Reinforcing Criminal Justice in Border Districts

CENTER FOR
THE STUDY OF
DEMOCRACY

This report presents the general problems and specificities inherent in the detection, investigation into, and prosecution of offences relating to illegal border crossings or the illicit movement of items across the country's frontiers, defined as cross-border crimes, as well as the existing views about the legislative, organizational and technical measures indispensable to improve law enforcement and criminal justice in the areas that straddle Bulgaria's borders with Turkey and Macedonia, and the southern Black Sea border.

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INTRODUCTION

Further to Bulgaria's accession to the European Union, the country's frontiers with the Republic of Turkey, the Republic of Macedonia and the Republic of Serbia, as well as its Black Sea border, have become external borders of the EU. Hence, border crossing-related criminal offences and customs violations no longer represent a problem of Bulgarian national security alone: they have turned into a problem of EU security. Many crimes and customs violations involve organized criminal groups and breed genuine corruption threats to customs authorities, border policemen, investigative police officers, and magistrates. Such acts fall within the jurisdiction of courts and prosecution offices at different levels and are inquired into by investigative police officers whose capacity still fails to match their wider responsibilities.

One peculiarity of the border areas is that, in addition to the more or less usual offences encountered in virtually any region of the country, they are affected by specific criminality seen nowhere else (e.g. illegal border crossings, trafficking in persons, etc.). Besides, it is more difficult to staff institutions in remote areas such as the border ones, a reality that hits hard the police as well as the courts and the prosecution offices. Finally, the budgets of those authorities are not commensurate with the complex criminogenic circumstances prevailing there, while their technical equipment is sometimes rudimentary.

This report purports to explore and visualize the general problems and specificities inherent in the detection, investigation into, and prosecution of offences relating to illegal border crossings or the illicit movement of items across the country's frontiers, defined as **cross-border crimes**, and to display the existing views about the legislative, organizational and technical measures indispensable to improve law enforcement and criminal justice in the areas that straddle Bulgaria's borders with Turkey, Macedonia and the Black Sea. In addition, the report is designed to contribute to further cooperation between the competent authorities on both sides of the respective frontiers.

For the purposes of this study, the following are regarded as **typical cross-border criminal offences**, in light of the relevant legislation and practices:

- Trafficking in human beings (Articles 159a–159c of the *Criminal Code*);
- Smuggling of goods and narcotics (Article 242 of the *Criminal Code*);
- Illicit carrying across the border of counterfeit currency, securities and payment cards (Article 244(1) of the *Criminal Code*);
- Violations of the import and export arrangements applicable to foreign exchange valuables (Article 251 of the *Criminal Code*);
- Illegal crossing of the border and smuggling of persons (Articles 279-280 of the *Criminal Code*);
- Illegal carrying across the border of hazardous waste, toxic chemical substances, biologic agents, toxins and radioactive substances (Article 353b of the *Criminal Code*);

- Illegal export from the country of listed cultural monuments or records forming part of the State Archives (Article 278(3) of the *Criminal Code*).

In addition to the typical cross-border offences, the study addresses some problems of law enforcement and the administration of justice in cases of bribery and trade in influence (Articles 301–307a of the *Criminal Code*), as long as cross-border criminality is often intimately linked to corrupt practices.

At the time when the old *Criminal Procedure Code* (now repealed) was in effect, most cases for cross-border offences were heard by the regional courts at first instance. The district courts only handled at first instance (yet only after 2003) cases for the illicit export of listed monuments of culture or archive records, the illicit carrying across the border of counterfeit currency and securities, as well bribery and trade in influence.

The entry into force of the new *Criminal Procedure Code* on 29 April 2006 changed the situation and the district courts obtained jurisdiction over the cases for smuggling of goods and narcotics previously entertained by the regional courts. In parallel, the competence to investigate almost all cross-border crimes was vested in investigative police officers at the Ministry of Interior. To ensure the comprehensiveness of the analysis offered in this report, the authors have focused on the problems that existed before the legislative change, as well as on the future challenges emerging from the implementation of the novel rules.

Due to the specificity of cross-border criminality, which derives from the peculiarities of the three border areas scrutinized in the report, the remit of law enforcement there and its intensiveness require primarily an analysis of substantive criminal law. As to criminal procedure, the problems here are often similar to those in other regions of Bulgaria.

The analysis in this report has tapped on various sources of information:

- Studies of the relevant legislative texts (both those currently in effect and those that were applied over the past few years but are no longer in force);
- A series of focus group discussions involving representatives of the judiciary, investigative police officers from the Ministry of Interior, border police and customs officials;
- Interviews with senior officials from the Customs Agency (Customs Investigation and Intelligence Department, and the Inspectorate), the Directorate-General for Combating Organized Crime (Narcotics Department, Smuggling Department and Anti-Trafficking Unit), the General Border Police Directorate at the Ministry of Interior, etc.;
- Talks and meetings with prosecutors and judges from Turkey, and with officials from the Ministries of Justice of Bulgaria and Turkey;
- A survey of statistical data on cross-border crime during the period 2001–2006 available at the regional and district courts and prosecution offices, the district investigation services, the regional border sections and the territorial customs departments in border areas;

- Public reports and other information provided by the Ministry of Justice and the Supreme Prosecution Office of Cassation about Bulgaria's partaking in international legal cooperation between 2001 and 2006, including statistical information on letters rogatory and data on the investigative and prosecutorial files involving the Republic of Turkey and the Republic of Macedonia and relevant to the cross-border crimes discussed in the report.

The analysis of law enforcement and criminal justice in the border areas covers the time between 2001 and 2006. It reflects part of the period when the old legal rules was still in force and the initial period of enforcing the new procedural provisions.

