislation was, in general, in compliance with the UNCAC provision under review. Nevertheless, they encouraged the national authorities to consider the expansion of the scope of legislation regulating the mitigation of punishment and/or exemption from criminal liability of collaborators with law enforcement authorities to cover specific instances of a broader range of UNCAC-based offences and not only those of active bribery (article 306 of the Bulgarian Criminal Code) and money laundering (article 253a of the Bulgarian Criminal Code).

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<sup>19</sup> On the issue of whether the decision to apply effective regret is subject to judicial review, it should be noted that a decision of the prosecutor to terminate criminal proceedings, including on the basis of article 306 of the Criminal Code, is subject to judicial review (article 243, paragraph 3, of the Penal Procedure Code) and the court can repeal the prosecutor's decree and order the continuation of investigation. The wording "shall not be punished" means that only the punishment of the act is dropped but the punishment is decided by the court and therefore the applicability of article 306 of the Criminal Code is always a matter of the punishing authority assessing the evidence, so in practice this provision is most often applied by the court.

<sup>20</sup> Decision No. 411//16.05.2007 of the Supreme Cassation Court, Decision No. 21/10.02.2006 of the Military Appellate Court of the Republic of Bulgaria.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 3**

*3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria reported that it had not implemented this provision. It was stressed, in this regard, that the persons who may enjoy immunities are explicitly listed in the Constitution of the Republic of Bulgaria. Under the Bulgarian legislation, there is no possibility for the judicial authorities to grant immunity to persons who provide substantial cooperation in the investigation and prosecution of an offence.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted the recognition of the Bulgarian authorities that they have not implemented the – optional - provision of the UNCAC under review. In this regard, they encouraged once more the national authorities to consider the expansion of the scope of legislation regulating the mitigation of punishment *and/or exemption from criminal liability* of collaborators with law enforcement authorities to cover specific instances of a broader range of UNCAC-based offences and not only those of active bribery (article 306 of the Bulgarian Criminal Code) and money laundering (article 253a of the Bulgarian Criminal Code).

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 4**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision stating that the defendant can be eligible for the special protection under the Law on Protection of Persons Threatened in connection with Criminal Proceedings where his/her explanations or depositions provide evidence of significant importance to criminal proceedings for the criminal offences under Art.4 of that Law.

#### **(b) Observations on the implementation of the article**

It has been justified by the Bulgarian authorities that the accused and the defendant can be eligible for special protection under the domestic legislation, where the explanation or dispositions provide evidence of significant importance to criminal proceedings. Such domestic legislation is in compliance with the UNCAC.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 5**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria reported that it had not implemented this provision reiterating its response under article 37, paragraph 3, of the UNCAC.

#### **(b) Observations on the implementation of the article**

The reviewing experts took note of the clarifications provided by the Bulgarian authorities that the lack of implementation of the provision under review was attributed to the fact that paragraph 3 of article 37 of the UNCAC is not implemented domestically as well. Nevertheless, they pointed out that paragraph 5 of the UNCAC refers not only to paragraph 3, but also to paragraph 2 of article 37, which, as described above, is implemented by the national authorities. Therefore they urged the Bulgarian authorities to explore the possibility of entering into agreements or arrangements, in accordance with domestic law, with other States parties to allow the law enforcement authorities of those States to propose a mitigated sanction in exchange for substantial cooperation with regard to a corruption offence.

## **Article 38 Cooperation between national authorities**

### **Subparagraph (a)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

### **Subparagraph (a)**

*(b) Providing, upon request, to the latter authorities all necessary information.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision and provided information on its regulatory framework that enables reporting of corruption in general and, more specifically, within the public sector. Reporting of the administrative errors and violations which create conditions for corruption practices, frauds or irregularities is a direct obligation of every public official in compliance with the existing ethical codes and the Law on civil servants. In accordance with article 46 of the Law on Administration (LA), specialized Inspectorates exist

in every central public body, which collect, analyze and check signals for corruption, conflict of interests and other breaches by public servants when exercising their duties. If any data of a committed crime has been found, they signalize the Prosecution Office. The Directorate “Chief Inspectorate” to the Council of Ministers coordinates and supports the activities of each of the inspectorates. After the entry into force of the Law on Prevention and Disclosure of Conflict of Interest Act (LPDCI - 1 January 2009), checks after signals are performed by the relevant inspectorates under the LA and the acts for availability/lack of conflict of interest are appealed before the administrative court. Summary and analysis of the practice are forthcoming.

“Internal rules for reporting suspicion for corrupt behaviour of National Revenue Agency's public officials”, aiming at regulating the procedures and methods for reporting signals and information from the NRA officials where there is a certain suspicion and/or attack against Agency's honesty, were adopted and have been applying since 2008. The rules describe the methods for reporting (in writing, by electronic mail and internet), the procedures of inspections, as well as protection for the person reporting a signal.

Under Article 34, paragraph 2, of the Tax and Social Insurance Procedure Code (TSIPC), where in the course of the proceedings it is found that a criminal offence relevant to the outcome of the proceedings was committed, the proceedings shall be suspended and the case records shall be transmitted to the competent prosecutor. After termination of the criminal proceedings, the case records thereon shall be transmitted to the revenue authorities for a resumption of the suspended proceeding.

There is a legally established obligation for the financial inspectors in the Public Financial Inspection Agency (PFIA) that if there is suspected corruption within the checked-up organization and related to the specific check, this fact must be reflected in the report of the financial inspection which afterwards is sent to the prosecution authorities.

It should be noted that there is interaction and co-operation between PFIA and the other institutions in Bulgaria which is reflected in bilateral and trilateral agreements (including establishment of spheres of risk and fields of corruption). According to Art.3 of the Law on State Agency “National Security” the Agency is entitled to perform its activities independently and in close interaction with other state authorities. Interagency cooperation was established by bilateral instructions between SANS and the Prosecution and between SANS and the Ministry of Interior, both issued in November 2008.

The cooperation and the interaction between the Prosecution Office of Bulgaria and various state institutions in counteracting crime, including corruption-related crime, is arranged in a number of agreements and joint instruction for interaction.

Cooperation in the meaning of Article 38 of the UNCAC has also been normatively arranged for in the Penal Procedure Code. Article 204 of the Penal Procedure Code entitles the pre-trial proceedings authorities to use widely the cooperation of the public to uncover crime and clarify the circumstances in the case. Article 205 of the Penal Procedure Code regulates the obligation of the citizens and officials to inform the competent authorities when they come to know that a crime has been committed. It is in this meaning that the obligation of the Bulgarian citizens to testify in good faith before the respective investigation and judicial authorities should be interpreted. The non-fulfillment of this obligation results in criminal liability for perjury pursuant to Article 290 of the Penal Code, where it relates to giving false

testimony (confirmation of an untruth or concealment of truth) before a court or other due authority.

Information received in this way constitutes cause previewed by the law to institute criminal pre-trial proceedings in the way of Article 208, item 1, of the Penal Procedure Code by the Prosecutor. Such cause previewed by the law is attributed also to information for committed crime, made public by the mass media (Article 208, item 2, of the Penal Procedure Code).

In 1998, the act of an official who violates or fails to comply with the provisions of the Law on Measures against Money Laundering (Article 253 b of the Criminal Code), was criminalized. If this offense is performed for a received gift or other benefit, it would be considered as bribery. The public interest reflected in the Criminal Code requires confiscation of the illegal capital and not its entry into turnover. Any breach of the obligations of officials who monitor money laundering, though without a mercenary motive, also replaces the basic principles of the state apparatus and may constitute a form of corruption.

Regarding databases or other ways through which information can be shared in order to promote cooperation, there are different kinds of registers in Bulgaria which facilitate the access to information and the cooperation between the competent authorities. The electronic registry of persons with uncompleted criminal proceedings was set up by Instruction of the Prosecutor General in 2010 and embraces all persons against whom criminal proceedings have been opened but not completed in all public prosecutor's offices in the country. A function has been set up to automatically update the data in the Unified Information System. The control has been assured by the hierarchical access to the data in the system. The sustainability of results is guaranteed by the implementation of the Unified Information System in all public prosecutor's offices in the country.

According to an agreement for cooperation and exchange of information between the Prosecution of the Republic of Bulgaria and the State Committee on Information Security (SCIS), the latter has access to the data base of the Unified Information System. In implementation of an agreement between the Ministry of Interior and the Prosecution of the Republic of Bulgaria, access of the Ministry of Interior to the Unified Information System is forthcoming upon execution of certain actions by the Ministry. Access of the Prosecution to the information system of the History of Convictions Bureau at the Ministry of Justice has been assured in implementation of a decision of the Supreme Judicial Council of 11.03.2010. According to Order No.1983/2010 of the respective deputy of the Prosecutor General the prosecutors have been instructed to start using the National Information System of the History of Convictions Bureau as a reference source. The regulations on the use of the system have been published in the intra-agency site of the Prosecution of the Republic of Bulgaria. The access of the Prosecution of the Republic of Bulgaria to the Population National Data Base (PNDB) has been made possible as a result of implementation of Regulation of the Minister of Justice and the Minister of Regional Development and Public Works. The procedure of using the Population National Data Base by the prosecutor's offices has been introduced by Order of the area deputy of the Prosecutor General No. LS 3829/2009.

The Unified Information system to counteract crime (UISCC) is an aggregate of automated systems and consists of a central component (nucleus) of the system connected with systems of the judicial and the executive agencies, which process information about events and objects and in its entirety, provide unified information on the activities aimed at counteraction to crime. The judicial authorities, the Ministry of Interior, the State Agency of National Security,

the Ministry of Defence, the Ministry of Justice and the Ministry of Finance set up, maintain, use and develop their own information systems, which are part of the UISCC and exchange information within the unified system. The implementation of the Unified Information System in all prosecutor's offices, the practical possibility for citizens and organizations to obtain reference information on the movement of files opened upon their request or signal, the introduction of on-site working places and the work on the modernization of the information module of the Unified Information System compensate at this stage the delay of implementation of the UISCC, because of its transfer from the Ministry of Justice to the Prosecution, regulated by the Law on the Amendment of the Law on the Judicial Power (SG, No. 33 of 2009), while its operational implementation has been assigned to the National Investigation Service.

As at 12.07.2010, the nucleus of the UISCC is working steadily and contains data on 1,476,989 events related to the criminal process. It has the information system of the National Investigation Service switched to it in the regime of non-stop exchange of information. Work is going on to join the following systems:

- The AIS of the Military Police is ready to be integrated, at this moment a procedure is underway to declassify the system;
- The AIS of the Ministry of Interior - joint work is going on with specialists of the Ministry to make available the data transfer converter. At the same time the standards of the AIS - MI are being adjusted to that of the UISCC.
- Up to the end of 2011, installation of special communication components of all participators in the UISCC will be put in place with view to transfer data and/or use information from the nucleus of the UISCC.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian authorities answered positively as to the measures they adopted and implemented in order to comply with the obligations deriving from article 38 of the UNCAC. They highlighted more specifically the following aspects:

- In accordance with article 46 of the Law on Administration (LA), specialized Inspectorates exist in every central public body, which collect, analyze and check signals for corruption, conflict of interests and other breaches by public servants when exercising their duties. If any data of a committed crime has been found, they inform the prosecution.
- "Internal rules for reporting suspicion for corrupt behaviour of National Revenue Agency's public officials", aiming to regulate the procedures and methods for reporting signals and information from the NRA officials where there is a certain suspicion and/or attack against Agency's honesty, were adopted and have been applying since 2008.
- There is a legally established obligation for the financial inspectors in the Public Financial Inspection Agency (PFIA) that if there is suspected corruption within the checked-up organization and related to the specific check this fact must be reflected in the report of the financial inspection which afterwards is sent to the prosecution authorities.
- The cooperation and the interaction between the Prosecution of the Republic of Bulgaria and various state institutions in counteracting crime, including the corruption-related crime is arranged in a number of agreements and joint instruction for interaction.

Bulgaria provided all supporting material (laws, instructions evidencing these assertions). The legislation seems to be in compliance with the UNCAC.

## **Article 39 Cooperation between national authorities and the private sector**

### **Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of the provision. The Law on Measures against Money Laundering (LMML) requires that specific categories of legal persons in private sector (banks, credit institutions, financial houses, exchange bureaus etc.) report immediately any suspicion of money laundering to the Financial Intelligence Directorate of the State Agency for National Security (Article 11). A person who commits a violation or allows commitment of violation pursuant to Article 11 shall be punished by fine of BGN 5,000 to BGN 20,000, if the offence does not constitute a crime (Article 23, paragraph 2, of the Law).

Bulgaria also provided statistics with regard to the number of Suspicious Transactions Reports under LMML for 2009-2010. It was reiterated that Article 205 of the Penal Procedure Code only regulates the obligation of the citizens and officials to inform the competent authorities when they come to know that a crime has been committed. The provision does not foresee criminal liability for those who do not cooperate.

The third round mutual evaluation report of Bulgaria was adopted at the Moneyval plenary on 1.04.2008. The first progress report of Bulgaria was adopted 18.03.2009. In addition, the Bulgarian authorities are currently discussing amendments to the CTF legislation (Law on Measures against Financing of Terrorism), as well as some amendments to the LMML in order to comply with the recommendations of the Moneyval evaluation report. The proposed amendments to the LMML include adjusting some of the categories of reporting entities to comply with legislation on financial institutions (Law on Credit Institutions) as well as with the Postal Services Law and to fully cover the scope of third AML directive in regard to accountants. Another proposed change is related to introducing the reporting of attempted suspicious transactions.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that both general and specific national legislation (Penal Procedure Code and Law on Measures against Money Laundering (LMML)) contain provisions requiring citizens, officials and specific categories of legal persons in the private sector respectively to report suspicions of crime in general and money laundering in particular. They further noticed that a link of article 205 of the Penal Procedure Code to substantive criminalization provisions of the Criminal Code in case of infringement of the reporting obligation was lacking, or not adequately highlighted.

## **Article 39 Cooperation between national authorities and the private sector**

### **Paragraph 2**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision through the general obligation pursuant Article 205 of the Penal Procedure Code to inform the competent authorities when information exists that a crime has been committed. In each public institution, automatic 24 hour telephone line is available for reporting signals for corruption against public officials. Special e-mail addresses for reporting signals for corruption practices have been created on their web pages too. Similarly, in the embassies and the consular services of Bulgaria abroad post office boxes are affixed and telephone numbers are announced for submitting signals for corruption. Guidance for the clients of the administration, specifying the actions that shall be performed in case of corruption practices proved, were elaborated and distributed. In addition, a central website to signal corruption offences has been set up (via an EU-funded project) which allows complaints to be lodged centrally against all institutions and to check the status of the complaint. Coordination, supervision, technical support for all regional anti corruption offices and a network of inspectorates at all ministries were provided. Moreover, the citizens may report corruption cases directly to the closest police department or territorial prosecution office. Obligation for reporting crimes committed exists for all public servants.

The one-year experience of the implementation of the Law on the Prevention and Detection of Conflicts of Interests (LPDCI) in the system of central executive authorities shows the positive impact of the new legal provisions and their quality as an anti-corruption measure. Over 170 signals for conflict of interest were submitted in the system of the administration from August 2009 till May 2010, the performed inspections were more than 190 and over 30 officials were punished with disciplinary sanctions. The release of official duties upon proven conflict of interest is already a fact. For the same period the Prosecutor's Offices throughout the country have initiated 651 pre-trial proceedings for corruption crimes, 449 pre-trial proceeding shave been solved, 229 prosecutor's acts have been submitted to court, 285 persons were accused, 155 were convicted and the verdicts have entered into force for 112 persons. The apparent contradiction between the signals for conflicts of interests and the performed inspections is due to the fact that the inspections shall be instigated both upon signals submitted to the Committee for prevention and disclosure of conflicts of interest and upon an a decision of the Committee itself.

#### **(b) Observations on the implementation of the article**

The reviewing experts observed that, in general, the explanations provided by the Bulgarian authorities with regard to the implementation of the UNCAC provision under review seemed to be convincing and adequate. However, they further noticed that a link of article 205 of the Penal Procedure Code to substantive criminalization provisions of the Criminal Code in case of infringement of the reporting obligation was lacking, or not adequately highlighted. They also underscored that a better and more effective implementation of the provision at the domestic level could be achieved through building capacity to collect and systematize information on the following issues:



- Number of reports received through the telephone lines for reporting signals for corruption against public officials, as well as information on follow-up to these reports, as appropriate;
- If anonymous reports are given due consideration by appropriate authorities, number of reports received that have contributed to the investigation or prosecution of corruption offences.

## **Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The access of the prosecutors and the investigating authorities to information protected by bank secrecy is provided with a permission of the court pursuant to the order of the Law on Credit Institutions (LCI). Pursuant to article 62, paragraph 6, item 1, of LCI, the court can lift bank secrecy upon a request of a prosecutor when there is evidence of committed criminal offence. Simplified procedure for granting such information is prescribed in cases of committed crimes under Articles 321 and 253 of the Criminal Code (organized criminal activity and money laundering). If there is available data for organized criminal activity or money laundering, the Prosecutor General is able to require directly from banks to grant the relevant data considered bank secrecy.

According to information of the regional prosecutor's offices, the latter do not have difficulties with the drawing up of the requests for uncovering a bank secret and the following activities of obtaining the requested information. At a request of the prosecutor's office, the court gives a ruling within the legal 24-hour term. The permission for uncovering a bank secret is sent immediately to the relevant bank institution from which the materials are received within the monthly term.

### **(b) Observations on the implementation of the article**

The reviewing experts noted that the lifting of bank secrecy is provided through court permission and where there is evidence of committed criminal offences, including corruption offences. During the country visit, discussion revolved around possible delays that may occur with respect to the obtaining of court orders for the lifting of bank secrecy. In this connection, it was indicated that a relaxation of the relevant standards and processes need to be considered to ease the formal requirements for obtaining authorization to lift bank secrecy in the context of domestic investigation of corruption cases, taking into account the overall approach of the national legislation as to the valid authority to provide authorization.

## **Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such*

*information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. According to article 5, paragraph 4, of the Constitution of the Republic of Bulgaria, any international instruments which have been ratified by the constitutionally established procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. The Bulgarian legislation contains a rule which stipulates that national courts take into account the verdict of a foreign court in regard of an alleged offender in the cases established by an international agreement (Article 8 of the Criminal Code).

In addition, Bulgaria has acceded in 2004 to the European Convention on the International Validity of Criminal Judgments, which provides for an obligation for States parties to enable their courts when rendering a judgment to take into consideration any previous European criminal judgment rendered for another offence in regard to the same person.

In this connection, reference needs to be made to the Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings. The Framework Decision establishes the criteria whereby previous convictions delivered by any Member State are taken into account during criminal proceedings in another Member State against the same person, but for different facts. In order to fully comply with the requirements of the cited Framework decision, the Bulgarian Ministry of Justice has elaborated a Draft Law for amendment and supplement of the Penal Code and the Penal procedure Code. The Draft law has been submitted to the Council of Ministers for its approval before it is forwarded to the Bulgarian National Assembly for final approval and enactment.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian authorities justified in a convincing manner that the national legislation contained rules and incorporated standards and requirements on international validity of criminal judgements so as to ensure adequate compliance with the UNCAC provision under review.

**Article 42 Jurisdiction**

**Subparagraph 1 (a)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

**Subparagraph 1 (b)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

### **Subparagraph 2 (a)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

### **Subparagraph 2 (b)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

### **Subparagraph 2 (c)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

### **Subparagraph 2 (d)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(d) The offence is committed against the State Party.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of these provisions. Article 3, paragraph 1, of the Criminal Code shall apply for every crime committed on the territory of the Republic of Bulgaria. According to the international public law state territories include among others also the board a vessel that is flying the flag of that state or an aircraft that is registered under the laws of that state at the time that the offence is committed. The territorial jurisdiction of the Bulgarian Criminal Code extends to all of the offences established in accordance with the Convention committed on board of ships or aircrafts under Bulgarian flag. Article 37 of the Penal Procedure Code further determines the court competence in cases where the crime has been perpetrated on a Bulgarian ship or an aircraft beyond the confines of the country.

The provision of Article 5 of the Criminal Code provides for criminal responsibility of foreigners that have committed crime of general nature abroad, punishable under the Bulgarian law that has affected the interests of the Republic of Bulgaria or the Bulgarian citizens. Jurisprudence defining the term “interests of the Republic of Bulgaria” has been provided.<sup>21</sup>

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<sup>21</sup> Decision Nr. 26 from 13.01.1971 on criminal case 726/70, II criminal division Court practice Supreme court –

Particularly in relation to corruption cases, where a foreign person has bribed abroad a Bulgarian official, the briber (foreign person) will be prosecuted because such bribery offence has affected the interests of the Bulgarian State related to the proper functioning of the public institutions and administration (i.e. on the basis of the jurisdictional rule of Article 5 of the Criminal Code). The establishment of the national jurisdiction over the active bribery in such a case stems from the concept that bribery affects the rule of law and good governance. Based on this concept, Section “Bribery” is placed in Chapter Eight of the Criminal Code “Crimes against Activities of State Institutions, Public Organizations and Persons Performing Public Functions”. The title defines the scope of the activities and social relations affected by the offences established under this Chapter and thus the scope of the relevant State’s interests in the meaning of Article 5 of the Criminal Code.

The Bulgarian legislation provides for active personality jurisdiction. Bulgaria establishes criminal jurisdiction over its nationals for crimes committed abroad through Article 4, paragraph 1, of the Criminal Code. Article 2 of the Law for the foreigners in the Republic of Bulgaria contains a legal definition of the term "foreigner". In the sense of this provision, foreigner shall be any person who is not a Bulgarian citizen. This means that stateless persons are also considered as foreigners. The same jurisdiction rules as for foreigners shall apply for stateless persons.

The persons under Article 23, paragraph 1(b), (ii) of the UNCAC shall be held criminally liable pursuant to Bulgarian Criminal Code if they are Bulgarian citizens and if they are foreign citizens when the crime affects interests of the Republic of Bulgaria and/or those of the Bulgarian citizens or when it is explicitly provided in an international treaty to which the Republic of Bulgaria is a party. In such cases, Articles 4 -6 of the Criminal Code shall apply.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the relevant provisions of the Bulgarian legislation were in compliance with the UNCAC. The rules of Bulgarian criminal jurisdiction are laid down in

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criminal division, 1971: The Criminal Code is applicable to foreigners, who have committed crimes of general nature abroad, whereby the interests of the Republic of Bulgaria or those of Bulgarian citizens have been affected.

“It is undisputable, that the accused Sh., by receiving a passport, in order to cross the border of the state L. and to enter into our state, has falsified a passport by entering another name into the document. The defense raises the objection, that no crime under art. 308 CC has been committed, since the falsification has been committed on foreign territory, by a foreign citizen and on a foreign official document. The Supreme Court considers this objection unjustified. In accordance with art. 5 CC, 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. This legal provision is absolutely clear and there is no place for doubt, whether our Criminal code is applicable to foreigners, who have committed crimes abroad. The Code is applicable also in these case, but under the two conditions – if the crime is of general nature according to our CC and second, if by the crime the interests of the Republic of Bulgaria or of Bulgarian citizens have been affected. The accused himself has confessed that he wanted to enter into our state. Taking into account that under the Bulgarian CC the falsification of a passport is also a crime of general nature, we have to consent, that a crime under art. 308 CC is present. Although committed by a foreign citizen and on foreign territory, the crime affects the national security of the state, the right for control over the persons, who enter and exit the country, as well as the sovereign right of the state to let only those persons going through its borders, to whom a permission has been granted, and not all persons who would like to do so.

In view of the above, the district court has correctly and reasonably accepted, that the defendant has committed both crimes, on the one hand - a crime under art. 279, para.1 CC and on the other – crime under art. 308 CC.”

the general part of the Criminal Code; they apply to all bribery and trading in influence offences. Jurisdiction is established over acts committed within the territory of Bulgaria (principle of territoriality, Article 3, paragraph 1, of the Criminal Code), acts committed by Bulgarian nationals (nationality principle, Article 4 paragraph 1, of the Criminal Code) as well as acts committed abroad by foreigners affecting the interests of the Republic of Bulgaria or of a Bulgarian citizen (Article 5 of the Criminal Code) and acts committed abroad by foreigners wherever stipulated by an international agreement to which the Republic of Bulgaria is a party. According to the authorities, under the criminal doctrine, the jurisdiction is also established over offences committed only partly in Bulgaria.” The concept of “interests” of the country, used in article 5 of the Criminal Code, needs to be interpreted broadly enough to enable the country to prosecute under Bulgarian law the relevant offences committed abroad by a foreign person/entity where the target of the influence or the bribe-taker is a domestic official .

## **Article 42 Jurisdiction**

### **Paragraph 3**

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. In Chapter 2 of the Bulgarian Constitution, entitled “Fundamental rights and obligations of citizens”, Article 25, paragraph 4, provides that a citizen of the Republic of Bulgaria cannot be delivered to other State or international court for the purposes of punitive prosecution unless this is provided in international agreement, ratified, promulgated and entered into force for the Republic of Bulgaria. This principle rule is followed in the Law on the extradition and the European arrest warrant which settles the terms and order of execution of extradition, as well as the terms and order of execution of European Arrest Warrant (LEEAW).

According to the LEEAW, extradition shall not be admitted when the requested person is a Bulgarian citizen, except otherwise provided by an entered in force international treaty, which the Republic of Bulgaria is a party to. If extradition is refused solely on the basis of the nationality of the person sought, the Bulgarian authorities are bound by the obligation to prosecute if there are sufficient grounds for doing so and to provide the materials to the respective prosecutor for performance of criminal prosecution. Extradition between the Republic of Bulgaria and the member states of the EU shall be performed on the basis of a European Arrest Warrant. The LEEAW also envisages the possibility for the court to refuse execution of the European Arrest Warrant, if the required person is a Bulgarian citizen. In such case, Bulgarian courts have to start executing the sentence or detention order which have been imposed by the court of the issuing Member State in accordance with domestic law.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the domestic legal framework, as defined in the on the extradition and the European arrest warrant, enables the initiation of criminal proceedings in the country when extradition is denied on the grounds of nationality and therefore is in

compliance with the UNCAC provision under review. They further took into account the explanation provided by the Bulgarian authorities during the country visit that in cases of extradition relations with non-EU countries, article 21 of the aforementioned law also enables domestic prosecution in lieu of extradition if the conduct for which extradition was sought is established as criminal offence under Bulgarian law.

## **Article 42 Jurisdiction**

### **Paragraph 4**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The Bulgarian authorities are obliged to take proceedings against an alleged offender when extradition had been requested, but could not be granted for reasons other than the nationality of the requested person. See also the response under article 42, paragraph 3, of the UNCAC.

#### **(b) Observations on the implementation of the article**

412. The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## **Article 42 Jurisdiction**

### **Paragraph 5**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. If parallel proceedings are held in a State that is Party to the European Convention on the Transfer of Proceedings in Criminal Matters or the European Convention on the International Validity of Criminal Judgments, then the existence of final verdict abroad for the same crime and against the same person is a ground for termination of the criminal proceedings initiated in Republic of Bulgaria under the legal principle “*non bis in idem*”, unless the crime is not committed on the Bulgarian territory or the proceedings is initiated against a person who occupies an important official position and affects important interests of Republic of Bulgaria.

If the parallel proceedings in a EU Member State have been completed with a final verdict, the Republic of Bulgaria in all cases shall terminate all criminal proceedings held in the country on basis of the legal principle “*non bis in idem*”, as set out in article 54 of the

Schengen Convention and article 50 of Charter of Fundamental Rights, an integral part of the Lisbon Treaty.

In future, the EUROJUST is given supplementary powers under the Lisbon Treaty to settle disputes between Member States of the EU on conflicts of jurisdiction. There should be direct consultations between competent authorities of the Member States with the aim of achieving a consensus on any effective solution aimed at avoiding the adverse consequences arising from parallel proceedings and avoiding waste of time and resources of the competent authorities concerned. Such effective solution could notably consist in the concentration of the criminal proceedings in one Member State, for example through the transfer of criminal proceedings. It could also consist in any other step allowing efficient and reasonable handling of those proceedings, including concerning the allocation in time, for example through a referral of the case to Eurojust when the competent authorities are not able to reach consensus.

**(b) Observations on the implementation of the article**

The reviewing experts indicated that the clarifications provided by the Bulgarian authorities regarding compliance with the UNCAC provision under review were adequate, although more information on parallel proceedings with non-EU or non-Council of Europe Member States would be welcome.

**Article 42 Jurisdiction**

**Paragraph 6**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision stating that, in addition to the jurisdictional bases mentioned above, it applies universal jurisdiction in line with article 6 of the Criminal Code.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## Article 44 Extradition

### Paragraph 1

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

#### (a) Summary of information relevant to reviewing the implementation of the article

According to the Bulgarian law, extradition is the surrender of a person, who is wanted for prosecution, trial, or execution of punishment in the territory of a requesting State for an extraditable offence and found in the territory of the requested State. Extraditable offences are offences which, at the time of the request, are punishable *under the laws of both States* by deprivation of liberty for a period of at least one year or by a more severe penalty. Extradition between the Republic of Bulgaria and the Member States of the European Union is carried out on the basis of a European Arrest Warrant. In this case, *double criminality is not be required for 32 offences, explicitly listed in article 36 of the Law on Extradition and European Arrest Warrant (LEEAW)* – the law that domesticated the provisions of the relevant Framework Decision on the EAW - if they are punishable in the issuing Member State by a custodial sentence for a maximum period of at least three years or more severe penalty, or a detention order for the same period of time. Corruption crimes are also listed in article 36 of the LEEAW and they can also give rise to surrender pursuant to a European arrest warrant without verification of the double criminality of the act, if the prerequisites of law are met.

Examples of successful execution of EAWs and granting of extradition requests have been provided by the Bulgarian authorities.

Bulgaria also provided clarifications on action taken domestically to assess the effectiveness of measures taken to ensure compliance with the UNCAC requirements. It was reported, in this connection, that profound internal assessment is carried out when amending national laws and secondary legislative acts and that one example is the amendments to the Law on Extradition and European Arrest Warrant (LEEAW). This was the result of an internal assessment which is carried out by the Bulgarian institutions in order to comply with the existing international standards and instruments. The internal assessment is carried out on an ad-hoc basis, where practical difficulties or legislative gaps are identified. All the legislative amendments are carried out after broad consultations with practitioners, academics and governmental experts in order to reflect their experience and to achieve maximum effectiveness.

The provisions regarding the European Arrest Warrant contained in the Law on Extradition and European Arrest Warrant have been reviewed in the course of the Fourth Round of mutual evaluation carried out by the Council of the European Union of the practical application of the European Arrest Warrant. The Law entered into force in 2005 while the part for EAW entered into force after the accession of Bulgaria to the European Union. During the past years, the LEEAW has undergone several amendments in order to reflect the shortcomings found by the Bulgarian authorities, on the one hand, and the recommendations of the Council of the European Union, on the other.



Chapters 1 and 5 of the LEEAW are devoted solely to the procedure for surrender on the basis of European arrest warrant between the member states of the European Union while the other chapters of the LEEAW shall apply in all other extradition cases.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

At the operational level and with a view to facilitating the assessment of the effectiveness of implementation of the relevant provisions on extradition, the reviewing experts encouraged the Bulgarian authorities to further strengthen the capacity and effectiveness of the Unified Information System as the centralized mechanism for gathering, processing and circulating information and statistics on the operational aspects of extradition proceedings; and to continue efforts to establish a new integration system for the prosecutorial authorities which will enable the compilation of statistics and the generation of thematic reports based on them.

The reviewing experts also invited the Bulgarian authorities to consider the allocation of additional resources to strengthen the efficiency and capacity of international cooperation mechanisms, including extradition mechanisms.

**Article 44 Extradition**

**Paragraph 2**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria reported that double criminality is always needed for extradition procedures, as extradition is allowed only for offenses alleged as crimes in jurisdictions of both the requesting and requested States (Article 5 of the LEEAW). As an exception to that fundamental requirement, double criminality is excluded for 32 crimes when the person is surrendered on the basis of European Arrest Warrant (Article 36 of the LEEAW).

**(b) Observations on the implementation of the article**

The reviewing experts encouraged the Bulgarian authorities to explore the possibility of relaxing the strict application of the double criminality requirement in cases of UNCAC-based offences that go beyond those relating to the execution of European Arrest Warrants, in line with article 44, paragraph 2, of the UNCAC.

**Article 44 Extradition**

**Paragraph 3**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of*

*imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The country ratified the European Convention on Extradition in 1994 (and the additional protocols to it), the provisions of which are directly applicable pursuant to Article 5, paragraph 4, of the Bulgarian Constitution. According to Article 2, paragraph 2, of the abovementioned convention, “accessory” extradition may be granted for a minor offence when the person claimed has to be extradited for a serious offence. Moreover, accessory extradition enables the courts of the requesting country to take into consideration all the offences of which the extradited person was accused, so that a comprehensive judgment could be passed on him/her.

The LEEAW contains no specific provision on accessory extradition. However, there is no hindrance to directly apply article 44, paragraph 3, of the UNCAC for extradition to/from states that have not ratified the CoE Convention on extradition. Similarly to the latter convention, the UNCAC has become an integral part of the Bulgarian legal system, thus entailing the application of article 44, paragraph 3, which, in any case, is of an optional nature.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## **Article 44 Extradition**

### **Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. According to Article 5, paragraph 4, of the Bulgarian Constitution, any international instruments which have been ratified through the constitutionally established procedure, promulgated and have come into force in the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. Hence, the provisions of Article 44 of the UNCAC shall supplement all the bilateral extradition treaties which Bulgaria is a party to.

Information on the conclusion of bilateral agreements on extradition with India (2004), United States of America (2008) and South Korea (2009) has also been provided.

There is no legal definition of the term “political offence” neither in the international treaties nor in the relevant Bulgarian legislation. For each single case the courts and the Supreme

Prosecution Office shall estimate whether the crime for which extradition is sought is political crime or not.

**(b) Observations on the implementation of the article**

The reviewing experts took into account the explanations provided by the Bulgarian authorities. They urged them to continue to ensure that any crime established in accordance with the UNCAC is not considered or identified as a political offence that may hinder extradition, especially in view of the fact that the political offence is one of the most common grounds for refusal of an extradition request in Bulgarian practice (see the response under article 44, paragraph 8, of the UNCAC).

**Article 44 Extradition**

**Paragraph 5**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria recognizes UNCAC as a legal basis for cooperation on extradition in the absence of bilateral agreements. In case the Bulgarian competent authorities receive such request for extradition, they should proceed with the request under the provisions of the LEEAW (article 4, paragraph 1). Although UNCAC can directly apply as a legal basis for extradition requests, no case has been ascertained in the last two years of a received request for extradition on the grounds of the Convention and, in this view, no analysis of refusals to execute such requests can be done.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 44 Extradition**

**Subparagraph 6 (a)**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria reported that it does not make extradition conditional on the existence of a treaty. In the absence of an extradition treaty with another Party, the domestic extradition legislation

shall apply on a basis of reciprocity. Bulgaria can also consider the Convention as a legal basis for extradition.

**(b) Observations on the implementation of the article**

The reviewing experts noted that Bulgaria does not make extradition conditional on the existence of a treaty.

**Article 44 Extradition**

**Subparagraph 6 (b)**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria reported that it does not make extradition conditional on the existence of a treaty. In the absence of an extradition treaty with another Party, the domestic extradition legislation shall apply on a basis of reciprocity. Bulgaria can also consider the Convention as a legal basis for extradition.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 44 Extradition**

**Paragraph 7**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision stating that it recognizes the UNCAC as a legal basis for cooperation on extradition. In case of absence of international treaty or bilateral agreement, the LEEAW shall apply under the condition of reciprocity. The reciprocity shall be established by the Minister of Justice. (Article 4 of the Law on Extradition and European Arrest Warrant).

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

### **Article 44 Extradition**

#### **Paragraph 8**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision and provided information on grounds for refusal of an extradition request, as provided for in the Law on Extradition and European Arrest Warrant (articles 7, 8, 39 and 40). Bulgarian experience from the recent years shows that among the most common grounds for refusing the execution of extradition requests is the statute of limitations of the crimes referred to in the requests and when extradition is sought for political offences.<sup>22</sup>

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

### **Article 44 Extradition**

#### **Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

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<sup>22</sup> The two examples given below illustrate some concrete cases where the court refused to execute extradition requests:

- a) With a decision dated 24.02.2010 ruled out on private criminal case №712/2009 of Shumen Regional Court, confirmed by Decision №44 dated 19.03.2010 of Varna Court of Appeal on private criminal case № 70/10, the extradition is denied of the Russian citizen Dmitriy Vladislavovich Shishin on the grounds of an expired prescription (time limitation) pursuant to Bulgarian legislation. The extradition of the person was asked by the competent authorities of the Russian Federation for prosecution for the criminal offence of “fraud”.
- b) Due to expired prescription pursuant to Bulgarian legislation, but also due to the political nature of the deed for which the person was convicted in the requesting country, with Decision № 234/16.11.2010 of Haskovo Regional Court on private criminal case № 470/10, the extradition of Ali Haidar Maho is denied on a request of the legal authorities of the Republic of Turkey for serving the imposed penalty of “imprisonment” for the committed criminal offence “member of an illegal terrorist organization PKK”. The court has not discussed but it registered the produced evidences that the person was first granted the status of a refugee by the authorities of the Federal Republic of Germany due to his political prosecution in the Republic of Turkey and later on, he acquired German citizenship.

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision highlighting that the entire extradition procedure, in which the court of the requested state should come with a final decision for the extradition of the requested person, runs in short terms. In practice, this means that a common extradition process lasts approximately 2-3 months, with the exception of complicated cases that may require more time for completion. The most common reasons for delay are those related to translation requirements and back and forth communication due to lack of clarity of the extradition request. With regard to execution of European arrest warrants, the law prescribes an even shorter timeframe and the entire procedure should come to an end within 60 days with the exception of complicated cases that may require more time for completion. In addition, Article 19 of the LEEAW sets forth the “immediate extradition within twenty-four hours”. During the country visit, the Bulgarian authorities made reference to the fact that the country signed the Third Addition Protocol to the Council of Europe Convention on Extradition, which, upon its entry into force, will set the framework of simplified extradition within the context of the Council of Europe as well.

**(b) Observations on the implementation of the article**

The reviewing experts encouraged the Bulgarian authorities to continue making best efforts to ensure that common extradition proceedings, beyond those related to the execution of European Arrest Warrants, are carried out in the shortest possible period. In this connection, they welcomed the signature by Bulgaria of the Third Addition Protocol to the Council of Europe Convention on Extradition.

**Article 44 Extradition**

**Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The procedure for provisional detention is set forth in articles 13 and 42 of the LEEAW and article 64, paragraphs 3 and 5, of the Penal Procedure Code.

The provisional detention is carried out on request of the Supreme Prosecution Office of Cassation (SPOC) after assessing whether grounds for refusal of extradition exist. When the prosecutor finds that there are sufficient grounds to proceed with the surrender procedure, he/she shall file a request for provisional detention at the relevant district court. The request is to be made under article 13, paragraph 6, of the LEEAW and shall contain the obligatory information as cited in paragraph 2 of the same provision, as well the duration of the detention. In accordance with the timeframe prescribed in article 13, paragraph 7, of the LEEAW, the maximum duration of the provisional detention is up to 40 days unless other term is stipulated by an international agreement, to which Bulgaria is a party. The request is

considered in accordance with article 64 of the Penal Procedure Code. The Court shall immediately proceed to hear the case with the participation of the prosecutor, the accused party and his/her defence counsel. The provisional detention is admitted by court ruling which can be appealed or protested by the prosecutor in front of the appellate court. After the entrance into force of the court ruling, the competent district prosecutor immediately notifies the SPOC for its outcome. The SPOC on its part informs the Minister of Justice and the requesting State for the detention measure. The observation over the term of detention falls within the competence of SPOC and the relevant district prosecutor. The prosecutor shall rescind the measure of provisional detention where, within the period of provisional detention specified by the court, the Republic of Bulgaria does not receive a request for extradition and the documents under Article 9, paragraph 3, of the LEEAW. Release of the person shall not be an obstacle to his/her further arrest to the purpose of extradition or to the extradition itself, where the request for extradition is received after expiry of the period under paragraph 7. In principle, upon request of the person sought, the District Court may modify the measure of provisional detention into another measure of procedural coercion which can ensure the participation of the person in extradition proceedings. The only alternative measure of procedural coercion, which can be imposed to the person sought is prohibition from leaving the boundaries of the Republic of Bulgaria under article 68 of the Penal Procedure Code.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 44 Extradition**

**Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. See the response under article 42, paragraph 3, of the UNCAC. All the evidence and information necessary for the domestic criminal proceedings could be obtained from the requesting State by use of the existing instruments for mutual legal assistance (Article 471 of the Penal Procedure Code).

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## Article 44 Extradition

### Paragraph 12

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Bulgaria reported partial implementation of this provision stating that, under article 41, paragraph 3, of the LEEAW, the possibility of temporary surrender of Bulgarian nationals to the requesting State for purposes of trial only is foreseen only with regard to the European Arrest Warrant process with other EU Member States.

#### (b) Observations on the implementation of the article

The reviewing experts noted the implementation of this provision of the UNCAC is subject to the requirements of the domestic legislation and, in this connection, took into account that the Bulgarian legislation gives practical effect to the said provision only partially and in relation to surrender procedures within the European Union.

## Article 44 Extradition

### Paragraph 13

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Bulgaria reported partial implementation of this provision stating that the possibility of enforcing a foreign sentence in lieu of extradition is foreseen in the following cases:

- In the context of the European Arrest Warrant process with other EU Member States;
- In extradition relations with other Council of Europe Member States, where the requesting State, upon advice of the Bulgarian authorities, file a request for international validity of the sentence on the basis of the Council of Europe Convention on international validity of criminal judgments.

The text of relevant legal provisions of the Penal Procedure Code (Articles 463-469) on the recognition and enforcement of a sentence issued by a foreign national court has been provided.

#### (b) Observations on the implementation of the article



The reviewing experts noted the implementation of this provision of the UNCAC is subject to the requirements of the domestic legislation and, in this connection, took into account that the Bulgarian legislation gives practical effect to the said provision only partially and in relation to surrender/extradition procedures with EU Member States, as well as Council of Europe Member States bound by the Convention on international validity of criminal judgments.

## **Article 44 Extradition**

### **Paragraph 14**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The domestic extradition procedure aims at ensuring fair treatment of fugitives and pays attention to the protection of their legal rights. Defense counsel and interpreter (if the person does not speak Bulgarian) should be appointed to the detained person within 72 hours of the detention. It should be noted that the participation of defense counsel and interpreter, where necessary, is obligatory in the course of entire extradition procedure. The court is also obliged by the law to appoint a defense counsel to the person claimed and an interpreter where needed and shall explain his/her right to consent to immediate extradition and the implications thereof. Furthermore, the fugitive has the right to appeal the court ruling which imposes preliminary detention as well the court decision whereby extradition is granted or refused. The text of relevant legal provisions (Articles 14 and 17 of the LEEAW) has been provided.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## **Article 44 Extradition**

### **Paragraph 15**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. If the competent Bulgarian authorities have substantial grounds to believe that the extradition request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause

prejudice to that person's position for any one of those reasons, they are obliged to refuse extradition in accordance with Article 7 of the LEEAW.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 44 Extradition**

**Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The Bulgarian authorities may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters. The grounds for refusal of extradition are exhaustively listed under Articles 7 and 8 of the LEEAW. The fact that “the offence is considered to involve fiscal matters” does not fall within the scope of the cited provision and *per argumentum a contrario* does not constitute a ground for refusal.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 44 Extradition**

**Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision stating that, in the course of the court proceedings for granting extradition, the court shall deliberate on whether grounds for refusal of extradition under Articles 7 and 8 are present. When the court deems necessary it may request additional information from the requesting State, specifying a period for its receipt.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## Article 44 Extradition

### Paragraph 18

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

#### (a) Summary of information relevant to reviewing the implementation of the article

467. Bulgaria confirmed implementation of this provision stating that it concluded bilateral and multilateral extradition agreements after in-depth analysis and assessment of the necessity for concluding such agreements. In the decision-making process, existing bilateral and multilateral legal instruments, international engagements, as well as the flow of extradition requests, encountered difficulties in granting them and other relevant factors are taken into account. Following this policy, Bulgaria has signed during the reporting period bilateral agreements on extradition with India (2004), United States of America (2008) and South Korea (2009). Prior acceding to the UNCAC, Bulgaria has signed bilateral extradition treaties with the following countries: Spain (1994), Azerbaijan (1996), China (1997), Armenia (1997), Lebanon (2001) and Uzbekistan (2004). In the case of South Korea and India, the lack of multilateral agreements led to the necessity to conclude bilateral agreements with those two countries in the field of extradition. At the time of signing the agreements, South Korea and India were not parties to the UNCAC. With regard to extradition relations with the USA, Bulgaria had signed a bilateral treaty in 1924, which was amended in 1934. Due to the intensive flow of the extradition requests between the two countries and the fact that the treaty was more than 70 years old, it has been decided to sign a new extradition treaty.

#### (b) Observations on the implementation of the article

While acknowledging that the domestic extradition system does not require as a prerequisite the existence of a treaty, the reviewing experts encouraged the Bulgarian authorities to continue exploring opportunities to actively engage in bilateral and multilateral extradition arrangements with foreign countries (particularly non-European countries), with the aim to enhance the effectiveness of extradition;

## Article 45 Transfer of sentenced persons

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Bulgaria confirmed implementation of this provision stating that the legal framework regarding transfer of sentenced persons includes the following:

- Multilateral agreements: the Council of Europe Convention on the Transfer of Sentenced Persons and the additional Protocol thereto, the UNTOC, UNCAC and other international treaties to which Bulgaria is a party;
- EU secondary legislation: Framework Decision 2008/909/JHA of the Council of 27 November 2008 on the application of the principle of mutual recognition to judgments

in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union;

- Bilateral agreements: For the past 20 years Bulgaria has signed bilateral agreements on transfer of sentenced persons with Turkey (1992) and the Republic of Lebanon (2001). The texts of both cited treaties do not contain a list of crimes for which transfer of sentenced persons is to be granted. Therefore, they are applicable to all crimes, under the double criminality condition (contained in both treaties);
- National legislation: Penal Procedure Code, Chapter 36, Section I;
- In the absence of international agreements, the transfer of sentenced persons could be carried out on the condition of reciprocity.

All the respective provisions concerning transfer of sentenced persons have been assessed during the last amendment of the Penal Procedure Code (SG No. 15/22.02.2010, SG No. 32/27.04.2010, effective 28.05.2010). The amendments were drafted by a Special Working Group after an in dept analysis of the existing international agreements in the field of international cooperation in criminal matters to which Bulgaria is a party. No need of revision has been identified, so that the existing provisions of PPC (art. 453-462) remained unchanged.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation is in compliance with the requirements of the article under review.

### **Article 46 Mutual legal assistance**

#### **Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Mutual legal assistance in criminal matters shall be rendered in accordance to the provisions of Chapter thirty-six, Section III of the Penal Procedure Code. Article 471, paragraph 2, contains a non-exhaustive list of the types of mutual legal assistance which can be provided in the course of the whole criminal proceedings - pre trial and trial phase. The scope of the mutual legal assistance is not limited by the law and encompasses all other forms of legal assistance provided for in an international agreement to which the Republic of Bulgaria is a party (i.e. UNCAC) or have been imposed on the basis of reciprocity (Article 471, paragraph 2, item 5).

Bulgaria renders mutual legal assistance in the largest possible volume and in compliance with its domestic legislation and the international treaties and agreements to which it is a party. Pursuant to art. 46, paragraph 7, of the UNCAC, the provisions of paragraphs 9–29 of this article apply to requests made by virtue of this article when the relevant countries are parties to the UNCAC and are not bound by an agreement on mutual legal assistance. When these States parties are bound by such an agreement, the corresponding provisions of this agreement shall apply except in the cases the countries agree upon the application of paragraphs 9 to 29 of article 46. As Bulgaria has ratified many conventions, including the

European Convention on Mutual Assistance in Criminal Matters (ECMACM), the EU Convention of 29.05.2000 on Mutual Assistance in Criminal Matters, UNTOC, the European Convention on transfer of proceedings in criminal cases and others, as well as the additional protocols to them, and further has concluded many bilateral agreements on mutual legal assistance, the mutual legal assistance practice is regulated by the abovementioned instruments and not only pursuant to article 46 of the UNCAC.

In cases where a request for legal assistance is received by a prosecutor's office that is not competent, the latter should send it immediately to "International Legal Cooperation" department, the Supreme Prosecutor's Office of Cassation. The Prosecutor's Office is competent to execute requests for legal assistance only for the pre-trial criminal proceeding. When a request for legal assistance is received in the Prosecutor's Office for rendering cooperation on a criminal proceeding which is in the court phase, it is immediately sent to the Ministry of Justice. The Ministry of Justice shall immediately forward it to the relevant competent court authority.

The prosecutor from "International Legal Cooperation" department of the Supreme Prosecutor's Office of Cassation acquaints himself with the materials sent to him that should be in Bulgarian or in any of the official languages of the Council of Europe – English and French. In case the request and the accompanying materials are in one of the official languages of the Council of Europe, they are given for translation into Bulgarian language by the "Translations" office in the administration of the General Prosecutor. If the request and the materials to it are in a language different from the specified ones, they are returned to the requesting country to make the translation. In case the request is with a demand for urgent execution, the materials for translation are immediately sent directly by fax as well or by e-mail to the translation agency. Having acquainted himself with the received materials, the competent prosecutor from the Supreme Prosecutor's Office of Cassation assesses the admissibility and lawfulness of the request.

With regard to the execution of the request, the prosecutor from "International Legal Cooperation" department of the Supreme Prosecutor's Office of Cassation rules out a decree with which he allows the execution of the request for legal assistance or he makes a motivated wholesome or partial refusal for execution. The refusal for execution is sent to the relevant competent authority in the requesting country. The prosecutor from the Supreme Prosecutor's Office of Cassation assigns with a decree to the National Investigation Office-Sofia the execution of the letters rogatory from abroad when the requests for legal assistance are valid and comply with the requirements of ECMACM and/or the applicable bilateral treaty. The decree for assigning the execution of the letter of request contains the admitted actions of the investigation, evidence to be collected, the methods of evidence collection and the term for execution of the request. The prosecutor may also personally execute the request or perform investigation activities in its execution. In the process of execution of the request, the investigator can also require from another investigating authority to perform separate actions in the investigation and/or ask cooperation from the bodies of the Ministry of Interior in the conducting of separate actions of the investigation (article 218 of the Penal Procedure Code).

In cases where the presence of foreign public officials (magistrates, prosecutors, investigators, advocates etc.) is asked in the request (article 4 of the ECMACM), such a presence is allowed by the decree through which the request is assigned to the National Investigating Office. The investigator executing the request, or a prosecutor, makes the necessary arrangements with the foreign legal authorities, depending on what is written in the request. Information needed for

the execution of the request includes, among others, the exact names of the persons, the dates of arrival and departure and the activities in which they are about to participate. Copies of the drawn records of investigation activities can be handed over to foreign public officials in return of a signature, the originals are sent to the relevant foreign competent authorities pursuant to the rules of the Convention. If nothing else is indicated, the execution of the letter of request is done by the rules of the Bulgarian Penal Procedure Code.

The confidentiality, inherent to the international legal assistance, is observed in the course of execution of the letter of request. The investigator who carries out the letter of request and the other public officials who cooperate with him cannot announce to other public officials and citizens information regarding its content or execution without the permission of the prosecutor. When an unauthorized access to such information is ascertained, the prosecutor should be informed.

The materials from the executed request are sent by the investigator to the prosecutor with the relevant statement in which the performed actions in the investigation, the collected evidence, as well as the reasons due to which the separate investigating activities have not been performed and/or some of the evidence have not been collected are described. The prosecutor acquaints himself with the collected materials and he can:

- return the request to the investigator if he decides that not all possible investigating activities have been performed and not all possible evidences have been collected; or
- send the materials under the due order without translating them, to the competent authority in the requesting country.

When the materials are large and/or they contain objects forbidden by the law, the Supreme Prosecutor's Office of Cassation arranges their handing over to a representative of the embassy authorized by the requesting country or directly to the competent authority. For this purpose, a representative of the latter should be invited to the Republic of Bulgaria where he/she is to receive on-the-spot the materials from the execution of the request. In these cases, a bilateral statement is drawn between a prosecutor from "International Legal Cooperation" department, the Supreme Prosecutor's Office of Cassation and the authority accepting the materials.

When the material collected in the course of execution of the request contains classified information, its transfer is done in observance of the following requirements:

- The presence of an international agreement on security protection in the exchange of classified information is ascertained;
- A request is sent from the "International Legal Cooperation" department of the Supreme Prosecutor's Office of Cassation to the Chairman of the State Commission on Information Security (SCIS) with a view to issuing a permission for providing classified information to the foreign country. Consent for providing the information should be explicitly declared in the request;
- After the receipt of a permission from SCIS, the prosecutor places a request to the particular person from the requesting country who sends the request asking for the submission of a certificate showing that he has the right of access to the relevant level of classified information;
- After receiving the certificate, the prosecutor sends the materials from the executed request to the particular person who has the right of access to the relevant level of classified information in a way envisaged in the particular bilateral contract;

- The “International Legal Cooperation” department of the Supreme Prosecutor’s Office of Cassation informs the Chairman of SCIS about the transferred materials;
- The whole correspondence with SCIS is open, unless it contains personal information or shows facts related to the investigated deed;
- In case SCIS does not give permission for sending the materials, containing classified information, they should be deposited for safekeeping in the relevant secret service in the prosecutor’s office or be returned to the organizational unit that created the classified information;
- When there are legal obstacles for the transfer of classified information, the competent authorities of the requesting country are informed about their existence.

In relation to the execution of requests for legal assistance for effecting service of procedure documents, such service is carried out pursuant to the rules described in article 15 of ECMACM and/or pursuant to the rules contained in the applicable bilateral treaty. When such request is received, the prosecutor from “International Legal Cooperation” department of the Supreme Prosecutor’s Office of Cassation sends it to the relevant regional or district prosecutor’s office in the place of residence of the person to whom the documents or the procedure papers are requested to be served. In case the exact address of the person in the Republic of Bulgaria is not fully mentioned in the request, an inquiry is made in Population National Data Base for the last place of residence of the specified person in the Republic of Bulgaria. When a request is received, the competent territorial prosecutor summons the person and serves him/her the documents in return of a signature on a receipt. If the personal serving is impossible, it can be done by some of the ways envisaged in the domestic procedural legislation. The prosecutor can also assign the execution of the service to the bodies of the Ministry of Interior.

Article 16 of the Second Additional Protocol to ECMACM enlarges the options of States parties for serving papers through their serving by post. The competent legal authorities in each contracting country may send directly by post procedural documents and court decisions to persons who are in the territory of another contracting country. The procedural documents and the court decisions are accompanied by a message in which it is noted that the recipient may receive from the authority specified in the message some information regarding his rights and obligations related to the serving of the papers. The provisions of paragraph 3 of article 15 of the Protocol apply to the message. The provisions of articles 8, 9 and 12 of ECMACM apply respectively for serving by post. The provisions of paragraphs 1, 2 and 3 of article 15 of the Protocol apply regarding the language of the procedural documents and court decisions which are subject to serving by post.

The execution of requests for legal assistance pursuant to the rules of the Convention on Mutual Assistance in Criminal Matters between the EU Member States dated 29.05.2000, in effect for the Republic of Bulgaria as of 01.12.2007 (promulgated ST issue 23/08) is done in a way similar to the one described above by taking into account and observing the main innovations, forms of mutual assistance and principles embodied in the convention: decentralization of the legal assistance – to be executed by the territorial prosecutor’s office competent for its execution; the option the request to be executed by the Bulgarian authorities pursuant to the legislation of the requesting country; the option of providing assistance in relation to proceedings that were instituted before administrative bodies for deeds punishable according to the national legislation of the requesting or the requested member state or of both, because they are violations of legal norms and the decision may lead to the institution of a legal proceeding in a court which is competent particularly in criminal cases, etc.

The competent prosecutor's office for receiving and execution of requests for legal assistance from a territorial authority of a requesting country is determined as follows:

- If the accused person is a foreigner, Sofia City Prosecutor's Office and Sofia Regional Prosecutor's Office are competent, depending on the type of jurisdiction of the criminal offence, for the investigation of which the provision of legal assistance is required;
- When the person is a Bulgarian citizen without residence in the country or in case of several Bulgarian citizens with residence in different court regions, in the first case the prosecutor's office where the persons, witnesses or experts live is competent, and in the second case, where the residence of the majority of the accused persons is.

The request can be received by post, by diplomatic channels through the central bodies – the Supreme Prosecutor's Office of Cassation, by fax, e-mail, through the channels of Interpol, Europol, Eurojust and the European legal network, as well as from the foreign embassies located in the Republic of Bulgaria through the political attaches. In cases where the request for legal assistance is received by a non-competent prosecutor's office, the former should be immediately sent to the relevant prosecutor's office. When an argument related to the jurisdiction arises, it should be judged by "International Legal Cooperation" department of the Supreme Prosecutor's Office of Cassation. The competent prosecutor's office executing the request informs about that the relevant competent territorial authority of the requesting country by specifying the full information in the letter of advice (registered address of the prosecutor's office, telephone, fax, e-mail).

The prosecutor's office is competent to execute requests for legal assistance only for the pre-trial criminal proceeding and for administrative proceedings whose act is subject to legal control. When a request for legal assistance in criminal proceedings in a court phase is received in prosecutor's office, it should be immediately sent to the Ministry of Justice. When the request for legal assistance is received by a first-instance prosecutor's office and contains a request for allowing joint investigating teams, investigation through an employee under cover, controlled delivery, confidential deal or trans-border observation and taking hold of telecommunications, then the request is immediately sent to the "International Legal Cooperation" department of the Supreme Prosecutor's Office of Cassation which is competent for the execution of these requests.

All the respective provisions concerning mutual legal assistance in criminal matters have been assessed during the last amendment of the Penal Procedure Code (SG No. 15/22.02.2010, SG No. 32/27.04.2010, effective 28.05.2010). The amendments were drafted by a Special Working Group after an in depth analyses of the existing international agreements in the field of international cooperation in criminal matters, which Bulgaria is a party to. As a result, the provision of Article 474 of the Penal Procedure Code has been amended in order to extend the cases where interrogation through tele –or video conference of an individual who appears as a witness or expert in the criminal proceedings and is located in the Republic of Bulgaria, as well as an interrogation with the participation of an accused party, can be used. Through the amendment, the reference to international treaty to which Bulgaria is a party has been removed, hence the provision has been brought in line with the principle of reciprocity. For all the items under Article 46, the answer shall refer to the present response.

So far, there have been no mutual legal assistance requests explicitly based on the UNCAC. On the matter of compiling statistics on mutual legal assistance cases, it was reported that after 2008 cases are recorded in the Unified Information System, while a new database which



would allow the production of thematically structured statistics is currently being established by the Prosecution Office.

**(b) Observations on the implementation of the article**

The reviewing experts noted the comprehensive legal framework to regulate MLA proceedings in Bulgaria. They were also briefed that amendments to the Penal Procedure Code with regard to the provisions concerning mutual legal assistance in criminal matters were drafted by a Special Working Group after an in-depth analysis of the existing international agreements in the field of international cooperation in criminal matters to which Bulgaria is a party. In general, Bulgaria has put in place measures to give practical effect to the requirements foreseen in article 46 of the UNCAC.

At the operational level and with a view to facilitating the assessment of the effectiveness of implementation of the relevant provisions on extradition, the reviewing experts encouraged the Bulgarian authorities to further strengthen the capacity and effectiveness of the Unified Information System as the centralized mechanism for gathering, processing and circulating information and statistics on the operational aspects of MLA proceedings; and to continue efforts to establish a new integration system for the prosecutorial authorities which will enable the compilation of statistics and the generation of thematic reports based on them.

The reviewing experts also invited the Bulgarian authorities to consider the allocation of additional resources to strengthen the efficiency and capacity of international cooperation mechanisms, including MLA mechanisms.

**Article 46 Mutual legal assistance**

**Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria executes or submits requests for mutual legal assistance in relation to the penal proceedings where legal persons may be held liable. This is applicable among Member States of the European Union in accordance with Article 34 of the Treaty of the European Union on Mutual Assistance in Criminal Matters.

According to Article 471, paragraph 1, of the Bulgarian Penal Procedure Code, international legal assistance in criminal matters shall be afforded to another State under the provisions of an international treaty, to which Bulgaria is a party, or based on the principle of reciprocity. Given that UNCAC is part of the domestic legislation, Article 46, paragraph 2, can be directly applicable with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable. If the requesting or the requested state is not party to the UNCAC, then mutual legal assistance can be granted on the principle of reciprocity.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Subparagraph 3 (a)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(a) Taking evidence or statements from persons;*

**Subparagraph 3 (b)**

*(b) Effecting service of judicial documents;*

**Subparagraph 3 (c)**

*(c) Executing searches and seizures, and freezing;*

**Subparagraph 3 (d)**

*(d) Examining objects and sites;*

**Subparagraph 3 (e)**

*(e) Providing information, evidentiary items and expert evaluations;*

**Subparagraph 3 (f)**

*(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*

**Subparagraph 3 (g)**

*(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of these provisions through Article 471, paragraph 2, of the Penal Procedure Code.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provisions under review.

## **Article 46 Mutual legal assistance**

### **Subparagraph 3 (h)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(h) Facilitating the voluntary appearance of persons in the requesting State Party;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision through Article 471, paragraph 2, item 5, and Article 473, paragraph 1, of the Penal Procedure Code.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Subparagraph 3 (i)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision through Article 471, paragraph 2, item 5, of the Penal Procedure Code. See also the response under Article 46, paragraph 1, of the UNCAC.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Subparagraph 3 (j)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision through Article 471, paragraph 2, items 2 and 5, of the Penal Procedure Code. See also the response under Article 46, paragraph 1, of the UNCAC. In addition, the Commission for Establishment of Property Acquired through Criminal Activity can also cooperate with the competent authorities of other States through exchange of information for the purposes of the Law on Forfeiture of Proceeds of Crime (Article 33 of the LFPC).

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Subparagraph 3 (k)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision through Article 471, paragraph 2, item 5, of the Penal Procedure Code. See also the response under Article 46, paragraph 1, of the UNCAC.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 4**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

In principle, there is no hindrance for the Bulgarian authorities to forward to UNCAC State parties information or evidence it believes is important for combating the offences covered by the Convention, where the other State party has not made a request for assistance and may be completely unaware of the existence of the information or evidence. This is considered to be

type of mutual legal assistance in accordance with the provision of Article 471, paragraph 2, item 5, of the Penal Procedure Code. Bulgaria is a party to the Convention established by the Council in accordance with Article 34 of the Treaty of the European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union and in compliance with Article 7 of the said Treaty the competent authorities may exchange spontaneous information within the limits of the national law, with the competent authorities of the Member States, without a request to that effect.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 5**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision stating that it transmits information in accordance with its domestic law and only in cases where it shall not prevent the pending inquiries and criminal proceedings falling under its national jurisdiction. As a receiving State, Bulgaria makes best efforts to keep the confidentiality of information received whether spontaneously or through request for assistance, as well as its content, supporting documents and any actions taken pursuant to the request, with the exception that the information and evidence are needed for investigations and proceedings.

In the course of criminal proceedings, the court and the law enforcement authorities have to collect and verify both evidence which exposes the accused party or aggravates his or her responsibility, and evidence which exonerates the accused party or attenuates his or her responsibility. Of relevance is Article 107 of the Penal Procedure Code, the text of which was provided .

The pre-trial proceedings in relation to which mutual legal assistance is requested are kept in the secret records bureau to the respective prosecution office. This procedure is regulated by a decree of the Chief prosecutor, the provisions of which are in line with the Law on protection of classified information. Those records are “confidential” and can be used exceptionally by the prosecutors. Other persons, including lawyers do not have access to them. The right of defence is still not violated, since access to them will be gained to the lawyers once an accusation has been brought. See, further, the answer under article 46, paragraph 1, of the UNCAC regarding the treatment of the requests containing classified information.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 6**

*6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. Mutual legal assistance treaties, whether bilateral or multilateral, seek to improve the effectiveness of judicial assistance and to regularize and facilitate its procedures and should supplement each other. It is up to the competent authorities to decide whether to use the provisions of the UNCAC or bilateral agreements taking into account the specificities of each particular case. The provisions of Article 46 of the UNCAC shall neither affect obligations subsisting between the parties whether pursuant to other treaties, arrangements or otherwise, nor prevent the Parties from providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise. During the past several years, Bulgaria has concluded bilateral agreements for mutual legal assistance with USA (2008) and South Korea (2009).

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 7**

*7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The recently concluded bilateral agreements by Bulgaria do not preclude the application of article 46 of the UNCAC. They usually do not prevent parties from providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## Article 46 Mutual legal assistance

### Paragraph 8

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

#### (a) Summary of information relevant to reviewing the implementation of the article

Bulgaria confirmed implementation of this provision. The provision of Article 472 of the Penal Procedure Code lists the grounds for refusal for providing legal assistance and the bank secrecy is not mentioned. This is also evident from the declarations made by Bulgaria to the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocol thereto, which contain the following grounds for refusal:

- the offender shall not be held responsible by virtue of amnesty;
- the criminal responsibility is precluded by statutory limitation;
- after having committed the offence, the offender has fallen into a state of lasting mental disturbance precluding criminal responsibility; and
- there is a pending penal procedure, an enforceable sentence, an order or an enforceable decision to terminate the case, with respect to the same person for the same offence.

#### (b) Observations on the implementation of the article

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## Article 46 Mutual legal assistance

### Subparagraph 9 (a)

*9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

#### (a) Summary of information relevant to reviewing the implementation of the article

Bulgaria does not apply the double criminality prerequisite/check in regard to requests for mutual legal assistance. The Penal Procedure Code does not list such a ground for refusing to provide mutual legal assistance. It is also evident from the declaration that Bulgaria has made to article 2 of the European Convention on Mutual Assistance in Criminal Matters (1959).

#### (b) Observations on the implementation of the article

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Subparagraph 9 (b)**

*9.( b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed partial implementation of this provision stating that the national authorities do not apply the double criminality requirement with regard to requests for mutual legal assistance. However, during the country visit, it was clarified that the country had made a reservation regarding the applicability of the First Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (1978) that it accepts Chapter I of the Protocol relating to fiscal offences only in respect of acts which are offences under Bulgarian criminal law, namely on the understanding that the double criminality requirement is met. A similar declaration made in respect of Article 2 of the European Convention on Mutual Assistance in Criminal Matters (1959) was partially withdrawn to the extent that double criminality is not needed.

#### **(b) Observations on the implementation of the article**

The governmental experts took into account the assessment of the Bulgarian authorities that the provision under review is partially implemented in the domestic legal system. However, subparagraph 9(b) of Article 46 of the UNCAC enables (not obliges) a State party to require compliance with the double criminality requirement and further provides for a certain case of departing from such requirement. Bulgaria seems to apply the rule only in prescribed cases (see the reservation to the First Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters), whereas the general rule for the national authorities is to deviate from it. Thus, the national practice seems to be in conformity with the provision under review and even go beyond it in line with Article 65, paragraph 2, of the UNCAC.

## **Article 46 Mutual legal assistance**

### **Subparagraph 9 (c)**

*9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

See above under article 46, paragraph 9(b), of the UNCAC.

#### **(b) Observations on the implementation of the article**

See above under article 46, paragraph 9(b), of the UNCAC.



## **Article 46 Mutual legal assistance**

### **Subparagraph 10 (a) - Subparagraph 10 (b)**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

### **Subparagraph 11 (a)**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

### **Subparagraph 11 (b)**

*11. For the purposes of paragraph 10 of this article:*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

### **Subparagraph 11 (c)**

*11. For the purposes of paragraph 10 of this article:*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

### **Subparagraph 11 (d)**

*11. For the purposes of paragraph 10 of this article:*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of these provisions. The competent Bulgarian authorities may directly apply these provisions in accordance with Article 5, paragraph 4, of the Constitution and Article 471, paragraph 2, item 5, of the Penal Procedure Code. In addition, Article 473, paragraph 2, of the Penal Procedure Code provides for the possibility to surrender individuals remanded in custody to another country for the purpose of being interrogated as witnesses or experts. Temporary transfer of persons held in custody for purpose of

investigation may be carried out in compliance with Article 9 of the 2000 EU Convention on Mutual Assistance in Criminal Matters to which Bulgaria is a party, as well as Article 11 of the Convention on Mutual Assistance in Criminal Matters of the Council of Europe.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provisions under review.

**Article 46 Mutual legal assistance**

**Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision stating that it embodies a common rule which guarantees the right of the person under detention or subject to any other legal restriction of right and can be found in the Bulgarian Constitution, the LEEAW and various conventions ratified by the country. The competent authorities directly apply this provision in accordance with Article 5, paragraph 4, of the Constitution.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 13**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances,*

where the States Parties agree, through the International Criminal Police Organization, if possible.

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision stating that, through the Law for the Ratification of the UNCAC, published in Official Journal, No. 66/15.08.2006, the following declaration was made: *“In accordance with Article 44, para. 13 UNCAC the Republic of Bulgaria declares that requests for assistance or letters rogatory must be addressed to the Ministry of Justice.”*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision stating that, through the Law for the Ratification of the UNCAC, published in Official Journal, No. 66/15.08.2006, the following declaration was made: *“In accordance with Article 44, para. 14 UNCAC, the Republic of Bulgaria declares that it will require that requests for assistance and annexed documents be accompanied by a translation into Bulgarian or English.”*

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 15**

*15. A request for mutual legal assistance shall contain:*

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. According to the Bulgarian Penal Procedure Code, the request for MLA should contain the information listed in Article 475, paragraph 1. In case the request is based on the UNCAC, the Bulgarian authorities should draft the request in accordance with the requirements of the provision under review. The Ministry of Justice, in its capacity as the central authority, checks whether the requirements are met and in cases of incompleteness of the letter rogatory, it may advise the requesting authority to submit additional information.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 16**

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. There is no legal hindrance for the requested authorities of the requested State to ask the counterparts in the requesting State to provide additional information, where needed.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision through Article 476 of the Penal Procedure Code. See also the response under article 46, paragraph 1, of the UNCAC.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 18**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision through Articles 473-474 of the Penal Procedure Code. It was further stated that since the adherence of the Republic of Bulgaria to the UNCAC in 2006, there have been no registered requests for video conference based on the Convention.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. See also the response under article 46, paragraph 5, of the UNCAC.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 20**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

The Bulgarian competent authorities can apply the provision under review. The confidentiality should be determined according to the domestic law of the requested State unless otherwise stated in international agreements. According to article 211, paragraph 2, of the Law on Judiciary, all the magistrates are obliged to keep in secrecy the information they gained knowledge when exercising their duties. For breaches against the secrecy they could be held disciplinary and criminally liable. The confidentiality of the information is kept on the ground of a Decree, issued by the Chief prosecutor. See also the response under article 46, paragraph 1, of the UNCAC.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Subparagraph 21 (a)**

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

### **Subparagraph 21 (b)**

*21. Mutual legal assistance may be refused:*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

### **Subparagraph 21 (c)**

*21. Mutual legal assistance may be refused:*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

## **Subparagraph 21 (d)**

*21. Mutual legal assistance may be refused:*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria applies directly the grounds for refusal of a mutual legal assistance request contained in the provision under review. According to Article 472 of the Penal Procedure Code, “International legal assistance may be refused if the implementation of the request could threaten the sovereignty, the national security, the public order and other interests, protected by law”.

### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provisions under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 22**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The only grounds for refusal are set forth in Article 472 of the Penal Procedure Code and do not contain the possibility to refuse execution of MLA requests when the offence is also considered to involve financial matters. As mentioned above, the provisions of the UNCAC have direct application due to the basic principle under Article 5, paragraph 4, of the Bulgarian Constitution.

### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 23**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. When refusing to implement the request under the procedure of the UNCAC, the Bulgarian authorities are obliged to inform the

requesting state on the grounds for refusal. Usually Bulgarian authorities request and provide MLA on the basis of the European Convention on Mutual Assistance in Criminal Matters (1959), which stipulates in Article 19 that any refusal of mutual assistance shall be reasoned.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. As mentioned above, the UNCAC provisions are directly applicable due to the basic principle under Art.5 para 4 of the Bulgarian Constitution. However, no practice regarding MLA requests under the UNCAC was reported so far. This, however does not mean that requests where the UNCAC was applicable have not been made, rather that such requests have not been registered in a way that makes their identification possible. After the introduction of the Unified Information System in 2008, all requests are fully registered and can be identified. For the period before 2008 when the UIS did not exist, the information is hard to be traced, as in the records the subject of investigation had not been described.

As far as the time needed for the execution of MLA requests is concerned, the national practice varies, because every case is different and the execution of MLA requests may require more time, depending on its complexity. However, normally it does not take longer than 4 to 6 months to execute MLA requests. There are even cases, where such requests are executed within one month. For comparative purposes, it should be noted that the average time between receiving requests for mutual legal assistance and responding to them under the recent practice of applying the European Convention on Mutual Assistance in Criminal Matters is about 30-45 days. The identification of the time needed may also depend on the type of assistance requested. For example, the maximal term for service of writs and record of judicial verdicts under this Convention is 50 days (Article 7).

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.



## Article 46 Mutual legal assistance

### Paragraph 25

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

#### (a) Summary of information relevant to reviewing the implementation of the article

The competent Bulgarian authorities directly apply this provision. Similarly, they apply the provision of article 6, paragraph 1, of the Council of Europe Convention on Mutual Assistance in Criminal Matters, under which the requested party may postpone the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings.

#### (b) Observations on the implementation of the article

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## Article 46 Mutual legal assistance

### Paragraph 26

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

#### (a) Summary of information relevant to reviewing the implementation of the article

The Bulgarian authorities directly apply this provision. Ministries of Justice may also cooperate with each other in their capacity as central authorities with regard to the submission of the request to the competent judicial authorities. This is a common practice while applying the provision of article 21, paragraph 1, of the European Convention on Mutual Assistance in Criminal Matters.

#### (b) Observations on the implementation of the article

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## Article 46 Mutual legal assistance

### Paragraph 27

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of*

*the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision through Article 473 of the Penal Procedure Code.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. With regard to the ordinary costs of executing a request, the Bulgarian legislation (Article 477 of the Penal Procedure Code) refers to the international treaties to which the Republic of Bulgaria is a party. The costs can also be distributed between both parties on the principle of reciprocity.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation and practice were in compliance with the requirements of the provision under review.

**Article 46 Mutual legal assistance**

**Subparagraph 29 (a)**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

## **Subparagraph 29 (b)**

*29. The requested State Party:*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of these provisions. Public information can be provided in accordance with the provisions of Law on Access to Public Information (Promulgated, SG No. 55/7.07.2000, last amend, SG No. 77/1.10.2010). The text of relevant provisions of this Law has been provided.

### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provisions under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision stating that it may consider the possibility of concluding bilateral or multilateral agreements and arrangements that would serve the purposes of Article 46 of the UNCAC. As it is explicitly stated in the provision of Article 471, paragraph 2, item 5, of the Penal Procedure Code, the Bulgarian authorities can afford any other forms of legal assistance prescribed in an international agreement to which the Republic of Bulgaria is a party or have been imposed on the basis of reciprocity. Bulgaria has concluded bilateral agreements on mutual assistance in criminal matters with USA (2008) and South Korea (2009).

### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

## **Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The transfer of the proceedings on criminal cases from and to the Republic of Bulgaria is provided for in articles 478-479 of the Penal Procedure Code and can be carried out in accordance with the provisions of the European Convention on Transfer of Proceedings on Criminal Cases of the Council of Europe (in effect for the Republic of Bulgaria as of 01.07.2004), the UNTOC (art. 21), European Convention on Mutual Assistance in Criminal Matters (article 21) and the UNCAC. In the absence of international arrangements, transfer of criminal proceedings can be carried out on the basis of reciprocity.

The respective provisions concerning transfer of criminal proceedings have been assessed during the last amendment of the Penal Procedure Code (SG No. 15/22.02.2010, SG No. 32/27.04.2010, effective 28.05.2010). The amendments were drafted by a Special Working Group after an in-depth analysis of the existing international agreements in the field of international cooperation in criminal matters, to which Bulgaria is a party. As a result the provision of Article 478 of the Penal Procedure Code has been amended in order to solve a number of practical problems, encountered throughout the years. This refers primarily to the assessment of central authority under Article 478, paragraph 2 whether to take over criminal proceedings or not. The previous wording of Article 478 used to indicate that the Ministry of Justice should make an assessment on the merits, which is solely the responsibility of the judiciary and is unacceptable to be carried out by executive authority. Another major problem in the trial phase was how to determine the competent court to hear the case in respect of which the transfer request was made. In many cases where an application for transfer of proceedings referred to two or more defendants that are Bulgarian citizens or persons residing in Bulgaria, with addresses falling into various court districts, a decision could not be made as to which court had the jurisdiction to initiate proceedings. The amended provision determines which Bulgarian court is competent to consider and adjudicate a criminal case instituted in another country and transferred to Bulgaria.

There are no registered cases of transfer of criminal proceedings on the basis of the UNCAC. This information is based on research in the records of International Legal Cooperation Department. However, the accuracy of this information is not guaranteed, since the Unified Information System was introduced in the period 2008 – 2010 and not all cases were registered in it.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the article under review.

### **Article 48 Law enforcement cooperation**

#### **Subparagraph 1 (a)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The UNCAC provides the legal basis for establishment of channels for cooperation and communications between the relevant law enforcement competent authorities, agencies and services of the States parties. Besides that, the Bulgarian law enforcement authorities within the Ministry of Interior, in accordance with the national legislation, cooperate and communicate closely with the relevant structures thereof within the frames of bilateral and multilateral agreements, other United Nations Conventions related to cooperation on criminal matters, as well as with other international police and law enforcement agencies.

The interagency instructions fostering the law enforcement cooperation is subject to constant observation. The aim of that observation is to timely detect the gaps in the existing regulation and to further develop the cooperation in order to achieve best results in the fight against offences covered by the Convention.

The European judicial network (EJN), Eurojust, Europol and Interpol are among the existing channels of communication used for law enforcement purposes. Thus, direct channels of communication were created (by telephone, e-mail, fax, etc.) between the prosecutors and prosecutor's offices of Bulgaria and other countries aiming at facilitating the secure and fast exchange of information on all aspects related to any type of criminal offences. It should be taken into account that the channels of EJN, Eurojust and Europol are applicable only amongst the Member States of the EU, whereby decentralized obtaining and exchange of information between the competent bodies is carried out. If obtaining of information from other countries is needed, then the channels of communication are centralized involving the International legal assistance department of the Supreme Prosecutors office of the Republic of Bulgaria.

The Prosecutor's Office of the Republic of Bulgaria has signed Agreements with counterparts in other countries with a view to enhancing direct relations of operational nature. The Prosecution office has further tried to facilitate the exchange of information at the international level through the following activities:

- Visits of experts, prosecutors and judges from the EU countries and USA to provide assistance to the Prosecutor's Office on such issues as misuse of EU funds and organized crime activities;
- Training and establishment of direct contacts with counterparts in foreign countries, as well as inviting experts from Germany, Austria, Spain, Holland, Switzerland, USA and other countries to participate in international projects of the Prosecutor's Office. .

Unit VIII of the Supreme Prosecution Office of Cassation on "Fighting Crimes against the Financial System of the European Union" performs priority exchange of information with the European Anti-Fraud Office (OLAF).

The information exchange takes place:

- Through the Ministry of Interior, Anti-Fraud Coordination Structure (AFCOS);
- By holding meetings between OLAF representatives, prosecutors from Unit VIII of the Supreme Prosecutor's Office of Cassation and prosecutors from the specialized unit of the Sofia City Prosecutor's Office mainly in Bulgaria, but where appropriate, in EU Member States too;
- By carrying correspondence between OLAF representatives and prosecutors from Unit VIII of the Supreme Prosecutor's Office of Cassation and prosecutors from the specialized unit of the Sofia City Prosecutor's Office.

Assistance is received by OLAF regarding certain investigations in response to relevant requests submitted by the Bulgarian authorities.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation and practice were in compliance with the requirements of the provision under review.

The reviewing experts also invited the Bulgarian authorities to consider the allocation of additional resources to strengthen the efficiency and capacity of international cooperation mechanisms, including in the field of law enforcement.

### **Article 48 Law enforcement cooperation**

#### **Subparagraph 1 (b) (i)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The police cooperation shall be performed in compliance with the existing national legislation and bilateral agreements to which Republic of Bulgaria is a party. In general, police cooperation consists of the following actions:

- Exchange of information on circumstances, whose knowledge may contribute to prevention of threats with regard to public order and security, and also for prevention and detection of crimes;
- Exchange of experience regarding the implementation of legal regulations, crime prevention, and also applied forensic methods, means and techniques;

- Exchange of experience in certain areas of countering crime and organizing expert meetings;
- Undertaking concerted actions of the competent authorities of the Contracting Parties on their territory, aimed at preventing threats with regard to public order and security, as well as prevention and detection of crimes, including use of controlled deliveries;
- Tracing and searching of persons and objects, identifying persons and bodies of unknown identity.

The provision of assistance to other state bodies and international cooperation are among the main tasks of the Ministry of Interior. These tasks are regulated in the general provisions of the Law on the Ministry of Interior (articles 6 and 7). Interagency cooperation is carried out through the endorsement of joint operational plans, information exchange, as well as by setting up joint investigation teams and providing access to the Unified Information System, supported within the Prosecution Office.

The Law on the Ministry of Interior does not explicitly list the types of police cooperation that may be granted. The legal basis for setting up joint investigation teams, conducting undercover investigations and using special investigative techniques for the aim of international cooperation is contained in the Penal Procedure Code and the Law on Special Intelligence Means, as well as other legal acts, such as joint instructions and agreements through which a significantly high level of cooperation and interaction between the competent authorities in the Republic of Bulgaria is achieved (see below).

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation and practice were in compliance with the requirements of the provision under review.

### **Article 48 Law enforcement cooperation**

#### **Subparagraph 1 (b) (ii)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision through Article 469 of the Penal Procedure Code, as well as Articles 15 and 33 of the Law on Forfeiture of Proceeds of Crime.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

### **Article 48 Law enforcement cooperation**

#### **Subparagraph 1 (b) (iii)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision (see also the response under Article 46, paragraph 1, of the UNCAC). Moreover, information-sharing on the movement of property, equipment or other instrumentalities used or intended for use in the commission of criminal offences is considered to be one of the forms of MLA in accordance with Article 471, paragraph 2, items 4 and 5, of the Penal Procedure Code. In addition, the text of Article 53 of the Bulgarian Criminal Code and Article 469 of the Penal Procedure Code has been provided.

Through the last amendments of the Penal Procedure Code, it became possible for Bulgarian courts to recognize and enforce acts of foreign national courts, ruling the seizure or forfeiture of the means of crime and of proceeds acquired through crime, or of their equivalent.

Bulgaria is a party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) and the Supreme Prosecution Office of Cassation actively cooperates with other States parties on the basis of this Convention.

## **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

### **Article 48 Law enforcement cooperation**

#### **Subparagraph 1 (c)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*



*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

#### **Subparagraph 1 (d)**

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of these provisions (see the response under article 48, paragraph 1(b)(i), of the UNCAC).

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation and practice were in compliance with the requirements of the provisions under review.

### **Article 48 Law enforcement cooperation**

#### **Subparagraph 1 (e)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision (see the response under article 48, paragraph 1(b)(i), of the UNCAC). Moreover, the bilateral agreements in the field of police cooperation signed by Bulgaria usually contain provisions reflecting the need of exchange of experience in certain areas of countering crime and organizing expert meetings. They encourage the exchange of personnel in order to enhance the capacity of the law enforcing authorities.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation and practice were in compliance with the requirements of the provision under review.

### **Article 48 Law enforcement cooperation**

#### **Subparagraph 1 (f)**

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision (see the response under article 48, paragraph 1(b)(i), of the UNCAC).

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation and practice were in compliance with the requirements of the provision under review.

**Article 48 Law enforcement cooperation**

**Paragraph 2**

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision (see the response under article 48, paragraph 1(b)(i), of the UNCAC). During the period 2003-2010, Bulgaria has signed bilateral agreements in the field of police cooperation with Bosnia and Herzegovina, Romania (focusing specifically on corruption prevention and counteractions), Russian Federation, Poland and Austria. As mentioned already, the UNCAC is a legal basis for cooperation and its provision shall apply between States parties in the absence of respective bilateral agreements.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 48 Law enforcement cooperation**

**Paragraph 3**

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. The investigation and prosecution of a crime in Bulgaria are conducted according to the general principles of the Penal Procedure Code. In addition, with regard to the techniques for collecting evidence, there are special provisions on the investigation of cybercrime, as referred to Articles 159, 160, 162, paragraph 6, 163 and 165 of the Penal Procedural Code.

Within the structure of Ministry of Interior, there is a special operations and search service for combating and dismantling the criminal activity of local and transnational criminal structures. In addition, the Chief Directorate "Combating Organized Crime" (CDCOC), independently or jointly with other specialized bodies, carries out activities of informational and organizational nature such as prevention, detection and investigation of organized crime related to property, customs regime, monetary, crediting, financial, tax and social insurance systems; terrorist activities; corruption, cybercrime and etc. A 24/7 Contact Point empowered with all relevant competences in conformity with the provisions of the Council of Europe Convention on Cybercrime was established.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation and practice were in compliance with the requirements of the provision under review.

**Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision through Article 476 of the Penal Procedure Code. According to paragraph 3 of Article 476, the Supreme Prosecution Office of Cassation shall set up, together with other states, joint investigation teams, in which Bulgarian prosecutors and investigative bodies will take part. The competent authorities of the participant States shall conclude an agreement in respect of the activities, duration and composition of a joint investigation team. This means that Joint Investigation Teams can be established on a case-by-case basis after careful examination of the circumstances and the need for establishing the team.

Bulgaria is also a party to a series of multilateral agreements which build up the necessary legal framework for conducting joint investigations in more than one country, including the:

- 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union;
- Second additional protocol to the European Convention on Mutual Assistance in Criminal Matters of 1959;
- UNTOC; and

- Agreement on mutual legal assistance between the European Union and United States of America.

The UNCAC can also be used as a legal ground for concluding agreements on joint investigations.

So far, bilateral agreements to carry out joint investigations have been concluded with Germany, Belgium, Spain, France, Norway, Romania, Turkey and the United Kingdom. Similar agreements are expected to be concluded with Serbia, Montenegro and the Former Yugoslav Republic of Macedonia. An agreement on exchange of law enforcement experience and trainings has been concluded with Estonia.

Such practice as establishing joint investigation teams on the principle of reciprocity does not exist in Bulgaria. However, joint investigations can be carried out on a case-by-case basis after careful examination of the circumstances and the need for establishing of the team.

All the respective provisions concerning joint investigations have been assessed during the last amendment of the Penal Procedure Code (SG No. 15/22.02.2010, SG No. 32/27.04.2010, effective 28.05.2010). No need of amendment has been identified, so that the existing provisions of Penal Procedure Code remained unchanged.

#### **(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation and practice were in compliance with the requirements of the article under review.

### **Article 50 Special investigative techniques**

#### **Paragraph 1**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. Pursuant to the Criminal Procedure Code and the 1997 Law on Special Investigative Means, the following measures may be employed in investigating corruption cases: the electronic recording of conversations (“bugging”) in private or public premises, wire-tapping of telephones and interception of other communications (i.e. mail, fax, e-mail), video-surveillance, observation, controlled delivery, anonymous informants and searches. The procedures for applying for authorization to use special investigative techniques are clarified by amendments to the Law on Special Investigative Techniques of 2003. Thus, the court approves their use in a particular case upon the request of the police or the prosecutor’s office. After obtaining the court’s approval, permission must also be obtained from the Minister of Interior.

Thirteen years after its adoption, the Law on special intelligence means has undergone several amendments too. These amendments are products of internal assessment which has been carried out by the competent Bulgarian institutions in order to comply with the existing international standards and instruments. The internal assessment is carried out on an ad-hoc basis, where practical difficulties or legislative gaps are identified. All the legislative amendments have been carried out after broad consultations with practitioners, academics and governmental experts, in order to reflect their experience and to achieve maximum effectiveness.

The procedure contained in the Penal Procedure Code and the Law on Special Intelligence Means is in compliance with the 2000 EU Convention on Mutual Assistance in Criminal Matters. It is also applicable in relation to non-EU Member States, which are parties to the UNCAC or any other international treaty which provides for this type of mutual legal assistance.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 50 Special investigative techniques**

**Paragraph 2**

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision stating that it is a party to the following multilateral agreements:

- Convention implementing the Schengen Agreement of 14 June 1985;
- Convention of 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union;
- Second additional protocol to the European Convention on Mutual Assistance in Criminal Matters of 1959; and
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Moreover, in each of the recent bilateral agreements to which Bulgaria is a party, there are provisions with regard to the use of special investigative techniques.

Statistical information on controlled deliveries has been provided as follows:

2007 - 11 controlled deliveries in accordance with Letter Rogatory

2008 - 3 controlled deliveries in accordance with Letter Rogatory

2009 - 14 controlled deliveries in accordance with Letter Rogatory

The information for 2008-2009 is incomplete, whereas for the period 2003-2007 no data is available in the Unified Information System. During the country visit, it was reported that a recent operation in cooperation with the Romanian authorities, which also involved cross-border surveillance techniques, was carried out successfully to detect and arrest customs officers on bribery accusations.

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation and practice were in compliance with the requirements of the provision under review.

**Article 50 Special investigative techniques**

**Paragraph 3**

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision. In the absence of an agreement for the use of special intelligence means, the Law on Special Intelligence Means allows their use on the basis of reciprocity. The text of Article 34j of the Law on Special Intelligence Means is of relevance (see also the response under Article 49 of the UNCAC).

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

**Article 50 Special investigative techniques**

**Paragraph 4**

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

**(a) Summary of information relevant to reviewing the implementation of the article**

Bulgaria confirmed implementation of this provision through Article 10a of the Law on Special Intelligence Means, which also applies in relation to non-EU Member States which are parties to UNCAC or any other international treaty that provides for this type of mutual legal assistance. In relation to EU Member States, Bulgaria is bound by the provisions of the 2000 Convention on Mutual Assistance in Criminal Matters (see also the response under Article 50, paragraph 1, of the UNCAC).

**(b) Observations on the implementation of the article**

The reviewing experts noted that the Bulgarian legislation was in compliance with the requirements of the provision under review.

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## **ANNEX I**

### **RELEVANT LEGAL FRAMEWORK – COUNTRY REVIEW REPORT OF BULGARIA**

<b>CONSTITUTION OF THE REPUBLIC OF BULGARIA</b>
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(Ren. SG, 56/13 July 1991, last amend. and suppl. SG 12/6.02.2007)
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#### **Article 5**

**(4)**

“International treaties, ratified in compliance with the constitutional procedure, published and entered into force for the Republic of Bulgaria are part of the domestic law of the country and have supremacy over those provisions of the domestic law which contradict them”

#### **Article 25**

(...)