CHAPTER ONE. CROSS-BORDER CRIMES: THE LEGAL FRAMEWORK

1. SUBSTANTIVE PROVISIONS

The Bulgarian *Criminal Code* defines as criminal offences a number of acts relating to the illegal crossing of the border by individuals or the illicit carrying of certain items across the frontiers. These are: trafficking in human beings (Articles 159a–159c of the *Criminal Code*); smuggling of goods and narcotics (Article 242 of the *Criminal Code*); carrying across the border counterfeit currency, securities and payment cards (Article 244(1) of the *Criminal Code*); violating the arrangements applicable to the import and export of foreign exchange valuables (Article 251 of the *Criminal Code*); illegal export of listed cultural monument or records forming part of the State Archives (Article 278(3) of the *Criminal Code*); illegal crossing of the border and smuggling of persons (Articles 279–280 of the *Criminal Code*); and illegal carrying across the border of hazardous waste or other substances (Article 353b of the *Criminal Code*). All these offences have a common denominator in that they are committed at the country's borders, so their detection, investigation and prosecution are in the hands of judicial and law enforcement bodies in the respective border areas.

1.1. Trafficking in Human Beings

The offence of trafficking has been increasingly in the spotlight in recent years. For the countries in South-East Europe, including Bulgaria, the problem has become especially acute during the period of transition, as the socio-economic changes, whose onset triggered wider poverty and rising unemployment, have been conducive to the flourishing of that phenomenon.

1.1.1. Existing definitions of trafficking in human beings

Further to the commitments Bulgaria undertook by its accession to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2002 the National Assembly amended the Criminal Code by inserting in Chapter Two of its Special Part – Offences against the Person – a new Section Nine, entitled Trafficking in Human Beings (Articles 159a–159c of the *Criminal Code*).

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, every State Party must criminalize in its internal legislation the offence of trafficking in persons, as well as the attempt, complicity, organizing or directing of other persons towards committing that offence. According to the legal definition enshrined in the Protocol, trafficking in persons means "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs". The Protocol also states that the consent of a trafficking victim to the intended exploitation shall be irrelevant where any of the means set forth above have been used. In addition, where a case involves the recruitment, transportation, transfer, harboring or receipt of children (defined as individuals under eighteen years of age), the act shall constitute the offence of trafficking even if it has not involved any of the above means.

The offences criminalized by Chapter Two, Section Nine of the Special Part of the *Criminal Code* form two major groups of acts:

- Recruitment, transportation, harboring or receipt of individuals or groups of persons for the purpose of using them for obscene acts, for forced labor, for the removal of organs or for them to be kept in servitude (Article 159a(1) of the *Criminal Code*);
- Recruitment, transportation, harboring or receipt of individuals or groups of persons and their transfer across the country's border for the purpose of using them for obscene acts, or forced labor, for the removal of organs or for them to be kept in servitude (Article 159b(1) of the *Criminal Code*);

Only acts in the second category are specifically cross-border in nature, as their very definition involves the **cross-border transfer of the victim**. In any other case the offence would have been committed in the territory of Bulgaria. Four different acts are criminalized, viz. recruitment, transportation, harboring, and receiving one or more individuals. In any event, an offence only matches the definition of trafficking in human beings if **the specific unlawful purpose of the criminal conduct** is proven, viz. to use the victims "for obscene acts, for forced labor, for the removal of organs or for them to be kept in servitude". An offence cannot be defined as trafficking in human beings unless it is established that it was committed exactly for one of those purposes. The difficulties in proving the criminal purpose of the conduct often frustrate the classification

of an offence as trafficking in human beings and the offenders are therefore prosecuted under other provisions of the *Criminal Code*, usually those on illegal crossing of the border or smuggling of persons. This, however, prevents the imposition of the harsher sentences provided for trafficking in human beings.

Under the Bulgarian *Criminal Code*, **the consent of the victim is completely irrelevant to the punishability** of a trafficking offence. The Bulgarian legislation therefore has more stringent rules than the minimum standards set in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* under which the victim's consent excludes the criminal nature of the offence under certain circumstances.

All offences listed in the section *Trafficking in Persons* are **serious intentional crimes**[1] carrying penalties in the range between one and eight years imprisonment plus a fine of up to 8,000 Levs for internal trafficking (i.e. trafficking in persons within the territory of Bulgaria) and from three to eight years imprisonment plus a fine of up to 10,000 Levs for international trafficking (i.e. the cross-border trafficking in persons).

1.1.2. Forms of trafficking carrying severer penalties

The legislation attaches severer penalties to some forms of trafficking posing a higher level of danger to the community. Most of those are explicitely listed in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. Thus, Bulgarian legislation penalizes more harshly the offence of trafficking where it is committed:

- Against a person under eighteen years of age;
- By use of coercion or by means of deceiving the victim;
- By means of abduction or unlawful deprivation of liberty;
- By using the victim's vulnerability;
- Through abuse of power;
- By promising, giving or receiving benefits.

The heavier penalties involve from two to ten years imprisonment plus a fine of up to 10,000 Levs for internal trafficking and from ten to fifteen years imprisonment plus a fine of up to 15,000 Levs where the victims have been moved cross-border.

The penalty provided for the most serious instances of trafficking is five to fifteen years imprisonment plus 20,000 Levs, and the court may order of its own discretion the confiscation of the offender's property, in whole or in part. These are the following scenarios:

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[1] A "serious offence" is defined as any criminal offence which carries under the law a penalty of more than five years imprisonment, life imprisonment or life imprisonment without parole (Article 97, point 7 of the *Criminal Code*).