(4) (amend. SG 18/05) A citizen of the Republic of Bulgaria cannot be delivered to other state or international court for the purposes of punitive prosecution unless this is provided in international agreement, ratified, promulgated and entered into force for the Republic of Bulgaria.

#### **Article 103**

(1) The President and the Vice President shall not be held liable for any actions performed in the discharge of the functions thereof, with the exception of high treason and violation of the Constitution.

(2) Impeachment shall require a motion by at least one-fourth of the members of the national assembly and shall be pursued by the National Assembly if more than two-thirds of the Members of the National Assembly have voted in favour.

(3) The Constitutional Court shall consider an impeachment of the President or Vice President within one month after the impeachment has been submitted. Should it be established that the President or Vice President have committed high treason or have violated the Constitution, the mandate of the President or Vice President shall terminate.

(4) The President and the Vice President may not be detained, and criminal prosecution may not be initiated against them.

<b>CRIMINAL CODE</b>
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#### **Section I – Crime**

##### **Article 3**

(1) The Criminal Code shall apply for every crime committed on the territory of the Republic of Bulgaria.

##### **Article 4**

(1) The Criminal Code shall apply for the Bulgarian citizens and for the crimes committed by them abroad.

##### **Article 5**



The Criminal Code shall also apply for foreigners who have committed crime of general nature abroad, affecting the interests of the Republic of Bulgaria or of a Bulgarian citizen.

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The Criminal Code is applicable to foreigners, who have committed crimes of general nature abroad, whereby the interests of the Republic of Bulgaria or those of Bulgarian citizens have been affected.

#### **Article 6**

(1) The Criminal Code shall also apply regarding foreigners who have committed crime abroad against the peace and mankind, thus affecting the interests of another country or foreign citizens.

(2) The Penal Code shall also apply for other crimes committed by foreigners abroad wherever stipulated by an international agreement to which the Republic of Bulgaria is a party.

#### **Article 11**

(1) The social dangerous act shall be considered delinquent when it is deliberate 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 he has acted incautiously with regard to them.

### **Section II - Preparation and Attempt**

#### **Article 17**

(1) Preparation shall be the getting ready of the means, the finding of accomplices and the creating of conditions in general for the perpetration of intended crime, before the commencement of its perpetration.

(2) Preparation shall be punishable only in the cases provided for by the law.

(3) The acting person shall not be punished where he has given up the perpetration of the crime of his own accord.

#### **Article 18**

(1) An attempt shall be the commenced perpetration of intentional crime, whereas the act has not been completed or, although completed, the consequences dangerous to society provided by the law and desired by the perpetrator have not occurred.

(2) For an attempt, the perpetrator shall be punished by the punishment provided for completed crime, with due consideration taken of the degree of implementation of the intent and the reasons because of which the crime remained unaccomplished.

(3) For an attempt, the perpetrator shall not be punished where of his own accord:

a) he has given up the completion of the crime, or

b) he has averted the occurrence of criminal consequences.

### **Article 19**

In the cases of Article 17, paragraph (3), and Article 18, paragraph (3), if the act of preparation or attempt contained elements of another crime, the perpetrator shall be held liable for that crime.

## **Section III - Complicity**

### **Article 20**

(1) Accomplices in the perpetration of intentional crime shall be: perpetrators, abettors and accessories.

(2) A perpetrator shall be a person who took part in the perpetration itself of the crime.

(3) An abettor shall be a person who intentionally incited another to commit a crime.

(4) An accessory shall be a person who intentionally facilitated the perpetration of a crime through advice, explanations, promises to render assistance after the act, removal of obstacles, supply of means or in any other way.

### **Article 21**

(1) All accomplices shall be punished by the punishment provided for the perpetrated crime, with due consideration of the nature and degree of their participation.

(2) Abettors and accessories shall be held responsible only for what they have intentionally abetted or by what they have assisted the perpetrator.

(3) Where because of certain personal characteristics or attitude of the perpetrator the law treats the perpetrated act as a crime, liable for this crime shall be both the abettor and the accessory with respect of whom such circumstances do not exist.

(4) The special circumstances, due to which the law excludes, reduces or increases the punishment for some of the accomplices, shall not be taken into account for the remaining accomplices with respect to whom such circumstances do not exist.

### **Article 22**

(1) The abettor and the accessory shall not be punished, if of their own accord they have given up further participation and hindered the perpetration of the act or averted the occurrence of criminal consequences.

(2) In such cases the provisions of Article 19 shall apply, respectively.

## **Section IV - Multiple Crimes**

### **Article 23**

(1) If one act has been an instrument of several crimes or if one person has committed several individual crimes before a verdict has been enacted for any of them the court, upon awarding punishment for each crime individually shall impose the most serious of them.

(2) (Amend., SG 92/02, amend. SG 103/04) The imposed punishments of public

reprobation and deprivation of rights according to art. 37, para 1, item 6, and 9 shall be added to the awarded most serious punishment. If deprivation of equal rights is ruled the one with the longest term shall be imposed.

(3) When the punishments are different in kind and some of them is a fine or confiscation the court can add it entirely or partially to the most serious punishment.

#### **Article 24**

When the imposed punishments are of the same kind the court can increase the awarded total most serious punishment by no more than one second, but the thus increased punishment cannot exceed the sum of the individual punishments, or the maximal size stipulated for the respective kind of punishment.

#### **Article 25**

(1) The provisions of art. 23 and 24 shall also apply when the person is convicted by individual verdicts.

(2) In these cases, if the punishment under some of the verdicts has been incurred entirely or partially, it shall be deducted if it is of the kind of the total punishment awarded.

(3) (amend. SG 103/04) The incurred punishment probation shall be deducted entirely from the imprisonment and vice versa, two days of probation being considered as one day imprisonment.

(4) (New, SG 28/82) When, for one or more of the verdicts, the person has been acquitted from serving the sentence by the order of art. 64, para 1 or art. 66 the issue of serving the total sentence shall be settled at the time of its awarding

#### **Article 36**

(1) The punishment shall be imposed for the purpose of: 1) correcting and re-educating the convict to comply to the laws and rules of socialist community, 2) exerting warning impact on him and depriving him of the possibility to commit other crimes, and 3) producing an educative and deterring effect on the other members of society.

(2) The punishment may not have as purpose the causing of physical suffering or crushing of human dignity.

(...)

#### **Article 37**

(1) Punishments shall be:

1) (new, SG No. 50/1995) life imprisonment;

1a) (renumbered from Item 1 - SG No. 50/1995) deprivation of liberty;

2) (new, SG No. 92/2002 - effective 1.01.2005, with respect to the punishment of probation - amended SG No. 26/2004, effective 1.01.2004) probation;

2a) (renumbered from Item 2 - SG No. 92/2002, repealed, SG No. 103/2004);

3) confiscation of existing property;

4) a fine;

5) (repealed, SG No. 92/2002);

6) deprivation of the right to hold a certain state or public office;

7) deprivation of the right to exercise a certain vocation or activity;

8) (repealed, SG No. 92/2002);

9) deprivation of the right to receive orders, honorary titles and distinctions;

10) deprivation of military rank;

11) public censure.

(2) ...

#### **Article 44**

(1) Confiscation in a compulsory and ex gratia requisition of a property or a part of it, of definite property of the convict or parts of such properties in favour of the state.

#### **Article 49**

(1) (Amended, SG No. 92/2002 - effective 1.01.2005, with respect to the punishment of probation, amended SG No. 26/2004, effective 1.01.2004) The punishment by deprivation of rights under Article 37, paragraph 1, sub-paragraphs 6 and 7, where imposed separately or with another punishment, not connected to deprivation of liberty, shall be pronounced for a specified term of up to three years within the limits established in the special part of this Code.

(2) (Supplemented, SG No. 54/1978) Where the deprivation of such rights is imposed together with deprivation of liberty, its term may exceed the term of the latter by at most three years, unless otherwise provided in the Special Part of this Code.

(3) The term shall commence as from the entry of the sentence into force, but the convict may not avail himself of the rights of which he has been deprived prior to completion of the punishment by deprivation of liberty.

(4) The term of deprivation of rights shall be reduced by the period of time for reduction of the term of deprivation of liberty due to remission, work or deduction of period of preliminary detention.

(5) (Amended, SG No. 153/1998) A person sentenced to life without substitution shall be deprived of the rights set forth in the sentence for good.

#### **Article 51**

After the expiry of the term, the convict shall be able again to exercise the rights of which he was deprived by the sentence. This shall not apply to the rights under Article 37 (1), sub-paragraphs 9 and 10, which may be acquired anew only by the procedure established therefor.

#### **Article 53**

(1) Regardless of the criminal responsibility seized in favour of the state shall be:

- a) the chattel belonging to the delinquent and have been used for committing deliberate crime;
- b) the chattel belonging to the delinquent and which have been subject to deliberate crime - in the cases explicitly stipulated by the special part of this Code.

(2) (New, SG 28/82) Seized in favour of the state shall also be:

- a) the chattel, object or means of the crime the possession of which is prohibited, and
- b) the acquisition through the crime, if not subject to return or recovery. When the acquisition is missing or has been expropriated its equal value shall be adjudicated

#### **Article 55**

(1) In case of exceptional or of a great number of attenuating circumstances, where even the mildest punishment provided by law proves disproportionately severe, the court:

- 1. shall fix a punishment under the lowest limit;
- 2. shall substitute:

a) (amended, SG No. 153/1998) life imprisonment for deprivation of liberty for a term from fifteen to twenty years;

b) (amended, SG No. 28/1982, SG No. 10/1993, SG No. 62/1997, amended and supplemented, SG No. 92/2002 - effective 1.01.2005, with respect to the punishment of probation, amended, SG No. 26/2004, effective 1.01.2004, SG No. 103/2004) deprivation of liberty, where the lowest limit has not been specified - for probation, and with respect to minors - for probation or public censure;

c) (amended, SG Nos. No. 28/1982, SG No. 10/1993, SG No. 62/1997, SG No. 92/2002, SG No. 103/2004) probation - for a fine BGN of one hundred (100) up to five hundred (500)

(2) In the cases of sub-paragraph 1 of the preceding paragraph where the punishment is a fine, the court may specify punishment under the lowest limit by one half at most.

(3) In such cases the court may not impose the lesser punishment provided by law along with punishment by deprivation of liberty.

(4) (Repealed, SG No. 28/1982).

## **Article 59**

(1) (Amended, SG No. 92/2002 - effective 1.01.2005 with respect to the punishment of probation, amended, SG No. 26/2004, effective 1.01.2004, SG No. 103/2004, SG No. 27/2009) The time period in which the convict was detained or under home arrest shall be deducted from the period of serving the punishment of deprivation of liberty or probation as follows:

1. one day of detention shall count as one day of deprivation of liberty or as three days of probation;

2. two days of home arrest shall count as one day of deprivation of liberty or as two days of probation.

(2) (New, SG No. 27/2009) Besides the measure detention in custody, detention in the sense of paragraph 1 shall be any other detention under the procedure of the Criminal Procedures Code, the Ministry of Interior Act or another act related to the crime for which the person was convicted or detained for execution of the punishment.

(3) (New, SG No. 28/1982, renumbered from Paragraph 2, SG No. 27/2009) The provision of the preceding paragraph shall also be applied where the convict has been detained under charges for another crime, the proceedings for which were terminated or ended by sentence of acquittal, if the provision of Article 23, paragraph (1) may be applied with respect to the acts.

(4) (New, SG No. 28/1982, amended, SG No. 103/2004, renumbered from Paragraph 3, SG No. 27/2009) In serving of punishment by deprivation of liberty under Article 37, para 1, items 6 and 7 (1), deducted shall be the time during which the convict has been deprived of the possibility to exercise such rights by administrative order.

## **Article 70**

((1) (Amend., SG 153/98, amend. SG 103/04; amend. - SG 27/09) The court can rule a early release ahead of term for the remaining part of the punishment of imprisonment regarding a convicted with exemplary conduct and honest attitude to the work, and who has proven his reformation and has served actually no less than half of the imposed punishment.

(2) (Amend., SG 92/02) The provision of para 1 shall also apply regarding persons sentenced for a crime representing a dangerous recidivism, if actually incurred has been no less than two thirds of the imposed punishment and the part of the punishment to be incurred is not longer than three years.

(3) Probationary release ahead of term shall not be admitted repeatedly unless the perpetrator has been rehabilitated for the crime for which probationary release ahead of term has been applied.

(4) (Amend., SG 92/02) The probationary release ahead of term shall also regard the term of the deprivation of rights according to art. 37, para 1, item 6 and 7.

(5) (Amend., SG 92/02) In case of a probationary release ahead of term the court can release the convicted from the imposed sentence of deprivation of rights according to art. 37, para 1, item 6 or 7.

(6) (Suppl., SG 28/82; Suppl., SG 92/02, suppl. SG 103/04; amend. - SG 27/09) Ruled, in case of a probationary release ahead of term of the convicted, shall be a probation period for the period of the part of the punishment which has not been served, but no less than six months, for which time the court can rule one of the probation measures under Art. 42a, Para 2, Items 1 - 4 taking into consideration report by the probation employee.

(7) (Suppl., SG 92/02) The released ahead of terms shall also serve separately the remaining part of the punishment if, within the probation period, he commits a new deliberate crime provided for which is imprisonment or does not fulfil the ruled probation. If, within this period, the released ahead of term commits a negligent crime, the court can rule not serving of the imposed punishment or its serving entirely or partially.

(8) (Corr., SG 29/68) In the cases of the preceding para the convicted shall incur in full the punishment from which he has been released according to para 5 of this article.

(9) The term of rehabilitation under art. 86 in the case of the probationary release ahead of term shall begin at the moment of expiration of the probation term.

## **Article 71**

(1) The court can release ahead of term the convicted to imprisonment juvenile if he has corrected himself, after having served actually no less than one third of the imposed punishment.

(2) Regarding a person convicted for a crime he has committed as a juvenile the provisions of art. 70 shall apply upon coming of age regarding the release ahead of term.

## **Article 73**

(1) (amend. - SG, 75/06, in force from 13.10.2006) Regarding the persons released ahead of term the court shall assign the organising of the supervision and the corrective care for them during the probationary term to the respective commission, and for the juveniles - to the local commission for fighting juvenile crime.

(2) Where necessary the court shall assign the supervision and the corrective care to a definite public organisation upon its consent, or to a definite person, informing about that the supervisory or local commission.

(3) The total control and the management of the corrective care and of the conduct of the released ahead of term shall be carried out by the regional court at the place of their residence.

(4) The order and the way of applying the provisions of the preceding paras shall be settled by a law.

## **Chapter IX, "Lapse of Criminal Pursuit and Imposed Penalty"**

### **Article 80**

....

"Criminal prosecution shall be excluded by prescription where it has not been instigated in the course of:

3. ten years with respect to acts punishable by imprisonment for more than three years;

4. (amended, SG No. 62/1997) five years in respect of acts punishable by imprisonment for more than one year.

**Article 93 (Amended, SG No. 28/1982, SG No. 10/1993, SG No. 50/1995, SG No.62/1997, SG No. 153/1998, SG No. 7/1999)**

The words and expressions indicated below shall be construed for the purpose of this Code to mean the following:

1. "Official" shall be construed as any person assigned to carry out against remuneration or without pay, temporarily or permanently:

a) the duties of an office in a state institution, with the exception of persons who carry out activities relevant solely to material production;

b) (amended, SG No. 10/1993; supplemented SG No. 62/1997, SG No. 43/2005, amended, SG No. 26/2010) management work and work related to safeguarding or managing property belonging to others in a state enterprise, co-operative, public organisation, another legal person or sole proprietor, as well as a notary and assistant-notary, private enforcement agent and assistant private enforcement agent.

#### **Article 143 (Amended, SG No. 50/1995)**

(1) (Previous Article 143, SG No. 62/1997) A person 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.

(2) (New, SG No. 62/1997) Where the act has been perpetrated by a person under Article 142, paragraph (2), subparagraphs 6 and 8, the punishment shall be deprivation of liberty for three to ten years.

(3) (New, SG No. 62/1997, amended and supplemented, SG No. 103/2004, supplemented, SG No. 43/2005, amended, No. 27/2009) Where in the cases under the preceding paragraph the act of coercion has been committed in respect of a judge, a prosecutor, an examining magistrate, a police body, an investigating officer, a public enforcement agent, a private enforcement agent and an assistant private enforcement agent, as well as on a Customs officer, a tax administration officer, an officer of the Forestry Executive Agency, or an officer of the Ministry of Environment and Waters performing a control activity, in the course of or in the event of carrying out his duties or functions, the punishment shall be deprivation of liberty for two to eight years.

### **Chapter five - Crime against the property - Section III. - Embezzlement**

**Art. 201.** (Supplemented, SG No. 28/1982, amended, SG No. 10/1993, supplemented, SG No. 50/1995, Judgment No. 19 of the Constitutional Court of the Republic of Bulgaria, SG No. 97/1995)

An official who misappropriates from another sums of money, objects or other valuables, deposited with him in his capacity or entrusted to him for safekeeping and management, and disposes with them to his own interest or to the personal interest of another, shall be punished for embezzlement by official, by deprivation of liberty for up to eight years, and the court may also rule confiscation of up to one half of the culprit's property and deprive him of rights under Article 37 (1), sub-paragraphs 6 and 7.

#### **Article 202**

(1) For embezzlement by official the punishment shall be deprivation of liberty for one to ten years: where for the purpose of facilitating it yet another crime has been committed, for which the law does not provide more severe punishment;

2. (amended, SG No. 28/1982) if the embezzlement has been perpetrated by two or more persons who have conspired in advance.

(2) For embezzlement by official the punishment shall be deprivation of liberty from three to fifteen years:

1. (amended, SG No. 92/2002) if it is on a large scale,
  2. (amended, SG No. 92/2002) if it constitutes dangerous recidivism or
  3. (new, SG No. 92/2002) where the funds appropriated come from funds, which are the property of the European Union or which have been granted by the European Union to the Bulgarian State.
- (3) (Supplemented, SG No. 28/1982, amended, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004, SG No. 103/2004) In the cases of the preceding paragraphs, the court shall deprive the perpetrator of the rights under Article 37, para 1, sub-paragraphs 6 and 7. The court may also rule confiscation pursuant to paragraph (1) of up to one half, and under paragraph (2) - of the whole or part of the culprit's property,

#### **Article 203**

(1) (Amended, SG No. 89/1986, No. 75/2006) For embezzlement by official on particularly large scale, constituting a particularly grave case, the punishment shall be deprivation of liberty from ten to twenty years.

(2) (Amended, SG No. 92/2002, effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004) The court shall rule confiscation of the whole or part of the property of the culprit and shall deprive him of the rights under Article 37, paragraph 1, sub-paragraphs 6 and 7.

#### **Article 204**

In minor cases of embezzlement by official the punishment shall be:

- a) (amended, SG No. 28/1982, SG No. 10/1993) under Article 201 - deprivation of liberty for up to one year or probation, or a fine from BGN one hundred to three hundred
- b) under Article 202, paragraph (1) - deprivation of liberty for up to two years or probation.

#### **Article 205**

(1) If the embezzled money, objects or valuables are returned or replaced prior to the conclusion of the judicial inquiry at the first instance court, the punishment shall be:

1. (amended, SG No. 28/1982) in the cases under Article 201 - deprivation of liberty for up to five years;
2. (amended, SG No. 28/1982) in the cases under Article 202, paragraph (1) - deprivation of liberty for one to seven years;
3. in the cases of Article 202, paragraph (2) - deprivation of liberty for three to ten years;
4. (amended, SG No. 28/1982, SG No. 89/1986) in the cases of Article 203 - deprivation of liberty from eight to twenty years;
5. (amended, SG No. 28/1982, SG No. 10/1993) in the cases of Article 204, letter "a" - probation or a fine from BGN one hundred to three hundred Bulgarian Leva;
6. in the cases of Article 204, letter "b" - deprivation of liberty for up to six months or probation.

(2) (Supplemented, SG No. 28/1928) In the cases of sub-paragraphs 2, 3 and 4 of the preceding paragraph the court shall also rule deprivation of rights under Article 37 (1), sub-paragraphs 6 and 7, and in the cases of sub-paragraph 3 may rule confiscation of up to one half of the property of the culprit, and in the cases under sub-paragraph 4 it shall rule confiscation of part or the whole of the property.

#### **Article 206**

(1) (Amended, SG No. 28/1982, SG No. 10/1993, SG No. 26/2010) A person who unlawfully appropriates a movable object of another, which is in his possession or which has been left with him for safekeeping, shall be punished for embezzlement by deprivation of liberty from one to six years.



(2) (Supplemented, SG No. 92/2002) Embezzlement shall also be considered to occur where part of the object belongs to the perpetrator, as well as where the object is the property of the perpetrator, but it has been burdened to become a pledge and perpetrator has illegally disposed thereof, failing to protect the rights of pledge creditors, or where perpetrator uses movable property of another as a pledge, thereby making it more difficult for creditors to obtain satisfaction.

(3) (New, SG No. 28/1982) If the embezzlement is on a large scale or constitutes a case of dangerous recidivism the punishment shall be deprivation of liberty for three to ten years, whereas the court shall deprive the culprit of rights under Article 37 (1), sub-paragraphs 6 and 7, and may rule confiscation of part or the whole of his property.

(4) (New, SG No. 28/1982) For embezzlement on particularly large scale, constituting a particularly grave case, the punishment shall be deprivation of liberty for five to fifteen years, whereas the court shall rule also deprivation of rights under Article 37 (1), sub-paragraphs 6 and 7, and confiscation of part or the whole of the culprit's property.

(5) (Former paragraph (3), Amended, SG Nos. 28/1982, 10/1993) In minor cases the punishment shall be deprivation of liberty for up to one year or probation, or a fine from BGN one hundred to three hundred

(6) (Renumbered from Paragraph 4, amended, SG No. 28/1982) If the embezzled property is returned or replaced prior to the conclusion of the judicial inquiry at the first instance court, the punishment shall be:

1. under paragraph (1) - deprivation of liberty for up to three years;
2. under paragraph (3) - deprivation of liberty for two to eight years;
3. under paragraph (4) - deprivation of liberty for three to twelve years;
4. (Amended, SG No. 10/1993) under paragraph (5) - probation or a fine from BGN one hundred to three hundred

(7) (New, SG No. 28/1982) In the cases of sub-paragraph 2 of the preceding paragraph, the court may rule confiscation of up to one half of the property of the culprit and to deprive him of rights under Article 37 (1), sub-paragraphs 6 and 7, and in the cases under sub-paragraph 3 it shall rule confiscation of part or the whole property of the culprit and shall deprive him of rights under Article 37 (1), sub-paragraphs 6 and 7.

## **Article 215**

(1) (Supplemented, SG. No. 28/1982, amended, SG No. 10/1993, supplemented SG No. 62/1997, amended, SG No. 26/2010) A person who for the purpose of procuring material benefit for himself or for another conceals, acquires or helps for the appropriation of movable properties of another, for which he knows or supposes that they have been obtained by somebody through crime or another act which constitutes public danger, shall be punished by deprivation of liberty from one to six years, but with a punishment not more severe than the one provided for the crime itself.

(2) (Amended, SG. No. 95/1975, SG No. 28/1982, SG No. 10/1993, SG No. 62/1997, SG No. 26/2010) The punishment shall be deprivation of liberty for three to ten years and a fine from BGN five thousand to ten thousand, if the receiving is:

1. of large amount;
2. of articles set under special regime;
3. carried out as occupation;
4. repeated or constitutes dangerous recidivism.

## **Chapter Six “Crimes against the Economy” - Section I “Common/General economic crimes”**

### **Article 225c**

(1) The individual performing a job for a legal entity or a sole trader under the Commercial Act, who requests or accepts a gift or any benefit, that appears undue, or accepts an offer or a promise for a gift or benefit in order to perform an act, or fail so to do, in breach of his/her obligations with regard to commercial activities, shall be punished by deprivation of liberty of up to five years or by a fine of up to BGN twenty thousand.

(2) A person who, in the course of business activity, offers, promises or gives a gift or any kind of advantage to a person who works for legal entity or sole proprietor in order to perform or to fail to perform an act in breach of his/her duties, shall be punished by deprivation of liberty for up to three years or fine of up to 15 000 Leva.

(3) The punishments provided in the preceding paragraphs shall be imposed also where, with the consent of the person mentioned in paragraph 1, the gift or advantage have been offered, promised or given to another person.

(4) A person who mediates for perpetrating any action under the preceding paragraphs, if the perpetrated action does not represent a graver crime, shall be punished by deprivation of liberty for up to one year or fine of up to 5 000 Leva.

(5) The object of the crime shall be forfeited in favor of the state or, where it is missing, a sum equal to its value shall be adjudged.

### **(Chapter Six “Crimes against the Economy” - Section III – Offences against the customs regime” – CRIMES AGAINST THE FINANCIAL, TAX AND INSURANCE SYSTEMS)**

#### **Art. 253. (Amend., SG 28/82; revoked, SG 10/93; New, SG 62/97)**

(1) (Amend., SG 85/98; amend., SG 26/04; suppl. - SG 75/06, in force from

13.10.2006) Who carries out a financial operation or a transaction with a property, or hides the origin, location, movement or actual rights on a property about which he knows or suspects that they have been acquired through a crime or another socially dangerous act, shall be punished for money laundering by imprisonment

of one to six years and a fine of three thousand to five thousand levs.

(2) (suppl. - SG 75/06, in force from 13.10.2006) The punishment under para 1 shall also be imposed to those who acquire, receive, keep, use, transform or contribute in any way for the transformation of a property for which he knows or suspects by the moment of its receipt that it has been acquired through a crime or another socially dangerous act.

(3) (prev. para 2 - amend., SG 26/04) The punishment shall be imprisonment of one to eight years and a fine of five to twenty thousand levs if the act under para 1 and 2 has been committed:

1. (amend., SG 26/04) by two or more persons who have conspired in advance, or by a person acting on an errand or in fulfillment of a decision of an organized criminal group;

2. two or more times;

3. by an official within the scope of his office;

4. (new, SG 26/04) by opening and maintaining an account in a financial institution under a fictitious name or under the name of a person who has not given consent for that.

(4) (New, SG 21/2000; prev. para 3 amend., SG 26/04; amend. - SG 75/06, in force from 13.10.2006) The punishment shall be imprisonment of three to twelve years and a fine of twenty thousand to two

hundred leva if the act under para 1 and 2 has been committed by means or property about which the perpetrator has known or supposed that they have been acquired through serious deliberate crime.

(5) (New, SG 85/98; prev. para 3, SG 21/00; prev. para 4 - amend., SG 26/04; amend. - SG 75/06, in force from 13.10.2006; amend. - SG 75/06, in force from 13.10.2006) If the means or the property are of particularly large size and the case is particularly serious the punishment shall be imprisonment of five to fifteen years and a fine of ten to thirty thousand leva, whereas the court shall deprive the culprit of rights according to art. 37, para 1, item 6 and 7.

(6) (New, SG 85/98; prev. para 4, SG 21/00; prev. para 5) The subject of the crime or the property into which it has been transformed shall be seized in favour of the state, and if it is missing or alienated, its equivalence shall be adjudged.

(7) (new, SG 26/04) The provisions of para 1 - 6 shall also apply when the crime through which the property has been acquired does not fall under the criminal jurisdiction of the Republic of Bulgaria.

#### **Article 253 a**

(1) The preparation of money laundering or the association for this purpose shall be punished by imprisonment of up to two years or by a fine of five thousand to ten thousand leva.

(2) The same punishment shall also be imposed on those who instigates another to money laundering.

(3) The property meant for money laundering shall be seized in favour of the state, and if it is missing or alienated, its equivalence shall be adjudged.

(4) Participant in the association under para 1 shall not be punished when, before the completion of money laundering, he terminates his participation in the association and informs the authority about it.

#### **Article 253a (New, SG No. 26/2004)**

(1) Preparations toward money laundering or any association to this goal shall be punishable by deprivation of liberty of up to two years or a fine from BGN five thousand to ten thousand.

(2) The same punishment shall also be imposed on the one who incites another to commit money laundering.

(3) Property destined for money laundering shall be forfeited to the benefit of the state and where absent or alienated, its equivalent shall be awarded.

(4) The member of an association under paragraph 1 who, before money laundering is completed, puts an end to participation therein and notifies the authorities thereof, shall not be punished.

#### **Article-253b**

(New, SG No. 85/1998, renumbered from Article 253a, amended SG No. 26/2004)

Any official who violates or fails to comply with the provisions of the Measures Against Money Laundering Act shall be punished, in cases of significant impact, with deprivation of liberty for up to three year and a fine of BGN one thousand to three thousand, unless the deed does not constitute a more serious crime.

### **Chapter Eight - “Crimes against Activities of State Institutions, Public Organisations and Persons Performing Public Functions” - Section I “Crimes against Order of Government”**

#### **Article 269**

(Supplemented, SG No. 43/2005, amended, No. 27/2009)

(1) (Amended, SG No. 26/2010) A person who uses force or threat for the purpose of compelling an authority, a representative of the public, a private enforcement agent or an assistant private enforcement agent to do or to omit doing something within his duties or related to his functions, shall be punished by deprivation of liberty for up to six years.

(2) Where the crime under paragraph 1 has been committed by participants in a crowd, the abettors and leaders shall be punished by deprivation of liberty from two to eight years.

**Chapter Eight. “Offences against the activity of State bodies, Public organizations and persons performing Public duties”- Section II “Criminal Breach of Trust”**

**Article 282**

(1) (Amended, SG No. 28/1982) An official who violates or fails to fulfil his official duties, or exceeds his powers or rights for the purpose of acquiring a benefit for himself or for another, or to cause damage to another, from which significant harmful consequences may set in, shall be punished by deprivation of liberty for up to five years, whereas the court may also rule deprivation of the right under Article 37 (1), sub-paragraph 6, or by probation. (2) (Amended, SG Nos. 28/1982, 89/1986) If from the act major harmful consequences have set in, or the act has been committed by a person occupying a responsible official position, the punishment shall be deprivation of liberty from one to eight years, whereas the court may rule deprivation of the right under Article 37 (1), sub-paragraph 6.

(3) (New, SG No. 89/1986) For particularly grave cases under the preceding paragraph the punishment shall be deprivation of liberty from three to ten years, and the court shall also rule deprivation of the right under Article 37 (1), sub-paragraph 6.

(4) (New, SG No. 62/1997) The punishment under paragraph (3) shall also be imposed on officials who have committed the crime with the participation of persons under Article 142, paragraph (2), subparagraphs 6 and 8.

(5) (New, SG No. 21/2000) Where the act under the preceding paragraphs is connected with exercising control over the production, processing, storage, trading inside the country, import, export, transit and reporting of drugs and precursors, the punishment shall be deprivation of liberty for up to ten years under paragraph (1) and for three to fifteen years under paragraph (2).

**Art. 282a. (New, SG 62/97)**

An official who, in the presence of the conditions stipulated by a normative act, necessary for issuance of special permit for carrying out certain activity, refuses or delays its issuance beyond the law determined terms shall be punished by imprisonment of up to three years, a fine of up to five hundred levs and revoking of right according to art. 37, para 1, item 7.

**Art. 283. (Amend., SG 26/73, SG 28/82)**

An official who uses his official position in order to provide for himself or for somebody else unlawful benefit shall be punished by imprisonment of up to three years.

**Art. 283a. (New, SG 62/97)**

If the offences under art. 282 and 283 are related to the privatisation, sale, renting or leasing, as well as the inclusion in trade companies of state, municipal and cooperative property, as well as property of corporate bodies the punishment shall be:

1. under art. 282 - imprisonment of three to ten years, a fine of three to five thousand levs and revoking rights according to art. 37, para 1, item 6 and 7;
2. under art. 283 - imprisonment of one to three years, a fine of one thousand to three thousand levs and revoking rights according to art. 37, para 1, item 6 and 7.

**Art. 283b. (New, SG 62/97; Suppl., SG 92/02)**

An official who obstructs or frustrates the exercising by the owners of their rights restored according to the Law for restoration of the ownership of expropriated real estates, according to the Law for restoration of the ownership of some expropriated real estates according to the Law for the territorial and urban development, the Law for planned building of populated areas, the Law for the urban

development of populated areas, the Law for the state real estates and the Law for the ownership, and according to the Law for the ownership and tenure of agricultural lands and the Law for indemnification of owners of expropriated real estates, the

Law of privatisation and post-privatisation control or through enforced judicial acts related to another law shall be punished by imprisonment of two to six years.

## **Chapter Eight**

### **CRIMES AGAINST ACTIVITIES OF STATE BODIES AND PUBLIC ORGANISATIONS AND PERSONS PERFORMING PUBLIC FUNCTIONS**

#### **Section III**

#### **Crimes Against Justice**

#### **Article 286**

(1) (Amended, SG No. 62/1997) A person who falsely accuses, before the respective state authorities, another person of a crime, knowing that such person is innocent, or who produces false evidence against such person, shall be punished for false accusation by deprivation of liberty for one to six years and by public censure.

(2) (Repealed, renumbered from Paragraph 3, amended, SG No. 62/1997) If penal proceedings have been started against the falsely accused person, the punishment shall be deprivation of liberty for one to ten years.

#### **Article 287**

(1) A person who abuses his power or his official position, who fails to fulfil his official duties or oversteps his power, and harmful consequences have set in therefrom, shall be punished by deprivation of liberty for up to three years.

(2) (Amended, SG No. 28/1982) If grave consequences have set in from the act, or if it has been systematically performed by a superior with respect to a subordinate, the punishment shall be deprivation of liberty for one to eight years.

(3) (Amended, SG No. 89/1986) If the act under the preceding paragraphs has been committed with the purpose for the perpetrator to acquire for himself or for another property benefit, or to cause harm to another, the punishment shall be: deprivation of liberty for one to five years under paragraph (1), for three to eight years under paragraph (2), and in particularly grave cases - for three to ten years, and the court shall rule also deprivation of right under Article 37 (1), sub-paragraph 6.

(4) (New, SG No. 28/1982, renumbered from Paragraph 3, SG No. 89/1986)

Where the harmful consequences have been caused through negligence, the punishment shall be: under paragraph (1) - deprivation of liberty for up to two years; under paragraph (2) - deprivation of liberty for up to five years.

(Amended, SG No. 26/2004, No. 75/2006)

An official who, in the course or on the occasion of discharging his service, acting alone or through another, takes unlawful coercive action in respect of an indicted individual, a witness or an expert witness, in order to extort confession, testimony, a conclusion or information therefrom, shall be punished by deprivation of liberty from three to ten and by withdrawal of rights under Article 37, paragraph 1, sub-paragraphs 6 and 7.

**Article 289 (Amend., SG 62/97; amend. - SG 75/06, in force from 13.10.2006; amend. – SG 26/10)**

Who persuades an official of the investigating bodies or of the prosecution or the judiciary bodies to violate his official duty related to the jurisdiction shall be punished by imprisonment from one to six years.

**Article 290**

(1) Persons who, in their capacity of witness before the court or before another respective body of authority, orally or in writing consciously assert untrue statement or hold back the truth, shall be punished for perjury by deprivation of liberty for up to five years.

(2) The same punishment shall also be imposed on a translator or interpreter who before the court or another respective body of authority, orally or in writing consciously renders untrue translation or interpretation.

**Article 290a (New, SG No. 28/1982)**

Persons who assert untrue statement or hold back the truth in an affidavit presented in court, shall be punished by deprivation of liberty for up to three years.

**Article 291**

(1) Persons who in their capacity of expert before the court or another respective body of authority orally or in writing consciously give untrue conclusion, shall be punished by deprivation of liberty for one to five years and by deprivation of the right under Article 37 (1), sub-paragraph 7.

(2) Where the act under the preceding paragraph has been committed through negligence, the punishment shall be deprivation of liberty for up to one year or probation. The court may also rule deprivation of the right under Article 37 (1), sub paragraph 7.

**Article 292**

(1) For a crime under art. 290 and 291 the indictability shall be dropped:

1. ....

2. if the person renounces before the respective body his perjury, translation, interpretation or conclusion until the enactment of the sentence or the decision and before institution criminal proceedings against him for that act.

(2) (New, SG 89/86) The provision of item 2 of the preceding para shall also apply in the cases of art. 290a when the person withdraws his declaration before a decision is passed on the case with respect to which it has been presented.

**Article 293**

(1) (Redesignated from Article 293, supplemented, SG No. 89/1986) A person who abets another to a crime under Articles 290, 290a and 291 shall be punished by deprivation of liberty for up to one year or by probation.

(2) (New, SG No. 89/1986) Where two or more persons have been abetted and the case is particularly grave, the punishment shall be deprivation of liberty for up to three years.

**Chapter 8 “Crimes against the Activity of the Public Authorities and Public Organisations” - Section IV “Bribery”**

**Article 301**

(1) (Amend., SG 51/00; Amend., SG 92/02) An official who requests or accepts a gift or any other benefit whatsoever, which is not due, in order to perform or not an act on business or because he has or has not performed such an activity shall be punished for bribery by imprisonment of up to six years and a fine of up to five thousand lev.

(2) (Amend., SG 51/00; Amend., SG 92/02) If the official has committed some of the acts under para 1 in order to offend or because he has offended his office, if this offence does not represent a crime, the punishment shall be imprisonment of up to eight years and a fine of up to ten thousand leva.

(3) (Amend., SG 95/75; SG 51/00; Amend., SG 92/02) If the official has committed some of the acts under para 1 in order to commit or because he has committed another crime related to his office, the punishment shall be imprisonment of up to ten years and a fine of up to fifteen thousand leva.

(4) (Amend., SG 89/86; amend. - SG 75/06, in force from 13.10.2006) In the cases under the preceding paras the court shall also rule revoking of right according to art. 37, para 1, item 6 and 7.

(5) (New, SG 92/02) The punishment under para 1 shall also be imposed on a foreign official who requests or accepts bribery or accepts an offer or a promise for bribery.

### **Article 302**

For a bribery committed:

1. (Suppl., SG 92/02; suppl. - SG 26/10) by a person who occupies a responsible official position, including a judge, member of the jury, prosecutor or investigator or by a police body or an investigating policeman;

2. through extortion through embezzlement;

3. (amend., SG 28/82) repeatedly and

4. in large size, the punishment shall be:

a) (suppl., SG 89/86; amend., SG 51/00; Suppl., SG 92/02; amend. - SG 75/06, in force from 13.10.200) in the cases of art. 301, para 1 and 2 - imprisonment of three to ten years, a fine of up to twenty thousand leva and revoking of rights according to art. 37, para 1, item 6 and 7;

b) (amend., SG 89/86; Suppl., SG 92/02; amend. - SG 75/06, in force from 13.10.200) in the cases of art. 301, para 3 - imprisonment of three to fifteen years, a fine of up to twenty five thousand leva and confiscation of up to one thirds of the property of the culprit, whereas the court shall also rule revoking of rights according to art. 37, para 1, item 6 and 7.

### **Article 302 a**

For bribery in particularly large size, representing a particularly grave case, the punishment shall be deprivation of liberty from ten to thirty years, fine of up to 30000 Leva, confiscation of the whole or part of the culprit's property and deprivation of rights under Article 37, sub-paragraphs 6 and 7.

### **Article 303**

In accordance with the differences under the preceding articles, the official and the foreign public official shall also be punished where, with their consent, the gift or the benefit has been offered, promised or given to another.

### **Article 304 (Amend., SG 92/02)**

(1) Who offers, promises or gives a gift or any other benefit whatsoever to an official in order to fulfil or not an activity related to his office, or because he has fulfilled or not such activity, shall be punished by imprisonment of up to six years and a fine of up to five thousand leva.

(2) If, in connection with the bribery, the official has violated his official obligations the punishment shall be imprisonment of up to eight years and a fine of up to seven thousand leva, where this offence does not constitute a more severe crime.

(3) The punishment under para 1 shall also be imposed to those who offer, promise or give a bribe to a foreign official.

### **Article 304 a (New, SG 51/00; Amend., SG 92/02; suppl. - SG 26/10)**

Who offers, promises or gives a bribe to an official occupying a responsible position, including to a judge, a member of the jury, a prosecutor or an investigator, a police body or an investigating

policeman, shall be punished by imprisonment of up to ten years and a fine of up to fifteen thousand levs.

#### **Article 304b (New, SG 92/02)**

(1) Who requests or accepts a gift or whatever benefit which is not due, or accepts an offer or a promise of a gift or benefit, in order to exert influence in taking a decision by an official or by a foreign official related to his office, shall be punished by imprisonment of up to six years or a fine of up to five thousand levs.

(2) Who offers, promises or gives a gift whatsoever benefit which is not due, to person, who asserts that he/she is able to exert influence under paragraph 1, shall be punished by deprivation of liberty for up to three years or fine of up to 3000 Leva.

#### **Article 305**

(1) The punishments for bribery under the preceding articles shall also be imposed on an arbitrator or an expert, appointed by a court, establishment, enterprise or organisation, if he commits such acts in connection with his assigned task, as well as on those who offers, promises or gives such a bribe.

(2) The punishments for bribery under the preceding articles shall also be imposed on a defender or a client when they commit such acts in order to help settlement in favour of the opposite party or to the detriment of the client a criminal or civil case, as well as on the one who offers, promises and gives such a bribe.

#### **Article 305a**

A person who mediates for giving or receiving of a bribe, if the perpetrated act does not represent a graver crime, shall be punished by deprivation of liberty for up to three years.

#### **Article 306 (Amend., SG 92/02)**

Not punished shall be the one who has offered, promised or given a bribe if he has been blackmailed by the official, the arbitrator or by the expert to do that or if he has informed the authorities immediately and voluntarily.

#### **Article 387**

(1) A person who abuses his power or his official position, who fails to fulfil his official duties or oversteps his power, and harmful consequences have set in therefrom, shall be punished by deprivation of liberty for up to three years.

(2) (Amended, SG No. 28/1982) If grave consequences have set in from the act, or if it has been systematically performed by a superior with respect to a subordinate, the punishment shall be deprivation of liberty for one to eight years.

(3) (Amended, SG No. 89/1986) If the act under the preceding paragraphs has been committed with the purpose for the perpetrator to acquire for himself or for another property benefit, or to cause harm to another, the punishment shall be: deprivation of liberty for one to five years under paragraph (1), for three to eight years under paragraph (2), and in particularly grave cases - for three to ten years, and the court shall rule also deprivation of right under Article 37 (1), sub-paragraph 6.

(4) (New, SG No. 28/1982, renumbered from Paragraph 3, SG No. 89/1986)

Where the harmful consequences have been caused through negligence, the punishment shall be: under paragraph (1) - deprivation of liberty for up to two years; under paragraph (2) - deprivation of liberty for up to five years.



### **Additional Provision - Explanation of Certain Words**

15. (New, SG No. 7/1999) "A foreign official" shall be any person performing:

- a) duties in a foreign country's office or agency;
- b) functions assigned by a foreign country, inclusive of a foreign state-owned enterprise or organisation;
- c) (supplemented, SG No. 92/2002) duties, assignments or tasks delegated by an international organisation, as well as holding office in an international parliamentary assembly or an international court of justice.

### **Chapter XIII "Military Offences" - Section III "Misdemeanour in office"**

Special Part of the Penal Code a separate text for abetting to perjury has been created.

<b>CRIMINAL PROCEDURE CODE</b>
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#### **Article 37**

(.....)

(2) Where the crime has been perpetrated on a Bulgarian ship or an aircraft beyond the confines of this country, the case shall be under the jurisdiction of the court, in the district of which is the port or the airport to which the ship or the aircraft belong.

#### **Article 64**

(1) At the request of the prosecutor, the competent court of first instance shall apply the measure of remand in custody in the context of pre-trial proceedings.

(2) The prosecutor shall immediately ensure for the accused party to appear before court and, if needed, he/she may rule the detention of the accused party for up to 72 hours until the latter is brought before court.

(3) The Court, sitting in a panel of one, in a public hearing, at which the prosecutor, the accused party and his/her defence counsel are present, shall immediately proceed to hear the case.

(4) The court shall apply a measure of remand in custody where the grounds of Article 63, Paragraph 1 are present, and where said grounds are not present, it may refrain from applying a measure of remand or apply a less restrictive one.

(5) The court shall issue a ruling which shall be notified to the parties at the court hearing and shall be implemented immediately. Upon notifying its ruling, the court shall schedule the case for hearing before the intermediate appellate review court within up to seven days, in case an accessory appeal or protest is filed.

(6) The ruling shall be subject to appeal and protest before the respective intermediate appellate review instance court within three days by accessory appeal or protest.

(7) The intermediate appellate review instance court shall hear the case in a panel of three judges at an open hearing in attendance of the prosecutor, the accused party and his/her defence counsel. Failure of the accused party to appear shall not be an obstacle to the examination of the case.

(8) The intermediate appellate review instance court shall make pronouncement by a ruling that is to be announced to the parties at the court hearing. The ruling shall not be subject to appeal by accessory appeal or protest.

(9) Where by virtue of a ruling in force bail has been applied as a measure of remand, the accused party who is held in custody shall be released following its deposition.

#### **Article 67**

(1) At the proposal of the prosecutor with consent of the victim or at the request of the victim, the competent first-instance court may prohibit the accused party from directly approaching the victim.

(2) The court shall immediately hear the proposal or request at an open hearing, at which the prosecutor, the accused party and the victim shall be heard. The ruling of the court shall be final.

(3) The prohibition shall extinguish after termination of the case by virtue of a sentence in force or where proceedings are terminated on any other ground.

(4) At any time the victim may request from the court to repeal the prohibition. The court shall make pronouncement, applying the procedure under para 2.

#### **Article 68**

(1) (Amended, SG No. 109/2008) In pre-trial proceedings, where the accused party has been constituted in this capacity because of a serious intentional criminal offence, the prosecutor may prohibit the accused party from leaving the offence, the prosecutor may prohibit the accused party from leaving the boundaries of the Republic of Bulgaria, unless the prosecutor has given authorisation to this effect. Border control points shall immediately be notified of the imposed prohibition.