- The act represents **dangerous recidivism**. Article 29(1) of the *Criminal Code* defines dangerous recidivism as a situation where the offender commits the act after having been convicted of a serious intentional crime and sentenced to at least one year in prison, provided that the execution of the penalty has not been deferred, or where the offender had been sentenced for a number of serious indictable offences, provided that the execution of the penalty imposed for at least one of those offences has not been deferred.
- The act is committed by order of or in implementation of a decision made by an **organized criminal group**. An organized criminal group is a structured lasting association of three or more persons having come together for the purpose of committing, in a coordinated manner, in Bulgaria or abroad, criminal offences that carry at least three years imprisonment and that aim at deriving property benefits. The association is deemed structured even if there is no formal distribution of functions among its participants and irrespective of the continuity of the participants' involvement or the existence of a fully-developed structure (Article 93, point 20 of the *Criminal Code*).

In implementation of the measures set forth in the *National Program to Prevent and Combat Trafficking in Human Beings and to Protect Trafficking Victims for 2006*, in September 2006 the National Assembly amended the *Criminal Code* by adding to it a more heavily punishable form of trafficking, viz. where **the victim of the crime is a pregnant woman and the purpose of the criminal conduct is to sell the child** (Article 159a(3) of the *Criminal Code*). That act carries three to ten years imprisonment plus a fine from 5,000 to 15,000 Levs in the event of internal trafficking and five to ten years imprisonment plus a fine of up to 15,000 Levs in the event of international trafficking. The new provision, which took effect on 13 October 2006, came in response to the growing number of reports about Bulgarian children sold abroad after their pregnant mothers left Bulgaria lawfully, delivered the babies abroad and the children were then affiliated by nominees with the mother's consent. The rule also attempted to surmount some difficulties in the prosecution of that peculiar form of trafficking. Before the amendment, those acts did not constitute trafficking as the babies were unborn at the time of their mothers' leaving the country, so the children could not qualify as victims.[2] Despite the amendment, however, the detection and investigation of the illicit trafficking in babies are still frustrated primarily by the fact that the child' biological mother is normally an active accomplice in the act and leaves the country completely legally in terms of papers, transportation, etc.

1.1.3. Challenges associated with the investigation of trafficking in persons

For various reasons connected primarily with proving the offence the *Criminal Code* rules that criminalize trafficking in human beings, in particular international trafficking, have some confines in terms of day-to-day enforcement.

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[2] See *Information on the Illicit Trafficking in Bulgarian Children Abroad*, Supreme Prosecution Office of Cassation, Sofia, 2006 (http://www.prb.bg/php/documents/352.doc, in Bulgarian).

An analysis of the Supreme Prosecution Office of Cassation suggests that the major difficulties impinging on the detection and investigation of trafficking in human beings have to do with the fact that those offences are organized by criminal groups and **the victims normally cross the border lawfully** and in compliance with the border-crossing and visa requirements.[3] Even where persons under age are trafficked, they cross the border accompanied, so there is no formal violation of the applicable legal requirements. The crime therefore only becomes visible in the country of final destination chosen by the traffickers.

Up until 2007 the criminal proceedings for trafficking in persons were the subject-matter of a **special monitoring arrangement within the prosecution office** on account of their higher level of danger to the community. In May 2007 the number of cases to be specifically monitored was reduced and trafficking cases were removed from the special monitoring scheme altogether, except for the offences committed by organized criminal groups.[4] Nonetheless, a possibility exists for certain high-profile cases to be placed under special monitoring at the discretion of the Prosecutor-General, his or her deputies or the Heads of Departments at the Supreme Prosecution Office of Cassation.

The prosecution applies an extensive interpretation of the concept of trafficking in human beings covering the instances of trafficking per se (Articles 159a–159c of the Criminal Code), illegal crossing of the border and smuggling of persons (Articles 279–280 of the *Criminal Code*), enticement into prostitution (Article 155 of the *Criminal Code*), and abduction for the purpose of procuring the victim for obscene acts (Article 156 of the *Criminal Code*).[5]

The information available to the Supreme Prosecution Office of Cassation shows that in 2005 a total of 3044 pre-trial proceedings were instituted involving 3489 defendants, 24 of whom were detained on remand as a measure to prevent absconding (*Table 1*).

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[3] See *Information on the Illicit Trafficking in Bulgarian Children Abroad*, Supreme Prosecution Office of Cassation, Sofia, 2006 (http://www.prb.bg/php/documents/352.doc, in Bulgarian).

[4] See Order No. ЛС-2184/30.05.2007 of the Prosecutor-General of the Republic of Bulgaria.

[5] See *Prosecution Office of the Republic of Bulgaria: Report of Activities, 1999-February 2006*, Sofia, 2006 (http://www.prb.bg/php/documents/371.doc, in Bulgarian).

TABLE 1. CRIMINAL PROCEEDINGS FOR ENTICEMENT INTO PROSTITUTION (ARTICLE 155 OF THE CRIMINAL CODE), ABDUCTION FOR PURPOSE OF PROCURING VICTIM FOR OBSCENE ACTS (ARTICLE 156 OF THE CRIMINAL CODE), TRAFFICKING IN HUMAN BEINGS (ARTICLES 159A–159C OF THE CRIMINAL CODE), AND ILLEGAL MIGRATION INVOLVING VIOLATIONS OF BORDER-CROSSING AND VISA REQUIREMENTS (ARTICLES 279–280 OF THE CRIMINAL CODE)