(2) The prosecutor shall rule within three days on the request for authorisation under Paragraph 1 of the accused party or his/her defence counsel.

(3) The refusal of the prosecutor shall be subject to appeal before the competent court of first instance.

(4) The court shall consider forthwith the appeal in a single-judge panel, deliberating privately, and shall make pronouncement by a ruling, thus confirming the refusal of the prosecutor or allowing the accused party to leave the boundaries of the Republic of Bulgaria for a set period. The ruling shall be final.

(5) At the request of the accused party or his/her defence counsel, the court may repeal the prohibition under Paragraph 1 in pursuance of the procedure under Paragraph 4, where there is no risk for the accused party to abscond outside this country.

(6) In court proceedings the powers pursuant to paragraphs (1) and (5) shall be exercised by the court examining the case. The ruling of the court shall be subject to appeal by accessory appeal or protest.

#### **Article 69**

(1) Where the accused party has been constituted in this particular capacity on account of a publicly actionable criminal offence of intent committed in relation to his/her work and there are sufficient reasons to believe that the official position of the accused party shall set obstacles to the objective, comprehensive and thorough elucidation of the circumstances in the case, the court may remove the accused party from office.

(2) In pre-trial proceedings, the respective first instance court shall make pronouncement in a single-judge panel at an open hearing in attendance of the prosecutor, the accused party and his/her defence counsel.

(3) The ruling shall be subject to appeal by accessory appeal and protest before the respective intermediate appellate review instance court within three days.

(4) The intermediate appellate review instance court shall make pronouncement in a three-judge panel at an open hearing in attendance of the prosecutor, the accused party and his/her defence counsel. Failure of the accused party to appear without valid reasons shall not be an obstacle to the examination of the case.

(5) Where further need for the measure that was taken ceases to exist, in pre-trial proceedings removal from office shall be revoked by the prosecutor, or by the court - at the request of the accused party or his/her defence counsel pursuant to the procedure under Paragraphs 1 and 2.

(6) In court proceedings the powers pursuant to paragraph (1) shall be exercised by the court examining the case.

#### **Article 72**

(1) Upon request of the prosecutor, the competent court of first instance, sitting in (1) Upon request of the prosecutor, the competent court of first instance, sitting in a panel of one, in camera, shall apply measures to secure the fine, confiscation, and forfeiture of objects to the benefit of the state, in pursuance of the procedure set forth in the Code of Civil Procedure.

(2) In the course of court proceedings the court shall take the measures under Paragraph 1 upon request of the prosecutor.

#### **Article 73**

(1) The court and the bodies entrusted with pre-trial proceedings shall be obligated to explain to the victim that he/she has the right to bring, in the course of court proceedings, a civil claim for the damages caused by the offence.

(2) Upon request of the victim or his/her heirs or of the prejudiced legal person filed in the course of pre-trial proceedings, the competent court of first instance, sitting in a panel of one, in camera, shall apply measures to secure a forthcoming claim pursuant to the procedure set forth in the Code of Civil Procedure.

(3) In the hypotheses under Article 51, the measures under Paragraph 2 shall be applied upon request of the prosecutor.

(4) In court proceedings the requests under paragraphs 2 and 3 shall be examined by the court hearing the case.

...

#### **Article 74**

(1) Victim shall be the person, who has suffered property or personal damages from the crime.

(2) In case of death of the person this right shall transit to his/her heirs.

(3) The defendant may not exercise the rights of a victim in one and the same procedure.

#### **Article 75 (amend. - SG 109/08)**

(1) (suppl. - SG 32/10, in force from 28.05.2010) In the pre-trial procedure the victim shall have the following rights: to be notified of his/her rights in the penal procedure; to acquire defence of his/her safety and his/her close persons; to be informed about the outcome of the penal procedure; to participate in the procedure as per this Code; to make requests, observations and objections; to appeal the acts which lead to disclosure or suspension of the penal procedure; to have a trustee.

(2) (new - SG 32/10, in force from 28.05.2010) The authority initiating the pre-trial proceedings shall notify the victim immediately, provided that he has supplied an address for summoning in the country.

(3) (prev. text of Para. 02, suppl. - SG 32/10, in force from 28.05.2010) The victim's rights shall arise upon his/her explicit request to participate in the pre-trial proceedings, indicating an address for summoning in the country.

#### **Article 84**

(1) The victim and his/her heirs, as well as the legal persons who suffered damages from the crime, may file a civil claim for compensation of the damages and to establish themselves as civil claimants in the Court procedure.

(2) The civil claim cannot be filed in the Court procedure, if it is filed under the procedure of the Civil Procedure Code.

#### **Article 85**

(1) The application of filing civil claim shall contain: the full name of the applicant and of the person against who the claim is filed; the penal case on which it is filed; the crime by which the damages are caused and the nature and amount of the damages for which compensation is demanded.

(2) The application may be oral or in writing.

(3) The civil claim shall be filed before the initiation of the Court investigation before the first instance Court at latest.

#### **Article 86**

The civil claim in the Court procedure may be filed as against the defendant, as well as against other persons, who shall bear civil liability for the damages caused by the crime.

#### **Article 87**

(1) The civil claimant shall have the following rights: to participate in the Court procedure; to require securitising of the civil claim; to become acquainted with the case and to make the needed extracts; to submit evidence; to participate in the Court procedure; to make requests, notes and objections and to appeal the acts of the Court, where his/her rights and legitimate interests are harmed.

(2) The civil claimant shall exercise the rights under Para 1 within the limits needed to prove the ground and amount of the civil claim.

#### **Article 88**

(1) The civil claim in the Court procedure shall be heard under the rules of this Code, and as far as there are no rules established, the Civil Procedure Code shall be applied.

(2) Hearing of the civil claim may not become a reason for delay of the penal case.

(3) In the event that the Court procedure is discontinued, the civil claim shall be heard, but it may be filed before a civil Court.

#### **Article 107**

(1) The bodies entrusted with pre-trial proceedings shall collect evidence ex officio or at the request of the interested individuals.

(2) The court shall collect evidence following requests made by the parties, and of its own motion, whenever this is necessary to the discovery of the objective truth.

(3) The court and the bodies entrusted with pre-trial proceedings shall collect and verify both evidence which exposes the accused party or aggravate his or her responsibility, and evidence which exonerates the accused party or attenuates his or her responsibility.

(4) Collection of evidence may not be refused only because a request has not been made within the time limit set to this effect.

(5) All collected evidence shall be subject to careful verification.

## **Article 111**

- (1) Material evidence shall be kept until the completion of criminal proceedings.
- (2) Objects seized as material evidence, may be returned to rights holders from whom they had been taken with authorisation of the prosecutor before the end of criminal proceedings only where this will not obstruct the discovery of the objective truth and they do not make the object of administrative violations.
- (3) A refusal of the prosecutor under Paragraph 2 shall be subject to appeal by the rights holder before the competent court of first instance. The court shall rule on the appeal within three days of the submission thereof, sitting in a panel of one and in camera, by a ruling which shall be final.
- (4) Perishable objects seized as material evidence which cannot be returned to the rights holders from which they had been taken shall be delivered to the respective institutions and legal entities with the authorisation of the prosecutor to be used in accordance with their designation or shall be sold and the proceeds shall be deposited with a commercial bank, servicing the National budget.
- (5) Drugs, precursors and drug containing plants may be destroyed prior to the completion of criminal proceedings under the terms and in pursuance of the procedure specified in the Narcotic Substances and Precursors Control Act . In this hypothesis only representative samples seized shall be kept until the completion of proceedings.

## **Article 112**

- (1) Except in the hypotheses specified in Article 53 Criminal Code, the objects seized as material evidence shall be forfeited to the benefit of the state where the ownership thereof has not been established and within one year following the completion of criminal proceedings they have not been claimed.
- (2) Objects seized as material evidence, the possession of which is forbidden, shall be delivered to the respective institutions or destroyed.
- (3) (New, SG No. 109/2008) In cases other than the hypotheses stipulated in Article 53 of the Criminal Code, motor vehicles seized as material evidence shall be forfeited in favour of the State, where the ownership of such vehicles has not been established and they have not been claimed back within five years upon their seizure. The forfeiture shall be effected by a prosecutor's decree in the case of pre-trial proceedings, and by a court ruling in the case of court proceedings.
- (4) (Renumbered from Paragraph 3, SG No. 109/2008) Letters, papers or other written instruments seized as material evidence shall remain enclosed to the case file or shall be delivered to the interested institutions, legal and natural persons.

Disputes over rights to objects seized as material evidence

## **Article 115**

- (1) The accused party shall give explanations orally and directly before the respective body.
- (2) The accused party shall not be interrogated by letter rogatory or through a video conference, except where he or she is outside the territory of the country and the interrogation will not obstruct the discovery of the objective truth.
- (3) The accused party may provide explanations at any moment during the investigation and the judicial trial.
- (4) The accused party shall have the right to refuse providing explanations. Probative value of confessions by the accused party

## **Article 116**

- (1) The accusation and the sentence may not be grounded only on the confession of the accused.
- (2) The confession of the accused shall not discharge the respective bodies from the obligation to collect also other evidence on the case.

## **Article 123**

(1) The prosecutor, the judge-rapporteur or the court shall, upon request or with consent of the witness, take measures for his/her immediate protection, should there be sufficient grounds to assume that, as a result of testimony, a real threat has arisen or may arise to the life, health or property of the witness, his/her ascending and descending relatives, brothers, sisters, spouse or individuals with whom he is in a particularly close relationship.

(2) Witness protection shall be of a temporary nature and be provided by means of:

1. Personal physical protection by the authorities of the Ministry of Interior;

2. Keeping his/her identity secret;

(3) Personal physical protection may also be provided to ascending or descending relatives, brothers, sisters, the spouse or individuals with whom the witness is in a particularly close relationship, with their consent or with consent from their statutory representatives.

(4) The act of the respective body on the provision of witness protection shall indicate:

1. The issuing body;

2. The date, hour and place of issuance;

3. The circumstances warranting that protection be provided;

4. The type of measure applied;

5. Information about the identity of the individual for whose protection arrangements are made;

6. The identification code given to the individual whose identity is kept secret;

7. Signature of the respective body and the individual concerned.

(5) The respective pre-trial authorities and the court shall have direct access to the protected witness, while the defence counsel and the counsel may have such access only if the witness has been summonsed upon their request.

(6) The measures for protection under paragraph 2 shall be withdrawn upon request of the person, in respect of whom they have been taken, or in the event of elimination of the need for application of such measures, through an act of the body under paragraph (1).

(7) In order to ensure the protection of the life, health or property of individuals under Paragraph 1, who have given their written consent, special intelligence means may be used.

(8) Within up to thirty days of taking a measure under Paragraph 2, the prosecutor or judge-rapporteur may propose the inclusion of the witness or his/her ascending or descending relatives, siblings, spouse or of the persons with whom he/she is in particularly close relationships into the protection programme subject to the conditions and procedure of the Protection of Individuals at Risk in Relation to Criminal Proceedings Act.

## **Article 141**

(1) (amend. - SG 32/10, in force from 28.05.2010) The bodies of the pre-trial procedure and the Court shall interrogate the witness whose identity is kept in secret and shall all possible precautions for keeping secret his/her identity, including where interrogation of a witness is performed via video-conference or telephone conference.

(2) Copies of the records of interrogation of the witness without his/her signature shall be submitted immediately to the defendant and to his/her defender, and in the Court procedure - to the parties, which shall have right to question the witness in writing.

(3) (amend. - SG 32/10, in force from 28.05.2010) Interrogation under Art. 139, Para. 8 of a witness with a secret identity shall be conducted by altering the voice, and through videoconferencing - by

altering also the image of the witness. Before starting the interrogation a judge from the Court of first instance at the location of the witness shall verify that the interrogated person is the same that has been given an identity number under Art. 123, Para. 4, Item 6.

(4) (new - SG 32/10, in force from 28.05.2010) Para. 1 - 3 shall apply accordingly to interrogation of persons to whom a protection measure under Art. 6, Para. 1, Items 3, 4 and 5 under the Law on Protection of Persons Threatened in Connection with a Criminal Procedure is imposed.

## **Criminal Procedure Code**

### **Section V**

#### **Searches and seizures**

#### **Article 159**

(1) (Redesignated from Article 159, SG No. 32/2010, effective 28.05.2010) Upon request of the court or the pre-trial authorities, all institutions, legal persons, officials and citizens shall be obligated to preserve and hand over all objects, papers, computerized data, including traffic data, that may be of significance to the case.

(2) (New, SG No. 32/2010, effective 28.05.2010) The pre-trial authorities or the court may request that the European Anti-fraud Office provide them with the reports and enclosures thereof regarding any investigations conducted by the Office.

#### **Article 160**

(1) Should there be sufficient reasons to assume that in certain premises or on certain persons objects, papers or computerized information systems containing computerized data may be found, which may be of significance to the case, searches shall be conducted for their discovery and seizure.

(2) A search may also be conducted for the purpose of finding a person or a body.

#### **Article 161**

(1) In pre-trial proceedings search and seizure shall be performed with an authorisation by a judge from the respective first instance court or a judge from the first-instance court in the area of which the action is taken, upon request of the prosecutor.

(2) In cases of urgency, where this is the only possible way to collect and keep evidence, the pre-trial authorities may perform physical examination without authorisation under paragraph 1, the record of the investigative action being submitted for approval by the supervising prosecutor to the judge forthwith, but not later than 24 hours thereafter.

(3) In court proceedings a search and seizure shall be performed following a decision of the court which is trying the case.

#### **Art. 162**

(1) Searches and seizures shall be conducted in the presence of certifying witnesses and of the person who uses the premises, or of an adult member of the person's family.

(2) Where the person who uses the premises or a member of his/her family cannot attend, the search and seizure shall be effected in the presence of the house manager or of representative of the municipality or mayor's office.

(3) Searches and seizures in premises used by state and/or municipal services shall be effected in the presence of a representative of the service.

(4) Searches and seizures in premises used by a legal person shall be performed in the presence of a representative thereof. Where no representative of the legal person may be present, the search and seizure shall be carried out in the presence of a representative of the municipality or mayoralty.

(5) Searches and seizures in premises of foreign missions and of missions of international organizations or in dwellings of their employees who enjoy immunity with respect to the criminal

jurisdiction of the Republic of Bulgaria, shall be conducted with the consent of the head of mission and in the presence of a prosecutor and a representative of the Ministry of Foreign Affairs.

(6) Where searches and seizures concern computerized information systems and software applications, these shall be conducted in presence of an expert- technical assistant.

### **Article 163**

(1) Searches and seizures shall be performed in daytime, except where they can suffer no delay.

(2) Before proceeding with a search and seizure, the respective body shall submit the authorisation therefore, and shall ask the objects, papers, and computerized information systems containing computerized data sought to be shown to him/her.

(3) The body performing the search shall have the right to forbid those present to contact other persons or each other, as well as to leave the premises until completion of the search.

(4) No actions may be undertaken during searches and seizures, which are not necessitated by their purposes. Premises and storerooms shall only be forcefully opened in the case of refusal to be opened, unnecessary damage being avoided.

(5) Where in the course of searches and seizures circumstances of the intimate life of citizens are revealed, measures shall be taken as necessary so that they are not be made public.

(6) The objects, papers and computerized information systems containing computerized data seized shall be shown to the certifying witnesses and the other attending persons. Where necessary, these shall be wrapped and sealed at the location where they had been seized.

(7) Seizure of computerized data shall be operated through record on paper or another carrier. In case of a paper carrier, each page shall be signed by the persons under Article 132, Paragraph 1. In other cases the carrier shall be sealed with a note stating: the case, the body performing the seizure, the location, date, and names of all individuals present under Article 132, Paragraph 1 who shall sign it.

(8) Carriers prepared in pursuance of Paragraph 7 will only be unsealed with the authorisation of the prosecutor for the needs of the investigation, which shall be carried out in presence of certifying witnesses and an expert- technical assistant. In court proceedings carriers shall be unsealed upon decision of the court by an expert technical assistant.

### **Article 164**

(1) The search of a person in pre-trial proceedings without authorisation by a judge from the respective first instance court or a judge from the first-instance court in the area of which the action is taken shall be allowed:

1. at detention;

2. should there be sufficient grounds to believe that persons who are present at the search have concealed objects or papers of significance to the case.

(2) The search of a person shall be performed by an individual of the same gender in the presence of certifying witnesses of the same gender.

(3) The record of the performed investigative action shall be submitted for approval to the judge forthwith, but not later than 24 hours thereafter.

### **Article 165**

(1) Interception and seizure of correspondence shall be allowed only where this is necessary for disclosure or prevention of serious crime.

(2) Interception and seizure of correspondence in pre-trial proceedings shall be performed upon request of the prosecutor with the authorisation of a judge from the respective first instance court or a judge from the court in the area of which the action is taken.



(3) In court proceedings search and seizure of correspondence shall be performed by a decision of the court which is trying the case.

(4) The interception and seizure of correspondence shall be carried out in pursuance of Article 162, Paragraphs 1 - 4.

(5) The provisions of paragraphs 1 - 4 shall also apply to searches and seizures of electronic mail.

## **Article 205**

(1) Where they come to know about a perpetrated publicly actionable criminal offence the citizens shall be publicly obligated to notify forthwith a pre-trial authority or another state body.

(2) Where they come to know about a perpetrated publicly actionable criminal offence the officials must notify forthwith the body of pre-trial proceedings and take the necessary measures for the preservation of the general setup and data about the crime.

(3) In cases under Paragraphs 1 and 2 pre-trial authorities shall immediately exercise their powers to institute criminal proceedings.

## **Chapter twenty-nine**

### **DISPOSING OF THE CASE BY VIRTUE OF AN AGREEMENT**

#### **Agreement to dispose of the case during pre-trial proceedings.**

#### **Article 381**

(1) Upon completion of the investigation based on a proposal of the prosecutor or of the defence counsel an agreement may be drawn up between them in order to dispose of the case. Where the accused party has not authorised a defence counsel, upon request of the prosecutor a judge from the respective first instance court shall appoint a defence counsel thereto with whom the prosecutor shall negotiate the agreement.

(2) The agreement shall not be allowed in respect of serious crimes of intent under Chapter one, Chapter two, section I and VIII, Chapter eight, Section IV, Chapter eleven, section V, Chapter twelve, Chapter thirteen, sections VI and VII and under Chapter fourteen of the Special Part of the Criminal Code.

(3) Where property damages have been caused by the crime, the agreement shall be admitted after their recovery or securing.

(4) By virtue of the agreement a sentence may be imposed following the provisions of Article 55 Criminal Code, even in the absence of exceptional or numerous circumstances attenuating the level of responsibility.

(5) The agreement shall be drawn up in writing and shall set out consent on the following matters:

1. whether an act has been committed, has it been committed by the accused party and has it been culpably committed, whether the act constitutes a crime and what its legal qualification is;

2. what type and amount of punishment shall apply;

3. (supplemented, SG No. 27/2009, effective 1.06.2009) what initial regime and type of prison establishment should be set for serving the punishment of deprivation of liberty, where the provisions of Article 66 of the Criminal Code shall not apply;

4. who should be entrusted with educational work in the cases of conditional sentencing;

5. what educational measure should be imposed on the underage accused party in cases under Article 64, paragraph (1) of the Criminal Code;

6. how to dispose of the pieces of material evidence, where they are not required for the needs of criminal proceedings with respect to other persons or other crimes, and who should be charged with the costs of the case.

(6) The agreement shall be signed by the prosecutor and the defence counsel. The accused party shall sign the agreement, provided he/she agrees to it, after a statement that he/she makes a waiver from the examination of the case in court following the general procedure.

(7) Where proceedings are conducted against several persons or for several crimes, an agreement may be reached for some of the persons or for some of the crimes.

(8) Where the accused party has committed several crimes by one and the same act or where one and the same accused party has committed several separate crimes, Article 23 and 25 Criminal Code shall be taken into account and implemented within the agreement.

#### **Article 382**

(1) The agreement shall be brought by the prosecutor at the respective first-instance Court immediately after it is drafted, together with the case.

(2) The Court shall set the hearing within seven-day period after the introduction of the case and shall hear it in a sitting of a single judge.

(3) In the Court session the prosecutor, the defender and the defendant shall participate.

(4) The Court shall question the defendant if he/she understands the accusation, does he/she plead guilty, does he/she understand the consequences of the agreement, does he/she agree with them and did he/she sign the agreement of his/her own will.

(5) The Court may propose amendments to the agreement, which shall be discussed with the prosecutor and the defender. Last shall be heard the defendant.

(6) In the Court record shall be entered the contents of the final agreement, which shall be signed by the prosecutor, the defender and the defendant.

(7) The Court shall approve the agreement where it does not contravene the law or morality.

(8) Where the Court does not approve the agreement, it shall remand the case to the prosecutor. In such case, the confession of the defendant made before the Court according to Para. 4, shall bear no evidentiary value.

(9) The determination by the Court shall be final.

(10) About the determination under Para. 7 the victim and his/her heirs shall be notified by an instruction that they may submit a civil claim for non-material damages before the civil Court.

#### **Article 383**

The approved by the Court agreement on settlement of the case shall have the consequences of a verdict entered into force.

(2) Where the agreement concerns an act committed under the provisions of Art. 68, Para. 1 of the Penal Code, the Court shall also rule in respect of serving the suspended punishment according to the procedure of Art. 306, Para. 1, Item 3.

(3) Where the agreement concerns an act committed under the provisions of Art. 68, Para. 2 of the Penal Code, the suspended punishment shall not be served.

#### **Article 384**

(1) Under the conditions and in accordance with the procedure of this chapter, the Court of first instance may approve an agreement on the settlement of the case, reached after the institution of the Court proceedings but before the conclusion of the Court investigation.

(2) The Court shall appoint a defender for the defendant, where he/she has not authorised one himself/herself.

(3) In such a case, the agreement shall be approved only with the consent of all the parties.

### **Article 463**

An effective sentence issued by a foreign national court shall be recognised and enforced by the authorities in the Republic of Bulgaria in compliance with Article 4, Paragraph 3 where:

1. The act in respect of which the request has been made constitutes a criminal offence under Bulgarian law;
2. The offender is criminally responsible under Bulgarian law;
3. The sentence has been issued in full compliance with the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms and with the Protocols thereto, to which the Republic of Bulgaria is a party;
4. The offender has not been sentenced for a crime that is considered political or for one associated with a political or a military crime;
5. In respect of the same offender and for the same crime the Republic of Bulgaria has not recognised any sentence issued by another national court;
6. The sentence does not stand in contradiction to the fundamental principles of Bulgarian criminal and criminal procedural law.

### **Article 464**

The request of another state for the recognition and enforcement of a sentence issued by a court in said state shall be rejected, where:

1. The punishment imposed may not be served due to the expiry of the prescription period envisaged under the Bulgarian Criminal Code;
2. At the moment the criminal offence was committed no criminal proceedings in the Republic of Bulgaria could have been initiated against the sentenced individual;
3. In respect of the same criminal offence against the same individual in the Republic of Bulgaria criminal proceedings are pending, a sentence has come into force, or a decree or ruling terminating the proceedings have come into force;
4. There are sufficient grounds to believe that a sentence has been imposed or aggravated due to racial, religious, national or political considerations;
5. Execution stands in contradiction to international obligations of the Republic of Bulgaria;
6. The offence has been committed outside its territory.

### **Article 465**

(1) A request for the recognition of a sentence issued by a foreign court in the Republic of Bulgaria shall be extended by the competent authority of the other state concerned to the Ministry of Justice.

(2) The Ministry of Justice shall refer the request together with the sentence and other relevant documents attached thereto to the district court at the place of residence of the sentenced individual. Where the latter does not live in this country, Sofia City Court shall be competent to examine the request.

(3) The court shall examine the request for recognition of the sentence issued by a foreign national court hearing in a panel of three judges, at an open hearing of the court, which shall be attended by the prosecutor, a counsel for the sentenced individual being appointed, where the latter has not hired one.

(4) After hearing the prosecutor, the sentenced person and his or her counsel the court shall issue a decision within 10 days, whereby it shall honour or reject the request for recognition of the sentence issued by a foreign national court.

(5) The decision of the court shall be subject to appeal or protest before the respective Appellate Court within seven days from its notification.

(6) The appeal and protest shall be examined by the respective Appellate Court within 10 days from being received at the court. The decision of the Appellate Court shall be final.

(7) A certified copy of a judgement which has come into effect shall be sent to the Ministry of Justice, which shall forward it to the competent authorities of the state which had requested recognition of the sentence. Where at the time a judgement is issued the sentenced individual serves a sentence to deprivation of liberty in another state, the court shall serve him or her with a copy of the decision, acting through the Ministry of Justice.

#### **Article 466**

(1) A judgement whereby a sentence issued by a foreign national court has been recognised has the effect of a sentence issued by a Bulgarian court.

(2) Where the punishment of imprisonment has been imposed on several individuals in the sentence concerned issued by a foreign national court, recognition shall only have effect in respect of the individual for whom recognition of the sentence has been requested.

(3) Where the recognised sentence issued by a foreign national court only concerns an isolated offence belonging to a series of offences, which have been committed on the territory of another state, the recognised sentence shall not be an obstacle to the criminal prosecution of the sentenced individual in respect of other offences included in the series of offences, which have been committed on the territory of the Republic of Bulgaria.

#### **Article 467**

(1) In order to secure the execution of a punishment to deprivation of liberty imposed by a sentence issued by a foreign national court, the competent court under Article 465, Paragraph 2 may, at any time after institution of proceedings for recognition and execution of the sentence concerned issued by a foreign national court and until a judgement has come into effect, set a measure of remand in custody and serve it on the sentenced individual who is in the territory of the Republic of Bulgaria.

(2) A ruling imposing a measure of remand in custody shall be appealed pursuant to the general rules.

#### **Article 468**

(1) The district court at the place of residence of the sentenced individual shall be competent to rule on the execution of a judgement, recognising a sentence issued by a foreign national court, and where a sentenced individual does not have a place of residence inside this country, this shall be Sofia City Court.

(2) A court under Paragraph 1 shall also be competent to rule on the execution of a judgement on the rights over any assets that have been forfeited or confiscated.

(3) The court under Paragraph 1 shall be competent in all matters pertaining to the procedure for execution, including the examination of a request for clear criminal record in respect of the punishment of deprivation of liberty imposed in the sentence issued by a foreign national court.

(4) The court shall rule on the issue of the period of service of a punishment of deprivation of liberty, deducting the period of detention in custody and the punishment of deprivation of liberty, which has been served in the other state.

(5) The court shall terminate the procedure for enforcement of the punishment of deprivation of liberty in respect of a recognised sentence issued by a foreign national court where the state whose court had issued it announces amnesty, pardon or gives any other reason due to which the subsequent enforcement of the sentence is inadmissible. Where by virtue of amnesty, pardon or another reason the punishment imposed is reduced, the court shall decide what portion of the sentence should be served. The decision of the court shall be subject to appeal following the general rules.

(6) The provisions of the Criminal Procedure Code for enforcement of sentences shall also apply to the enforcement of a decision, whereby a sentence issued by a foreign national court has been recognised.

**Article 469 (Supplemented, SG No. 15/2010, effective 23.02.2010)**

Other acts of foreign national courts, ruling the forfeiture or confiscation of the means of crime and of proceeds acquired through crime, or of their equivalent, shall be recognized and enforced pursuant to this section, unless provided otherwise in a law.

**Article 471**

(1) International legal assistance in criminal matters shall be rendered to another state under the provisions of an international treaty executed to this effect, to which the Republic of Bulgaria is a party, or based on the principle of reciprocity. International legal assistance in criminal cases shall also be made available to international courts whose jurisdiction has been recognized by the Republic of Bulgaria.

(2) International legal assistance shall comprise the following:

1. Service of documents;
2. Acts of investigation;
3. Collection of evidence;
4. Provision of information;
5. Other forms of legal assistance, where they have been provided for in an international agreement to which the Republic of Bulgaria is a party or have been imposed on the basis of reciprocity.

**Article 472**

International legal assistance may be refused if the implementation of the request could threaten the sovereignty, the national security, the public order and other interests, protected by law.

**Article 473**

(1) The appearance of a witness and an expert before foreign Court authorities shall only be allowed if assurance is given that the summoned persons, irrespective of their citizenship, would not bear criminal liability for acts committed prior to summoning them. In the event of a refusal to appear, no coercive measures may be applied to them.

(2) Turning over persons detained in custody, in order to be interrogated as witnesses or experts, shall only be allowed in exceptional cases at the discretion of the respective district Court on the grounds of papers submitted by the other state or the international Court of justice, provided that the person gives his/her consent for being turned over and provided that his/her stay in the other state will not extend the term of his/her detention in custody.

**Article 474**

(1) (Amended, SG No. 32/2010, effective 28.05.2010) The judicial body of another state may conduct an interrogation, through a video or phone conference, of an individual who appears as a witness or expert in the criminal proceedings and is located in the Republic of Bulgaria, as well as an interrogation with the participation of an accused party only if such interrogating does not run counter to the fundamental principles of Bulgarian law. An interrogation through a video conference involving the accused party or a suspect may only be conducted upon their consent and once the participating Bulgarian judicial authorities and the judicial authorities of the other state agree on the manner in which the video conference will be conducted.

(2) The request for interrogation filed by a judicial body of the other state should indicate:

1. The reason why the appearance in person of the individual is undesirable or impossible;
2. The name of the judicial body of the other state;

3. The data of individuals who shall conduct the interrogation;
4. The consent of the individual who shall be interrogated as a witness or expert through a phone conference;
5. Consent of the accused party who will take part in an interrogation hearing through a video conference.

(3) Bulgarian competent authorities in the field of criminal proceedings shall implement requests for interrogation through a video or phone conferences. A request for interrogation through a video or phone conference shall be implemented for the needs of pre-trial proceedings by the National Investigation Service. For the need of judicial proceedings, a request for interrogation through a phone conference shall be implemented by a court of equal standing at the place of residence of the individual, and for interrogation through a video conference – by the Appellate Court at the place of residence of the individual. The competent Bulgarian authority may require the requesting party to ensure technical facilities

for interrogation.

(4) The interrogation shall be directly conducted by the judicial authority of the requesting state or under its direction, in compliance with the legislation thereof.

(5) Prior to the interrogation the competent Bulgarian authority shall ascertain the identity of the person who needs to be interrogated. Following the interrogation a record shall be drafted, which shall indicate:

1. The date and location thereof;
2. The data of the interrogated individual and his or her consent, if it is required;
3. The data of individuals who took part therein on the Bulgarian side;
4. The implementation of other conditions accepted by the Bulgarian party.

(6) An individual who is abroad may be interrogated by a competent Bulgarian authority or under its direction through a video or phone conference where the legislation of said other state so admits. The interrogation shall be conducted in compliance with Bulgarian legislation and the provisions of international agreements to which the Republic of Bulgaria is a party, wherein the above means of interrogation have been regulated.

(7) The interrogation through a video or phone conference under Paragraph 6 shall be carried out in respect of pre-trial proceedings by the National Investigation Service, whereas in respect of trial proceedings - by the court.

(8) The provisions of Paragraphs 1 - 5 shall apply mutatis mutandis to the interrogation of individuals under Paragraph 6.

#### **Article 475**

(1) A letter rogatory for international legal assistance shall contain data about: the body filing the letter; the subject and the reasoning of the letter; full name and citizenship of the individual to whom the letter refers; name and address of the individual on whom papers are to be served; and, where necessary - the indictment and a brief description of the relevant facts.

(...)

#### **Article 476**

(1) Request for international legal assistance shall be executed pursuant to the procedure provided by Bulgaria law or pursuant to a procedure provided by an international agreement to which the Republic of Bulgaria is a part. A request may also be implemented pursuant to a procedure provided for in the law of the other country or the statute of the international court, should that be requested and if it is not contradictory to the Bulgarian law. The other country or international court shall be notified of the time and place of execution of the request, should that be requested.

(...)

(3) The Supreme Prosecution Office of Cassation shall set up, together with other states, joint investigation teams, in which Bulgarian prosecutors and investigative bodies will take part. An agreement with the competent authorities of the participant states shall be entered in respect of the activities, duration and composition of a joint investigation team. The joint investigation team shall comply with provisions of international agreements, the stipulations of the above agreement and Bulgarian legislation while being on the territory of the Republic of Bulgaria.

(4) The Supreme Prosecution Office of Cassation shall file requests with other states for investigation through an under-cover agent, controlled deliveries and cross-border observations and it shall rule on such requests by other states.

(5) In presence of mutuality a foreign authority carrying out investigation through an agent under cover on the territory of the Republic of Bulgaria shall be able to collect evidence in accordance with its national legislation.

(6) In urgent cases involving the crossing of the state border for the purposes of cross-border observations on the territory of the Republic of Bulgaria the Supreme Prosecution Office of Cassation shall be immediately notified. It shall make a decision to proceed with or terminate cross-border observations pursuant to the terms and conditions of the Special Intelligence Means Act .

(7) The implementation of requests for controlled delivery or cross-border observations filed by other states shall be carried out by the competent investigation authority. It shall be able to request assistance from police, customs and other administrative bodies.

#### **Article 477**

The expenses for the execution of the order shall be distributed between the countries in accordance with the international treaties to which the Republic of Bulgaria is a party, or on the principle of mutuality.

### **Section IV Transfer of Criminal Proceedings**

#### **Article 480**

In the event where information has been received from the authority of another state concerning the institution of criminal proceedings or the forthcoming institution of criminal proceedings in relation to a criminal offence committed in said other state, the competent prosecutor under Article 37 shall make a decision whether Bulgarian authorities will exercise their power under Article 4, Paragraph 1 concerning the institution of criminal proceedings in respect of the same criminal offence.

<b>LAW ON MEASURES AGAINST MONEY LAUNDERING</b>
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#### **Article 11**

(1) (Amended and supplemented, SG No. 1/2001, amended, SG No. 109/2007) Where money laundering has been suspected, the persons under Article 3, paragraphs (2) and (3), shall be bound to notify the Financial Intelligence Directorate of the State Agency for National Security immediately prior to the completion of the transaction or deal while delaying its execution within the allowable time as per the regulations dealing with the respective type of activity.

(2) (Amended, SG No. 1/2001, SG No. 109/2007) In case a delay in the transaction or deal is objectively impossible, the person under Article 3, paragraphs (2) and (3) shall notify the Financial Intelligence Directorate of the State Agency for National Security immediately after its completion.

(3) (New, SG No. 1/2001, amended, SG No. 109/2007) Notification of the Agency may be done also by personnel of the persons under Article 3, paragraphs (2) and (3) that are not responsible for enforcing anti-money laundering measures. The Directorate shall protect the anonymity of such personnel.

(4) (New, SG No. 54/2006, amended, SG No. 109/2007) The Financial Intelligence Directorate of the State Agency for National Security shall provide the person under Article 3, Paragraph 2 and 3, and under Article 3a information, related to the notification made thereby. The decision on the volume of information, which has to be returned for each particular notification case, shall be taken by the Agency director.

#### **Article 11a**

(New, SG No. 31/2003, effective 01.01.2004)

(1) (Amended, SG No. 109/2007) Persons referred to in Article 3, paragraphs (2) and (3) shall notify the Financial Intelligence Directorate of the State Agency for National Security of any payment in cash at a value exceeding BGN 30,000 or its equivalent in foreign currency made by or to any of their clients.

(2) (Amended, SG No. 109/2007) The Financial Intelligence Directorate of the State Agency for National Security shall keep a register of payments referred to in paragraph (1). The register may only be used for the purposes of counteracting money laundering.

(3) (Amended, SG No. 22/2009) The procedure and time terms for the provision, use, storage and destruction of the information referred to in paragraph (1), as well as its deletion from the register referred to in paragraph (2), shall be determined in the rules for implementing this Act.

#### **Article 11b**

(New, SG No. 31/2003)

(1) (Amended, SG No. 109/2007) The Customs Agency shall provide the Financial Intelligence Directorate of the State Agency for National Security with the information about trade credits involved in export and import, about financial leasing between domestic and foreign persons and about the export and import of Bulgarian Leva and foreign currency in cash, which information is being collected under the terms and procedure of the Foreign Exchange Act.

(2) (Supplemented, SG No. 109/2007) The procedure for the provision of the information referred to in paragraph (1) shall be determined jointly by the Chairperson of the State Agency for National Security and by the Minister of Finance.

#### **Article 11c**

(New, SG No. 31/2003, repealed, SG No. 109/2007)

#### **Article 12**

(Amended, SG No. 1/2001)

(1) (Amended, SG No. 54/2006, SG No. 109/2007) In cases under Articles 11 and 18, the Minister of Finance may, upon a proposal by the Chairperson of the State Agency for National Security, put a stay, by an order in writing, on a certain transaction or deal for a period of up to 3 business days as of the day following the issuance of the order. If no preventive measure, impoundment or injunction are imposed within that period, the person under Article 3, paragraphs (2) and (3), shall be free to execute the transaction or deal.

(2) (Amended, SG No. 109/2007) The Financial Intelligence Directorate of the State Agency for National Security shall notify the Prosecutor's Office immediately of the stay on the transaction or deal, providing the relevant information while protecting the anonymity of the person under Article 3, paragraphs (2) and (3) that has made the notification under Article



11 or 18.

(3) The prosecutor may impose a preventive measure or file a request with the relevant court to impose an impoundment or injunction. The court ought to adjudicate on the request within 24 hours of its submission.

(4) (Supplemented, SG No. 31/2003, amended, SG No. 54/2006, SG No. 109/2007, SG No. 36/2008) When, in the course of investigation and analysis of any information obtained under this Act, the suspicion in money laundering has not been cleared, the Financial Intelligence Directorate of the State Agency for National Security shall disclose this information to the prosecutor's office or to the relevant security or public order service, while preserving the anonymity of the person under Article 3, Paragraphs 2 and 3, and under Article 3a, and of its employees, making the notification under Articles 11 or 18.

## **LAW ON THE ADMINISTRATIVE OFFENCES AND SANCTIONS (LAOS)**

### **Article 83a (New, SG, No. 79/2005)**

(1) (Amended, SG No. 27/2009) A legal person, which has enriched itself or

would enrich itself from a crime under Articles 108a, 109, 110 (preparations for terrorism), Articles 142-143a, Article 152, Paragraph 3, Item 4, Articles 153, 154a, 155, 155a, 156, 158a, 159-159d, 209-212a, 213a, 214, 215, 225c, 242, 250, 252, 253, 254, 254b, 256, 257, 280, 283, 301-307, 319a-319f, 320-321a and 354a-354c of the Criminal Code, as well as from all crimes, committed under orders of or for implementation of a decision of an organized criminal group, when they have been committed by:

1. an individual, authorized to formulate the will of the legal person;
2. an individual, representing the legal person;
3. an individual, elected to a control or supervisory body of the legal person, or
4. an employee, to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of this task, shall be punishable by a property sanction of up to BGN 1,000,000, but not less than the equivalent of the benefit, where the same is of a property nature; where the benefit is not of a property nature or its amount can not be established, the sanction shall be from BGN 5,000 to 100,000.

(2) The property sanction shall also be imposed on the legal person in the cases, when the persons under paragraph 1, items 1, 2 and 3 have abetted or assisted the commission of the above acts, as well as when the said acts were stopped at the stage of attempt.

(3) The property sanction shall be imposed regardless of the materialization of the criminal responsibility of the perpetrator of the criminal act under paragraph 1.

(4) The benefit or its equivalent shall be confiscated in favour of the state, if not subject to return or restitution, or forfeiture under the procedure of the Criminal Code .

(5) Property sanctions under paragraph 1 shall not be imposed on states, state bodies and local self-government bodies, as well as on international organizations.

## **LAW ON EXECUTION OF PENALTIES AND DETENTION (LEPD)**

### **Chapter 11 SOCIAL AND CORRECTIONAL-EDUCATION WORK**

#### **Article 152.**

(1) Social and correctional-education work shall be essential tools of resocialization of persons deprived of their liberty and shall seek to assist the personality change of sentenced persons and the building of skills and abilities for a law-abiding lifestyle in society.

(2) Social and correctional-education work at the places of deprivation of liberty shall include:

1. diagnostic and individual correctional work;
2. programmes for intervention, for reduction of recidivism and of the risk of material damage;
3. education, training and qualification of persons deprived of their liberty;
4. creative, cultural and sports pursuits and religious support.

(3) Group and individual social and correctional-education work shall be implemented with persons deprived of their liberty.

## **Section I**

### **Programmes for Intervention, for Reduction of Recidivism and of Risk of Material Damage**

#### **Article 153.**

(1) Immediately after admission to the places of deprivation of liberty, persons deprived of their liberty shall be enrolled in a compulsory specialised programme for adaptation to the conditions for service of the sentence as imposed.

(2) The adaptation programme shall be of a duration of up to three months.

(3) Upon implementation of the adaptation programme, the persons deprived of their liberty shall be provided with information in a language which they understand regarding the objectives and forms of social and correctional-education work at the places of deprivation of liberty.

#### **Article 154.**

(1) After completion of the adaptation programme, an initial report and an individual plan for execution of the sentence shall be prepared for each sentenced person.

(2) The initial report shall cover an evaluation of the sentenced person, which shall include:

1. an assessment of the risk of recidivism and the risk of material damage;
2. causative factors of the risk of recidivism;
3. a proposal for remedying personality deficiencies and containing the causative factors of the risk of recidivism and the risk of material damage.

(3) The rules for evaluation of the sentenced person shall be endorsed by the Minister of Justice.

#### **Article 155.**

(1) The evaluation of the sentenced person shall be modified depending on the behaviour of the person deprived of his or her liberty.

(2) On the basis of the evaluation of the sentenced person, proposals shall be made for:

1. alteration of the regime of service of the sentence;
2. transfer to a prison facility of a lower security type or, respectively, of a higher security type;
3. conditional early release.

#### **Article 156.**

(1) The individual plan for execution of the sentence shall include intervention activities and programmes for resocialisation of the sentenced person.

(2) The individual plan for execution of the sentence shall be prepared on the basis of:

1. the type and nature of the criminal offence committed;
2. the length of the sentence imposed;
3. the assessment of the sentenced person and the causative factors of the risk of recidivism;
4. the initial place assigned by the court for service of the custodial sentence as imposed.

(3) The individual plan for execution of the sentence shall have as an objective:

1. the enrolment of the sentenced person in programmes and activities for personality change and elimination of the causative factors of the risk of recidivism;
2. transfer for service of the sentence as imposed to a prison facility of a lower security type;
3. conditional early release.

(4) An annual report on the results of the work under the individual plan for execution of the sentence shall be prepared for each sentenced person.

#### **Article 157.**

(1) The specialised programmes for individual and group work shall be implemented by the social and correctional-education work inspectors jointly with the personnel members of the rest of the fields of activity, volunteers and suitably trained outside experts.

(2) The specialised programmes shall have as an objective:

1. to motivate and encourage law-abiding behaviour;
2. to increase the social competence and to build behavioural skills;
3. to overcome dependencies;
4. to prepare for return to life in society after release.

(3) Participation of sentenced persons in specialised programmes shall be voluntary. Their co-operation in the resocialisation process shall be encouraged.

(4) The specialised programmes for individual and group work shall be endorsed by the Chief Director of the Chief Directorate of Implementation of Penal Sanctions on a proposal by the Council on Implementation of Penal Sanctions.

#### **Article 158.**

Individual work with sentenced persons shall include:

1. provision of information regarding the legal and social status and the possibilities to relax the conditions of serving the sentence;
2. assistance to addressing problem situations and building skills to cope with difficulties;
3. referral to and intermediation with outside organisations for solving particular problems;
4. motivation for active participation and cooperation in the preparation for return to life in society after release.

### **Section II**

#### **Education, Training and Qualification of Persons Deprived of their Liberty**

#### **Article 159.**

(1) Educational, training and qualifying activities, accessible on an equal footing to all persons deprived of their liberty, shall be implemented at the places of deprivation of liberty.

(2) The participation of persons deprived of their liberty in educational, training and qualifying activities shall be taken into consideration in determining the degree of correction and re-education.

#### **Article 160.**

(1) Schools at the places of deprivation of liberty shall be opened, transformed and closed by the Minister of Education, Youth and Science on a proposal by the Minister of Justice. The said schools shall carry out the activity thereof according to the state educational requirements.

(2) The school principals and the teachers at the places of deprivation of liberty shall be appointed according to the procedure, established by the Public Education Act.

#### **Article 161.**

- (1) The curricula and syllabi shall conform to the state educational requirements for education level.
- (2) The activity of the schools at the places of deprivation of liberty shall be financed by the state budget through the Ministry of Justice.
- (3) A completed education level, an acquired qualification in an occupation or part of an occupation shall be certified by a document, endorsed by the Ministry of Education, Youth and Science.

**Article 162.**

- (1) Persons deprived of their liberty, who have not attained the age of 16 years, shall be subject to compulsory schooling at the schools at the places of deprivation of liberty.
- (2) Persons deprived of their liberty, who are not subject to compulsory schooling, may be enrolled in general educational instruction.
- (3) The educational, training and qualification activities at the places of deprivation of liberty shall include:
  1. general and vocational education;
  2. vocational training;
  3. literacy and vocational courses;
  4. social education.
- (4) The activities, covered under Paragraph (3), shall be implemented in the following forms:
  1. daytime;
  2. evening courses;
  3. extramural;
  4. individual;
  5. self-managed learning.

**Section III**

**Creative, Cultural and Sports Pursuits.**

**Exercise of Freedom of Religion**

**Article 163.**

- (1) Conditions shall be created at the places of deprivation of liberty for creative and cultural pursuits and for development of the physical culture of the persons deprived of their liberty.
- (2) Outside organisations and volunteers may be recruited for implementation of the activities, referred to in Paragraph (1).
- (3) The exchange of creative, cultural and sports events between the places of deprivation of liberty shall be organized and conducted according to a procedure, established by the Chief Director of the Chief Directorate of Implementation of Penal Sanctions.