	2004		2005	
	Total, all categories	**Illegal Migration**	**Total, all categories**	**Illegal Migration**
Resolved pre-trial proceedings	2,193	n/a	2,264	n/a
Bills of indictment presented to court	1,645	1,597	1,709	1,642
Defendants under presented bills of indictment	1,935	1,853	2,206	1,894
Convicted individuals	1,768	1,759	2,129	2,095
Convicted individuals whose conviction entered into force	1,564	1,560	1,730	1,723
Acquitted individuals	8	n/a	9	n/a
Acquitted individuals whose acquittal entered into force	3	n/a	1	n/a
Victims (males/females)	233/354	n/a	124/393	n/a
Victims under 18 years of age (boys/girls)	11/60	n/a	11/100	n/a

Source: *Prosecution Office of the Republic of Bulgaria: Report of Activities, 1999-February 2006 (http://www.prb.bg/php/documents/371.doc).*

Over 96 per cent of the indictments and more than 99 per cent of the convicted persons whose convictions took effect had to do with illegal crossing of the border or smuggling of persons while the criminal proceedings for trafficking per se were very few.[6]

1.1.4. Forfeiture of assets derived from trafficking in persons

Trafficking in human beings is an offence covered by the *Law on the Forfeiture to the State of Property Acquired from Criminal Activity*. In 2006, the Commission for Establishing Property Acquired from Criminal Activity opened a total of eight procedures to identify assets obtained from trafficking in human beings: three of them related to internal trafficking (Article 159a of the *Criminal Code*),

[6] See *Prosecution Office of the Republic of Bulgaria: Report of Activities, 1999-February 2006*, Sofia, 2006 (http://www.prb.bg/php/documents/371.doc, in Bulgarian). Out of all proceedings, 23 involved enticement into prostitution or luring into gross indecency or intercourse where the perpetrator acted by order of or in implementation of a decision made by an organized criminal group (Article 155(5), point 1 of the Criminal Code). There were a total of 34 defendants in those cases and two of them were detained on remand. Sixteen of those proceedings were closed by the end of 2005 and 11 bills of indictment were presented to court against 23 defendants.

five related to cross-border victim transfers (Article 159b of the *Criminal Code*), and one involved the more seriously punishable form of trafficking committed by order of or in implementation of a decision made by an organized criminal group or constituting dangerous recidivism (Article 159c of the *Criminal Code*).[7]

1.1.5. Special protection of victims of trafficking

Specific measures aimed at protecting the victims of trafficking in human beings are provided for in the *Law on Combating Trafficking in Human Beings* adopted in 2003. The law is intended to ensure the cooperation and coordination between the state authorities and the municipalities as well as between them and the non-governmental organizations with a view to preventing and countering trafficking in humans and developing the national policy in that area.

In accordance with the law, a National Commission for Combating Trafficking in Human Beings has been established with the Council of Ministers comprising certain deputy ministers and representatives of other state authorities involved in the countering of trafficking in human beings.

The law envisages the establishment of shelters for temporary accommodation and centers for providing protection and support to victims of trafficking. The shelters should accommodate victims of trafficking and provide them with standard living and sanitary conditions, food and medications, emergency medical and psychological services, assistance in establishing contacts with their relatives, etc. The centers for protection and support should provide information regarding the procedures for assisting victims of trafficking, ensure specialized psychological and medical services, and facilitate the victims' reintegration in the family and the social environment.

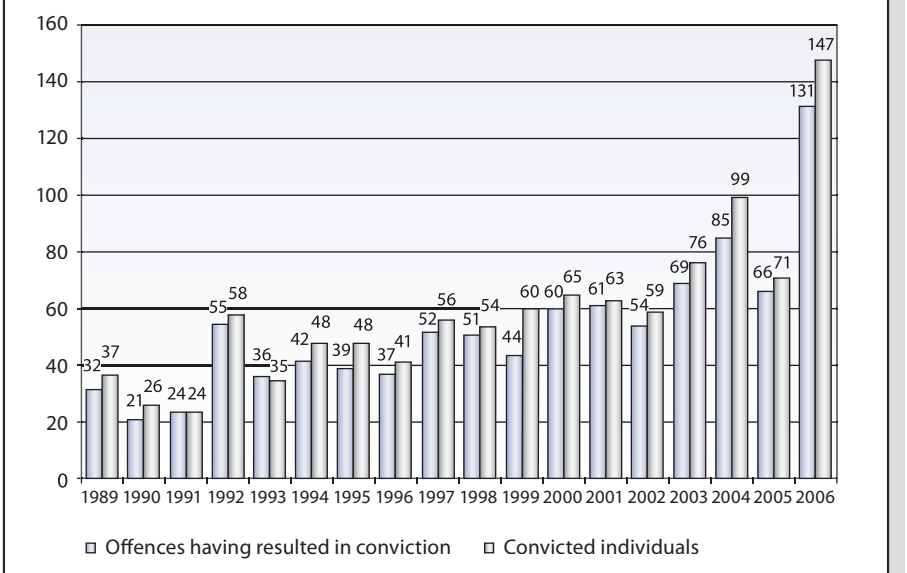
There is also a specific procedure for granting special protection status to victims of trafficking who have agreed to collaborate for the detection of trafficking offenders. Such status is granted for the time of the criminal proceedings and includes permission to foreign nationals for long-term stay in the country and extension of the accommodation period in shelters.

1.2. Smuggling of Goods and Narcotics

The smuggling of goods and narcotics is amongst the cross-border offences most frequently prosecuted and punished. Between 1989 and 2005, a total of 828 convictions were returned for such offences and a total of 920 individuals were convicted (*Chart 1*).

[7] See *Commission for Establishing Property Acquired from Criminal Activity: Report of Activities, January-December 2006*, Sofia, 2007, p. 12 (in Bulgarian).