**Article 164.**

- (1) As far as possible, each person deprived of his or her liberty shall be ensured conditions for participation in sports games and exercise for one hour per day besides the designated outdoor time.
- (2) If the conditions are unfavourable, the sports games and exercise shall be held indoors.
- (3) Tourist outings, visits to cultural events and sports events outside the places of deprivation of liberty may be organised for juveniles, women and specific categories of men deprived of their liberty.

**Article 165.**

- (1) A library shall be set up at each prison, prison hostel and reformatory, and access thereto shall be ensured to all persons deprived of their liberty.

(2) The library holdings shall be replenished and renewed periodically. The instruments of national and international law, which regulate the activity comprehended in implementation of penal sanctions, shall be arranged in the library and shall be made available for use.

(3) Persons deprived of their liberty shall be afforded an opportunity for subscription to publications of the local and national print media. The service subscription for persons deprived of their liberty shall be endorsed by the Minister of Justice.

#### **Article 166.**

(1) Persons deprived of their liberty shall be afforded an opportunity to satisfy the needs of their religious life by means of attending religious services and rites, as well to use the relevant literature.

(2) The satisfaction of the needs of religious life may not breach order at the places of deprivation of liberty.

#### **Article 167.**

(1) Ministers of the religious communities, registered in the Republic of Bulgaria, shall be afforded access to the places of deprivation of liberty.

(2) A clergy persons shall be allowed to meet in private with persons deprived of their liberty.

(3) Persons deprived of their liberty may not be compelled to attend religious services and rites.

(4) Persons professing different religions shall have equal rights.

(5) Ministers of the religious denomination professed by the prevailing number of persons deprived of their liberty who serve a sentence at the respective prison or reformatory may be appointed to a full-time position at the places of deprivation of liberty.

### **LAW ON FORFEITURE OF PROCEEDS OF CRIME (LFPC)**

**Promulgated, state Gazette No. 19/1.03.2005, last amendment SG No. 18/5.03.2010, effective 5.03.2010**

## **Chapter Two. GROUNDS FOR FORFEITURE AND CRIMINAL ASSETS FORFEITABLE TO THE EXCHEQUER.**

### **Section I. Grounds for Forfeiture of Criminal Assets to the Exchequer**

#### **Article 3**

(1) Proceedings under this Act shall be conducted where it has been established that a specific person has acquired assets of substantial value which can be reasonably assumed to have been derived from criminal activity and criminal prosecution has been undertaken against such a person in connection with a criminal offence under the Penal Code under:

1. Article 108a (1) (terrorism); Article 108a (2) (financing of terrorism); Article 109 (forming, leading or membership of an organized criminal group which sets itself the object of committing criminal offences under Article 108a (1) and (2); Article 110 (preparation for terrorism);

2. Items 7 and 10 of Article 116 (1);

3. Articles 155, 156, 159;

4. Articles 159a-159c;

5. Articles 194-196a (theft of a motor vehicle);

6. Articles 198-200 (robbery of a motor vehicle);

7. Articles 201-203;

8. Articles 209-211, Article 212 (3), (4) and (5), Articles 212a, 213;

9. Articles 213a-214;

10. Item 1 of Article 215 (2);
11. Articles 227c and 227d;
12. Article 233;
13. Article 235;
14. Articles 242-242a;
15. Articles 243-246 and Articles 250-252;
16. Articles 253 (money laundering) and 253a (preparation of money laundering and conspiracy for such purpose);
17. (Amended, SG No. 75/2006, SG No. 16/2008) Articles 254b and Articles 255 and 256;
18. Article 282 (5);
19. Articles 301-306;
20. Article 308 (2), (3) and (5);
21. Articles 321-321a;
22. Article 327 (1) - (3);
23. Articles 337 and 339;
24. Item 4 of Article 346 (2) and Article 346 (3);
25. Article 354a, Article 354b (4), (5) and (6) and Article 354c.

(2) Proceedings under this Act shall furthermore be conducted where there are sufficient data about assets of substantial value which can be reasonably assumed to have been derived from criminal activity but:

1. no criminal proceedings have been instituted, or such proceedings in progress have been discontinued due to the death of the perpetrator, or
2. no criminal proceedings have been instituted, or such proceedings in progress have been discontinued due to the fact that after committing the offence the perpetrator has lapsed in a sustained mental derangement which precludes sanity, or an amnesty has ensued, or
3. (amended, SG No. 86/2005) the criminal proceedings have been suspended in pursuance of Article 25 of the Criminal Procedure Code.

(3) The proceedings referred to in Paragraph (1) shall furthermore be conducted where property of substantial value is identified as having been derived from criminal activity carried out abroad which falls under the criminal jurisdiction of the Republic of Bulgaria.

## **Section II. Forfeitable Assets**

### **Article 4**

(1) Any assets acquired during the period under examination by persons in respect of whom the grounds under Article 3 herein have been established to exist, and in the specific case the acquisition can be reasonably assumed to be associated with the criminal activity of the said persons, so long as no legitimate source has been identified, shall be forfeited according to the procedure established by this Act.

(2) Where the assets referred to in Paragraph (1) have been transferred onerously to a bona fide third party, with payment in full of the actual value of the acquisition, solely the consideration that has accrued to the person under Paragraph (1) shall be forfeitable.

### **Article 5**

Any assets derived from criminal activity shall likewise be forfeited by the legal or testamentary heirs of the person who has derived any such assets up to the amount received by the said heirs.

## **Article 6**

Any assets derived from criminal activity, which are incorporated into the patrimonium of a legal person controlled by the respondent, whether independently or jointly with another natural or legal persons, shall likewise be forfeited to the Exchequer under the terms and according to the procedure established by this Act. Any such assets shall furthermore be forfeited in the cases of legal succession of the relevant legal person.

## **Article 7**

Any transactions effected in assets derived from criminal activity shall be invalid in respect of the State and the benefit conferred shall be forfeitable where the said transactions are:

1. gratuitous transactions with third parties, whether natural or legal persons;
2. onerous transactions with third parties, if the said parties were aware that the assets have been derived from criminal activity, or where such third parties have acquired the assets for the purpose of concealing them, or for disguising the illicit origin thereof or the actual rights associated with such assets.

## **Article 8**

(1) Any assets transferred during the period under examination to a spouse, to lineal relatives up to any degree of consanguinity and to collateral relatives or affines up to the second degree of consanguinity or affinity inclusive shall likewise be forfeitable under the terms and according to the procedure established by this Act where the said persons were aware that the said assets have been derived from criminal activity.

(2) Awareness of the persons referred to in Paragraph (1) shall be presumed until otherwise proven.

## **Article 9**

Until otherwise proven, any assets which the spouse and underage children of the respondent have acquired from third parties in their own name shall be presumed acquired for the account of the respondent, where the acquisition is of substantial value, exceeds the income of the said persons during the period under examination, and another source of income cannot be identified.

## **Article 10**

Any assets derived from criminal activity, which constitute matrimonial community property, shall likewise be forfeited to the Exchequer where it is established that the other spouse did not contribute to the acquisition of the said assets.

## **Article 15**

(1) The authorities referred to in Article 12 (10) herein shall conduct examinations and shall collect evidence for identification of the source and location of assets of which there is data that they have been derived, whether directly or indirectly, from criminal activity. The said authorities shall have the right to request assistance and to seek information from all State and municipal authorities. Provision of the information sought may not be refused or limited on considerations of official or commercial secrecy.

(2) An examination under this Act may not continue for more than ten months. By way of exception, the Commission shall have the right to extend this period on a single occasion by three months.

(3) The proceedings under this Act shall be instituted by a decision of the Commission on institution of proceedings for forfeiture of criminal assets, which shall not be subject to service and shall be unappealable. The criminal assets identification authorities shall draw up a memorandum on each step under this Act.

## **Article 17**

(1) The authorities referred to in Article 12 (10) herein shall have the right to (1) The authorities referred to in Article 12 (10) herein shall have the right to require from a natural-person respondent to submit within 14 days a declaration in writing regarding:

1. the corporeal immovables and motor or land vehicles or vessels, limited real rights to corporeal immovables, cash deposits, securities, works of art, movable archaeological property, participating interests in commercial corporations, receivables, patents, trademarks and industrial designs, owned by the said respondent and by the members of the family thereof;

2. a list of the bank accounts held by the respondent and by the members of the family thereof in Bulgaria and abroad;

3. the sources of income and the grounds for acquisition of the assets and for maintenance of the family;

4. any transactions in corporeal immovables, movable things, shares and interests in commercial corporations and other property effected during the period under examination by the relevant respondent and by the members of the family thereof, as well as the sources of income used to effect the said transactions;

5. any debts to third parties, where such debts have been shown in the annual tax returns.

(2) Should the person referred to in Paragraph (1) be deceased, the declaration shall be required from the legal and testamentary heirs thereof.

(3) A declaration under Paragraph (1) may furthermore be required from the third parties who have acquired assets from the respondent and in respect of whom data exist that they have acquired assets in their name on funds belonging to the respondent.

(4) In respect of legal-person respondents, a declaration shall be required from the persons who represent, manage or control the said legal person, as well as from all persons who represented, managed or controlled the said legal person during the period under examination. The declaration shall state accordingly the circumstances covered under Items 1 to 5 of Paragraph (1) regarding the legal person referred to in Article 6 herein.

(5) Should the respondent fail to submit a declaration or submit an incomplete declaration, or refuse to submit a declaration, the assets which are not declared shall be presumed to have been derived from criminal activity until otherwise proven.

(6) In its request for completion and submission of a declaration addressed to the person referred to in Article 3 (1) herein, the authority shall fix the period under examination.

(7) The standard form of the declaration referred to in Paragraph (1) shall be endorsed by the Commission and shall be promulgated in the State Gazette.

## **Article 22**

(1) The director of the competent territorial directorate shall prepare a report to the Commission on any notification under Article 21 (1) and (2) herein received. On the basis of the said report, the Commission shall make a reasoned motion, supported by evidence under this Act, for imposition of injunctions to the district court exercising jurisdiction over the permanent address of the [natural] person or over the address of the registered office of the legal person, as the case may be, and in the cases where a corporeal immovable is incorporated into the assets, over the location of the corporeal immovable.

(2) The court shall impose injunctions under the terms and according to the procedure established by the Code of Civil Procedure.

(3) Should there be a risk of the criminal assets being squandered, destroyed, concealed or disposed of, the court, acting on a motion by the authorities referred to in Article 12 (10) herein, may order the sealing of premises, equipment, means of transport and any other where such assets are stored.



## **Article 23**

(1) The court shall pronounce on the day of receipt of a motion, rendering a ruling whereby it shall grant or shall refuse the imposition of the injunction. Any ruling granting an injunction shall be subject to immediate enforcement.

(2) The court ruling whereby imposition of an injunction is granted or refused shall be subject to intermediate appellate review and to cassation appeal.

(3) The injunction referred to in Paragraph (1) shall extend to the interest and acquisition of other civil fruits of the assets whereon it is imposed.

(4) The court may permit the effecting of a payment or other acts of disposition of any assets whereon injunctions are imposed under this Act, where this is required for the purpose of:

1. medical treatment or other urgent humanitarian needs of the person on the assets whereof injunctions are imposed, or of a member of the family of the said person;
2. payment of spousal and child support;
3. payment of obligations at public law to the State;
4. payment of remunerations for work performed;
5. compulsory social and health insurance;
6. payment of expenses needed to preserve and maintain the assets whereon injunctions are imposed;
7. payment of expenses in connection with the proceedings under this Act;
8. payment of the remuneration of the trustee in bankruptcy in bankruptcy proceedings.

(5) A permission under Paragraph (4) shall be granted for each particular case, acting on a reasoned application by the interested party or, where payment of an obligation to the State is involved, also on the initiative of the director of the competent territorial directorate. The court shall pronounce within 48 hours after receipt of any such application.

(6) (Amended, SG No. 105/2005, SG No. 12/2009, effective 1.01.2010 - amended, SG No. 32/2009) Any perishable assets or assets whereof the preservation entails large expenses shall be sold by the authorities of the National Revenue Agency according to the procedure established by the Tax and Social Insurance Procedure Code, and the proceeds shall be credited to a special account.

(7) No injunctions shall be imposed on any assets whereagainst execution cannot be enforced.

## **Article 33**

The Criminal Assets Identification Commission shall exchange information for the purposes of this Act with the competent authorities of other States and with international organizations on the basis of international instruments and international treaties which are in force for the Republic of Bulgaria.

<b>LAW FOR THE PROTECTION OF PERSONS THREATENED IN CONNECTION WITH CRIMINAL PROCEEDINGS (LPPTCP, State Gazette No. 103 dated November 23, 2004).</b>
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<b>/ Protection of Individuals at Risk in Relation to Criminal Proceedings Act</b>
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## **Article 3**

Special protection under this Law can obtain the following threatened persons:

1. (amend. - SG 66/08, in force from 26.09.2008) participants in criminal procedure - witness, private prosecutor, indicter, defendant, accused, expert, witness of investigation;
2. sentenced ones;

3. persons, directly related to the ones referred to in items 1 and 2 - ascending, descending, brothers, sisters, spouse or persons, with whom they are in particular close relations.

#### **Article 4**

The threatened persons can get special protection in those cases where the evidence, the explanations or the information of the persons of art. 3, items 1 and 2 provide proof of essential importance in criminal procedures for serious intentional unqualified crimes of Chapter one, two, Chapter six - art. art. 242, para 2, 3 and 4, chapter eight - section IV, chapter eleven - art. 330, 333, 354a, and chapter fourteen of the Penal Code and of all crimes, committed upon instruction or in fulfilment of decision of an organised criminal group.

#### **Article 26 INTERNATIONAL COOPERATION**

On grounds of an international agreement to which the Republic of Bulgaria is a party or based on mutuality the Protection Bureau may request and provide assistance in the implementation of protection as herein set forth.

### **LAW ON RECOGNISING, EXECUTING AND MAKING ORDERS FOR FREEZING PROPERTY OR EVIDENCE**

#### **Article 19**

(1) Rulings for freezing property or evidence which are subject to recognition and execution in another Member State of the European Union are issued by the respective first-instance court upon the request of: 1. the Prosecutor – for taking measures for securing the confiscation or seizure of property in favour of the State; 2. the Prosecutor, the defendant, the injured, the private prosecutor or the civil claimant in those cases where it is feared that any piece of evidence might get lost or the collection thereof might become difficult. (2) The Prosecutor issues a decree on freezing the evidence in those cases where the Penal Procedure Code does not require the court's permission or approval for the actions relating to the inquest in pre-trial proceedings;

### **TAX - INSURANCE PROCEDURE CODE (TIPC) / TAX AND SOCIAL INSURANCE PROCEDURE CODE (TSIPC)**

## **Chapter Seven. SUSPENSION, RESUMPTION AND TERMINATION OF PROCEEDING**

#### **Article 34**

(1) A proceeding shall be suspended in case of:

1. illness of a person whose participation is indispensable, after certification by a valid medical document;
2. institution of an administrative, criminal or judicial proceeding, which is of relevance to the outcome of the proceeding, after presentation of a certificate issued by the authority before which the said proceeding has been instituted;
3. death of a legitimate representative of the person concerned, until institution of tutorship or curatorship;
4. a request submitted by the subject: on a single occasion, for a specified period which may not exceed three months;
5. other circumstances provided for by a law.

(2) Where a reason to believe that a criminal offence relevant to the outcome of the proceeding is established in the course of the proceeding, the proceeding shall be suspended and the case records shall be transmitted to the competent prosecutor. After close of the criminal proceeding, the case records thereon shall be transmitted to the revenue authorities for a resumption of the suspended proceeding.

(3) If any grounds under Paragraph (1) or (2) exist, the discretion shall be given to the authority that has ordered the proceedings, and in cases of administrative appeal, to the decision-making authority. The proceeding shall be suspended by an order which shall be served on the persons concerned and shall be unappealable.

## CONTRACTS AND OBLIGATIONS (COA)

### **Article 26 (Amended, SG No. 12/1993)**

A contract which contravenes or circumvents the law, as well as a contract which infringes upon good morals, including a contract on an as yet nonexistent inheritance, shall be null and void.

Null and void shall also be contracts with an impossible subject, contracts which lack consent, the form prescribed by law, a consideration, as well as simulated contracts. The consideration shall be presumed to exist until proven otherwise.

(Paragraph 3, repealed, SG No. 30/1990).

(Paragraph 4, amended, SG No. 12/1993) The nullity of parts of a contract shall not entail nullity of the entire contract, provided the null provisions are replaced by operation of law with mandatory rules of the law, or when it can be assumed that the transaction would have been concluded even without its null parts.

### **Article 27**

Contracts concluded by persons lacking capacity, or by their agents without observing the requirements established for such agents, as well as contracts concluded under mistake, fraud, threat or financial duress shall be invalidatable.

### **Article 28**

A mistake as to the subject shall represent grounds for invalidation of the contract provided the mistake concerns material properties of the subject. A mistake as to the person shall represent grounds for invalidation provided the contract was concluded with respect to the person.

A mistake which is limited to the calculations shall not represent grounds for invalidation and shall be subject to correction.

The party claiming invalidation must compensate the other party for the damages suffered by it as a result of the conclusion of the invalidated contract, unless the former party proves that it had no fault for the mistake or that the other party knew about the mistake.

### **Article 29**

Fraud shall represent grounds for invalidating a contract provided one of the parties was misled into concluding it through intentional misrepresentation.

Where the fraud originates from a third party the deceived party may claim invalidation of the contract only if upon conclusion of the contract the other party knew or could not have not known of it.

### **Article 30 (Amended, SG No. 12/1993)**

Threat shall serve as grounds for contract invalidation provided one of the parties was forced by the other party or by a third party to enter into the contract through provoking a well-founded fear.

### **Article 31**

A contract entered into by a person possessing capacity shall be subject to invalidation provided that upon conclusion of the contract that person could not understand or could not guide his acts.

The invalidation of such a contract may not be claimed after the death of such a person unless his judicial disability was requested prior to his death or unless the lack of capacity is evident from the contract itself.

#### **Article 32**

Invalidation may be claimed only by a party in whose interest the law allows such invalidation.

The right to claim invalidation shall be limited to three years. The limitation period shall commence on the date when the person came of age, the judicial disability was lifted, the mistake or fraud was discovered or the threat ceased, and for all other cases - from the date of conclusion of the contract.

A defendant to an action for enforcing performance of a contract subject to invalidation may claim the invalidation by means of a defense even after the limitation period has expired.

#### **Article 33**

A contract entered into because of financial duress under clearly unfavourable terms shall be subject to invalidation. The court may invalidate such a contract fully or only for the future. The invalidation shall not be admissible if the other party proposes to repair the damage.

The right to claim invalidation shall be limited to one year from the date of conclusion of the contract.

Invalidation on grounds of financial duress shall not affect the rights acquired by third parties prior to the registration of the petition.

#### **Article 40**

If the agent and the person with whom he is negotiating reach an agreement to the detriment of the principal, the contract shall not have effects on the latter.

#### **Article 94**

Arrangements which a priori rule out or reduce the debtor's liability for deliberate actions or gross negligence shall be null and void.

(Paragraph 2, repealed, SG No. 12/1993).

#### **Article 113**

An agreement for abridging or extending established limitation periods, as well as renunciation of the limitation before it expires shall be invalid.

#### **Article 135**

The creditor may ask that with respect to himself certain acts of the debtor which have harmed him be declared invalid, if the debtor was aware of the harm at the time of performance of those acts. Where an act is for consideration it shall be assumed that the person with whom the debtor negotiated was also aware of the harm. Invalidity shall not prejudice the rights acquired in good faith by third parties for consideration prior to the registration of the petition for invalidation.

Knowledge shall be presumed until proven otherwise, if the third party is a spouse, a descendant or ascendant, or a sibling of the debtor.

Where the act was performed prior to the arising of the claim it shall be invalid only if it was intended by the debtor and the person with whom he negotiated to harm the creditor.

Creditors in whose favour the invalidity is declared shall be satisfied out of the amount received from a public auction before the third party, when the latter participates in the distribution with a claim arising from the declaration of invalidity.

## **Chapter eight. BANK AND PROFESSIONAL SECRECY**

### **Article 62**

(1) Bank employees, members of the bank's management and controlling bodies, BNB officials, liquidators, trustees in bankruptcy as well as all the other persons, who work for the bank, shall not make public, nor take personal advantage (for themselves or for the members of their families) of information, which is deemed bank secrecy.

(2) Bank secrecy shall be facts and circumstances relating to availabilities and operations on bank customers' accounts and deposits.

(3) Upon entering into their duties, all employees of the bank shall sign a declaration that they will keep the bank secrecy.

(4) The provision under paragraph 1 shall apply to cases where the relations between the respective persons and the bank have been terminated or their activities have been suspended.

(5) With the exception of BNB and for the purposes of Art. 56, the bank shall disclose information under paragraph 2 for its customers only after obtaining their assent or pursuant to court decision.

(6) The court may rule out disclosure of information under paragraph 2 also at the request of the following authorities:

1. Procurator - if data for performed crime is available;

2. The Minister of Finance or a person authorised by him - in the cases referred to in Art. 143, paragraph 4 of the Tax Procedure Code;

3. The director of a territorial directorate of the National Revenues Agency in the following cases:

a) Where there exists proof that the person under investigation has frustrated investigation or revision or that his accounting is incomplete or untrue;

b) Where an act of a competent state authority has established occurrence of an event that have led up to destruction of reporting documentation of the person under inspection;

4. The Commission for determining of property acquired as a result of criminal actions and the directors in its regional directorates;

5. The director of the State Financial Inspection Agency or officials authorised by him where it has been established in an agency's act that:

a) The management of the organisation under inspection or a person has frustrated supervision executed on behalf of the agency's bodies;

b) The organisation or the person under inspection has not performed good accounting or it is incomplete or untrue;

c) There exists information for deficiencies;

d) The occurrence of an untoward event has been registered in an act issued by a state authority where this event has led up to destruction of reporting documentation of the organisation or the person under inspection;

6. (amend. - SG 95/09, in force from 01.12.2009) The director of the "Customs" Agency and the heads of customs in the following cases:

a) It has been registered by an act of the customs authorities that the person under inspection has frustrated an inspection of the customs authorities or does not keep the necessary accounting or the accounting is incomplete or untrue;

- b) Customs violations have been established by an act of the customs authorities;
  - c) It is necessary to levy distraint on bank accounts for securing receivables established by the customs authorities as well as for securing of fines, legal interests or others;
  - d) The occurrence of an untoward event that have led up to destruction of reporting documentation of the site inspected by the customs authorities where this event has been registered in an act issued by a state authority;
7. (amend. - SG 69/08; amend. - SG 93/09, in force from 25.12.2009) The directors of Chief Directorate "Combating Organized Crime", Chief Directorate "Criminal Police" and Chief Directorate "Pre-trial Proceedings" at the Ministry of Interior - for the purposes of investigation and detection of crime;
8. (amend. - SG 109/07, in force from 01.01.2008) The Chairman of State Agency "National Security" - where this is necessary for the protection of the national security.
- (7) The Regional Judge shall deliver a judgment on the request under paragraph 6 with a motivated decision voted during a closed session not later than 24 hours of the submission of the request; the Regional Judge shall determine the time span of the information under paragraph 1. The decision of the court shall not be subjected to appeal.
- (8) (amend. - SG 109/07, in force from 01.01.2008; amend. - SG 69/08); amend. - SG 93/09, in force from 25.12.2009) The banks shall disclose information regarding the availability and the bank account movements of the companies with 50 percent of state and/or municipal shares upon written request by the director of the National Bureau of Investigation, the Chairman of State Agency "National Security" or the directors Chief Directorate "Combating Organized Crime", Chief Directorate "Criminal Police" and Chief Directorate "Pre-trial Proceedings" at the Directorate "Criminal Police" and Chief Directorate "Pre-trial Proceedings" at the Ministry of Interior.
- (9) The banks shall disclose information, which is deemed bank secrecy, where this information is related to persons under investigation for reliability pursuant to the provisions of the Law of Protection of Classified Information at a written request issued by the Chairman of the State Information Security Commission or by the heads of security bureaus or the public order bureaus. The request shall be accompanied by assent for disclosure obtained by the person under investigation.
- (10) Where data on organised crime or money laundering are available, the Chief Prosecutor or a substitute authorised by him shall be in a position to request from the banks information referred from in paragraph 2. The request sent to the banks and the received information shall be entered in a register kept at the Chief Prosecutor's Office and at BNB.
- (11) (new - SG 105/06, in force from 01.01.2007) Banks shall provide information about the incomes from savings to the Executive Director of the National Revenue Agency under the conditions and following the procedure of Part Two, Chapter Sixteen, Section IV of the Tax-insurance Procedure Code.

### **Article 63**

- (1) Professional secrecy shall be the information received or created by the BNB for the purposes of banking supervision or in relation thereto, the disclosure of which would harm the commercial interest or the repute of a bank or its shareholders. Professional secrecy shall not constitute official secrecy within the meaning of the Classified Information Protection Act .
- (2) The information that is subject to publication or disclosure under a statutory instrument shall not constitute professional secrecy.
- (3) The members of the management board, the employees, external auditors, experts and other persons working for the BNB shall be bound by the obligation of professional secrecy, including after termination of their relations with the BNB.

(4) The persons under paragraph 3 may use the information subject to professional secrecy only for the purposes and in the course of their duties. Such information may not be divulged or provided to persons or authorities other than those specified in Article 64.

(5) The restrictions under paragraph 4 shall not apply where the information is provided in summary or collective form such that the bank or the persons whom it concerns cannot be identified.

(6) The information received from a bank or another liable party hereunder may be returned to them without any limitation.

#### **Article 64**

(1) The persons under Article 63 (3) may provide information constituting professional secrecy to the following bodies in relation to the performance of their functions and duties:

1. the judicial authorities - in the cases of initiated criminal proceedings;

2. the court:

(a) in the cases of an appeal of an administrative act issued by the BNB in accordance with this Act;

(b) in relation to court proceedings concerning supervisory actions taken; (c) in the cases of bank liquidation or bankruptcy proceedings opened, except for the information referring to third parties wishing to acquire the enterprise of the bank;

3. (amended, SG No. 109/2007) the financial supervision authorities in the Republic of Bulgaria, of the Bank Deposit Guarantee Fund and the State Agency for National Security - in the cases and according to a procedure laid down in joint instructions or agreements;

4. trustees in bankruptcy or liquidators of banks as well as the authorities responsible by law for overseeing a bank undergoing liquidation or bankruptcy proceedings;

5. auditors of the accounts of banks or other financial institutions as well as the persons responsible by law for overseeing the auditors of banks, insurance companies, investment intermediaries or other financial institutions;

6. the authorities of other Member States responsible for the supervision of financial institutions, insurance companies, financial markets or payment systems;

7. the authorities of other Member States involved in liquidation or bankruptcy proceedings concerning banks or in other similar procedures as well as the authorities of Member States responsible for overseeing banks undergoing bankruptcy, liquidation or other similar procedures;

8. the authorities of other Member States responsible for carrying out statutory audits of accounts of banks and other financial institutions as well as the authorities responsible for the statutory overseeing of auditors of banks;

9. the authorities administering deposit-guarantee schemes in Member States;

10. the European Central Bank and the central banks of Member States.

(2) The authorities under paragraph 1 shall use the information received only for the purposes for which it has been provided and shall not provide it to third parties save for the performance of an obligation provided for by law.

(3) The authorities under paragraph 1, subparagraphs 3 - 10 may receive information from the BNB where they are bound by the obligation of professional secrecy analogous to that established herein.

(4) Where professional secrecy constitutes bank secrecy as well, the procedure for disclosure of bank secrecy as set out herein shall apply.

(5) The Bulgarian National Bank shall communicate to the European Commission and the other Member States the names of supervisory bodies under paragraph 1, subparagraphs 4 and 5, which are entitled to receive information constituting professional secrecy.

## **Article 65**

(1) The provision of Article 63 shall furthermore apply to the information received by the BNB from the competent supervision authorities of Member States. Such information may be used only in the course of performance of BNB supervisory duties and only for the following purposes:

1. to check that the conditions for the granting of bank licence under Chapter Three are fulfilled or to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such business, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms;
2. to impose measures and sanctions under the terms of this Act;
3. in appeal of administrative acts of the BNB in administrative or court proceedings;

(2) The persons under Article 63 (3) may provide to the competent supervision authorities of Member States information subject to professional secrecy only if the information disclosed is subject to guarantees of professional secrecy by said authorities.

(3) The information received by the BNB from the competent supervision authorities of other Member States may be provided under the procedure of this Act to the authorities under Article 64 or to other persons and authorities only with the express written consent of the competent supervision authority of the Member State from which the information was received and subject to the conditions under which such consent was granted.

(4) The information received by employees of the BNB in conducting on-site inspections in a Member State may not be disclosed without the express written consent of the competent supervision authority of the Member State in which the inspection was conducted and subject to the conditions under which such consent was granted.

## **Article 66**

Information constituting professional secrecy may be provided to the competent supervision authority of a third country on the basis of an agreement under Article 88 and provided that:

1. the recipient ensures at least the same protection of the information provided as that provided for herein;
2. the recipient is entitled to and agrees to provide information of the same type at BNB request;
3. the exchange of information is for the purpose of the performance of the supervisory functions of the supervision authority concerned;
4. the recipient has substantiated need of the requested information.

<b>PUBLIC PROCUREMENT ACT / LAW FOR THE PUBLIC PROCUREMENT</b>
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(Prom. SG. 28/6 Apr 2004, last amend. SG. 54/16 Jul 2010)

### **Chapter four.**

#### **GENERAL RULES FOR PARTICIPATION IN A PUBLIC PROCUREMENT PROCEDURE**

##### **Section I.**

**Requirements to the Candidates and the Participants (Title amend. - SG 37/06, in force from 01.07.2006)**

**Art. 46.** (suppl. – SG 37/06, in force from 01.07.2006)

Participant in a public procurement procedure may be every candidate or participant who meets the requirements announced in advance.

**Art. 47.** (amend. - SG 37/06, in force from 01.07.2006)

(1) The contracting authority shall remove from participation in a public procurement procedure a candidate or participant who:



1. has been convicted by an enacted sentence, unless rehabilitated, for:
  - a) a crime against the financial, tax or insurance system, including money laundering;
  - b) bribe under art. 301 – 307 of the Penal code;
  - c) participation in a criminal organisation under art. 321 – 321a from the Penal code;
  - d) a crime against the property under art. 194 – 217 from the Penal code;
  - e) offence against the economy under art. 219 – 252 from the Penal code;
2. has been declared bankrupt;
3. is in liquidation proceedings or in a similar procedure according to the national laws and by laws.

<p style="text-align: center;"><b>CONCESSION ACT / LAW ON THE CONCESSIONS</b> <b>(Prom. SG. 36/2 May 2006, last amend. SG. 103/29 Dec 2009)</b></p>
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**Article 16**

(1) In the procedure for granting of concession may participate each individual or corporate body or association thereof.

(2) In the procedure for granting of concession may not participate independently or as member corporate body:

a. which has been announced insolvent;

b. which is in procedure of liquidation;

c. which manager or member of the management body, and in case member of the management body is corporate body – its representative in the respective management body, has been sentenced with a verdict entered into force for crime against property, against economy, against the financial, tax or insurance system (money laundering or fraud), for criminal breach of trust or for bribe (corruption) as well as for crimes connected with participation in criminal group.

3. A legal person may not participate independently or as part of a combination in a concession granting procedure where: a manager or a member of the managing body of the said person, or in case a legal person is a member of the managing body, the representative of the said legal person in the respective managing body, has been convicted by an enforceable sentence of any property offences, any economic offences, any offences against the financial, tax or social security system (money laundering or fraud), or of official malfeasance or of bribery (corruption), as well as of any offences related to participation in a criminal organization.

(3) In the procedure of granting concession may not take part individually or as a member of an association a natural person, who is:

1. convicted by effective sentence for a crime referred to in para 2, item 3;

2. deprived of right to carry out commercial activity.

(4) Candidate or participant may be removed from participation in the procedure for granting of concession, who:

1. is in insolvency procedure;

2. has liabilities for public receivables of the state or municipality in the sense of art. 162, para 2 of the Tax Insurance Procedure Code established with entered into force act of competent body unless deferment or delay of the liabilities is admitted;

3. has delayed pecuniary liabilities to the workers and the employees which employer he s;

4. has been concessionaire and the concession contract has been terminated due to his fault;

5. is guilty for professional breaches for which the commission of art. 23, para 3 has written proofs issued by competent body;

6. has not conceded the whole information required by the candidates or the participants in the procedure for granting f concession, or the information conceded by him is untrue or incomplete.

(5) The circumstances of para 4 which existence is ground for removal of candidate or participant shall be determined with the announcement of art. 41.

(6) The circumstances of para 1 – 4 shall be certified with documents and declarations by order determined with the regulation for implementation of the law.

## **LAW ON SPECIAL INTELLIGENCE MEANS**

### **Article 1**

(1) This law settles the conditions, the order of using and implementation and the control over the use of special intelligence devices and the results obtained through them.

(2) When using the special intelligence devices the inviolability of the personality and of the home and the secret of the correspondence and of the other communications shall be restricted.

### **Article 2**

(1) Special intelligence devices, in the context of this law, are the technical devices and the operative methods of their implementation, used for preparation of material evidence - movie records, video records, sound records, photos and marked objects.

(2) Technical devices are electronic and mechanical equipment, as well as substances used for documenting the activity of controlled persons and subjects.

(3) (amend., SG 86/05 - in force from 29.04.06) Operative methods are the surveillance, the tapping, the following, the penetration, the marking and the inspection of the correspondence and the computerized information, controlled delivery, trust-transaction and investigation through officer under coverage applied in using the technical devices under para 2.

### **Article 3**

(1) The special intelligence devices are used in the cases when it is required for the prevention and disclosure of severe crime by the order of the Criminal Proceedings Code, whenever the necessary information cannot be obtained otherwise.

(2) In the cases under para 1 the special intelligence devices shall be used for preparation of evidence under the conditions and by the order stipulated by the law.

### **Article 10a**

A controlled delivery shall be performed by an intelligence body and shall be used by an investigating or body within the limits of their competence in the presence of uninterrupted strict control on the territory of the Republic of Bulgaria or another country within the context of international cooperation, during which a controlled individual shall be import, export, carry or effect transit transportation through the territory of the Republic of Bulgaria of an object, which makes the object of a criminal offence, with a view of detecting those involved in a trans-border crime.

## **Chapter IVb – Use and application of special intelligence means in relation to international cooperation in criminal matters. - (New, SG No. 88/2009)**

### **Article 34i (New, SG No. 88/2009)**

(1). Special intelligence means, except in the cases referred to in Article 3, paragraph (1), may also be used where that is provided for in an international treaty which has taken effect in respect of the Republic of Bulgaria.

(2) In the cases referred to in paragraph (1) special intelligence means may be used to prevent and investigate crimes specifically indicated in the international treaty on the authority whereof their use is allowed.

### **Article 34j (New, SG No. 88/2009)**

(1) In the cases referred to in Article 34i, the special intelligence means may also be provided and applied by the competent authorities of a foreign state.

(2) A foreign undercover officer shall have the powers and may be used for the purpose of achieving the goals referred to in Article 10c where that is provided for in an international treaty which has taken effect in respect of the Republic of Bulgaria or where an agreement has been entered into for each specific case in accordance with the reciprocity principle.

### **Article 34k - (New, SG No. 88/2009)**

Special intelligence means shall be applied as stipulated by this Chapter for the period provided for in the Criminal Procedure Code.

### **Article 34l - (New, SG No. 88/2009)**

The results obtained through special intelligence means as stipulated by this Chapter may be used for the purposes of international legal assistance as well as for the purposes of internal investigation in accordance with the provisions of the national laws.

### **Article 34m - (New, SG No. 88/2009)**

In case a foreign state sends a legal assistance application requesting continuation of cross-border monitoring from the territory of other states into the territory of the Republic of Bulgaria by officers of the requesting state, the Supreme Cassation Prosecutor's Office shall rule on the application and, provided that it sanctions it, submit a substantiated written request for permission to the Chairperson of the Sofia City Court or to a deputy chairperson empowered by the Chairperson.

(2) The request shall contain:

1. information on the crime the investigation whereof requires cross-border monitoring;
2. information on the persons to be subjected to cross-border monitoring;
3. information on the officers to perform the cross-border monitoring;
4. terms under which the cross-border monitoring is to take place;
5. the period for which the cross-border monitoring is to take place.

(3) The Chairperson of the Sofia City Court or a deputy chairperson empowered by the Chairperson shall without delay give a written permission for the cross-border monitoring or reject it, provided that he/she substantiates such rejection.

(4) The permission shall be sent via the Supreme Cassation Prosecutor's Office to the competent authorities of the requesting state, whereof the competent Bulgarian authorities shall be notified.

### **Article 34n (New, SG No. 88/2009)**

In urgent cases where the Bulgarian border is crossed in the course of cross-border monitoring without prior permission having been requested, the foreign state's monitoring officers may continue it in the

territory of the Republic of Bulgaria if that is provided for in an international treaty which has taken effect in respect of the Republic of Bulgaria.

(2) (Amended, SG No. 93/2009) The competent authorities of the foreign state whose officers are performing the monitoring shall immediately notify the Supreme Cassation Prosecutor's Office and the Secretary General of the Ministry of Interior or an officer empowered by the Minister of the fact that the border has been crossed in the course of the monitoring.

(3) (Amended, SG No. 93/2009) After the notification referred to in paragraph (2), the Supreme Cassation Prosecutor's Office shall immediately rule on whether the monitoring shall be terminated and shall notify thereof the requesting state and the Secretary General of the Ministry of Interior or an officer empowered by the Commissioner General.

(4) The competent authorities of the foreign state whose officers perform the monitoring shall immediately send to the Supreme Cassation Prosecutor's Office a request for legal assistance in the performance of cross-border monitoring, which shall be accompanied by substantiation justifying the crossing of the border without prior permission.

(5) After receiving the legal assistance request, the Supreme Cassation Prosecutor's Office shall immediately rule on whether it is to be sanctioned. In case of rejection, the monitoring shall immediately be terminated.

(6) In case the request is sanctioned, the Supreme Cassation Prosecutor's Office shall file a substantiated written request for permission to the Chairperson of the Sofia City Court or to a deputy chairperson empowered by the Chairperson.

(7) The request shall contain:

1. information on the crime the investigation whereof requires cross-border monitoring;
2. information on the persons to be subjected to cross-border monitoring;
3. information on the circumstances which have predetermined the urgency;
4. information on the officers to perform the cross-border monitoring;
5. terms under which the cross-border monitoring is to take place;
6. the period for which the cross-border monitoring is to take place.

(8) The Chairperson of the Sofia City Court or the deputy chairperson empowered by the Chairperson shall, within five hours after the Bulgarian border is crossed, give a written permission for the cross-border monitoring to be performed, or refuse to give such permission and provide substantiation for such refusal.

(9) The Chairperson of the Sofia City Court or the deputy chairperson empowered by the Chairperson shall immediately send the issued permit to the Supreme Cassation Prosecutor's Office.

(10) Where the Chairperson of the Sofia City Court or the deputy chairperson empowered by the Chairperson refuses to give permission, the cross-border monitoring shall be terminated.

(11) The Supreme Cassation Prosecutor's Office shall notify the competent authorities of the requesting state of the issued permission and shall immediately dispatch it and notify the monitoring officers.

#### **Article 34o (New, SG No. 88/2009)**

Where special intelligence means are applied as stipulated by this Chapter, the officers of the foreign state's competent authorities shall:

1. observe the laws of the Republic of Bulgaria;
2. observe the instructions of the competent Bulgarian authorities;
3. carry a document certifying that the required permit has been granted, except in the cases referred to in Article 34n;

4. be able to prove at any time that they are operating in their official capacity.

(2) Where special intelligence means are applied as stipulated by this Chapter, no homes or places that are not publicly accessible may be trespassed on. Monitoring officers shall not have the right to detain the person being monitored.

(3) The officers of the foreign state's competent authorities shall draft a report on the actions which they have performed in the territory of the Republic of Bulgaria immediately after performing them.

(4) The report referred to in paragraph (3) shall be sent to the Supreme Cassation Prosecutor's Office, which shall provide it to the Chairperson of the Sofia City Court or the deputy chairperson empowered by the Chairperson who gave the permission for the actions to be performed, who may require the relevant officers to appear before him/her in person.

(5) The pre-court bodies and the court may require that the competent authorities of the foreign state whose officers have performed actions related to the application of special intelligence means in the territory of the Republic of Bulgaria assist during the criminal procedure, where such a procedure has been launched as a result of the relevant actions wherein they participated.

#### **Article 34p - (New, SG No. 88/2009)**

Any cases not provided for in this Chapter shall be treated in accordance with the general provisions of the law.

### **LAW ON PREVENTION AND DISCLOSURE OF CONFLICT OF INTEREST (LPDCI)**

1 January 2009

#### **Article 3**

Within the meaning given by this Act, "public office holders" shall be:

1. the President and the Vice President;
2. the Constitutional Court judges;
3. the National Representatives;
4. the Prime Minister, the Deputy Prime Ministers, the Ministers and the Deputy Ministers;
5. the Presidents of the Supreme Court of Cassation and of the Supreme Administrative Court and the Prosecutor General;
6. the National Ombudsman and the Deputy Ombudsman;
7. the Regional Governors and the Regional Vice Governors;
8. (amended, SG No. 26/2009, effective 31.03.2009) the mayors, the deputy mayors of municipalities and of boroughs;
9. the municipal councillors;
10. the members of the Supreme Judicial Council;
11. the Chief Inspector and the inspectors of the Inspectorate to the Supreme Judicial Council;
12. the President and the members of the National Audit Office;
13. the Governor, the Deputy Governors and the members of the Managing Board of the Bulgarian National Bank;
14. the Governor and the Vice Governor of the National Social Security Institute;
15. the heads of the overseas missions of the Republic of Bulgaria;
16. the administrative heads of the judicial authorities;

17. the single-person authorities, the deputies thereof and the members of the collegial authorities covered under Article 19 (4) of the Administration Act, as well as the members of other collegial authorities established by a law;
18. the heads of public-financed organisations established by a law, by a resolution of the National Assembly or by an act of the Council of Ministers;
19. (amended, SG No 101/2009, effective 18.12.2009, SG No. 62/2010, effective 10.08.2010) the members of the Supervisory Board, the Manager of the National Health Insurance Fund and the directors of the regional health insurance funds;
20. the judges, the prosecutors and the investigating magistrates;
21. the recording magistrates and the public enforcement agents;
22. the representatives of the State or the municipalities on the management or supervisory bodies of commercial corporations wherein the State or a municipality holds an interest in the capital or of not-for-profit legal entities;
23. the managers and the members of the management or supervisory bodies of municipal-owned or state-owned enterprises, as well as of other legal persons established by a law, by an act of a state body or of a body of local self-government;
24. (supplemented, SG No. 26/2009, effective 31.03.2009) the members of the political cabinets and the advisors and experts to the political cabinets;
25. (amended, SG No. 26/2009, effective 31.03.2009, SG No. 97/2010 effective 10.12.2010) the staff who perform management, disposition, regulation and control steps in the Administration of the President, of the legislative, executive and judicial authorities, of the local administration, as well as of the administration of bodies established by a law with exception of the employees who hold technical positions.

## **Article 12**

A public office holder shall submit:

1. a declaration of incompatibility within the meaning given by Article 5 herein;
2. a declaration of private interests; the said declaration shall be completed in a standard form according to the Annex hereto;
3. a declaration of occurrence of a change in the circumstances referred to in Item 1 or 2;
4. a declaration of a private interest on a particular occasion.

## **Article 13**

- (1) A public office holder shall submit the declaration referred to in Item 1 of Article 12 herein within seven days after the election or appointment thereof.
- (2) Where the person has declared the existence of incompatibility, the said person shall be obligated to take the actions necessary for elimination of the incompatibility within one month after submission of the declaration referred to in Paragraph (1).
- (3) The provisions of Paragraphs (1) and (2) shall apply save insofar as otherwise provided for in a special law.

## **Article 14**

- (1) (Redesignated from Article 14, SG No. 26/2009, effective 31.03.2009, SG No. 97/2010 effective 10.12.2010) A public office holder shall submit the declaration referred to in Item 2 of Article 12 herein within seven days after the election or appointment thereof. In the said declaration, the person shall state the circumstances which would lead to the occurrence of a conflict of interest, such as:

1. participation in commercial corporations, in management or supervisory bodies of not-for-profit legal entities or of co-operatives, as well as carrying on business as a sole trader at the date of election or appointment and twelve months prior to the date of election or appointment;
  2. (amended, SG No. 26/2009, effective 31.03.2009) obligations assumed to credit or financial institutions, as well as to other persons, to a value exceeding BGN 5,000; the person shall state the amount and type of the obligation assumed and the creditor thereof;
  3. (amended, SG No. 26/2009, effective 31.03.2009) contracts with any persons who or which carry out any activity in areas related to the decisions made by the public office holder within the range of the official powers or duties thereof;
  4. (amended, SG No. 26/2009, effective 31.03.2009) particulars of any persons having close links with the public office holder, in whose activity the public office holder has a private interest; particulars of any persons having close links
  5. (repealed, SG No. 26/2009, effective 31.03.2009).
- (2) (New, SG No. 26/2009, effective 31.03.2009, SG No. 97/2010 effective 10.12.2010) The person referred to in Paragraph (1) may alter the circumstances declared within one month after submission of the declaration referred to in Paragraph (1), when deficiencies or mistakes have to be removed.
- (3) (New, SG No. 26/2009, effective 31.03.2009, SG No. 97/2010 effective 10.12.2010) A declaration referred to in Paragraph (1) shall not be submitted upon transfer to another position by a person who remains obligated under Art.3.