CHART 1: OFFENCES HAVING RESULTED IN CONVICTION AND INDIVIDUALS CONVICTED OF SMUGGLING (ARTICLE 242 OF THE CRIMINAL CODE) FOR THE PERIOD 1989–2006



Source: *National Statistical Institute.*

The Bulgarian *Criminal Code* knows two major forms of smuggling, depending on the subject-matter of the crime: smuggling of goods and smuggling of narcotics. All offences in those categories represent serious intentional crimes, except for the preparation towards committing drugs smuggling.

1.2.1. Smuggling of goods

The smuggling of goods is criminalized in Article 242(1) of the *Criminal Code*. It is also called **"aggravated smuggling"** in order to be distinguished from other forms of illicit cross-border movements of goods which are not criminal offences and carry administrative penalties imposable by administrative bodies, rather than sanctions under the criminal law. Aggravated smuggling consists in carrying goods across the border without the knowledge and authorization of the customs authorities, if any of the additional conditions set out in the law exists. The *Law on Customs* defines "goods" as any item carried across the state border, *inter alia* via pipelines and electric grids, by vehicles, in passenger baggage or in other consignments (§ 1, point 14 of the Additional Provisions of the *Law on Customs*). The additional conditions for the act to be deemed a criminal offence are seven:

- The offence is perpetrated by individuals who **engage systematically in such activities** (Article 242(1)(a) of the *Criminal Code*). The concept "systematically" is not defined in the legislation but according to the case law offending is systematic where three or more separate acts are committed over the span of a non-lasting period of time; moreover, it is not required that each of those acts be a crime in itself.[8] The language of the provision enables the prosecution of aggravated smuggling where the same individual has committed three consecutive customs violations, provided that administrative penalties were imposed for the first two of them. Although the use of modern IT systems by the customs authorities facilitates the im-

[8] See Judgment No. 9 of 6.05.1982 in criminal case No. 64/82 pronounced by the General Assembly of Criminal College, Supreme Court.

plementation of that approach, there is no standard practice along these lines. The wording of Article 242(1)(a) of the *Criminal Code* therefore has to be reviewed and clear legislative criteria should be defined for the systematic perpetration of violations that makes criminal prosecution possible.

- The offence is perpetrated by use of a **document stating false information or someone else's document or an unauthentic or forged document** (Article 242(1)(b) of the *Criminal Code*).[9] Within the meaning of the law, unauthentic is the document which is made to appear as if it were a specific written statement by an individual other than the one who actually drew the document up (Article 93, point 6 of the *Criminal Code*). A document is deemed to state false information where the facts or statements reflected therein mismatch the objective reality. Only the so-called "certification documents" may state false information, i.e. the documents which certify the existence or inexistence of specific facts, circumstances or events which the author has reflected in the document (e.g. concerning the quality or quantity of some goods).[10] "Someone else's document" means that the person using the document differs from the one entitled to hold, possess or use that document lawfully and to derive rights therefrom. A document is forged where the content of an existing genuine document is essentially altered by changing or adding letters or numbers or by means of deleting characters (this can affect the statement contained in the document as well as any of its other mandatory particulars, i.e. signature, date, photographs, etc.).[11] The documents most frequently tampered with in smuggling cases are various customs declarations, certificates and other papers accompanying import or export transactions.
- The offence is perpetrated by **an official having an immediate connection with the customs services** (Article 242(1)(c) of the *Criminal Code*). The danger that this act poses to the community stems from the ease with which such offenders can commit the offence because of their links with the customs services. The rule covers the officials working at the customs authorities as well as any other officials having some connection with those services. Bulgarian criminal law regards as an official any individual who has been tasked to perform, in return for remuneration or gratuitously, on a temporary or permanent basis, services at a state institution, except for the individuals engaged in mere implementation or managerial functions or jobs relating to the safe-keeping and management of others' property at a state-owned enterprise, cooperative, civil society organization or another legal entity, or with a sole trader or private notary and assistant notary, pri-

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[9] What was criminalized before April 2004 was the smuggling of goods by use of someone else's document or a counterfeit official document or an official document stating false information. As an "official document" is solely a document issued in accordance with the relevant procedure and form by a public official within the remit of his or her service or by a representative of the public within the remit of the function he or she has been tasked with (Article 93, point 5 of the *Criminal Code*), the provision failed to cover a wide number of customs documents, including customs declarations, which are private (i.e. non-official) documents by definition. The text had therefore to be changed so as to extend its scope.

[10] In practical terms, the most difficult thing in investigating smuggling cases under Article 242(1)(b) of the *Criminal Code* is to prove that a document states false information.

[11] For more details on the distinction between the different categories of documents and on the ways and means to tamper with documents, see Regulation No. 3 of 23.03.1982 of the Plenary Assembly of the Supreme Court in criminal case No. 12/81.

vate enforcement agent and assistant-private enforcement agent (Article 93, point 1 of the *Criminal Code*).