#### **Article 18**

- (1) The electing or appointing authorities, as well as the relevant committee referred to in Items 1 and 3 of Article 25 (2) herein, shall maintain registers of the declarations covered under Article 12 herein.
- (2) The declarations shall be kept for ten years, where after they shall be destroyed by a commission designated by the relevant authority.

<b>LAW ON CONSTITUTIONAL COURT</b>
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#### **Article 23**

- (1) Decisions with regard to impeachment of the President or Vice President shall be sent to the Constitutional Court accompanied by the motivation, documentary evidence and minutes of the sessions in accordance with article 103, paragraph 2 of the Constitution.
- (2) The Chairman of the Court shall initiate the proceedings, shall designate three rapporteurs, shall set the date of the hearing and shall inform the person subject to impeachment.
- (3) Copies of the decision, the documentary evidence and the minutes shall be sent to the person subject to impeachment who within 15 days may present or request the gathering of further evidence.
- (4) All evidence is admissible in the course of the proceedings. The prson subject to impeachment shall be entitled to participate in the proceedings with legal counsel.
- (5) The Court shall inform the Chairman of the National Assembly of the date of the hearing. A member designated by the National Assembly shall take part in the proceedings to maintain the impeachment.

#### **Article 24**

- (1) The Constitutional Court shall hold the hearing when at least 3/4 of all members of the Court are present.
- (2) The person subject to impeachment shall be entitled to provide personal explanations before the Court.

- (3) The Court shall pass its judgement by secret ballot.
- (4) With its decision the Court shall terminate or refuse to terminate the mandate of the President or the Vice President.
- (5) The person impeached, the Chairman of the National Assembly, the President or the Vice President and the Prime Minister shall be immediately notified of the decision.
- (6) When the Court terminates the mandate of the President or the Vice President on grounds of treason the record of the hearings shall be sent to General Prosecutor.

## **RULES OF ORGANISATION AND PROCEDURE OF THE NATIONAL ASSEMBLY**

### **Article 123**

- (1) Members of the National Assembly may not be detained and prosecuted, except for criminal offences, and then only with authorization of the National Assembly or, if it is not convened (Article 36, paragraph 2), with authorization of the Chairperson of the National Assembly.
- (2) Authorisation to initiate criminal proceedings shall not be required in case there is consent in writing by the Member of the National Assembly. The Member of the National Assembly shall submit his/her consent in person to the Chairperson of the National Assembly who shall notify forthwith the Chief Prosecutor and inform the National Assembly at the first session following the submission of the consent. Once given by a Member of the National Assembly the consent cannot be withdrawn.
- (3) No authorisation for detention shall be required when the Member concerned is caught in the act of committing a serious crime, in which case the National Assembly, or, when the Assembly is not in session (Article 36, paragraph 2), its Chairperson, shall be notified immediately.
- (4) Where there is sufficient data that a Member of the National Assembly has committed a criminal offence, the General Prosecutor shall submit a substantiated request to the National Assembly or, when the Assembly is not in session, to its Chairperson, for authorization to institute criminal proceedings. Sufficient data shall be attached to the General Prosecutor's request.
- (5) The request of the general Prosecutor and the data therewith shall be considered by the National Assembly, which shall rule thereon not earlier than 14 days after the receipt of the request. If so requested, and if the Member of the National Assembly concerned appears before it, the National Assembly shall hear the Member concerned.
- (6) When the National Assembly is not in session (Article 36, paragraph 2), the authorisation to institute criminal proceedings against a Member shall be issued by the Chairperson of the National Assembly. Such authorisation so issued shall be submitted for approval by the Members of the National Assembly at the first session of the Assembly.
- (7) Where the criminal proceedings conclude with a prison sentence for an intentional crime or the execution of the prison sentence for any other crime is not suspended, the National Assembly shall adopt a resolution to terminate the mandate of the Member concerned before the end of its term.
- (8) Where the General Prosecutor has requested detention of the Member concerned, the National Assembly shall pass a separate resolution on such request following the procedure laid down under the above provisions. The Assembly may rescind an authorisation already given.
- (9) The provisions of Article 70 of the Constitution of the Republic of Bulgaria shall apply, also, where criminal proceedings against a Member of the National Assembly had been instituted prior to his election.

## **LAW ON JUDICIARY**

Ren., SG, 64/7.08.2007, last amend. and suppl., 33/30.04.2009)



## **Article 2**

The judiciary authorities shall follow the Constitution and the principles laid down in this Law.

## **Article 3**

When delivering their acts the judges, the prosecutors and the investigators shall stand on the law and on the evidence collected in the lawsuit.

## **Article 4**

The judiciary authorities shall exercise their functions impartially.

## **Article 6**

In exercising their activity the judges, the prosecutors and the investigators shall be politically neutral.

## **Article 8**

(1) The judiciary authorities shall apply the laws strictly and equally to all persons and cases they are related to.

(2) In exercising the judiciary functions, as well as when occupying positions in the judiciary authorities, no rights restrictions or privileges based on race, nationality, ethnicity, sex, origin, religion, education, beliefs, political affiliation, personal and social status or economic status shall be admitted.

## **Article 165**

(1) A judge, prosecutor or investigator shall be dismissed in case of:

1. completion of 65 years of age;
2. resignation;
3. entry into force of a conviction for imposing deprivation of liberty for a deliberate crime;
4. continuous factual impossibility to perform his duties for more than one year;
5. imposition of a disciplinary penalty - disciplinary dismissal of office;
6. a decision of the Supreme Judicial Council refusing to grant non-dismissible status;
7. incompatibility with position and activities under Art. 195, Para 1;
8. (revoked - SG 33/09)
9. reinstatement to work after illegal dismissal.

(2) (amend. - SG 33/09) A junior judge and junior prosecutor shall be dismissed also in the cases of a second examination under Art. 258, Para 4 with mark "failed to pass".

(3) A judge, prosecutor and investigator, who has become non-dismissible, shall be dismissed only on the grounds under Art. 129, Para 3 of the Constitution of the Republic of Bulgaria, as well as in the cases under Para 1, Item 7.

(4) A judge, prosecutor and investigator, who has retired under Para 1, Item 1, shall not be entitled to occupy positions in the judiciary authorities.

## **Article 211**

...

(2) Judges, prosecutors and investigating magistrates shall be obligated to keep as official secret the information of which they have gained knowledge while on service and which affects the interests of citizens, legal entities and the state.

## Article 228

(1) Judges, prosecutors and investigating magistrates shall declare their income and property before the National Audit Office subject to the terms and procedure of the Publicity of the Property of Individuals in Elevated Office of the State Act.

(2) The Supreme Judicial Council shall provide the National Audit Office with information about the remunerations of individuals occupying judicial, prosecutorial or investigating magisterial positions, as well as about any changes in their official status.

## LAW ON ADMINISTRATION

**Article 46.** (Amended, SG No. 24/2006, amended and supplemented, SG No. 94/2008, amended, SG No. 24/2010)

(1) At each ministry there shall be created an inspectorate, directly reporting to the government minister, for exercise of administrative control.

(2) Pursuing the activities thereof, the inspectorate shall seek to clarify the cases checked fully and accurately and to propose measures for solving these cases for the purpose of:

1. prevention and elimination of irregularities in the functioning of the administration;
2. independent and objective evaluation of the operation of the administration;
3. improvement of the performance of the administration.

(3) The inspectorate shall implement the activities thereof according to internal rules endorsed by the competent executive authority on the basis of the methodology referred to in Item 2 of Article 46a (2) herein.

(4) The inspectorate shall:

1. conduct comprehensive, planned, subject-specific, ad hoc and follow-up checks of structures, activities and processes in the administration;
2. assess the corruption risk and propose measures for reduction of the said risk;
3. collect and analyze information and conduct checks for detection of violations, corrupt practices and ineffective operation of the administration;
4. reviews observances of the laws, the instruments of secondary legislation and the intra-departmental acts on the organization of work of the administration employees;
5. may propose the institution of disciplinary proceedings upon detection of breaches of official duties, as well as of the Code of Conduct of State Administration Employees;
6. check the alerts about unlawful or incorrect steps or omissions of administration employees;
7. exercise control and carry out examinations under the Conflict of Interest Prevention and Disclosure Act;
8. draw up written statements ascertaining administrative violations upon detection of violations on the part of administration employees, where so provided for in a law;
9. alert the prosecuting authorities where, upon conduct of checks, it has obtained data that a criminal offence has been committed;
10. propose new or the amendment of intra-departmental acts regulating the organization of work and operation of the administration;
11. discharge other functions in connection with administrative control, ensuing from statutory instruments or assigned by the executive authority.

(5) At each ministry, the inspectorate shall exercise administrative control over the activity of second-level spending units.

(6) Inspectorates shall be created in the administrations which are not covered by the control referred to in Paragraph (5).

(7) Annually, not later than the 1st day of March, the inspectorate shall transmit to the Chief Inspectorate a report on the checks conducted under Paragraph (4) during the last preceding year.

## **LAW ON PUBLIC DISCLOSURE OF SENIOR PUBLIC OFFICIAL'S PROPERTY**

### **Article 2**

(1) (Supplemented, SG 38/2004, amended, SG No. 73/2006) The following shall declare their property, income and expenses in the country and abroad:

1. the President and the Vice President;
2. the members of Parliament;
3. (amended, SG No. 73/2006) the Prime Minister, the deputy prime ministers, the ministers and the deputy ministers;
4. the Chairperson and the judges of the Constitutional Court;
5. the Chairpersons and the judges of the Supreme Court of Cassation and the Supreme Administrative Court;
6. the chief prosecutor and the prosecutors of the Supreme Cassation Prosecution and the Supreme Administrative Prosecution;
7. (amended, SG No. 74/2002) the director of the National Investigation Office and his deputies;
8. (amended, SG No. 73/2006) the Chairpersons and Deputy Chairpersons of state agencies, the Chairpersons and members of state commissions;
9. the regional governors and deputy regional governors;
10. the Chairperson and the members of the Audit Office;
11. the Chairperson and the members of the Commission for the Protection of Competition;
12. the governor, the deputy governors and the members of the managing board of the Bulgarian National Bank;
13. (new, SG No. 8/2003) the Chairperson, deputy Chairperson and the members of the Commission for Financial Supervision;
14. (amended, SG No. 28/2002, renumbered from item 13 - SG 8/2003, amended, SG No. 18/2010, effective 5.03.2010) the members of the Executive Board and of the Supervisory Board of the Privatisation and Post Privatization Control Agency;
15. (renumbered from item 14 - SG No. 8/2003) the members of the Supreme Judicial Council;
16. (renumbered from item 15 - SG No. 8/2003, amended, SG 38/2004) the Chairperson and the members of the Council for Electronic Media;
17. (renumbered from item 16 - SG No. 8/2003, amended, SG No. 38/2004, No. 73/2006) the executive directors of executive agencies and the heads of state institutions established by law or a decree of the Council of Ministers, as well as their deputies;
18. (renumbered from item 17 - SG No. 8/2003, repealed, SG No. 94/2008, effective 1.01.2009).
19. (new, SG No. 38/2004) the Ombudsman and the deputy Ombudsman;
20. (new, SG No. 38/2004) The Chairperson, the deputy Chairperson and the members of the Commission for Regulation of the Communications;

21. (new, SG No. 38/2004, amended, SG No. 73/2006) the management bodies of the National Insurance Institute;
  22. (new, SG 38/04, supplemented, SG No. 73/2006, amended, SG No. 62/2010, effective 10.08.2010) the manager of the National Health Insurance Fund and the directors of District Health Insurance Funds;
  23. (new, SG No. 38/2004) the general directors of the Bulgarian National Television, of the Bulgarian National Radio and of the Bulgarian Telegraph Agency;
  24. (new, SG No. 38/2004, supplemented, SG No. 109/2007) the directors and the deputy directors of the security services and public order services within the meaning of the Classified Information Protection Act, the Chairperson and the deputy Chairpersons of the State Agency for National Security, the General Directors, Directors of Directorates and Directors of Territorial Directorates of the Agency;
  25. (new, SG No. 38/2004) the director and the deputy directors of "Customs" Agency;
  26. (new, SG No. 38/2004, amended, SG No. 105/2005) the Executive Director of the National Revenue Agency;
  27. (new, SG 38/2004, amended, SG No. 73/2006, SG No. 33/2008, SG No. 69/2008, SG No. 93/2009, effective 25.12.2009) the Secretary General of the MoI and his deputies, the directors and the deputy directors of the directorates general, the directors and the deputy directors of the regional directorates of the Ministry of Interior;
  28. (new, SG No. 38/2004, amended, SG No. 73/2006) the members of the political offices;
  29. (new, SG No. 38/2004) the mayors and deputy mayors of municipalities, the mayors and deputy mayors of regions and the Chairpersons of municipal councils.
  30. (new, SG No. 73/2006) The Secretary-General of the National Assembly, of the President and of the Council of Ministers, the secretaries- general within the administration of the Executive;
  31. (new, SG No. 73/2006) other individuals where this has been provided for by law.
- (2) (New, SG No. 73/2006) The heads of establishments hiring and relieving from office the individuals under paragraph 1 must, within 14 days of issuing the respective decision, notify the National Audit Office thereof.
  - (3) (Renumbered from Paragraph 2, SG No. 73/2006) The persons under paragraph 1 shall declare the property and the income of their spouses and underage children.
  - (4) (New, SG 38/2004, renumbered from Paragraph 3, SG No. 73/2006) The list of names of the persons under paragraph 1 shall be published in the Internet site of the Audit Office.

### **Article 3**

- (1) The persons under Article 2, paragraph 1 shall declare in the public register the following property and income:
  1. real estate;
  2. motor road, water and air vehicles;
  3. cash, receivables and liabilities over BGN 5 thousand in local or foreign currency;
  4. securities, shares in limited liability companies and commandite companies, registered shares in joint-stock companies, also acquired through participation in privatisation transactions, other than cases of bond (mass) privatisation;
  5. (amended, SG No. 38/2004, No. 73/2006, SG No. 94/2008, effective 1.01.2009) income, other than those for the position occupied by the persons under Article 2, paragraph 1 and 3, received during the preceding calendar year if they exceed BGN 2000.

(2) (Amended, SG No. 73/2006) Subject to declaration shall be security provided and expenses made by or in favour of the persons under Article 2, paragraph 1 and 3 with their consent, when they are not paid by their own resources or by resources of the institution where they occupy a position, for:

1. education;
2. travelling outside the country;
3. other payments of a unit price over BGN 500.

#### **Article 5**

(1) (Amended, SG No. 38/2004) The public register of the persons under Article 2, paragraph 1 shall be established with the Chairperson of the Audit Office.

(2) (Amended, SG No. 38/2004) The declarations shall be kept for 10 years.

(3) (Amended, SG No. 38/2004) The declarations shall be destroyed upon expiration of the term under paragraph 2 by a commission appointed by order of the Chairperson of the Audit Office.

#### **Article 6 (Amended and supplemented, SG 38/2004, amended, SG No. 38/2006)**

(1) Every person has the right to access the data in the public register under Article 5, paragraph 1.

(2) (Amended, SG No. 73/2006) Access shall be allowed through the website of the National Audit Office, subject to the Personal Data Protection Act.

(3) (New, SG No. 73/2006) Within two months of expiry of the periods under Article 4, paragraph 1 the Chairperson of the National Audit Office shall publish on the website of the National Audit Office:

1. the declarations of individuals under Article 2, paragraph 1;
2. the names of individuals under Article 2, paragraph 1 who failed to declare;

(4) (Repealed, new, SG No. 73/2006) Access to data on the public register under Article 5, paragraph 1 shall also be provided in pursuance of the Access to Public Information Act.

(5) (Renumbered from paragraph 3, amended, SG No. 73/2006) Persons under Article 2, paragraph 1 shall have the right of access to the register under Article 5, paragraph 1 regarding their personal declarations.

#### **Article 8 (New, SG No. 38/2004)**

(1) (Amended, SG No. 38/2006, supplemented, SG No. 94/2008, effective 1.01.2009) A person under Article 2, paragraph 1 who does not file a declaration or notification, as the case may be within the legally set term shall be punished by a fine of BGN 1000 to 1500.

(2) (Amended, SG No. 38/2006) For repeated violation under paragraph 1 the fine shall be from BGN 2500 to 5000.

(3) The fines under paragraph 1 and 2 shall be paid to the revenue of the national budget.

#### **Article 9. (New, SG No. 38/2004)**

(1) The acts for establishing the offences shall be drawn up by officials authorized by the Chairperson of the Audit Office.

(2) The penal decrees shall be issued by the Chairperson of the Audit Office.

(3) A penal decree regarding a drawn up act for established offence committed by the Chairperson of the Audit Office shall be issued by an authorized member of the Audit Office.

(4) The establishing of offences, the issuance, appeal and execution of penal decrees shall be carried out pursuant to the Administrative Violations and Sanctions Act

## **Article 7**

(1) To be eligible for appointment as a civil servant, a person must:

...

4. have not been sentenced to deprivation of liberty for a crime, committed intentionally;

## **Article 89**

(4) any civil servant shall incur disciplinary liability, irrespective of whether his or her act may be ground for incurrance of another type of liability as well.

## **Article 100**

...

(2) In any case where criminal proceedings have been instituted against any civil servant in connection with criminal offences committed thereby in his or her capacity as office holder within the meaning given by Item 1 (a) of Article 93 of the Penal Code, the appointing authority shall suspend the said civil servant.

## **Article 103**

(1) Any civil-service relationship may be terminated on any of the following generally applicable grounds:

...

4. by reason of incompatibility in the cases covered under Article 7 (2) herein; where the incompatibility is referred to in Item 1 of Article 7 (2) herein, the appointing authority shall have discretion as to terminate the civil-service relationship with one of the two civil servants;

5. should the civil servant be sentenced to deprivation of liberty for an intentionally committed crime of general nature;

...

<b>LAW ON THE MINISTRY OF INTERIOR</b>
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## **Chapter Three. MAIN TASKS.**

### **Article 6**

The main tasks of the MoI shall be:

(...)

11. (renumbered from Item 8, SG No. 69/2008, renumbered from Item 9, SG No. 93/2009, effective 25.12.2009) rendering assistance to other state bodies;

12. (renumbered from Item 9, SG No. 69/2008, renumbered from Item 10, SG No. 93/2009, effective 25.12.2009) international cooperation;

## **Chapter Four. MAIN ACTIVITIES.**

### **Article 7**

In fulfilment of the tasks, set in Article 6, the MoI shall perform the following main activities:

...

24. (renumbered from Item 21, SG No. 93/2009, effective 25.12.2009) cooperation with other state and international bodies and organisations;

## CODE OF ETHICS FOR THE BEHAVIOUR OF BULGARIAN MAGISTRATES

### THE MAGISTRATES WORKING IN THE JUDICIAL SYSTEM OF THE REPUBLIC OF BULGARIA

Guided by the understanding that **rules** on the ethical behaviour of magistrates are an important factor for:

- developing higher public confidence in the judicial system;
- protecting human rights and upholding the rule of law;
- preventing and limiting corruption in the judicial system.

undertake as their commitment before Bulgarian society the requirement to comply with and introduce in their professional work and in their **personal life** the rules of ethical behaviour described herein.

The Supreme Judicial Council, as the highest administrative and guidance body of the judicial system in Bulgaria, shall adopt the CODE OF ETHICS FOR THE BEHAVIOUR OF BULGARIAN MAGISTRATES and shall be mainly responsible for the implementation of the rules of behaviour enshrined in it in the magistrates' work and personal life.

#### FIELD OF APPLICATION

The Code of Ethical Behaviour shall apply to all judges, prosecutors and investigators, members of the Supreme Judicial Council, inspectors at the Inspectorate of the Supreme Judicial Council, referred to hereinafter as Magistrates

#### SOURCES

This Code has been drawn up in compliance with the Constitution of the Republic of Bulgaria, the Judicial System Act, the recommendations of the Committee of Ministers of the Council of Europe on the status of judges, prosecutors and investigating authorities as well as with all other national and international acts which regulate the work of magistrates in the Republic of Bulgaria.

#### Section I

#### MAIN PRINCIPLES

The main principles establish the standards and draw the framework for regulating the magistrates' behaviour both at work and outside it.

#### INDEPENDENCE

In the meaning herein independent shall be a magistrate who in the course of performing his/her official duties is guided solely by his/her inner conviction and the law and does not succumb to pressure, threats, incentives, direct or indirect influence by representatives of any other power – public or private, internal or external to the judicial system.

#### IMPARTIALITY

Impartial shall be a magistrate who establishes the truth of the facts solely on the basis of an objective analysis of the evidence in the case, **creates conditions for equality between the parties and their procedural representatives and avoids** behaviour which might be accepted as offering privileges, predisposition, bias or prejudice based on race, origin, ethnicity, gender, religion, education, beliefs, political affiliation, personal or public status or property status.

#### FAIRNESS AND TRANSPARENCY

Fair shall be a magistrate who, within the general and abstract norms of the law, takes into consideration the specificities of every individual case and decides it on the basis of criteria related to the general human values and the values of the democratic legal order.

Transparency in the magistrate's actions and acts is a guarantee for the fairness of the decisions made by him/her.

#### CIVILITY AND TOLERANCE

Civil shall be a magistrate who through his/her actions and acts always expresses the respect he/she owes his/her colleagues, **citizens**, lawyers, parties and the other participants in the proceedings.

Tolerant shall be a magistrate who is open and patient to hear and perceive new or different arguments, opinions and points of view.

#### HONESTY AND PROPRIETY

Honest shall be a magistrate who outside the law does not accept tangible or intangible favours which might place in doubt his/her independence and impartiality.

Propriety means refraining from any actions that might compromise the magistrate's honour in the profession and in society.

#### COMPETENCE AND QUALIFICATION

Competent and qualified shall be a magistrate who is well-trained, who knows the normative framework of the Republic of Bulgaria and European Union law and has developed capacities and skills to apply them correctly.

Competence and qualification are a prerequisite for the proper implementation of the magistrate's responsibilities and for his/her professional progress.

#### CONFIDENTIALITY

Confidential shall be a magistrate who is discreet and keeps as **official** secret the facts or information that he/she has become aware of in the course of the implementation of his/her official duties.

### Section II

#### RULES FOR ETHICAL BEHAVIOUR ENSUING FROM THE MAIN PRINCIPLES

##### 1. Rules for ethical behaviour ensuing from the principle of INDEPENDENCE

Independence is a prerequisite for establishing the rule of law and a guarantee for protection of the fundamental human rights and constitutional values.

##### APPLICATION

1.1. The magistrate shall exercise his/her powers and make decisions solely on the basis of the law and his/her inner conviction;

1.2. The magistrate shall not allow and shall not succumb to any external influence, pressure, threats, direct or indirect interference in his/her work regardless of their source, cause or reason;

1.3. When making decisions the magistrate shall be independent and shall not be influenced by the opinions of his/her colleagues but shall not take actions that might infringe upon their independence;



1.4. With his/her actions and behaviour outside the office the magistrate shall protect and establish in society the concept of independence of the judiciary and **shall not succumb** to influences – direct or indirect – by whatever power – public or private, internal or external to the judicial system.

1.5. The magistrate shall be **obliged** to inform the judicial authorities and the public of any attempt to infringe upon his/her independence.

## 2. Rules for ethical behaviour ensuing from the principle of IMPARTIALITY

Impartiality concerns equally the acts of magistrates on the application of material and procedural law and ensues from the right of the participants in the proceedings to be treated equally.

### APPLICATION

2.1. The magistrate shall respect the dignity of any person both when he/she exercises his/her official duties and outside the office and shall not allow preference, bias or prejudice on the basis of race, origin, ethnicity, gender, religion, education, beliefs, political affiliation, personal or public status or property status;

2.2. The magistrate shall uphold his/her impartiality also in the cases when in society there are strong sentiments or sympathy or antipathy towards the participants of proceedings pending before him/her and shall decide the case solely on the basis of the facts and the law;

2.3. The magistrate may not make public statements or comments on cases pending before him/her through which the outcome of the case is prejudged or an impression is created of bias or prejudice. Outside the courtroom he/she may not discuss such cases in front of other participants in them, lawyers or third parties, **save for the cases provided for by law**;

2.4. The magistrate shall behave in a manner that would **not give grounds, directly or indirectly**, his/her consideration of specific cases to be challenged;

2.5. The magistrate must respect the rights of the parties to express opinions, to make allegations and objections within the proceedings in which they participate;

2.6. The magistrate shall not give consultations on legal matters.

## 3. Rules for ethical behaviour ensuing from the principle of FAIRNESS AND TRANSPARENCY

The requirement for fairness ensues from the impossibility to regulate all cases and relationships occurring in life through legal norms.

The requirement for transparency ensues from the constant need of society to be convinced of the legality and fairness of the magistrates' acts and actions.

### APPLICATION

3.1. The magistrate shall enact his/her decisions only after he/she is convinced that they are fair within the law for all participants in the proceedings. He/she shall be particularly attentive when deciding matters related to freedom and the reputation of citizens;

3.2. Where the law gives the magistrate the option to decide certain matters on the basis of judgment the guiding principle for him/her shall be the requirement for fairness;

3.3. In compliance with the requirements of the law the magistrate shall provide the public with useful, timely, comprehensible and proper information;

3.4. The magistrate shall guarantee within the law publicity of his/her actions and decisions taking care at the same time not to infringe upon the legal rights and interests of the participants in the proceedings;

3.5. He/she shall present to the public, personally or through the media, the grounds for his/her decisions on **cases that represent public interest** and at the same time he/she shall avoid behaviour and actions that may be interpreted as self-promotion or excessive quest for public recognition

## 4. Rules for behaviour ensuing from the principle of CIVILITY AND TOLERANCE

The requirements for civility and tolerance are based on the morality and upbringing inherent to the magistrate and contribute both to the better implementation of his/her official duties and to the more efficient functioning of the judicial system itself.

## APPLICATION

4.1. The magistrate's behaviour in society should be based on good manners and good conduct and in public and official contacts he/she shall be courteous and polite;

**4.2. The magistrate shall be honest, polite and civil both in his/her work and in personal life and shall treat people with respect and shall abide by their rights and freedoms;**

4.4. Relations with colleagues between magistrates and employees in the judicial system, regardless of their place in the official hierarchy, shall be based on mutual respect and tolerance through abstaining of any behaviour that damages the reputation of the judicial authorities.

### 5. Rules for behaviour ensuing from the principle of HONESTY AND PROPRIETY

Honesty and propriety have substantial importance for the trust in, the reputation and the overall work of the magistrate.

## APPLICATION

**5.1. The magistrate may not receive favours from third parties which could reasonably be perceived as a result of compromise with his/her honesty and fairness in the course of exercising his/her professional duties.**

**5.2 The honest magistrate shall not sneak and shall not plot against his/her colleagues and employees and shall express his/her positions openly.**

5.3. The magistrate shall avoid acts and actions that are at variance with the views of propriety existing in society;

5.4. In his/her public and official contacts the magistrate shall not be entitled to use his/her official position or his/her powers with the aim to obtain personal gain;

5.5. With his/her personal conduct and sense of responsibility in his/her official and unofficial work the magistrate shall set an example of high morality and propriety;

5.6. The magistrate shall refrain from any actions that might compromise his/her honour in the profession and in society;

5.7. The magistrate must have irreproachable reputation;

5.8. The magistrate shall be consistent and unswerving in complying with the legal and ethical norms;

5.9. In his/her career development the magistrate shall not use personal contacts (connections, intercession) neither shall he/she act in a manner that damages his/her dignity.

### 6. Rules for behaviour ensuing from the principle of COMPETENCE AND QUALIFICATION

The requirement for competence and continuous qualification of magistrates ensues from the right of the participants in the proceedings and of society as whole to receive lawful legal acts.

## APPLICATION

6.1. The magistrate shall perform his/her official duties as a matter of priority before any other activity.

6.2. The magistrate must strive to enhance his/her professional qualification and training and must take the necessary measures to maintain and increase his/her knowledge, skills and personal qualities for the proper exercise of his/her powers.

6.3. The magistrate **should be informed** of the respective novelties in domestic and international law.

### 7. Rules of behaviour ensuing from the principle of CONFIDENTIALITY

Confidentiality ensues from the need to protect the rights of the parties and their relatives against illegal use of information and data;

7.1. The magistrate shall be obliged to be absolutely discreet and in his social communications and personal life to keep **official** secrets in relation to the facts or information that he/she has become aware of in the course of performing his/her official duties and to require this from the judicial employees.

7.2. The magistrate may not use illegally the information that he/she has become aware of in the

course of performing his/her functions;

7.3. The magistrate may discuss legal matters from the point of view of principle and in such cases he/she shall be obliged to keep in confidence the specific facts in the files and the cases on citizens' personal lives and ones that harm the interests of persons or their reputation;

7.4. The magistrate shall not be entitled to express publicly a preliminary position on specific files or cases;

7.5. The magistrate shall be free to express personal opinions in the media on any issues which are not expressly prohibited by law;

7/6. The magistrate who is a member of a collegiate body must keep in confidence the proceedings therein.

### Section III

#### SPECIFIC RULES FOR ETHICAL BEHAVIOUR OF ADMINISTRATIVE HEADS

8.1. The **magistrate who is in a leading position** shall treat his/her subordinate magistrates and judicial employees with respect and consideration for their personal dignity and shall not allow or create an impression of favouring anyone.

8.2. The magistrate in a leading position shall not succumb to any pressure and suggestions made in a manner that is inadmissible by law in cases of appointment, transfer or career development of his/her subordinate magistrates. Transparency of his/her actions in this respect is a guarantee of fairness, objectivity and best selection.

8.3. The magistrate in a leading position shall attend to the organisation and work of the office that he/she has been assigned with in a manner through which best results would be achieved. He/she shall ensure the best possible cooperation with the other judicial authorities and public services respecting the specific competences of any one of them.

8.4. The magistrate in a leading position shall strive to be informed of everything happening in the office that he/she leads in order to be able to make the correct management decisions and to take responsibility. **He/she shall not tolerate and shall curb forthwith acts of calumny and intrigue.**

8.5. The magistrate in a leading position shall see to it that his colleagues and the administrative staff **draw up their acts on time** and shall take the necessary measures within his/her powers.

8.6. The magistrate in a leading position shall be the main guarantor for upholding the independence of magistrates when making decisions and for complying with the principle of random distribution of files and cases.

### Section IV

#### RULES FOR PREVENTING CONFLICTS OF INTEREST

9.1. The magistrate shall not allow himself/herself to participate in proceedings when there is a conflict of interest. In case of doubt of such a conflict he/she shall be obliged to announce the facts and, if need be, shall withdraw;

9.2. The magistrate shall not participate in whatever way in party or political activity and shall not become involved in political or business circles of influence;

9.3. The magistrate may not occupy any other position, perform any other activity or exercise a profession save for the ones provided for in the Judicial System Act;

9.4. The magistrate shall not use his/her official position in order to exert influence in favour of a private interest;

9.5. The magistrate shall declare incompatibility and private interests in the cases and within the time-frames provided for in the Conflict of Interests Prevention and Disclosure Act;

9.6. The magistrate shall declare his/her income and property under the procedures and terms in the Publicity of the Property of Persons Occupying High Government Positions Act.

### Section V

## GUARANTEES FOR COMPLIANCE WITH THE ETHICAL RULES OF BEHAVIOUR INTRODUCED HEREBY

The main guarantor for complying and applying the provisions of this Code shall be the magistrates themselves through their conviction, involvement and voluntary adoption and implementation of the ethical rules of behaviour.

The Supreme Judicial Council shall exercise overall control over the application of and compliance with the Code of Ethics and shall take action periodically to refresh and update the provisions provided for herein.

The Professional Ethics Commission of the Supreme Judicial Council and the professional ethics commissions of the bodies of the judiciary shall exercise direct and immediate control over the application of and compliance with the Code of Ethics.

The professional associations of the magistrates shall take the actions provided for in their statutes *vis a vis* any established case of violation of these ethical rules of behaviour.

### Section VI

#### FORMATION AND STATUTE OF THE PROFESSIONAL ETHICS COMMISSIONS AT THE BODIES OF THE JUDICIARY

Professional Ethics Commissions shall be established at the regional courts and prosecution offices in the regional centres, the regional and appellate structures of the judiciary bodies, at the Supreme Court of Cassation, the Supreme Administrative Court, the Supreme Cassation Prosecutor's Office, the Supreme Administrative Prosecutor's Office and the National Investigation Service.

The personal composition and the number of the members of each commission shall be decided by the general meeting of each structure.

The professional ethics commissions at the bodies of the judiciary shall be subsidiary organs of the Standing Commission of the Supreme Judicial Council on Professional Ethics and for Combating Corruption.

Their main task and purpose shall be to provide consultations, advice, to give opinions and positions in relation to the implementation of the rules for ethical behaviour and in cases of conflict of interests.

The Professional Ethics Commissions of the bodies of the judiciary shall give opinions on:

- evaluation of judges, prosecutors and investigators on the indicator "compliance with the rules for ethical behaviour";
- in case of disciplinary proceedings for violation of the rules for ethical behaviour instituted by the administrative heads;
- in case of signals and complaints received from citizens for actions of magistrates that are incompatible with the rules for ethical behaviour.

They shall contribute to neutralising and settling in the best possible way occurring conflicts between judges, prosecutors or investigators.

They shall notify the Standing Commission of the Supreme Judicial Council on Professional Ethics and for Combating Corruption in case of serious violations of the rules for ethical behaviour by judges, prosecutors or investigators.

#### CLARIFICATIONS:

Private power – bearers of private power, in the meaning herein, shall be citizens that have no employment or official relationships with a government or municipal body, legal person or organisation.

Magistrates, in the meaning herein, shall be judges, prosecutors, investigators, members of the Supreme Judicial Council, inspectors of the Inspectorate at the Supreme Judicial Council.

Other relatives, in the meaning herein, shall be relatives in direct line as well as the ones in collateral line up to the 4<sup>th</sup> degree.

This Code of Ethics of Bulgarian Magistrates was approved with a decision of the Supreme Judicial Council of ..... 2008 in minutes No. .... of .....

Control over the implementation and the obligation to draw up proposals for periodic updating is assigned to the Standing Commission of the Supreme Judicial Council on Professional Ethics and for Combating Corruption.

<p style="text-align: center;"><b>LAW ON THE EXTRADITION AND THE EUROPEAN ARREST WARRANT</b> <b>(LEEAW)</b></p>
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#### **Article 1. Subject-matter of Act**

This Act shall specify the conditions and procedure for effecting extradition, as well as the conditions and procedure for the issuance and execution of a European arrest warrant.

#### **Article 2. Extradition**

Extradition shall be the surrender of a person located in the territory of one State:

1. against whom criminal proceedings have been instituted in another State or before an international court;
2. who is sought for service of a custodial sentence imposed by the judicial authorities of another State or by an international court;
3. in respect of whom a detention order has been made by the judicial authorities of another State or by an international court.

#### **Article 3. European Arrest Warrant**

The European arrest warrant shall be an act issued by the competent authorities of a Member State of the European Union with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

#### **Article 4**

- (1) This Act shall apply in the presence of an international treaty to which the Republic of Bulgaria is a party, supplementing the said treaty in respect of matters that are not provided for therein.
- (2) In the absence of an international treaty, the Act shall apply on a basis of reciprocity. Reciprocity shall be established by the Minister of Justice.
- (3) (Supplemented, SG No. 49/2010) This Act shall also apply upon receipt of an international Red Notice from the International Criminal Police Organisation (Interpol) seeking arrest and extradition or upon receipt of an alert through the Schengen Information System.

#### **Article 5 - Double criminality**

Art. 5. (1) Extradition shall be admitted only if the act constitutes a criminal offence as per the Bulgarian legislation and as per the legislation of the applying country, and for this offence imprisonment penalty or measure requiring detention not for shorter than 1 year or other more stiff penalty is stipulated.

(2) Extradition shall be admitted also for the purpose serving of imprisonment penalty, or if measure requiring detention of the person, imposed by the applying country for not shorter than 4 months.

(3) The act shall constitute offence in the both countries, if, not depending on the differences in the corpus delicti, the main indications are identical.

#### **Article 7**

Extradition shall be refused:

1. for a political offence or an offence connected with a political offence, with the exception of criminal offences that are not considered political by virtue of a law or of an international treaty to which the Republic of Bulgaria is a party;

2. for a military offence which is not a criminal offence under ordinary criminal law;

3. where the person whose surrender is requested will be tried by an extraordinary tribunal in the requesting State or where a sentence rendered by such a tribunal will be enforced against him/her;

4. where extradition is for the purpose of prosecuting or punishing a person on account of his or her race, religion, nationality, ethnicity, sex, civil status or political opinion or it is determined that there is a risk that the person's position may be prejudiced for any of these reasons;

5. where the person will be subjected in the requesting State to violence, torture or to a cruel, inhuman or degrading punishment, or his/her rights in relation to the criminal proceedings and the enforcement of his/her sentence are not guaranteed in accordance with the requirements of international law;

6. for a criminal offence in respect of which an amnesty has been declared or in respect of which the person has become immune from criminal prosecution or from the enforcement of the sentence by lapse of time under the legislation of the Bulgarian State or of the requesting State;

7. where in the Republic of Bulgaria there is an enforceable sentence against the person whose extradition is requested for the same criminal offence;

8. where the law of the requesting State provides for a death penalty for the offence or such a penalty has been imposed, unless the requesting State gives sufficient assurance that the death penalty will not be imposed or, where it has been imposed, that it will not be carried out or will be replaced by another penalty.

#### **Article 8 - Grounds on which Extradition May Be Refused**

Extradition may be refused:

1. for an act triable by the Bulgarian courts;

2. where criminal proceedings in respect of the same criminal offence have been terminated in the Republic of Bulgaria;

3. where in the Republic of Bulgaria criminal proceedings against the person whose extradition is requested are pending in respect of the offence for which extradition is requested;

4. where the sentence was rendered in absentia and the person was not aware of the criminal prosecution against him/her, unless the requesting State gives sufficient assurance that the person will be afforded a retrial of the case wherein his/her right to defence will be exercised;

5. for a criminal offence committed outside the territory of the requesting State where the legislation of the Republic of Bulgaria does not allow conduct of criminal proceedings for such an offence.

## **Article 9**

(1) A request for extradition shall be submitted by a competent authority of the requesting State in writing with the Ministry of Justice of the Republic of Bulgaria.

(2) A request for extradition can also be communicated through the diplomatic channel, the International Criminal Police Organisation (Interpol) or by other means of communication which may be arranged between the requesting State and the Republic of Bulgaria.

(3) The following shall be attached to the request for extradition:

1. the original or an authenticated copy of the conviction and sentence, the act of arraignment or the detention order or arrest warrant or other document having the same effect and issued in accordance with the procedure laid down in the law of the requesting State;

2. a statement of the offence for which extradition is requested, of the time and place of its commission, its legal description, of the amount of damages, where damages have been caused, and a copy of the applicable legal provisions, including those on the lapse of time;

3. information about the person claimed, accompanied by other information allowing to establish his/her identity and nationality;

4. information about the sentence imposed remaining to be served, where the extradition of a sentenced person is requested;

5. documents evidencing the assurance under Item 8 of Article 7 and Item 4 of Article 8.

(4) The request and the documents attached to it shall be drafted in the language of the requesting State, a translation into the Bulgarian language being also attached, unless otherwise provided for in an international treaty.

## **Article 13**

(1) In cases of urgency the competent authorities of the requesting State may request from the Ministry of Justice or the Supreme Cassation Prosecution Office the provisional arrest of the person sought, prior to submitting a request for extradition.

(2) A request for provisional arrest shall specify the existence of an act of detention, arraignment or of a conviction and the intention of the requesting State to submit a request for extradition. The request must contain information about the criminal offence in respect of which extradition will be requested, and when and where such offence was committed, as well as particulars of the person sought.

(3) Where the request for provisional arrest was submitted by a State with which the Republic of Bulgaria has not concluded a treaty on extradition, the Minister of Justice shall notify the Supreme Cassation Prosecution Office of the existence of reciprocity.

(4) A request for provisional arrest may be sent by mail, telegraph, telex, fax, through the diplomatic channel, the International Criminal Police Organisation (Interpol), or by other means capable of producing a written record evidencing its receipt and content.

(5) Once the person has been located in the territory of the Republic of Bulgaria and his/her identity has been ascertained, the Supreme Cassation Prosecution Office shall detain him/her for a period of up to seventy-two hours and communicate the request for provisional arrest together with all documents to the District Prosecutor under whose geographical jurisdiction the person is located.

(6) Within the period under Paragraph (5) the District Prosecutor shall appoint a defence counsel and an interpreter to the person where he/she has no command of the Bulgarian language and shall lodge an application for his/her provisional arrest with the respective District Court.

(7) (Amended, SG No. 86/2005) The District Court shall examine the application according to the procedure established by Article 64 (3) and (5) of the Criminal Procedure Code and shall pronounce by a ruling imposing thereby a measure of provisional arrest or another measure of procedural coercion to ensure the participation of the person in extradition proceedings. The measure of

provisional arrest shall be taken for up to forty days or another period, as provided for in an international treaty to which the Republic of Bulgaria is a party.

(8) A ruling under Paragraph (7) may be appealed and protested before the respective Appellate Court within three days.

(9) The Supreme Cassation Prosecution Office shall forthwith notify the Minister of Justice and the requesting State of the measure imposed.

(10) (Amended, SG No. 86/2005) At the request of the arrested person under the period specified in Paragraph (7) the District Court may modify the measure of provisional arrest into another measure of procedural coercion which can ensure the participation of the person in extradition proceedings, according to the procedure established by Article 65 of the Criminal Procedure Code. The ruling of the District Court may be appealed and protested before the respective Appellate Court within three days.

(11) The prosecutor shall rescind the measure of provisional arrest where, within the period of provisional arrest specified by the court, the Republic of Bulgaria does not receive a request for extradition and the documents under Article 9 (3).

(12) Release of the person shall not be an obstacle to his/her further arrest to the purpose of extradition or to the extradition itself, where the request for extradition is received after expiry of the period under Paragraph (7).

#### **Article 14**

(1) Following receipt of the request under Article 9, the Supreme Cassation Prosecution Office shall open a file for the case. If there are concurrent requests, they shall be joined in a single file.

(2) The Supreme Cassation Prosecution Office shall detain the person for a period of up to seventy-two hours, including where the period of provisional arrest specified by the court according to the procedure established by Article 13 (7) has expired or another measure has been imposed to ensure the participation of the said person in extradition proceedings.

(3) The file, together with mandatory instructions, shall be transmitted to the respective District Prosecutor under whose geographical jurisdiction the requested person is located.

(4) Within the period under Paragraph (2) the District Prosecutor shall:

1. provide the person claimed with a defence counsel, where the latter has none, and an interpreter if he/she has no command of the Bulgarian language;
2. present the person and his/her defence counsel with all documents contained in the file and take written explanations from the person;
3. explain the person his/her right to give consent for his/her immediate extradition before the court;
4. submit a motion to the respective court for the imposition of remand in custody in respect of the person claimed until completion of the extradition proceedings;
5. submit the file for examination by the respective District Court

#### **Article 17**

(1) A request for extradition shall be examined by the court sitting in public session in a panel of three judges with the participation of a prosecutor.

(2) The court shall appoint a defence counsel to the person claimed and an interpreter where he/she has no command of the Bulgarian language and shall explain his/her right to consent to immediate extradition and the implications thereof.

#### **Article 19. Procedure where Consent Is Given to Immediate Extradition**

(1) Where at the court session the person claimed gives consent to immediate extradition, the court shall ask of him/her whether he/she gives consent voluntarily and understands the implications thereof.



(2) Once the court is satisfied that consent has been voluntarily given, the latter shall be put down in the record of proceedings and signed by the person and his/her defence counsel.

(3) Where there is no ground under Article 7 for refusal of extradition, the court shall render a decision on immediate extradition within twenty-four hours. The said decision shall be final.

(4) An authenticated duplicate copy of the decision under Paragraph (3) shall be transmitted within twenty-four hours to the Minister of Justice for the purposes of notifying the requesting State and the Supreme Cassation Prosecution Office, which shall have to issue a decree for the execution of extradition.

(5) (New, SG No. 49/2010) Paragraphs 1 - 4 shall not apply in case there are pending criminal proceedings against the person claimed for an offence other than that in respect whereof extradition is requested, or in case the person is to serve a sentence for an offence other than that in respect whereof extradition is requested.

### **Article 36 Conditions for application of the European Arrest Warrant**

(1) European Arrest Warrant shall be issued for persons who has committed offences, which carry as per the legislation of the requesting country not less than one year imprisonment sentence or a measure requiring detention or another more severe penalty, or if the imposed penalty imprisonment or the requiring detention measure is not shorter than 4 months.

(2) The surrender on the base of European Arrest Warrant shall be performed, if the offence which the warrant has been issued for, constitutes a offence as per the Bulgarian legislation too. Execution of an European Arrest Warrant related to taxes, custom fees or currency exchange cannot be refused on the ground that the Bulgarian legislation does not stipulate the same type of taxes or fees or does not settle the taxes, fees, custom fees or the currency exchange in the same way as the legislation of the issuing Member State does.