- The subject-matter of the crime consists in **strong or poisonous substances, explosives, arms or ammunitions, nuclear material, nuclear facilities or other sources of ionizing radiation** or components or precursors therefor, as defined in a law or in an instrument issued by the Council of Ministers (Article 242(1)(d) of the *Criminal Code*). All those goods and items have a common feature: on account of their specific nature, their use, including their cross-border movement, is subject to special conditions. Before 2002 the rule covered only the strong or poisonous substances, explosives, weapons and ammunitions. The definitions and the legal regime applicable to the use of such goods are scattered among different laws (*Law on Explosives, Firearms and Ammunitions Control; Law on the Export Control of Arms, Ammunitions and Dual Use Technologies* passed in 2007 to replace the *Law on the Control of Foreign Trade in Arms and in Possible Dual Use Goods and Technologies*, etc.) and a myriad of implementing instruments (ordinances, regulations, rules, etc.).[12] In 2002, after the adoption of the *Law on the Safe Use of Nuclear Energy*, the scope of the relevant *Criminal Code* provision was extended to cover nuclear material, nuclear facilities and other sources of ionizing radiation.[13] In 2004, the provision was amended again to spell out that the substances listed in the text should be defined in a law or in an instrument issued by the Council of Ministers.
- The goods and items moved are **intended for commercial or production purposes and represent large quantities** (Article 242(1)(e) of the *Criminal Code*). This form of smuggling, also known as "commercial smuggling", was criminalized in view of the purpose of the criminal conduct and the proportions of the subject-matter of the crime. The Criminal Code requires that both criteria be met simultaneously, i.e. the goods and items must have been moved for commercial or production purposes and must represent large quantities. According to court case law, the subject-matter of the crime represents a large quantity where its cash equivalent is seventy

[12] Thus, Article 3 of the *Law on Explosives, Firearms and Ammunitions Control* defines explosives as chemical substances or compounds which may engage, under certain conditions, in a quick self-propelling chemical transformation coupled with the discharge of large amounts of heat and with highly-pressurized gaseous products having a destructive or metathetic effect, as well as the articles containing such substances or compounds. Article 6(1) of the same law defines ammunitions as a multitude of explosives and other elements, as well as hard items, which, either independently or when ejected from a weapon or another technical device, produce a destructive, inflammatory, poisonous, corrosive, asphyxiating, psychotropic, tear-provoking or other damaging effect, or a light-and-sound effect.

[13] Nuclear material is defined as a source material, special nuclear material or other material listed in an instrument issued by the Council of Ministers (§ 1(48) of the Additional Provisions of the *Law on the Safe Use of Nuclear Energy*). A nuclear facility is any facility, including the territory, buildings and equipment related thereto, where nuclear material is extracted, produced, processed, used, manipulated, stored or buried on such a scale that nuclear safety and radiation protection must be monitored and reported on. A nuclear facility may also be any facility for the management of radioactive waste (§ 1(55) of the Additional Provisions of the *Law on the Safe Use of Nuclear Energy*). A source of ionizing radiation is defined as an apparatus, radioactive substance, outfit, article, installation or facility having the capacity of emitting ionizing radiation or discharging radioactive substances, except for those qualifying as nuclear facilities (§ 1(15) of the Additional Provisions of the *Law on the Safe Use of Nuclear Energy*).

times higher than the minimum monthly salary set in Bulgaria.[14] The level of the minimum monthly salary for 2007 is 180 Levs (around 90 euros).[15] In other words, any smuggling for commercial or production purposes of goods and items worth in excess of 12,600 Levs (around 6.300 euros) constitutes a criminal offence punishable under the criminal law.

- The offence is perpetrated by **two or more individuals having conspired in advance** (Article 242(1)(f) of the *Criminal Code*). This particular form of smuggling is criminalized on account of the element of complicity and the so-called "preliminary conspiracy" both of which make the offence more dangerous to the community. Under the law, a criminal offence is committed by two or more individuals where at least two individuals are involved in the perpetration of the criminal act as such (Article 93, point 12 of the *Criminal Code*). Smuggling is often committed by accomplices but is not prosecuted under the criminal law as it is difficult to prove the link between the individual offenders.
- The offence is perpetrated by someone acting **by order of or in implementation of a decision made by an organized criminal group** (Article 242(1)(g) of the *Criminal Code*). This form of aggravated smuggling was criminalized in 2002 in order to step up the criminal-law repression against organized crime. The same amendments of 2002 introduced the legal definition of "organized criminal group". [16]

The smuggling of goods carries up to ten years imprisonment plus a fine from 20,000 to 100,000 Levs.[17] For some of the forms of smuggling the court may order the confiscation of the defendant's property, in whole or in part, instead of imposing a fine.[18]

The law provides for two instances of goods smuggling which carry heavier penalties (five to fifteen years imprisonment plus a fine from 50,000 to 200,000 Levs).

- The first scenario is where the subject-matter of **smuggling is of particularly large proportions and the case is particularly serious** (Article 242(4) of the *Criminal Code*). According to court case law, the subject-matter of smuggling is of particularly large proportions if its cash equivalent

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[14] See Interpretative Decision No. 1 of 30.10.1998 pronounced in criminal case No. 1/98 by the General Assembly of the Criminal College, Supreme Court.

[15] See *Regulation No. 324 of the Council of Ministers of 6.12.2006 setting a new level of the minimum monthly salary in Bulgaria*, published, SG, issue 101 of 15.12.2006.

[16] For more details on the definition of organized criminal groups, see the analysis of trafficking in persons and the related offences that carry heavier penalties.

[17] The penalties were raised considerably in 2004; until then the sanctions were up to six years imprisonment plus a fine of up to 2,000 Levs.

[18] The possibility for the court to order confiscation instead of a fine applies to smuggling perpetrated by persons who engage systematically in such activities, to the smuggling of large quantities of goods and items for commercial or production purposes, and to the smuggling of strong or poisonous substances, explosives, weapons or ammunitions or other sources of ionizing radiation or components, or precursors (Article 242(5) of the *Criminal Code*). Until 2002, the courts were also able to order the mandatory resettlement of an offender having engaged systematically in smuggling. In 2002 that penalty was replaced with probation which, in turn, was dropped in 2004.

exceeds more than 140 times the minimum monthly salary in Bulgaria.[19] On the other hand, a case is particularly serious where the offence committed displays an especially high level of danger to the community and of threat posed by the offender, in the light of the ensuing harmful effects and other aggravating circumstances (Article 93, point 8 of the *Criminal Code*).

- The second scenario is where the act is perpetrated by two or more individuals having conspired in advance if **one of those individuals is a customs officer** (Article 242(4) of the *Criminal Code*). The involvement of a customs officer as a co-perpetrator elevates the danger of the offence to the community and dictates a heavier penalty.

In any other event, where the illegal cross-border movement of goods is beyond the reach of the *Criminal Code*, offenders are punished following an **administrative procedure**, viz. under the *Law on Customs*. According to the latter, anyone who transfers or transports goods across the state border without the knowledge and permission of the customs authorities, shall be liable to a fine equaling 100 to 200 per cent of the customs value of the goods moved, unless the act is a criminal offence (Article 233(1) of the *Law on Customs*). Higher fines (equaling 150 to 250 per cent of the customs value of the goods) apply in cases where the smuggling involves goods subject to excise duties or goods whose import or export is prohibited (Article 233(3) of the *Law on Customs*).[20] The goods that form the subject-matter of customs smuggling are always forfeited to the state, irrespective of who their owner is; they are forfeited even though the owner might be unknown (Article 233(4) and (5) of the L*aw on Customs*). If the goods are missing or have been transferred, the forfeiture of their cash equivalent is ordered. Equally subject to forfeiture are the means of transportation and carriage used to transport or move the goods cross-border, unless their value clearly mismatches the subject-matter of the offence (Article 233(6) of the *Law on Customs*). As to the procedure used to establish those administrative offences and to impose the sanctions, the applicable instrument is the *Law on Administrative Offences and Penalties*; the statements of offences found are drawn up by the customs authorities while the penalty warrants are issued by the Director of the Customs Agency or by public officials authorized by the Director (Articles 230–231 of the *Criminal Code*).

[19] See *Regulation No. 324 of the Council of Ministers of 6.12.2006 setting a new level of the minimum monthly salary in Bulgaria*, published, SG, issue 101 of 15.12.2006.

[20] Until April 2005 the level of the fine varied between 50 and 150 per cent of the customs value of the goods, or 100 and 200 per cent of the value of goods covered by excise duties or goods whose import or export was prohibited.

Administrative Liability for Smuggling Goods across EU Internal Borders

Bulgaria' accession to the European Union brought about the abolition of import and export customs controls at those Bulgarian borders that became internal borders for the Union (i.e. those with Greece and Romania). To prevent the uncontrolled transfer into the EU territory of goods smuggled across the Union's external frontiers, in 2006 a new administrative liability provision was added to the *Law on Customs* penalizing anyone who moves or transports goods across an EU external border without the knowledge and permission of the customs authorities where the goods are detected during an inspection in the territory of Bulgaria (Article 233(2) of the *Law on Customs*). The rule enables the competent Bulgarian authorities to sanction, in the context of ex-post control, those individuals who smuggle goods into the Union across another external border (e.g. that between Turkey and Greece) and then import those goods into Bulgaria for them to be stored, processed, sold, etc.

The legislation makes it possible for the sanctioning body and the offender to make an agreement to discontinue the proceedings; such an agreement must be made before the issuance of the penalty warrant but no later than 30 days after drawing up the statement establishing the breach (Article 229a of the *Law on Customs*). The agreement may not fix a penalty lower than that prescribed by the *Law on Customs* but may provide that the forfeiture of the goods and of the means of transportation or carriage used would be replaced by payment of at least 25 per cent of the cash equivalent of such goods or means.

The dual legal regime for punishing the smuggling of goods (i.e. under the criminal law or under the administrative law) is imperfect and invites **circumvention of the laws as well as corruption**. The biggest problems in that respect stem from the rules on the so-called "commercial smuggling" which is defined by Article 242(1)(e) of the *Criminal Code* as moving "goods and items intended for commercial or production purposes and representing large quantities" across the border "without the knowledge and permission of the customs".

The first difficulty lies in the **criterion** of **"large quantities"** which is decisive for classifying the act as a criminal offence or administrative violation. According to court case law, "large quantities" exist where the cash equivalent of the subject-matter of the crime exceeds 70 times the minimum monthly salary in Bulgaria. However, when determining the **value of the subject-matter of the crime** the police, the prosecution and the courts, on the one hand, and the customs authorities, on the other hand, apply **different rules**. The customs authorities adhere to the provisions of the *Law on Customs* and rely on the customs value of the goods at stake (generally the price actually paid or to be paid). By contrast, the police, the prosecution and the courts rely on the market value of the goods which is calculated by experts. The two values are often divorced from each other, the market value usually being in (sometimes significant) excess of the customs value.

The second problem has to do with the **interpretation of the phrase "without the knowledge and permission of the customs"**. The prevailing practice is to classify as crimes **only the cross-border movements of goods without notifying the customs authorities at all**, while all instances of stating false information on the customs declaration (i.e. stating another category of goods or a smaller quantity or lower value, etc.) are regarded as administrative violations. Therefore, often times the smuggling of goods that by far exceed the "large quantities" within the meaning of the *Criminal Code* is only punished as an administrative violation as the quantity in question is declared and charged as a cheaper good (i.e. as potatoes instead of tomatoes), the goods are accompanied by bogus invoices showing a lower price, etc. Such cases have been reported in most border areas. Thus in 2002, when the minimum monthly salary in Bulgaria was 100 Levs[21] and the smuggling of goods worth over 7,000 Levs had to be classified as a crime, the customs officers from the Territorial Customs Department in Kyustendil detected smuggled new sewing machines worth 22,520 Levs shown on the documents as second-hand goods, as well as smuggled shoes worth 57,960 Levs declared as goods intended for outward processing. In both cases the files were sent to the relevant prosecution office which later remitted them to the customs authorities for administrative fines to be imposed as the prosecutors thought those acts constituted administrative violations, rather than criminal offences.