(3) Double criminality shall not be required for the following offences, if in the issuing State they carry not less than three years of imprisonment or with another more severe penalty, or for them a measure requiring detention for not less than of 3 years is provided:

1. participation in a criminal organization,
2. terrorism,
3. trafficking in human beings,
4. sexual exploitation of children and child pornography,
5. illicit trafficking in narcotic drugs and psychotropic substances,
6. illicit trafficking in weapons, munitions and explosives,
7. corruption,
8. fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
9. laundering of the proceeds of offence,
10. counterfeiting currency, including of the euro,
11. computer-related offence,
12. environmental offence, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
13. facilitation of unauthorized entry and residence,
14. murder, grievous bodily injury,
15. illicit trade in human organs and tissue,

16. kidnapping, illegal restraint and hostage-taking,
17. racism and xenophobia,
18. organized or armed robbery,
19. illicit trafficking in cultural goods, including antiques and works of art,
20. swindling,
21. racketeering and extortion,
22. counterfeiting and piracy of products,
23. forgery of administrative documents and trafficking therein,
24. forgery of means of payment,
25. illicit trafficking in hormonal substances and other growth promoters,
26. illicit trafficking in nuclear or radioactive materials,
27. trafficking in stolen vehicles,
28. rape,
29. arson,
30. offences within the jurisdiction of the International Criminal Court,
31. unlawful seizure of aircraft/ships,
32. sabotage

#### **Article 37.a**

Where a European arrest warrant covers several separate offences at least one of which satisfies the requirements under Article 36 (1) or (3), the executing state shall be entitled to allow surrender also for the rest of the offences.

### **Section II. Execution of European Arrest Warrant Issued by Another EU Member State**

#### **Article 39 (Effective 1.01.2007)**

The District court shall refuse to execute a European arrest warrant, where:

1. the offence on which the warrant is based is covered by amnesty in the Republic of Bulgaria and falls within its criminal jurisdiction;
2. it has been informed that the requested person has been finally judged by the Bulgarian court or by the court of a third Member State in respect of the same offence on which the warrant is based and the sentence has been served or is being served, or the sentence may no longer be executed under the legislation of the sentencing State;
3. the requested person is a minor according to Bulgarian legislation.

#### **Article 40 - Grounds for Optional Non-execution of European Arrest Warrant (Effective 1.01.2007)**

The District Court may refuse to execute a European arrest warrant where:

1. (amended, SG No. 52/2008) before reception of the warrant, the person has been arraigned as an accused party or is a defendant in the Republic of Bulgaria in respect of the offence on the basis of which the said warrant is issued;
  - 1a. (new, SG No. 52/2008) the criminal prosecution for the offence on the basis of which the warrant is issued has been terminated in the Republic of Bulgaria before reception of the said warrant;
2. the criminal prosecution or the execution of the punishment is statute-barred according to Bulgarian legislation and the offence is triable by a Bulgarian court;

3. it has been informed that the requested person has served or is serving a sentence in a State which is not a member of the European Union, under a final judgement in respect of the same offence on which the warrant is based or the said sentence may no longer be executed under the legislation of the sentencing State;

4. (amended, SG No. 52/2008) the requested person resides or is permanently resident in the Republic of Bulgaria, or is a Bulgarian national and the Bulgarian court undertakes that the prosecutor will execute the custodial sentence or the detention order imposed by the court of the issuing Member State;

5. the offence has been committed in whole or in part in the territory of the Republic of Bulgaria or has been committed outside the territory of the issuing Member State and Bulgarian legislation does not allow criminal prosecution for the same offence when committed outside the territory of the Republic of Bulgaria.

#### **Article 41**

(3) (Amended, SG No. 49/2010) Where a European arrest warrant has been issued for the purposes of conducting a criminal prosecution of a Bulgarian national or a person permanently resident in the Republic of Bulgaria, such person shall be surrendered subject to a guarantee by the issuing state, as demanded in advance, to the effect that after being heard in the issuing state's territory, he/she shall be returned to the Republic of Bulgaria at any of its border checkpoints in order to serve the custodial sentence or detention order passed against him/her. In such cases no transfer of a convicted person shall take place, and the issuing state shall cover the costs for the person's return.

#### **Article 42**

(1) (Amended, SG No. 52/2008) Following a reception of a European arrest warrant directly from a competent authority of the issuing Member State, the District Court under whose geographical jurisdiction the requested person is located shall verify whether the said warrant satisfies the requirements under Articles 36 and 37 and shall order the police to proceed with the detention of the requested person for a period not exceeding seventy-two hours.

(2) (Amended, SG No. 52/2008, supplemented, SG No. 49/2010) Where a European arrest warrant for the requested person has been received in cases other than those referred to in Paragraph (1), the police shall detain the said person for twenty-four hours and shall immediately notify the respective District Prosecutor.

In such cases the Prosecutor shall verify that the European arrest warrant satisfies the requirements under Articles 36 and 37. The Prosecutor may decree detention of the person for a period not exceeding seventy-two hours.

(3) (Repealed, SG No. 52/2008).

(4) (Amended, SG No. 52/2008) The alert received in the SIS shall be equivalent to a European arrest warrant if it is accompanied by the information under Article 37 (1) and (2) and shall be effected in compliance with Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders.

(5) (New, SG No. 52/2008) In the cases referred to in Items 1 to 3 of Article 38a (1), where the European arrest warrant is not accompanied by a translation into the Bulgarian language, the prosecutor shall immediately notify the issuing Member State to transmit the said translation within the period referred to in Paragraph (2).

Unless a translation of the warrant is received within the said period, the person detained shall be released by the prosecutor.

## **INTERNATIONAL LEGAL FRAMEWORK**

### **I. BILATERAL AGREEMENTS**

#### **A. BILATERAL AGREEMENTS FOR JOINT INVESTIGATIONS**

1. Agreement between the Public Prosecutor's Office of Republic of Bulgaria and the Federal Republic of Germany.
2. Agreement between the Public Prosecutor's Office of Republic of Bulgaria and Kingdom of Spain.
3. Agreement between the Public Prosecutor's Office of Republic of Bulgaria and the French Republic.
4. Agreement between the Public Prosecutor's Office of Republic of Bulgaria and Republic of Romania.
5. Agreement between the Public Prosecutor's Office of Republic of Bulgaria and the United Kingdom of Great Britain and Northern Ireland.
- 6.

#### **B. BILATERAL AGREEMENTS IN THE FIELD OF EXTRADITION**

1. Bilateral Agreement on Extradition with India (2004)
2. Bilateral Agreement on Extradition with United States of America (2008)
3. Bilateral Agreement on Extradition with South Korea (2009)
4. Bilateral Agreement on Extradition with Spain (1994)
5. Bilateral Agreement on Extradition with Azerbaijan (1996)
6. Bilateral Agreement on Extradition with China (1997)
7. Bilateral Agreement on Extradition with Armenia (1997)
8. Bilateral Agreement on Extradition with the Republic of Lebanon (2001)
9. Bilateral Agreement on Extradition with Uzbekistan (2004)
10. Bilateral Agreement on Extradition with Turkey (1992)
- 11.

#### **C. BILATERAL AGREEMENT FOR MUTUAL LEGAL ASSISTANCE**

1. Agreement on Certain Aspects of Mutual Legal Assistance in Criminal Matters between the Government of the Republic of Bulgaria and the Government of the United States of America

Ratified by law, adopted by the 40-th National Assembly on 23.04.2008 - SG, No. 43/29.04.2008. Issued by the Ministry of Justice, promulgated SG, No. 39/25.05.2010, effective 1.02.2010.

1. As contemplated by Article 3 (3) of the Agreement on Mutual Legal Assistance between the United States of America and the European Union signed 25 June 2003 (hereafter "the U.S. - EU Mutual Legal Assistance Agreement") for the purposes of providing enhancements to cooperation and mutual legal assistance, the Governments of the Republic of Bulgaria and the United States of America acknowledge that, in accordance with the provisions of this Agreement, the U.S. - EU Mutual Legal Assistance Agreement is applied between them under the following terms:

(a) Article 4 of the U.S. - EU Mutual Legal Assistance Agreement as set forth in Article 1 of the Annex to this Agreement shall govern the identification of financial accounts and transactions;

(b) Article 5 of the U.S. - EU Mutual Legal Assistance Agreement as set forth in Article 2 of the Annex to this Agreement shall govern the formation and activities of joint investigative teams;

(c) Article 6 of the U.S. - EU Mutual Legal Assistance Agreement as set forth in Article 3 of the Annex to this Agreement shall govern the taking of testimony of a person located in the Requested State by use of video transmission technology between the Requesting and Requested States;

(d) Article 7 of the U.S. - EU Mutual Legal Assistance Agreement as set forth in Article 4 of the Annex to this Agreement shall govern the use of expedited means of communication;

(e) Article 8 of the U.S. - EU Mutual Legal Assistance Agreement as set forth in Article 5 of the Annex to this Agreement shall govern the provision of mutual legal assistance to the administrative authorities concerned;

(f) Article 9 of the U.S. - EU Mutual Legal Assistance Agreement as set forth in Article 6 of the Annex to this Agreement shall govern the limitation on use of information or evidence provided to the Requesting State, and govern the conditioning or refusal of assistance on data protection grounds;

(g) Article 10 of the U.S. - EU Mutual Legal Assistance Agreement as set forth in Article 7 of the Annex to this Agreement shall govern the circumstances under which a Requesting State may seek the confidentiality of its request; and

(h) Article 13 of the U.S. - EU Mutual Legal Assistance Agreement as set forth in Article 8 of the Annex to this Agreement shall govern the invocation by the Requested State of grounds for refusal.

2. This Agreement is intended solely for mutual legal assistance between the Republic of Bulgaria and the United States of America in accordance with the terms of the U.S. - EU Mutual Legal Assistance Agreement, and shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request, nor expand or limit rights otherwise available under domestic law.

3. The Annex reflects the provisions on mutual legal assistance applicable between the Republic of Bulgaria and the United States of America upon entry into force of this Agreement.

4. In accordance with Article 12 of the U.S. - EU Mutual Legal Assistance Agreement, this Agreement shall apply to offenses committed before as well as after it enters into force.

5. This Agreement shall apply to requests made after its entry into force. Nevertheless, in accordance with Article 12 (2) of the U.S. - EU Mutual Legal Assistance Agreement, Articles 3 and 4 of the Annex shall apply to requests pending in the Requested State at the time this Agreement enters into force.

6. (a) This Agreement shall be subject to completion by the Republic of Bulgaria and the United States of America of their respective applicable internal procedures for entry into force. The Governments of the Republic of Bulgaria and the United States of America shall thereupon exchange instruments indicating that such measures have been completed. This Agreement shall enter into force on the date of entry into force of the U.S. - EU Mutual Legal Assistance Agreement.

(b) In the event of termination of the U.S. - EU Mutual Legal Assistance Agreement, this Agreement shall be terminated. The Governments of the Republic of Bulgaria and the United States of America nevertheless may agree to continue to apply some or all of the provisions of this Agreement.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Sofia, in duplicate, this 19 day of September, 2007, in the Bulgarian and English languages, both texts being equally authentic.

## **ANNEX**

### **Article 1. Identification of bank information**

1. (a) Upon request of the Requesting State, the Requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offense is the holder of a bank account or accounts. The Requested State shall promptly communicate the results of its enquiries to the Requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offense;

(ii) information in the possession of non-bank financial institutions; or

(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 of this Article shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions;

(b) sufficient information to enable the competent authority of the Requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offense and that banks or non-bank financial institutions in the territory of the Requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding; and

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Unless subsequently modified by exchange of diplomatic notes between the European Union and the United States of America, requests for assistance under this Article shall be transmitted between:

(a) for the Republic of Bulgaria, the Supreme Cassation Prosecutors Office during pretrial and the Ministry of Justice during the trial; and

(b) for the United States of America, the attaché responsible for Bulgaria of the:

(i) U.S. Department of Justice, Drug Enforcement Administration, with respect to matters within its jurisdiction;

(ii) U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, with respect to matters within its jurisdiction;

(iii) U.S. Department of Justice, Federal Bureau of Investigation, with respect to all other matters.

4. The Republic of Bulgaria and the United State of America shall provide assistance under this Article with respect to money laundering and terrorist activity punishable under the laws of both the Requesting and Requested States and with respect to such other criminal activity as they may notify each other.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The Requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article in accordance with the requirements of its domestic law.

### **Article 2. Joint investigative teams**

1. Joint investigative teams may be established and operated in the respective territories of the Republic of Bulgaria and the United States of America for the purpose of facilitating

criminal investigations or prosecutions involving the United States of America and one or more Member States of the European Union where deemed appropriate by the Republic of Bulgaria and the United States of America.

2. The procedures under which the team is to operate, such as its composition, duration, location, organization, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offenses, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other State(s) having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

### **Article 3. Video conferencing**

1. The use of video transmission technology shall be available between the Republic of Bulgaria and the United States of America for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in the Requested State. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as provided for under the law of the Requested State.

2. Unless otherwise agreed by the Requesting and Requested States, the Requesting State

Shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the Requested State) shall be borne as agreed upon by the Requesting and Requested States.

3. The Requesting and Requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the Requesting State, making an internationally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the Requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the Requested State available under applicable treaty or law.

6. The Requested State may permit the use of video conferencing technology for purposes other than those described in paragraph 1 of this Article, including for purposes of identification of persons or objects, or taking of investigative statements.

### **Article 4. Expedited transmission of requests**

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the Requested State. The Requested State may respond to the request by any such expedited means of communication.

### **Article 5. Mutual legal assistance to administrative authorities**

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. Requests for assistance under this article shall be transmitted between the Ministry of Justice of the Republic of Bulgaria and the United States Department of Justice or between such other authorities as may be agreed by the Ministry of Justice of the Republic of Bulgaria and the United States Department of Justice.

**Article 6. Limitations on use to protect personal and other data**

1. The Requesting State may use any evidence or information obtained from the Requested State:

- (a) for the purpose of its criminal investigations and proceedings;
- (b) for preventing an immediate and serious threat to its public security;
- (c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
  - (i) set forth in subparagraph (a); or
  - (ii) for which mutual legal assistance was rendered under Article 5 of this Annex;
- (d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
- (e) for any other purpose, only with the prior consent of the Requested State.

2. (a) This Article shall not prejudice the ability of the Requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested State may require the Requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting State for processing personal data may not be imposed by the Requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the Requesting State, the Requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested State may consult with the Requesting State to determine the extent to which the evidence and information can be protected.

**Article 7. Requesting State's request for confidentiality**

The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Requesting State. If the request cannot be executed without breaching the requested confidentiality, the central authority of the Requested State shall so inform the Requesting State, which shall then determine whether the request should nevertheless be executed.

For purposes of this Article, the central authority will be:

- a) for the Republic of Bulgaria the Supreme Cassation Prosecutors Office during pretrial and the Ministry of Justice during the trial; and
- b) for the United States the Department of Justice.

**Article 8. Refusal of assistance**

Subject to Article 1 (5) and 6 (2) (b) of this Annex, the provisions of this Annex are without prejudice to the invocation by the Requested State of grounds for refusal of assistance available pursuant to its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, public order or other essential interests.



## II. MULTILATERAL AGREEMENTS

1. UNCAC. Law for Ratification of UNCAC, published in Official Journal, No. 66/15.08.2006 the Republic of Bulgaria has made the following declaration:

“In accordance with Article 44, para. 14 UNCAC, the Republic of Bulgaria declares that it will require that requests for assistance and annexed documents be accompanied by a translation into Bulgarian or English.”

2. UNTOC
3. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
4. United Nations Convention against Transnational Organized Crime.
5. Charter of Fundamental Rights.

### Article 50

6. Resolution of the Council of EU from 23 November 1995 for protection of the witnesses in the fight against the international organized crime.
7. Framework Decision of the CEU from 15, March 2001 for protection of the victims in the criminal proceedings.
8. Decision of the Council of the EU from 17 October 2000.
9. Council of Europe Criminal Law Convention on Corruption.
10. European Convention on the International Validity of Criminal Judgments (2004).
11. European Convention on the Transfer of Proceedings in Criminal Matters and additional protocols.
12. Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.
13. Convention implementing the Schengen Agreement of 14 June 1985.
14. Schengen Convention.
15. Lisbon Treaty.
16. Council of Europe Convention on Extradition and additional protocols from 1975, 1978 and 2010.
17. Agreement on mutual legal assistance between the European Union and United States of America.
18. Convention Established by the Council in Accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29.05.2000 (ECMACM) – Ratified by law, adopted by the 40-th National Assembly on 5.07.2007 – SG, No. 58/17.07.2007, promulgated SG, No. 23/29.02.2008, effective for the Republic of Bulgaria since 01.12.2007.

### Declarations made by Bulgaria to the ECMACM

#### Article 3

Proceedings in connection with which mutual assistance is also to be afforded

1. Mutual assistance shall also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Member State, or both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

2. Mutual assistance shall also be afforded in connection with criminal proceedings and proceedings as referred to in paragraph 1 which relate to offences or infringements for which a legal person may be held liable in the requesting Member State.

19. Second Additional Protocol to ECMACM

20. European Convention on Mutual Assistance in Criminal Matters of 1959.

21. First protocol to the European Convention on Mutual Assistance in Criminal Matters of 1981

22. Second additional protocol to the European Convention on Mutual Assistance in Criminal Matters of 1959

### **Article 3**

Proceedings in connection with which mutual assistance is also to be afforded

1. Mutual assistance shall also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Member State, or both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

2. Mutual assistance shall also be afforded in connection with criminal proceedings and proceedings as referred to in paragraph 1 which relate to offences or infringements for which a legal person may be held liable in the requesting Member State.

23. Convention of the Council of Europe on Fight against Human Trafficking.

24. Council of Europe Convention on the Transfer of Sentenced Persons and the additional Protocol thereto.

25. Framework Decision 2008/909/JHA of the Council of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

26. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990).

27. Convention for transfer of the proceedings on criminal cases.

28. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

## ANNEX II

### Documents provided and listed by Bulgaria:

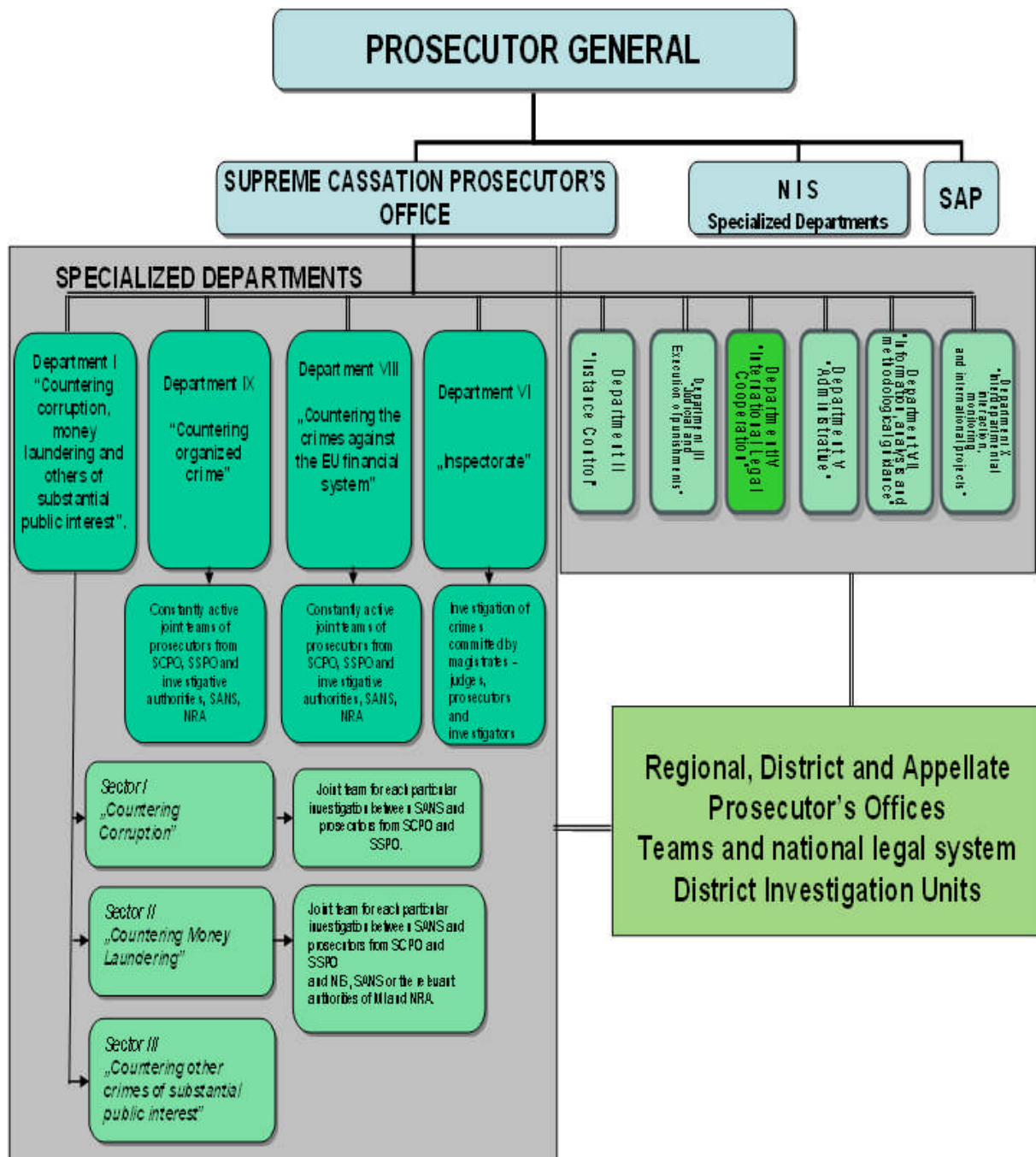
1. Bulgaria.doc: list of annexed documents .....	p2
2. Diagram -SPOC.doc .....	p3
3. Interpretative Ruling _48_ot_241976_g_po_n_d_3975_g_OSNK.doc .....	p4
4. Judgement 184-2008.doc .....	p7
5. Judgement 187 -2005.doc .....	p10
6. New Microsoft Word Document (5).doc .....	p13
7. Statistics - Protection of the witness.doc .....	p20
8. Statistics -relevant to Art.17 UNCAC.doc .....	p21
9. Statistics.doc .....	p23
10. Table 1- 225b-226 PC.doc .....	p24
11. Table 1- 253 PC.doc.....	p25
12. Table 1 - Art. 301-307 PC.doc .....	p26
13. Table 2- 282-283 and 387 PC.doc .....	p27
14. Table 2 - 253 PC.doc .....	p29
15. Table 2 - Art. 301 -307 PC.doc .....	p31
16. Table 4 -art. 304 b.doc .....	p33
17. Table -1 - 282- 283 and 387 PC.doc .....	p34
18. Table - statistics.doc .....	p35
19. Table -Art.289-293.doc .....	p37
20. Table statistics - Art. 212-215 PC.doc .....	p39

### Additional documents provided by Bulgaria:

21. Annex 2 ReportSTRs2009_2010.doc .....	p40
22. Statistical information - LAOS.doc .....	p41
23. Statistical information -immunities.doc .....	p42

Name of Files in Attachments	Chapter	Article_ID_Paragarph_(subparagraph)	Documents already sent before
Diagram -SPOC.doc	III	36_131	
Interpretative Ruling _48_ot_241976_g_po_n_d_3975_g_OSNK.doc	III	25_91_(a)	1
Judgement 184-2008.doc	III	19_76	2
Judgement 187 -2005.doc	III	19_76	3
Measures_Against_Money_Laundering_Act.pdf	III	23_81_1(a)(i)	
New Microsoft Word Document (5).doc	III	36_131	4
Protection_of_Individuals_at_Risk_in_Relation_to_Criminal_Pr	III	32_122_1	
Statistics - Protection of the witness.doc	III	32_122_1	
Statistics -relevant to Art.17 UNCAC.doc	III	17_73	
Statistics.doc	III	31_112_1(a)	5
Table 1- 225b-226 PC.doc	III	21_78_21(a)	
Table 1- 253 PC.doc	III	23_81_1(a)(i)	
Table 1 - Art. 301-307 PC.doc	III	18_74_(a) ; 15_69_(a)	
Table 2- 282-283 and 387 PC.doc	III	19_76	
Table 2 - 253 PC.doc	III	23_81_1(a)(i)	
Table 2 - Art. 301 -307 PC.doc	III	18_74_(a) ; 15_69_(a)	
Table 4 -art. 304 b.doc	III	18_74_(a)	
Table -1 - 282- 283 and 387 PC.doc	III	19_76	
Table - statistics.doc	III	39_140_1	
Table -Art.289-293.doc	III	25_92_(b); 25_91_(a)	
Table statistics - Art. 212-215 PC.doc	III	24_90_24	
Treaty between The Republic of Bulgaria and The Republic of.doc	IV	46_190_7	

Diagram -SPOC.doc



Interpretative Ruling 48 ot 241976 g po n d 3975 g OSNK.doc

Interpretation Decision № 48 of 24 February 1976 on the criminal case № 39/75 of the General Assembly of the Penal Colleges

When is the refusal for committing perjury a reason for discharge of criminal responsibility for perjury?

Decrees and interpretation decisions of the Supreme Court of the Republic of Bulgaria on criminal cases - 1953 – 1990, Union of Bulgarian Lawyers, 1992, p. 338

Article 290,

Article 292 of the Penal Code

Article 20, paragraph 3,

Article 21, paragraphs 1 and 4,

Article 293 of the Penal Code

Our Penal Code has adopted the fundamental rule that the accomplices in a criminal offence are punished if the offence, in which they have taken part, has been committed – Article 21, paragraph 1 of the Penal Code. Therefore, if the criminal offence is not committed, abettors and accessories are not punished. As an exception to this rule, in the Special Part of the Penal Code a separate text for abetting to perjury has been created. This text envisages the cases where abetting to perjury has not been successful and the abetted person has not committed perjury, regardless of the reasons. In this case, there is no reference to abetting where perjury has not been committed. It becomes clear that this is so from the grammatical interpretation of Article 293 of the Penal Code. The text says “who abets” and not “who has abetted”. Hence a conclusion can be drawn that the abettor’s punishability does not fall away if the person abetted to perjury does not commit the crime. In this case, the abettor is punished for crime under Article 293 of the Penal Code, as with the very abetting the abettor fulfills the corpus delicti. Jurisdiction is an important activity performed by the state. It achieves its purposes by revealing objective truth. Perjury is an obstacle for the achievement of correct and objective jurisdiction and undermines confidence in the jurisdictional authorities. Thus the law has provided a possibility for a perpetrator of perjury to renounce before the due authorities the alleged false circumstances – Article 292, paragraph 2 of the Penal Code and be released from criminal responsibility. This possibility is a personal reason. And, pursuant to Article 21, paragraph 2 of the Penal Code, this personal reason of the perpetrator of the crime does not concern the rest of the accomplices – abettors and accessories. Since perjury has been committed by the abetted person, but his responsibility has fallen away due to a personal reason, the abettor is not subject to punishment, namely for a crime under Article 290 of the Penal Code. The abettor’s responsibility falls away only under the conditions of Article 22, paragraph 1 of the Penal Code – if, by his own motives, he gives up further participation and impedes the commitment of the act or prevents the occurrence of the criminal consequences. That is why, if the punishability of the perpetrator of perjury has fallen away on the grounds provided for in Article 292, paragraph 2 of the Penal Code, the abettor’s responsibility does not fall away and the abettor is punished for the main criminal offence – perjury under Article 290, in conjunction with Article 20, paragraph 3 of the Penal Code.

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The Chairman of the Supreme Court has proposed under Article 17 of the Law on the Structure of the Courts the issuing of decision on interpretation of the following disputable issues in jurisdiction:

1. Shall the abettor to perjury be discharged of criminal responsibility if the abetted person has not committed the crime? Some of the courts assume that the abettor is not criminally responsible as abetting to commitment of a crime is an accessory act and, if the abetted person has not committed a crime, the abettor is not criminally responsible. Other courts accept that the criminal responsibility of the abettor does not fall away and in such cases he bears criminal responsibility under Article 293 of the Penal Code.

2. Shall the abettor be discharged of criminal responsibility if the punishability of the abetted person's act to perjure falls away on the grounds provided for in Article 293 of the Penal Code? Some of the courts assume that in such cases his criminal responsibility falls away, other courts consider that it does not fall away as this article concerns the falling away of the perpetrator's criminal responsibility on personal grounds. Pursuant to Article 21, paragraph 4 of the Penal Code the particular circumstances due to which the law excludes, reduces or increases the punishment for some of the accomplices shall not be taken into consideration regarding the rest of the accomplices with respect of whom these circumstances are not present. And, since the punishability of the perpetrator's act falls away on personal grounds, it is the abettor who should bear criminal responsibility for the committed abetting.

Some contradictory practice exists in the courts concerning the issue of qualifying the abettor's act.

In some cases it is assumed that the abettor shall bear responsibility for crime under Article 293 of the Penal Code, which is a special text.

In other cases it is assumed that he shall bear responsibility under Article 290, in conjunction with Article 20, paragraph 3, of the Penal Code since the crime under Article 290 is committed completely and the abettor is an accomplice in this crime. This view is maintained in Decision № 421 on the criminal case № 335/71, Penal division 1.

The General Assembly of the Penal Colleges of the Supreme Court, in order to deliver a ruling, took into consideration the following:

Our Penal Code has adopted the fundamental rule that the accomplices in a criminal offence are punished if the offence, in which they have taken part, has been committed – Article 21, paragraph 1 of the Penal Code. Therefore, if the criminal offence is not committed, abettors and accessories are not punished.

As an exception to this rule, in the Special Part of the Penal Code a separate text for abetting to perjury has been created. This text envisages the cases where abetting to perjury has not been successful and the abetted person has not committed perjury, regardless of the reasons. In this case there is no reference to abetting where perjury has not been committed.

It becomes clear that this is so from the grammatical interpretation of Article 293 of the Penal Code. The text says “who abets” and not “who has abetted”. Hence a conclusion can be drawn that abettor's punishability does not fall away if the person abetted to perjury does not commit the crime. In this case, the abettor is punished for crime under Article 293 of the Penal Code as with the very abetting the abettor fulfills the corpus delicti.

Jurisdiction is an important activity performed by the state. It achieves its purposes by revealing objective truth. Perjury is an obstacle for the achievement of correct and objective jurisdiction and undermines confidence in the jurisdictional authorities. Thus the law has provided a possibility for a perpetrator of perjury to renounce before the due authorities the alleged false circumstances – Article 292, paragraph 2 of the Penal Code and be released from criminal responsibility. This possibility is a personal reason. And, pursuant to Article 21, paragraph 2 of the Penal Code, this personal reason of the perpetrator of the crime does not concern the rest of the accomplices – abettors and accessories. Since perjury has been committed by the abetted person, but his responsibility has fallen away due to a personal reason, the abettor is not subject to punishment, namely for crime under Article 290 of the Penal Code.

The abettor's responsibility falls away only under the conditions of Article 22, paragraph 1 of the Penal Code – if, by his own motives, he gives up further participation and impedes the commitment of the act or prevents the occurrence of the criminal consequences.

That is why, if the punishability of the perpetrator of perjury has fallen away on the grounds provided for in Article 292, paragraph 2 of the Penal Code, the abettor's responsibility does not fall away and the abettor is punished for the main criminal offence – perjury under Article 290, in conjunction with Article 20, paragraph 3, of the Penal Code.



**Judgment № 184** of 25 February 2008 of the Military Court of Appeals of the Republic of Bulgaria on the criminal case of general nature № 155/2007, Rapporteur: the chairman Colonel Svilen Aleksandrov

Article 26, paragraph 1 of the Penal Code

Article 53, paragraph 2, b) of the Penal Code

Article 66, paragraph 1 of the Penal Code

Article 78a, paragraph 1, c) of the Penal Code

Article 93, point 1, a) of the Penal Code

Article 283 of the Penal Code

Article 301, paragraph 1 of the Penal Code

Article 302, points 1 and 2 of the Penal Code

Article 307a of the Penal Code

Article 334, point 3 of the Penal Procedure Code

Article 337, paragraph 1, point 2 of the Penal Procedure Code

Article 409, paragraph 2 of the Penal Procedure Code

*In order that all indications of the corpus delicti of passive bribery are in evidence, the acceptance of the undue gift should be in connection with a specific official act or in connection with an act within the scope of the official's duties. Perpetrator of bribery under Article 301 and Article 302 of the Penal Code is the official in the meaning of Article 93, paragraph 1, a) and b) of the Penal Code, who may personally fulfil or not fulfil an action or omission by office arising from his official competence or assigned work and for which the official acquires a gift or other benefit. An official may be such perpetrator if he is a member of the composition of a collective body deciding the issues for which the bribe is given, such as various commissions...and other such bodies. An official who accepts a gift or other benefit for an action or omission, which does not fall within the scope of his official rights or duties, cannot be perpetrator of the crime bribery. This is an act which is connected with violation or non-fulfilment of official duties, excess of power or rights, or abuse of official status for the purpose of acquiring by the perpetrator for himself or for another person some unlawful benefit.*

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After an in-depth analysis of all evidence assembled in the pre-trial proceedings and before the different panels of the Sliven Military Court and the Military Court of Appeals, the appellate

instance has established that no changes have occurred in the factual background accepted in the reasoning statement of the contested sentence.

(...)

In view of the above, the correct qualification of his activity should be done under Article 283, in conjunction with Article 26, paragraph 1, of the Penal Code. Everything, which is set forth in the indictment, is in support of this statement, but an incorrect legal qualification has been given. In order that all indications of the corpus delicti of passive bribery are in evidence, the acceptance of the undue gift should be in connection with a specific official act or in connection with an act within the scope of the official's duties. Decree № 8/81 of the Plenum of the Supreme Court of the Republic of Bulgaria has the same meaning that "perpetrator of bribery under Article 301 and Article 302 of the Penal Code shall be the official in the meaning of Article 93, paragraph 1, a) and b) of the Penal Code who may personally fulfil or not fulfil an action or omission by office arising from his official competence or assigned work and for which the official acquires a gift or other benefit. An official may be such perpetrator if he is a member of the composition of a collective body deciding the issues for which the bribe is given, such as various commissions...and other such bodies... An official who accepts a gift or other benefit for an action or omission, which does not fall within the scope of his official rights or duties, cannot be perpetrator of the crime bribery... This is an act which is connected with violation or non-fulfilment of official duties, excess of power or rights, or abuse of official status for the purpose of acquiring by the perpetrator for himself or for another person some unlawful benefit...". In this case, as it was mentioned above, the defendant's functions did not include accomplishment of inspections of motor vehicles apart from those presented before the authorities from the Automotive Transport Control Department in the Regional Directorate of the Ministry of Interior in the town of B. for registration and re-registration. After the commission, which included K. as its chairman, had made a statement concerning the re-registration of an automobile Mercedes presented by the witness T. and on this basis the Head of the Police Department in the Regional Directorate of the Ministry of Interior in the town of B. had issued Decision № 9/1994 on its refusal to make changes in the registration, K. fulfilled his official duties as a member of the commission and its chairman as far as it concerned this automobile.

In view of the above-stated observations, the Military Court of Appeals considers that the conclusion of the main court concerning the acquiring by K. of an undue gift in order to fulfil or not to fulfil a specific act by office in his capacity of chairman of the commission due to an order of the Regional Directorate of the Ministry of Interior in the town of B. and concerning the qualification of his acts as a crime under Article 302, points 1 and 2, in conjunction with Article 301, paragraph 1 and in conjunction with Article 26, of the Penal Code is manifestly unjustified. In view of this, the contested sentence should be modified in that part concerning the conviction of the defendant for this crime and the implementation of Article 307a of the Penal Code since his acts have been re-qualified as a crime under Article 283, in conjunction with Article 26, paragraph 1, of the Penal Code.

(...)

"Imprisonment of up to three years" is provided for the criminal offence under Article 283 of the Penal Code. The present panel of judges took into consideration the legal amendment of Article 78a of the Penal Code with paragraph 5, point 1, a) of the Transitional and Final Provisions of the Penal Procedure Code (SG, issue 86/28.10.2005, in force as of 29 April 2006), which provides for mandatory implementation of this article concerning deliberate crimes punishable by imprisonment of up to three years, along with the rest of the requirements in the same text of the Penal Code. Pursuant to the provision of Article 2, paragraph 2 of the Penal Code, implementation of the provision of Article 78a of the Penal Code, in its revision, effective as of 29 April 2006, is more

favourable for the defendant and he should be released from criminal responsibility, if such conditions are present, and an administrative punishment should be imposed in the size which is most favourable for him. However, since there are pecuniary damages inflicted with the crime at the amount of BGN 57,000, equal to the present BGN 1,761.71, which have not yet been recovered, pursuant to Article 78a, paragraph 1, c) of the Penal Code this is a legal obstacle for the release of the defendant from criminal responsibility and for the imposition of the administrative punishment “fine”.

(...)

For the criminal offence under Article 283 of the Penal Code the law does not provide for, as it is in Article 307a, seizure in favour of the state of the object of the crime. Pursuant to Article 53 of the Penal Code, however, regardless of the criminal responsibility, the chattel and the object of the crime shall be seized in favour of the state in the four cases indicated there. The present case concerns the implementation of the principle proclaimed in Article 53, paragraph 2, b) of the Penal Code, that is, the acquisition through the crime shall be subject to seizure in favour of the state, if not subject to return or recovery, and, when the acquisition is missing, its equal value shall be adjudicated. It is indisputably established in this case that the banknotes in cuts of BGN 100 and BGN 200. i.e. BGN 20,000 (undenominated) in total, described in the record of search and seizure (sheets 11-12, vol. 1 of the investigation case) were personal property of the witness T.T. and the latter submitted them voluntarily on the request of the authorities from the Regional Directorate of the Ministry of Interior in the town of B. (the witness Sht. A.) for describing them in a record before he had given them to K. Therefore, this sum should not be seized in favour of the state but returned to its owner T.T. after the entry of the sentence into legal effect. Since the sum of BGN (undenominated) 57,000 acquired by K. from the witness T. on 28 July 1995 is missing and is acquired through the crime, pursuant to Article 353, paragraph 1, b) of the Penal Code, he should be sentenced to pay in favour of the state its equivalence of BGN 1,761.71 in accordance with the conclusion of the judicial economic expertise for which comments were given above.

(...)

**JUDGMENT № 187 OF 21 MARCH 2005 ON THE APPELLATE CRIMINAL CASE OF GENERAL NATURE № 139/2004 OF THE BURGAS COURT OF APPEALS**

Rapporteur: the judge Georgi Koshnicharov

With Sentence № 82/25.06.2004 passed on the criminal case of general nature № 39/2004 in the list of the District Court in the town of B., the court has found the defendants:

1. B. Zh. T. from the town of B. guilty on account of the fact that in his capacity of official, i.e., customs inspector in the Regional customs office in the town of B., under the conditions of continuing crime for the period from 3 December 1991 to 30 January 1992 has exceeded his powers and has not fulfilled his duties under Section I “General Functions” of the customs inspector, with a purpose to provide benefit for “E .E. M. – I. E. H.” Ltd in the town of B. with a sum at the amount of BGN 53,357(undenominated), which constitutes the total sum of accrued customs duties (CD) not yet paid by that moment and is substantial damage under Article 282, paragraph 2, supposition 1, in conjunction with paragraph 1, of the Penal Code, in conjunction with Article 26 and Article 54 of the Penal Code, and has sentenced him to three years of “imprisonment” and to revocation of the right to occupy the position “Customs Inspector” for the term of four years, but pursuant to Article 66 of the Penal Code has postponed the imposed “imprisonment” for the term of five years.

It has found the defendant B.T. innocent and has acquitted him of the charge against him under Article 282, paragraph 3, in conjunction with paragraph 2, supposition 1 and paragraph 1, of the Penal Code, in conjunction with Article 26, paragraph 1 of the Penal Code, for the period from 30 May 1991 to 3 December 1991.

With the same sentence the court has found the defendant guilty on account of the fact that in his capacity of official, i.e., customs inspector in the Regional customs office in the town of B., under the conditions of continuing crime for the period from 25 August 1993 to 13 July 1994 has exceeded his powers and has not fulfilled his official duties with a purpose to provide benefit for “E .E. M. – I. E. H.” Ltd in the town of B. with a sum at the amount of BGN 100,600,279 (undenominated) – accrued and not collected customs duties, which constitutes a criminal offence under Article 282, paragraph 3, in conjunction with paragraph 2, supposition 1 and paragraph 1, of the Penal Code, in conjunction with Article 26, paragraph 1 and Article 54 of the Penal Code, and has sentenced him to six years of “imprisonment” and to revocation of the right to occupy the position “Customs Inspector” “for the term of seven years”.

By virtue of Article 23, paragraph 1 of the Penal Code the court has determined to him the punishment “imprisonment” for the term of six years, which should be served under the conditions of initial “strict” regime, and has added the punishment for revocation of the right to occupy the position “Customs Inspector” for the term of seven years.

Pursuant to Article 59, paragraph 1 of the Penal Code the court has taken into account the time when the defendant B. T. was detained in custody.

(...)

The factual background established by the first-instance court is supported fully and entirely by the oral and written evidence assembled for the case, which has been thoroughly and precisely discussed by the court and for which the court has set forth persuasive observations. The analysis and the assessment of the evidence in its entirety have led the first instance to the true and justified conclusion that, for the incriminated period, the defendants have committed the following crimes:

The defendant B. T., under the conditions of continuing crime, as Head of the Regional Customs Office in the town of B., in his capacity of official, for the period from 1 December 1991 to 30 January 1992, has exceeded his powers and has not fulfilled his duties with the purpose to provide benefit for “E. E. M. ...” Ltd with of a sum at the amount of BGN 53, 357 (undenominated), which

constitutes a criminal offence under Article 282, paragraph 2, supp. 1 of the Penal Code, in conjunction with Article 26 of the Penal Code. It has found the same defendant guilty on account of the fact that, for the period from 25 August 1993 to 13 July 1994, in his capacity of official, under the conditions of continuing crime, has exceeded his powers and has not fulfilled his official duties with the purpose to provide benefit for “E. E. M. ...” Ltd with of a sum at the amount of BGN 100,600, 279 (undenominated), i.e., accrued and not collected customs duties, and the case is particularly serious and constitutes a criminal offence under Article 282, paragraph 3, in conjunction with paragraph 2, supposition 1, of the Penal Code, in conjunction with Article 26 of the Penal Code.

(...)

2. On the appeal of the defendant B. T.:

Arguments for “ill-foundedness”, “breach of the substantial law and the procedural law” and “manifest unfairness of the imposed punishment” have been submitted. It is pleaded for revocation of this sentence and delivery of a new one which should find the defendant T. innocent and acquit him of the charge; besides, the prosecutor’s protest should not be granted.

A). The complaint for “ill-foundedness” of the factual background established by the first-instance court is unjustified. The factual background accepted by the court is supported fully and entirely by the oral and written evidence gathered for the case, which has been thoroughly and precisely discussed by the court and for which the court has set forth persuasive observations (see p. 120 of the reasoning statement).

B). The complaint for “breach of the substantial law” concerns absence of conformity of the act with the corpus delicti in Article 282 of the Penal Code. The evidence in the case leaves no doubt as to the perpetrator of these acts. The analysis and the assessment of the evidence in its entirety have led the first instance to the true and justified conclusion that during the incriminated period the defendant T. has committed subjectively and objectively the corpus delicti of the crime in Article 282 of the Penal Code and, in this sense, the appellate instance shares these conclusions completely. The assumed legal qualification is in accordance with the facts established in the case and the substantial law has been applied appropriately.

C). The complaint for “breach of the procedural law” concerns the allegation that the evidence for the case was not assembled under the procedure provided for in the Penal Procedure Code. It is alleged that the incriminating documents have been “flicked” by an anonymous person in front of the building of the Regional Directorate of the Ministry of Interior in the town of B.

The objection is groundless.

(...)

D). The complaint for “manifest unfairness” of the punishment imposed on the defendant T. concerns non-conformity with regard to its individualization.

The objection is ill-founded. As evident from the sentence appealed, in order to individualize the punishment for the defendant T., the first-instance court has taken into account all extenuating and aggravating circumstances. These circumstances are listed exhaustively and assessed correctly and the court has justifiably assumed that his criminal responsibility should be determined towards the average size of the legal sanction. Having applied the provisions of Article 23, paragraph 1 of the Penal Code, the court has determined for the defendant the most serious of the imposed punishments, namely, “imprisonment” for the term of six years, which should be served effectively. It complies with the requirements of Article 36 of the Penal Code and Article 54 of the Penal Code and, in this sense, it is fair.

(...)

For the above reasons and pursuant to Article 335, paragraph 2, point 2, supposition 2 of the Penal Procedure Code, the court

HAS DECIDED:

The court MODIFIES Sentence № 82 of 25 June 2004 on the criminal case of general nature № 39/2004 in the list of the B. District Court by revoking the release from serving the punishment “imprisonment” under Article 66, paragraph 1 of the Penal Code concerning the defendants Zh. G. Y. and Z. T. K. and upholds the rest of the sentence.

(...)

The judgment may be appealed before the Supreme Court of Cassation within fifteen days of receiving a written notice.

UNODC

## **CODE OF ETHICS FOR THE BEHAVIOUR OF BULGARIAN MAGISTRATES**

### **THE MAGISTRATES WORKING IN THE JUDICIAL SYSTEM OF THE REPUBLIC OF BULGARIA**

Guided by the understanding that **rules** on the ethical behaviour of magistrates are an important factor for:

- developing higher public confidence in the judicial system;
- protecting human rights and upholding the rule of law;
- preventing and limiting corruption in the judicial system.

undertake as their commitment before Bulgarian society the requirement to comply with and introduce in their professional work and in their **personal life** the rules of ethical behaviour described herein.

The Supreme Judicial Council, as the highest administrative and guidance body of the judicial system in Bulgaria, shall adopt the **CODE OF ETHICS FOR THE BEHAVIOUR OF BULGARIAN MAGISTRATES** and shall be mainly responsible for the implementation of the rules of behaviour enshrined in it in the magistrates' work and personal life.

#### **FIELD OF APPLICATION**

The Code of Ethical Behaviour shall apply to all judges, prosecutors and investigators, members of the Supreme Judicial Council, inspectors at the Inspectorate of the Supreme Judicial Council, referred to hereinafter as Magistrates

#### **SOURCES**

This Code has been drawn up in compliance with the Constitution of the Republic of Bulgaria, the Judicial System Act, the recommendations of the Committee of Ministers of the Council of Europe on the status of judges, prosecutors and investigating authorities as well as with all other national and international acts which regulate the work of magistrates in the Republic of Bulgaria.

#### **Section I**

#### **MAIN PRINCIPLES**

The main principles establish the standards and draw the framework for regulating the magistrates' behaviour both at work and outside it.

#### **INDEPENDENCE**

In the meaning herein independent shall be a magistrate who in the course of performing his/her official duties is guided solely by his/her inner conviction and the law and does not succumb to pressure, threats, incentives, direct or indirect influence by representatives of any other power – public or private, internal or external to the judicial system.

#### **IMPARTIALITY**

Impartial shall be a magistrate who establishes the truth of the facts solely on the basis of an objective analysis of the evidence in the case, **creates conditions for equality between the parties and their procedural representatives and avoids** behaviour which might be accepted as offering privileges, predisposition, bias or prejudice based on race, origin, ethnicity, gender, religion, education, beliefs, political affiliation, personal or public status or property status.

#### FAIRNESS AND TRANSPARENCY

Fair shall be a magistrate who, within the general and abstract norms of the law, takes into consideration the specificities of every individual case and decides it on the basis of criteria related to the general human values and the values of the democratic legal order.

Transparency in the magistrate's actions and acts is a guarantee for the fairness of the decisions made by him/her.

#### CIVILITY AND TOLERANCE

Civil shall be a magistrate who through his/her actions and acts always expresses the respect he/she owes his/her colleagues, **citizens**, lawyers, parties and the other participants in the proceedings.

Tolerant shall be a magistrate who is open and patient to hear and perceive new or different arguments, opinions and points of view.

#### HONESTY AND PROPRIETY

Honest shall be a magistrate who outside the law does not accept tangible or intangible favours which might place in doubt his/her independence and impartiality.

Propriety means refraining from any actions that might compromise the magistrate's honour in the profession and in society.

#### COMPETENCE AND QUALIFICATION

Competent and qualified shall be a magistrate who is well-trained, who knows the normative framework of the Republic of Bulgaria and European Union law and has developed capacities and skills to apply them correctly.

Competence and qualification are a prerequisite for the proper implementation of the magistrate's responsibilities and for his/her professional progress.

#### CONFIDENTIALITY

Confidential shall be a magistrate who is discreet and keeps as **official** secret the facts or information that he/she has become aware of in the course of the implementation of his/her official duties.

### Section II

#### RULES FOR ETHICAL BEHAVIOUR ENSUING FROM THE MAIN PRINCIPLES

##### 1. Rules for ethical behaviour ensuing from the principle of INDEPENDENCE

Independence is a prerequisite for establishing the rule of law and a guarantee for protection of the fundamental human rights and constitutional values.

##### APPLICATION



- 1.1. The magistrate shall exercise his/her powers and make decisions solely on the basis of the law and his/her inner conviction;
- 1.2. The magistrate shall not allow and shall not succumb to any external influence, pressure, threats, direct or indirect interference in his/her work regardless of their source, cause or reason;
- 1.3. When making decisions the magistrate shall be independent and shall not be influenced by the opinions of his/her colleagues but shall not take actions that might infringe upon their independence;
- 1.4. With his/her actions and behaviour outside the office the magistrate shall protect and establish in society the concept of independence of the judiciary and **shall not succumb** to influences – direct or indirect – by whatever power – public or private, internal or external to the judicial system.
- 1.5. The magistrate shall be **obliged** to inform the judicial authorities and the public of any attempt to infringe upon his/her independence.

## 2. Rules for ethical behaviour ensuing from the principle of IMPARTIALITY

Impartiality concerns equally the acts of magistrates on the application of material and procedural law and ensues from the right of the participants in the proceedings to be treated equally.

### APPLICATION

- 2.1. The magistrate shall respect the dignity of any person both when he/she exercises his/her official duties and outside the office and shall not allow preference, bias or prejudice on the basis of race, origin, ethnicity, gender, religion, education, beliefs, political affiliation, personal or public status or property status;
- 2.2. The magistrate shall uphold his/her impartiality also in the cases when in society there are strong sentiments or sympathy or antipathy towards the participants of proceedings pending before him/her and shall decide the case solely on the basis of the facts and the law;
- 2.3. The magistrate may not make public statements or comments on cases pending before him/her through which the outcome of the case is prejudged or an impression is created of bias or prejudice. Outside the courtroom he/she may not discuss such cases in front of other participants in them, lawyers or third parties, **save for the cases provided for by law**;
- 2.4. The magistrate shall behave in a manner that would **not give grounds, directly or indirectly**, his/her consideration of specific cases to be challenged;
- 2.5. The magistrate must respect the rights of the parties to express opinions, to make allegations and objections within the proceedings in which they participate;
- 2.6. The magistrate shall not give consultations on legal matters.

## 3. Rules for ethical behaviour ensuing from the principle of FAIRNESS AND TRANSPARENCY

The requirement for fairness ensues from the impossibility to regulate all cases and relationships occurring in life through legal norms.

The requirement for transparency ensues from the constant need of society to be convinced of the legality and fairness of the magistrates' acts and actions.

### APPLICATION

- 3.1. The magistrate shall enact his/her decisions only after he/she is convinced that they are fair within the law for all participants in the proceedings. He/she shall be particularly attentive when deciding matters related to freedom and the reputation of citizens;
- 3.2. Where the law gives the magistrate the option to decide certain matters on the basis of judgment the guiding principle for him/her shall be the requirement for fairness;
- 3.3. In compliance with the requirements of the law the magistrate shall provide the public with useful, timely, comprehensible and proper information;
- 3.4. The magistrate shall guarantee within the law publicity of his/her actions and decisions taking care at the same time not to infringe upon the legal rights and interests of the participants in the proceedings;

3.5. He/she shall present to the public, personally or through the media, the grounds for his/her decisions on **cases that represent public interest** and at the same time he/she shall avoid behaviour and actions that may be interpreted as self-promotion or excessive quest for public recognition

#### 4. Rules for behaviour ensuing from the principle of CIVILITY AND TOLERANCE

The requirements for civility and tolerance are based on the morality and upbringing inherent to the magistrate and contribute both to the better implementation of his/her official duties and to the more efficient functioning of the judicial system itself.

#### APPLICATION

4.1. The magistrate's behaviour in society should be based on good manners and good conduct and in public and official contacts he/she shall be courteous and polite;

**4.2. The magistrate shall be honest, polite and civil both in his/her work and in personal life and shall treat people with respect and shall abide by their rights and freedoms;**

4.4. Relations with colleagues between magistrates and employees in the judicial system, regardless of their place in the official hierarchy, shall be based on mutual respect and tolerance through abstaining of any behaviour that damages the reputation of the judicial authorities.

#### 5. Rules for behaviour ensuing from the principle of HONESTY AND PROPRIETY

Honesty and propriety have substantial importance for the trust in, the reputation and the overall work of the magistrate.

#### APPLICATION

**5.1. The magistrate may not receive favours from third parties which could reasonably be perceived as a result of compromise with his/her honesty and fairness in the course of exercising his/her professional duties.**

**5.2 The honest magistrate shall not sneak and shall not plot against his/her colleagues and employees and shall express his/her positions openly.**

5.3. The magistrate shall avoid acts and actions that are at variance with the views of propriety existing in society;

5.4. In his/her public and official contacts the magistrate shall not be entitled to use his/her official position or his/her powers with the aim to obtain personal gain;

5.5. With his/her personal conduct and sense of responsibility in his/her official and unofficial work the magistrate shall set an example of high morality and propriety;

5.6. The magistrate shall refrain from any actions that might compromise his/her honour in the profession and in society;

5.7. The magistrate must have irreproachable reputation;

5.8. The magistrate shall be consistent and unswerving in complying with the legal and ethical norms;

5.9. In his/her career development the magistrate shall not use personal contacts (connections, intercession) neither shall he/she act in a manner that damages his/her dignity.

#### 6. Rules for behaviour ensuing from the principle of COMPETENCE AND QUALIFICATION

The requirement for competence and continuous qualification of magistrates ensues from the right of the participants in the proceedings and of society as whole to receive lawful legal acts.

#### APPLICATION

6.1. The magistrate shall perform his/her official duties as a matter of priority before any other activity.

6.2. The magistrate must strive to enhance his/her professional qualification and training and must take the necessary measures to maintain and increase his/her knowledge, skills and personal qualities for the proper exercise of his/her powers.

6.3. The magistrate **should be informed** of the respective novelties in domestic and international law.

#### 7. Rules of behaviour ensuing from the principle of CONFIDENTIALITY

Confidentiality ensues from the need to protect the rights of the parties and their relatives against illegal use of information and data;

7.1. The magistrate shall be obliged to be absolutely discreet and in his social communications and personal life to keep **official** secrets in relation to the facts or information that he/she has become aware of in the course of performing his/her official duties and to require this from the judicial employees.

7.2. The magistrate may not use illegally the information that he/she has become aware of in the course of performing his/her functions;

7.3. The magistrate may discuss legal matters from the point of view of principle and in such cases he/she shall be obliged to keep in confidence the specific facts in the files and the cases on citizens' personal lives and ones that harm the interests of persons or their reputation;

7.4. The magistrate shall not be entitled to express publicly a preliminary position on specific files or cases;

7.5. The magistrate shall be free to express personal opinions in the media on any issues which are not expressly prohibited by law;

7/6. The magistrate who is a member of a collegiate body must keep in confidence the proceedings therein.

### Section III

#### SPECIFIC RULES FOR ETHICAL BEHAVIOUR OF ADMINISTRATIVE HEADS

8.1. The **magistrate who is in a leading position** shall treat his/her subordinate magistrates and judicial employees with respect and consideration for their personal dignity and shall not allow or create an impression of favouring anyone.

8.2. The magistrate in a leading position shall not succumb to any pressure and suggestions made in a manner that is inadmissible by law in cases of appointment, transfer or career development of his/her subordinate magistrates. Transparency of his/her actions in this respect is a guarantee of fairness, objectivity and best selection.

8.3. The magistrate in a leading position shall attend to the organisation and work of the office that he/she has been assigned with in a manner through which best results would be achieved. He/she shall ensure the best possible cooperation with the other judicial authorities and public services respecting the specific competences of any one of them.

8.4. The magistrate in a leading position shall strive to be informed of everything happening in the office that he/she leads in order to be able to make the correct management decisions and to take responsibility. **He/she shall not tolerate and shall curb forthwith acts of calumny and intrigue.**

8.5. The magistrate in a leading position shall see to it that his colleagues and the administrative staff **draw up their acts on time** and shall take the necessary measures within his/her powers.

8.6. The magistrate in a leading position shall be the main guarantor for upholding the independence of magistrates when making decisions and for complying with the principle of random distribution of files and cases.

### Section IV

## RULES FOR PREVENTING CONFLICTS OF INTEREST

- 9.1. The magistrate shall not allow himself/herself to participate in proceedings when there is a conflict of interest. In case of doubt of such a conflict he/she shall be obliged to announce the facts and, if need be, **shall withdraw**;
- 9.2. The magistrate shall not participate in whatever way in party or political activity and shall not become involved in political or business circles of influence;
- 9.3. The magistrate may not occupy any other position, perform any other activity or exercise a profession save for the ones provided for in the Judicial System Act;
- 9.4. The magistrate shall not use his/her official position in order to exert influence in favour of a private interest;
- 9.5 The magistrate shall declare incompatibility and private interests in the cases and within the time-frames provided for in the Conflict of Interests Prevention and Disclosure Act;
- 9.6. The magistrate shall declare his/her income and property under the procedures and terms in the Publicity of the Property of Persons Occupying High Government Positions Act.

### Section V

#### GUARANTEES FOR COMPLIANCE WITH THE ETHICAL RULES OF BEHAVIOUR INTRODUCED HEREBY

The main guarantor for complying and applying the provisions of this Code shall be the magistrates themselves through their conviction, involvement and voluntary adoption and implementation of the **ethical rules of behaviour**.

The Supreme Judicial Council shall exercise overall control over the application of and compliance with the Code of Ethics and shall take action periodically to refresh and update the provisions provided for herein.

The Professional Ethics Commission of the Supreme Judicial Council and the professional ethics commissions of the bodies of the judiciary shall **exercise direct and immediate control over the application of and compliance with the Code of Ethics**.

The professional associations of the magistrates shall **take the actions provided for in their statutes *vis a vis* any established case of violation of these ethical rules of behaviour**.

### Section VI

#### FORMATION AND STATUTE OF THE PROFESSIONAL ETHICS COMMISSIONS AT THE BODIES OF THE JUDICIARY

Professional Ethics Commissions shall be established **at the regional courts and prosecution offices in the regional centres**, the regional and appellate structures of the judiciary bodies, at the Supreme Court of Cassation, the Supreme Administrative Court, the Supreme Cassation Prosecutor's Office, the Supreme Administrative Prosecutor's Office and the National Investigation Service.

The personal composition and the number of the members of each commission shall be decided by the general meeting of each structure.

The professional ethics commissions at the bodies of the judiciary shall be subsidiary organs of the Standing Commission of the Supreme Judicial Council on Professional Ethics and for Combating Corruption.

Their main task and purpose shall be to provide **consultations**, advice, to give opinions and positions in relation to the implementation of the rules for ethical behaviour and in cases of conflict of interests.

The Professional Ethics Commissions of the bodies of the judiciary shall give opinions on:

- evaluation of judges, prosecutors and investigators on the indicator “compliance with the rules for ethical behaviour”;
- in case of disciplinary proceedings for violation of the rules for ethical behaviour instituted by the administrative heads;
- in case of signals and complaints received from citizens for actions of magistrates that are incompatible with the rules for ethical behaviour.

They shall contribute to neutralising and settling in the best possible way occurring conflicts between judges, prosecutors or investigators.

They shall notify the Standing Commission of the Supreme Judicial Council on Professional Ethics and for Combating Corruption in case of serious violations of the rules for ethical behaviour by judges, prosecutors or investigators.

#### **CLARIFICATIONS:**

**Private power** – bearers of private power, in the meaning herein, shall be citizens that have no employment or official relationships with a government or municipal body, legal person or organisation.

**Magistrates**, in the meaning herein, shall be judges, prosecutors, investigators, members of the Supreme Judicial Council, inspectors of the Inspectorate at the Supreme Judicial Council.

**Other relatives**, in the meaning herein, shall be relatives in direct line as well as the ones in collateral line up to the 4<sup>th</sup> degree.

This Code of Ethics of Bulgarian Magistrates was approved with a decision of the Supreme Judicial Council of ..... 2008 in minutes No. .... of .....

Control over the implementation and the obligation to draw up proposals for periodic updating is assigned to the Standing Commission of the Supreme Judicial Council on Professional Ethics and for Combating Corruption.

Statistics - Protection of the witness.doc

Period	Protection of the witness				
	Cases with protected witnesses (art.123 CPC)	A total number of measures undertaken by the prosecutor (art.123 CPC)	Of them by using SIM (art.123, para.7 CPC)	types	
				Ensuring physical guarding	Keeping the identity secret
<b>2006</b>		<b>47</b>	<b>8</b>	<b>5</b>	<b>42</b>
<b>2007</b>	<b>72</b>	<b>101</b>	<b>2</b>	<b>7</b>	<b>94</b>
<b>2008</b>	<b>86</b>	<b>136</b>	<b>0</b>	<b>15</b>	<b>121</b>
<b>2009</b>	<b>84</b>	<b>158</b>	<b>1</b>	<b>19</b>	<b>139</b>
<b>I half of 2010</b>	<b>55</b>	<b>111</b>	<b>0</b>	<b>3</b>	<b>108</b>

**Extract from the Annual Report of the Prosecutor's Office of the Republic of Bulgaria  
for 2009 with relation to the Corruption**

**Corruption crimes.**

	<b>2009</b>	<b>2008</b>	<b>2007</b>
Total number of the supervised pre-trial proceedings annually in the last three years	<b>1084</b>	1107	1409
Initiated pre-trial proceedings per year	<b>595</b>	490	512
Solved pre-trial proceedings per year	<b>590</b>	716	851
Prosecutor's acts submitted to court per year	<b>198</b>	183	223
Brought to court persons	<b>231</b>	242	296
Convicted persons	<b>192</b>	140	142
Convicted persons with an entered into force verdict	<b>152</b>	111	109
Acquitted persons	<b>21</b>	49	81
Acquitted persons with an entered into force verdict	<b>43</b>	23	36

The specificity of corruption, according to the scheme of the Criminal Code - by the type and movement of the pre-trial proceedings is highlighted by the presentation of data in the following way:

<b>Crimes according to Chapters and Sections of the Criminal Code</b>	<b>New initiated Pre-trial proceedings</b>	<b>Submitted to court Prosecutor's acts</b>	<b>Convicted persons</b>	<b>Acquitted persons</b>
Chapter Eight. "Offences against the activity of State bodies, Public organizations and persons performing Public duties"	<b>538</b>	<b>174</b>	<b>122</b>	<b>41</b>
Section II "Criminal Breach of Trust" Art.282-Art.283a	<b>303</b>	<b>38</b>	<b>21</b>	<b>37</b>
Section IV "Bribery" Art.301-Art.307a	<b>235</b>	<b>136</b>	<b>101</b>	<b>4</b>
Chapter Six "Offences against the Economy"	<b>45</b>	<b>11</b>	<b>27</b>	<b>1</b>
Section I "General Economy offences"	<b>41</b>	<b>11</b>	<b>5</b>	<b>1</b>
Section III "Offences against the customs regime"	<b>4</b>	<b>0</b>	<b>22</b>	<b>0</b>
Chapter XIII "Military Offences", Section III " Misdemeanour in office"	<b>12</b>	<b>13</b>	<b>3</b>	<b>1</b>

It is evident that the largest proportion of the new initiated pre-trial proceedings and submitted to court prosecutor's acts are for crimes against the activities of state bodies, public organizations and persons performing public functions. Of these, the most typical are the malfeasance in office and the typical corruption crime - bribery.

Against high-ranking officials 23 pre-trial proceedings are supervised. Of them - 18 are accused of malfeasance in office, of military malfeasance – 2, for deliberate dereliction of economy duty - 2 and bribery - 1.

**For the first six months of 2010** the statistics related to the corruptive offences is as follows:

	I-st six months 2010 г.	I-st six months 2009 г.	I-st six months 2008 г.
Total number of the supervised pre-trial proceedings	892	661	789
Initiated pre-trial proceedings	386	213	255
Solved pre-trial proceedings	319	273	361
Prosecutor's acts submitted to court	133	72	92
Brought to court persons	204	79	123
Convicted persons	107	102	75
Convicted persons by an entered into force verdict	84	67	51
Acquitted persons	10	22	38
Acquitted persons by an entered into force verdict	2	36	13

In the first six months of 2010 again the largest proportion of the new initiated cases of corruptive offences and submitted for them prosecutor's acts to court, consists of the crimes against the activities of state bodies, public organizations and persons performing public functions. Of these, the most typical are the malfeasance in office and the typical corruption crime – bribery, as it is seen from the Table below:

Crimes according to Chapters and Sections of the Criminal Code	New initiated Pre-trial proceedings	Submitted to court Prosecutor's acts	Convicted persons	Acquitted persons
Chapter Eight. "Offences against the activity of State bodies, Public organizations and persons performing Public duties"	333	119	82	2
Section II "Criminal Breach of Trust" Art.282-Art.283a	215	34	6	2
Section III "Crimes against Justice" Art.286-Art.300	1	0	0	0
Section IV "Bribery" Art.301-Art.307a	117	85	76	0
Chapter Six "Offences against the Economy"	43	10	2	0
Section I "General Economy offences"	41	10	2	0
Section III "Offences against the customs regime"	2	0	0	0
Chapter XIII "Military Offences", Section III " Misdemeanour in office"	10	4	0	0

According to the statistics for August 2010 about the criminal proceedings for crimes of particular public interest, which the Prosecution prepares monthly, the share of the corruption offenses is of 6.9%.



**Seizure of the subject of the crime and confiscation of property**

Year	Offence under the Criminal code	Number of the persons with regard to whom the subject of the offence is seized (Article 53 of the criminal code)	Number of the convicted persons with imposed confiscation of property under article 37 the Criminal code	Number of the convicted persons with imposed forfeiture under the Law on forfeiture of proceeds of crime
2007	Art. 225b and 225c	0	0	0
	Money laundering	2	1	0
	Misuse of EU funds	0	0	0
	Tax offences	34	6	1
	Bribery - under Art. 301 ÷ 307 of the Criminal Code	27	9	0
2008	Art. 225b и 225c	0	0	0
	Money laundering	3	6	
	Misuse of EU funds	0	0	
	Tax offences	5	1	
	Bribery - under Art. 301 ÷ 307 of the Criminal Code	10	0	0
2009	Art. 225b and 225c	2	0	0
	Money laundering	7	5	0
	Misuse of EU funds	0	1	0
	Tax offences	28	2	0
	Art. 301 ÷ 307 of the Criminal Code	44	0	0
1-st half of 2010	Art. 225b and 225c	1	0	0
	Money laundering	1	6	0
	Misuse of EU funds	0	0	0
	Tax offences	83	0	0
	Bribery - under Art. 301 ÷ 307 of the Criminal Code	16	0	0

Table 1- 225b-226 PC.doc

Penal Code texts	2003			2004					2005					2006					2007					2008					2009				
	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons					
rt.225			1*		1	1			4	1	2			3																			
rt.225b - bribery in economy			1*	4					2	2	2	2	0	1	2	2	0			4	2	2	1	2	2	4	4						
rt.225c - bribery in economy														1	1	2	0			1					2	2	2						
rt. 226 - use of state/public property for private economic activity				2					4	1	2		0	6	1	1	1			1													
art. 226, par. 1																			1														
art. 226, par. 2																																	
art. 226, par. 3																																	
art. 226, par. 4																																	
art. 226, par. 5																																	

on cases brought to court from previous period

\* The information about the sentenced and acquitted persons concerns the individuals with convictions and acquittals entered into force

Table 1- 253 PC.doc

Penal Code texts	2003			2004					2005					2006				
	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons
art.253 - money laundering	4	5	2	35	5	5	3	0	26	5	9	3	0	40	8	9	3	0
• art. 253, par.4 - means acquired through a serious crime														0	0	0	0	0
• art. 253, par.5 - particularly serious case in particularly large size														2	0	0	0	0
• art. 253, par.5, in connection with par.4														0	0	0	0	0
art.253a - (new, SG 26/04) preparation of money laundering	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
art.253a - (incl. art.253a until amendment SG 26/04) An official who violates or does not fulfil the provisions of the Law for the measures against money laundering				0	0	0	0	0	0	0	0	0	0	3	1	1	0	0

\* The information about the sentenced and acquitted persons concerns the individuals with convictions and acquittals entered into force.

Table 1 - Art. 301-307 PC.doc

Penal Code texts	2003				2004						2005				
	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons		Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons		Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons
art.301 - bribery	19	22	9		44	17	17	4	0		38	27	30	11	1
art.302 - bribery	14	15	12		18	18	20	1	2		14	18	21	9	3
art.302a - bribe of particularly large size	1	2	0		0	1	2	0	0		1	1	1	0	2
art.303 - bribe agreed for another person	0	0	0		0	0	0	0	0		1	2	2	0	0
art. 304 - bribe for an official occupying a responsible position	12	12	10		79	46	49	10	0		91	69	73	41	0
art.304a - promise for a bribe	1	1	0		2	1	1	0	0		0	0	0	1	0
art.304b - active bribery	0	0	0		2	2	2	1	0		0	1	1	2	0
art.305 - bribe of arbitrator of expert	0	0	0		0	2	2	0	0		1	1	2	1	0
art.305a - mediation	0	0	0		1	0	0	0	0		1	0	0	0	0
art.306	0	0	1		2	0	0	0	0		1	0	0	0	0
art.307 - provocation to bribery	0	0	0		1	0	0	0	0		0	0	0	0	0

\* The information about the sentenced and acquitted persons concerns the individuals with convictions and acquittals entered into force.

Table 2- 282-283 and 387 PC.doc

Penal Code texts	2006						2007						2008						2009				
	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons		Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons		Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons		Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons
<b>Section II Criminal Breach of Trust</b>	325	96	119	24	18		287	71	89	19	27		281	44	70	20	17		303	38	55	21	
art. 282 - criminal breach of trust	286	80	92	18	16		253	62	80	15	24		254	36	62	17	15		285	30	41	18	
art 282, par.1 - criminal breach of trust							163	26	24	9	8		160	8	8	6	2		168	6	8	5	
• art. 282, par.2 - significant damages	76	28	33	8	2		79	29	38	6	4		86	23	40	9	10		111	18	26	13	
• art. 282, par.3 - particularly severe case	7	6	6	1	1		7	7	18	0	12		8	5	14	2	3		6	5	6	0	
art. 282, par.4 - participation of a person according to art. 142, para 2, item 6 and 8							4	0	0	0	0		0	0	0	0	0		0	1	1	0	
• art. 282, par.5 - related to exercising control over the production, processing, storing, trade in the country, the import, export, transit and accountancy of narcotic substances and precursors	0	0	0	0	0		0	0	0	0	0		0	0	0	0	0		0	0	0	0	

art.282a - delay/refuse to issue a permit	2	0	0	0	0		0	0	0	0	0		3	0	0	0	0		0	1	2	0	
art. 283 -misuse of power	15	10	12	5	0		13	4	3	4	0		8	7	7	3	0		13	4	5	3	
art.283a - privatisation, sale, renting or leasing, as well as the inclusion in trade companies of state property	22	6	15	1	2		21	5	6	0	3		16	1	1	0	2		5	3	7	0	
Chapter XIII Military Offences Section III Misdemeanour in office - art. 387, par. 3 by a military man	116	82	104	14	8		13	8	17	0	0		14	7	12	2	0		12	13	18	3	

\* The information about the sentenced and acquitted persons concerns the individuals with convictions and acquittals entered into force.

Table 2 - 253 PC.doc

Penal Code texts	2007					2008					2009				
	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons
<b>Total for crimes related to money laundering</b>	<b>50</b>	<b>10</b>	<b>11</b>	<b>7</b>	<b>3</b>	<b>56</b>	<b>19</b>	<b>36</b>	<b>22</b>	<b>1</b>	<b>94</b>	<b>20</b>	<b>33</b>	<b>35</b>	<b>1</b>
<b>art.253 - money laundering</b>	50	10	11	7	3	55	19	36	22	1	94	20	33	35	1
art. 253, par.1 - money laundering	42	4	5	3	1	41	3	6	3	0	55	4	8	14	1
art. 253, par.2 - complicity in money laundering	2	2	2	3	2	5	4	4	3	0	9	1	1	4	
art. 253, par.3 - aggravation	3	1	1	0	0	4	0	0	0	0	5	2	2	3	
►art. 253, par.3, item 3 - by an official	0	0	0	0	0	0	0	0	0	0					
art. 253, par.4 - means acquired through a serious crime	1	1	1	1	0	1	8	12	9	1	5	10	13	8	
► art. 253, par 4,in connection with art.3, item 3 - an officialm, means acquired through a serious crime	0	0	0	0	0	0	0	0	0	0		2	2	2	
art. 253, par.5 - particularly serious case in particularly large size	2	2	2	0	0	3	4	14	7	0	20	3	9	6	
► art. 253, par 5,in connection with.3, item 3 - by and official - particularly serious case in particularly large size	0	0	0	0	0	0	0	0	0	0					
art. 253, par.7 - the predicate crimes do not fall under the criminal jurisdiction of Republic of Bulgaria	0	0	0	0	0	1	0	0	0	0					
►art. 253, par 7,in connection with par.3, item 3 - by an official,the predicate crimes do not fall under the criminal jurisdiction of Republic of Bulgaria	0	0	0	0	0	0	0	0	0	0					

Art.253a - (new, SG 26/04) preparation of money laundering	0	0	0	0	0		0	0	0	0	0					
► art. 253a, in connection with art. 253 (par. 4, 5 and 7 in connection with) par. 3, item. 3 - preparation of money laundering by an official	0	0	0	0	0		0	0	0	0	0					
art.253a - (incl. art.253a until amendment SG 26/04) An official who violates or does not fulfil the provisions of the Law for the measures against money laundering	0	0	0	0	0		1	0	0	0	0					

\* The information about the sentenced and acquitted persons concerns the individuals with convictions and acquittals entered into force.



Table 2 - Art. 301 -307 PC.doc

Penal Code texts	2007					2008					2009				
	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons
<b>Total for crimes related to money laundering</b>	<b>50</b>	<b>10</b>	<b>11</b>	<b>7</b>	<b>3</b>	<b>56</b>	<b>19</b>	<b>36</b>	<b>22</b>	<b>1</b>	<b>94</b>	<b>20</b>	<b>33</b>	<b>35</b>	<b>1</b>
<b>art.253 - money laundering</b>	50	10	11	7	3	55	19	36	22	1	94	20	33	35	1
art. 253, par.1 - money laundering	42	4	5	3	1	41	3	6	3	0	55	4	8	14	1
art. 253, par.2 - complicity in money laundering	2	2	2	3	2	5	4	4	3	0	9	1	1	4	
art. 253, par.3 - aggravation	3	1	1	0	0	4	0	0	0	0	5	2	2	3	
▶art. 253, par.3, item 3 - by an official	0	0	0	0	0	0	0	0	0	0					
art. 253, par.4 - means acquired through a serious crime	1	1	1	1	0	1	8	12	9	1	5	10	13	8	
▶ art. 253, par 4,in connection with art.3, item 3 - an officialm, means acquired through a serious crime	0	0	0	0	0	0	0	0	0	0		2	2	2	
art. 253, par.5 - particularly serious case in particularly large size	2	2	2	0	0	3	4	14	7	0	20	3	9	6	
▶ art. 253, par 5,in connection with.3, item 3 - by and official - particularly serious case in particularly large size	0	0	0	0	0	0	0	0	0	0					
art. 253, par.7 - the predicate crimes do not fall under the criminal jurisdiction of Republic of Bulgaria	0	0	0	0	0	1	0	0	0	0					
▶art. 253, par 7,in connection with par.3, item 3 - by an official,the predicate crimes do not fall under the criminal jurisdiction of Republic of Bulgaria	0	0	0	0	0	0	0	0	0	0					

Art.253a - (new, SG 26/04) preparation of money laundering	0	0	0	0	0		0	0	0	0	0					
► art. 253a, in connection with art. 253 (par. 4, 5 and 7 in connection with) par. 3, item. 3 - preparation of money laundering by an official	0	0	0	0	0		0	0	0	0	0					
art.253a - (incl. art.253a until amendment SG 26/04) An official who violates or does not fulfil the provisions of the Law for the measures against money laundering	0	0	0	0	0		1	0	0	0	0					

\* The information about the sentenced and acquitted persons concerns the individuals with convictions and acquittals entered into force.

Table 4 -art. 304 b.doc

Penal Code texts	2003			2004				2005				2006					2007				2008				2009								
	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings**	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons					
Art.304 b	0	0	0	2	2	2	1		1	1				12	1	2	1	1	7	5	7	2		7	4	7	3		14	3	3	1	

\* The information about the sentenced and acquitted persons concerns the individuals with convictions and acquittals entered into force.

\*\* The number of the initiated pre-trial proceedings for 2006 is t  
Table.

Table -1 - 282- 283 and 387 PC.doc

Penal Code texts	2003				2004						2005				
	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons		Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons		Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons
art.282 - criminal breach of trust	131	249	43		571	107	191	17	1		352	97	157	13	5
art.282a - delay/refuse to issue a permit	1	1	1		7	2	2	1	0		3	0	0	0	0
art.283 - misuse of power	10	14	2		30	7	8	3	0		14	9	12	3	0
art.283a - privatisation, sale, renting or leasing, as well as the inclusion in trade companies of state property	9	26	0		51	12	19	0	0		27	9	10	1	1
Chapter XIII Military Offences Section III Misdemeanour in office - art. 387, par. 3 by a military man	76	96	30		132	34	41	27	4		91	61	81	17	1

\* The information about the sentenced and acquitted persons concerns the individuals with convictions and acquittals entered into force.

Table - statistics.doc

Please find below the general statistics for the activities of Financial Investigation Directorate of SANS for the second half of 2009 and 2010.

<b>Indicator/Year</b>	<b>July-December 2009</b>	<b>January – May 2010</b>
Number of CTRs (over 15 000 EUR)	<b>118 917</b>	<b>83 694</b>
Number of ML STRs	<b>461</b>	<b>583</b>
Total amount under the ML STRs (EUR)	<b>216 118 775</b>	<b>197 617 652</b>
Cases initiated based on STRs	<b>441</b>	<b>506</b>
Forwarded notifications to law enforcement	<b>301</b>	<b>171</b>
Total amount under the notifications (EUR)	<b>230 377 090</b>	<b>94 572 952</b>
Breakdown of notifications		
To the MoI	<b>111</b>	<b>84</b>
To the SANS	<b>186</b>	<b>79</b>
To the Prosecutors Office	<b>4</b>	<b>8</b>
Postponed operations	<b>1</b>	<b>3</b>
Requests to foreign FIUs	<b>215</b>	<b>111</b>
Received replies	<b>188</b>	<b>56</b>
Received requests from foreign FIUs	<b>77</b>	<b>52</b>
Sent replies	<b>75</b>	<b>28</b>
Off-site inspections	<b>613</b>	<b>285</b>
Total number of on-site inspections	<b>39</b>	<b>25</b>
Findings protocols	<b>47</b>	<b>31</b>
Acts of administrative violation	<b>92</b>	<b>61</b>
Issued Penal decrees	<b>56</b>	<b>70</b>
Drafted Penal Decrees	<b>92</b>	<b>61</b>
Paid sanctions under the penal decrees	<b>97 850 BGN</b>	<b>104 500 BGN</b>

### **On-site inspections**

<b>Reporting Entities under LMML/ No of on-site inspections per year</b>	<b>July-December 2009</b>	<b>January-May 2010</b>
T.1 banks;	0	1
T.1 financial houses	2	0
T.1 exchange offices and money remitters;	0	0
T.2 insurers re-insurers and insurance intermediaries	3	2
T.3 collective investment schemes, investment schemes, and management companies	0	2
T.4 pension insurance companies and health insurance companies	1	1
T.5 privatization bodies;	0	0
T.6 public procurement bodies;	0	0
T.7 gambling;	0	2

T.8 Legal persons which have mutual aid funds	1	0
T.9 pawn houses	2	0
T.10 postal services	1	0
T.11 notaries	0	2
T.12 market operator and/or regulated market	0	0
T.13 leasing companies	5	2
T.14 state and municipal bodies concluding concession agreements	0	0
T.15 political parties	0	0
T.16 professional unions and organizations	0	0
T.17 non profit organizations	1	0
T.18 registered auditors	1	1
T.19 bodies of National revenue agency	0	0
T.20 Customs	0	0
T.21 car dealers	3	1
T.22 sport organizations	0	0
T.23 Central Depository	0	0
T.24 Persons dealing by occupation in objects where a payment was made in cash and the value exceeded 15 000 Euros.	11	6
T.25 dealers of weapons, petrol and petroleum products	0	0
T.26 tax consultants	2	0
T.27 whole sale traders	3	1
T.28 lawyers	1	2
T.29 real estate agents	2	1
T.30 Persons, whose occupation is to provide: a) management address, correspondence address, or office for the purpose of legal person registration; b) legal person, off-shore company, fiduciary management company or similar entity registration services; c) fiduciary management services for property or person under letter b).	0	1
Total number of on-site inspections per years	39	25

Table -Art.289-293.doc

ertified translation from Bulgarian into English  
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Annex 8

Penal Code texts	2003			2004					2005					2006					2007					2008					2009				
	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons	Number of initiated pre-trial proceedings	Number of prosecutorial acts brought to court	Number of individuals brought to court	Number of sentenced persons	Number of acquitted persons
1	2	3	4	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
rt.286	1	1	0	0	0	0	0	0	1	0	0	0	0	3	1	1	0	0	143	52	54	38	9	98	55	56	29	9	107	46	48	37	6
rt.287																			1	1	4	1	0	2	0	0	0	0	0	1	1	0	0
rt.287a																			5	0	0	0	0	1	0	0	0	0	0	0	0	0	0
rt.288																			5	3	3	0	0	2	3	3	0	0	9	3	3	0	0
rt.289																			4	1	1	0	0	1	2	2	0	0	2	0	0	0	0
rt.290																			192	83	122	71	11	164	67	97	191	3	199	82	120	94	12
rt.290a																			21	8	8	6	0	5	2	2	1	0	5	4	4	1	0
rt.291																			37	9	10	0	2	17	8	12	0	0	24	7	22	1	1
rt.292																			4	0	0	0	0	0	0	0	0	0	0	0	0	0	0
rt.293																			35	9	9	4	0	20	12	12	6	1	19	6	6	2	0
rt.293a																			185	41	43	30	7	130	42	44	23	0	109	32	34	24	6
rt.294																			17	9	14	2	2	28	8	9	7	2	33	10	13	8	1
rt.295																			0	0	0	0	0	1	1	1	0	0	1	0	0	0	0

rt.296																	118	40	40	27	5		126	54	54	27	2		214	92	93	59	5
rt.297																	118	69	69	66	1		92	90	93	72	0		36	52	53	73	0
rt.298																	3	1	1	1	0		0	0	0	0	0		2	4	9	7	0
rt.299																	0	0	0	1	0		0	0	0	0	0		0	0	0	0	0
rt.300																	0	0	0	0	0		0	0	0	0	0		1	0	0	0	0

\* The information about the sentenced and acquitted persons concerns the individuals with convictions and acquittals entered into force.



Table statistics - Art. 212-215 PC.doc

**Persons convicted by Article 212 and 215 of the Penal Code in 2004-2009**

	<b>2009</b>	<b>2008</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>
Some chapters and articles of Penal Code	Total	Total	Total	Total	Total	Total
<b>Documentary fraud (Art. 212)</b>	<b>126</b>	<b>145</b>	<b>138</b>	<b>239</b>	<b>251</b>	<b>160</b>
Art. 212 (1)	87	112	86	200	192	139
Art. 212 (2)	18	8	9	16	50	11
Art. 212 (4) - dangerous recidivism	20	19	34	12	3	9
Art. 212 (5)	0	4	3	5	1	0
Art. 212 (6)	1	2	6	6	5	1
<b>Constructive theft (Art. 215)</b>	<b>181</b>	<b>199</b>	<b>227</b>	<b>289</b>	<b>299</b>	<b>335</b>
Art. 215 (1)	152	164	205	248	257	295
Art. 215 (2), 1, 2 and 3	10	20	9	20	21	20
Art. 215 (2), 4 - dangerous recidivism	10	15	13	21	21	20
Art. 215	3					
Art. 215 (2)	6					

**Number of Suspicious Transaction Reports under LMML  
2009-2010**

Category of Reporting Entity	No. of Reports	%	Amount in EUR
<b>Year: 2010</b>			
Supervisory authorities	2	0.14%	0
Persons carrying out deals in precious metals, stones etc.	6	0.41%	1067488
Leasing companies	2	0.14%	0
Persons organizing gambling facilities	7	0.48%	158551
Banks	811	55.25%	430499502
Notaries	4	0.27%	239986
Persons providing legal advise	1	0.07%	0
Professional unions and organizations	1	0.07%	38347
Non-banking financial institutions - financial houses	505	34.40%	9259388
Central Depository	91	6.20%	0
State and municipal bodies concluding concession contracts	1	0.07%	51129
Non-banking financial institutions - exchange bureaus	2	0.14%	130680
Privatization bodies	1	0.07%	2341716
Customs authorities	11	0.75%	0
Real Estate Intermediation Companies	2	0.14%	97000
Tax authorities	11	0.75%	65798158
Pension funds	1	0.07%	25564
<b>Total</b>	<b>1468</b>	<b>100.00%</b>	<b>509707509</b>
<b>Year: 2009</b>			
Banks	721	81.01%	329787803
Tax authorities	26	2.92%	9162772
Insurers	1	0.11%	842957
Leasing companies	1	0.11%	0
Persons organizing gambling facilities	11	1.24%	322334
Customs authorities	15	1.69%	211763
Non-banking financial institutions	97	10.90%	1582655
Notaries	3	0.34%	2200
Privatization bodies	1	0.11%	51119171
Supervisory authorities	1	0.11%	0
Pension funds	4	0.45%	94374
Wholesale dealers	1	0.11%	230026
Traders in motor vehicles	1	0.11%	26701
<b>Total</b>	<b>890</b>	<b>100.00%</b>	<b>393382756</b>

Statistical information - LAOS.doc

**Statistics on the proceedings under LAOS**

For the period 01.01.2010 – 31.12.2010 there are 11 notifications for ascertained circumstances under Art. 83a -83e LAOS filed in the territorial prosecution offices and Sofia city prosecution office. Five of them are sent by the regional prosecution offices with regard to 4 cases for committed criminal offences under Art. 210 and 211 CC (qualified fraud) and 1 case for a crime under Art.212 CC (document fraud). The other 6 notifications fall within the competence of the district prosecutions offices and relate to tax offences – 1 case to Art.256 and 5 cases to Art.257 CC.

All 11 cases are at the stage of verification, necessary evidence are gathered for elaborating motivated proposal of the respective prosecutor to the district court for imposition of property sanctions to legal persons.

The provided statistical information has preliminary character. Final statistics on the matter could be provided after the adoption of the Chief Prosecutor's annual report on the activity of prosecution and investigative authorities for 2010.

Statistical information -immunities.doc

**Statistics for lifting immunities**

For the period 2006-2010 totally 16 requests for authorization for undertaking of criminal prosecution against members of Bulgarian National Assembly for committed crimes of general nature have been prepared and sent by the Chief Prosecution Office to the National Assembly on the basis of Art.70, para.1 of the Constitution of the Republic of Bulgaria. 15 of them were upheld.

In 2010 the Chief Prosecution Office has filed no requests to the National Assembly for authorization for undertaking of criminal prosecution against members of National Assembly.

## **ANNEX IV**

### **PHASE 1 EVALUATION OF BULGARIA UNDER UNCAC ( 1 REVIEW CYCLE)**

**COUNTRY VISIT: 14-17 FEBRUARY 2011**

#### **LIST OF PARTICIPANTS**

##### **Ministry of Justice**

- Mr Georgi Rupchev, State expert, International legal cooperation in criminal matters Department, International Legal Co-operation and European Affairs Directorate
- Mrs. Julia Meranzova, State expert, Legislation Council,
- Mrs. Nadya Hringova, Senior expert, International legal cooperation in criminal matters Department, International Legal Co-operation and European Affairs Directorate
- Mr. Florian Florov, Junior expert, International legal cooperation in criminal matters Department, International Legal Co-operation and European Affairs Directorate

##### **Inspectorate to the Ministry of Justice**

- Mr. Ivaylo Dimitrov, Inspector

##### **Ministry of Interior**

- Mrs. Tsvetana Petrova, Chief assistant in criminal law at the Academy of MoI
- Mr. Valentin Nikolov, Head of Department Inspectorate
- Mr. Georgi Sokolov, Chief legal adviser
- Mr. Petar Vladimirov, investigating police officer, Chief directorate “Criminal police”
- Mr. Vasil Tepavicharov representative of Directorate “EU and international cooperation”

##### **General Prosecutor’s Office**

- Mrs. Pavlina Nikolova – prosecutor, Head of sector “Counteraction of corruption”, “Counteraction of corruption, money laundering and other crimes of significant public interest” Department, SPOC
- Mrs. Vanya Nestorova – prosecutor, Head of sector “Counteraction of money laundering”, “Counteraction of corruption, money laundering and other crimes of public interests” Department, SPOC
- Mr. Nikolay Georgiev – prosecutor, Head of sector “Interagency Cooperation”; “Monitoring, international projects” Directorate
- Mrs. Ivanka Kotorova – prosecutor, Head of sector “International legal aid”, “International legal cooperation” Department, SPOC
- Mr. Toma Komov – prosecutor, Head of sector “Internal control”, “Inspectorate” Department, SPOC

- Mrs. Paulina Nedyalkova – prosecutor, “Information, analysis and methodical directions” Department, SPOC
- Mrs. Natasha Barneva – prosecutor, “Counteraction organized crime” Department, SPOC
- Mrs. Kalina Serafimova – prosecutor, Head of sector “Monitoring of proceedings monitored by the European Commission and the Supreme Judicial Council”, “Interagency cooperation, monitoring and international projects” Department, SPOC

#### **Sofia City Prosecutor’s Office**

- Mr. Bojidar Djambazov – Deputy Head City prosecutor’s office

#### **Minsitry of foreign affairs**

- Mrs. Emanuela Tomova “Human rights” Directorate
- Mr. Robert Nadinski, “UN and global affairs” Directorate
- Mr. Ivan Jordanov

#### **Judges**

- Mr. Vladimir Astarjiev - Sofia City Court
- Mr. Nikolay Darmonski -Supreme Court of Cassation
- Mrs. Ketii Markova – Supreme Court of Cassation

#### **CFPACA – Commission on finding property acquired from criminal activity**

- Mr. Krum Zarkov – inspector – legal adviser to Functional Directorate “Forfeiture in Favour of the State”
- Georgi Iliev, Secretary General

#### **Chief Inspectorate Directorate to the Council of Ministers**

- Mrs. Rada Paunova, State inspector
- Mrs. Maria Tomova, State inspector

#### **National Revenue Agency**

- Mr. Petar Tzonkov – Head of Department

#### **Transparency International Bulgaria**

- Mrs. Vanya Nusheva,
- Mrs. Boryana Samardjieva, project coordinator

#### **Bulgarian Chamber of Commerce and Industry**

- Mrs. Olga Chugunska, Economic analyses and policy

**Bulgarian Industrial Association**

- Mrs. Maria Mincheva, Legal Adviser

UNODC