The third problem stems from the possibility afforded by the *Criminal Code* **to impose fines as administrative penalties for petty smuggling**. That provision should not be in the *Criminal Code* at all, moreover it clearly mismatches the administrative liability provisions of the *Law on Customs*. Thus, in 2007, the level of the minimum monthly salary is 180 Levs and an offence should be regarded as criminal whenever the cash equivalent of the goods smuggled exceeds 12,600 Levs. If the rule on petty smuggling is put into play, the resulting situation may easily prove to be a legal absurdity. If the **goods smuggled** are worth **15,000 Levs** and the case represents a petty criminal offence, the offender would face an administrative penalty under the *Criminal Code* and get away with a **fine of up to 1,000 Levs**. By contrast, if the **goods smuggled are worth 5,000 Levs**, the offender will again face an administrative penalty, this time under the *Law on Customs*, and the fine will be in the range **between 5,000 and 10,000 Levs** (100 to 200 per cent of the value of the goods smuggled).

1.2.2. Smuggling of narcotics

The production, distribution of and trafficking in narcotics are criminal offences posing quite an intense danger to the community, so a number of government institutions are involved in their prevention and suppression. Further to the need to undertake coordinated steps to crack down on the distribution of drugs, in 2003 the government approved a *National Anti-Narcotics Strategy 2003–2008*, and an *Action Plan to Implement the National Anti-Narcotics Strategy*.

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[21] See *Regulation No. 209 of the Council of Ministers of 21.09.2001 setting the minimum monthly salary in Bulgaria*, published, SG, issue 82 of 25.09.2001.

The *Criminal Code* has criminalized several types of offences relating to the distribution of narcotic substances. The main category of acts connected with the production of and trade in drugs comes under the heading of *Offences against Public Health*, Articles 354a–354c of the *Criminal Code*. The smuggling of **narcotics, however, defined as the unauthorized carrying across the border of narcotic substances, their analogues, precursors, or facilities or equipment for the production of narcotic substances**, is an offence against the customs regime, Article 242(2), (3), (4) and (9) of the *Criminal Code*.[22]

Smuggling of Narcotics and Other Offences Involving Narcotic Substances

Besides the smuggling of narcotics, the *Criminal Code* criminalizes some other offences relating to narcotic substances, namely the illegal production, processing and possession for the purpose of distribution, as well as the very distribution of narcotic substances, their analogues, precursors or facilities or materials for the production of narcotic substances or their analogues (Article 354a(1) of the *Criminal Code*); the unlawful acquisition or possession at a public place for the purpose of distributing narcotic substances or their analogues (Article 354a(2) of the *Criminal Code*); the unlawful acquisition or possession of narcotic substances or their analogues (Article 354a(3) of the *Criminal Code*); and the breach of the rules on the production, acquisition, keeping, accounting for, administering, transportation or physical movement of narcotic substances (Article 354a(4) of the *Criminal Code*).

Often enough the act of narcotics smuggling may also represent another crime (e.g. unlawful possession of narcotic substances for the purpose of distribution; breach of the rules on transportation or physical movement of narcotic substances, etc.). In such situations there would be the so-called "combination of offences" which can in turn be a fully-fledged combination (two crimes committed by two different acts, e.g. production and smuggling) or a two-in-one combination (two crimes committed by the same act, e.g. infringing the rules on transportation and carriage combined with smuggling).

The interpretation and application of the provisions on such combined offences definitely generate problems. Thus, in 2006 the storage, physical movement and transportation were deleted as independent acts from the provision of Article 354a(1) of the *Criminal Code* and it remains unclear whether or not they are covered by any of the remaining offences (for example, could physical movement also be regarded as possession?). This calls in question the future application of that and other provisions on smuggling to two-in-one offences (which was indeed the practice before 2006). Another problem concerns the smuggling of particularly large quantities of drugs representing a particularly serious case (Article 242(4) of the *Criminal Code*) as the text of Article 354a of the Criminal Code does not refer to such a scenario.

[22] For more details, see *The Drug Market in Bulgaria*, Center for the Study of Democracy, Sofia, 2003.

The legal framework applicable to narcotic substances and the oversight of their distribution is defined by the *Law on the Control of Narcotic Substances and Precursors*. The additional provisions at the end of that law define the concepts of "narcotic substance", "analogue" and "precursor", while the schedules list the different kinds of narcotics (precarious or highly precarious) and precursors.[23]

Government Documents Designed to Combat Drugs Trafficking

The government has developed the following documents implementing European Union principles and standards to combat drug-related offences:

- *National Anti-Drugs Strategy 2003-2008*

By a Decision dated 20 February 2003 the Government of the Republic of Bulgaria adopted the first-ever National Anti-Drugs Strategy which relies on a balanced and holistic approach towards the issues of trafficking in, distribution and abuse of narcotic substances. The government has thus undertaken to assist both the individuals and the communities affected by illegal drug distribution.

- *Action Plan Implementing the National Anti-Drugs Strategy 2003–2008*

The plan is an organizational and governance tool designed to facilitate the implementation of the strategy of which it forms an integral part.

The criminal proceedings for the smuggling of narcotic substances and precursors are monitored by specialist prosecutors and are subject to a special monitoring arrangement implemented by the Department of Offences Dangerous to the Public and Other Offences at the Supreme Prosecution Office of Cassation. The data available from the Supreme Prosecution of Cassation reveal that drug smuggling cases are far fewer than those for the production and distribution of narcotic substances inside the country. Between 2002 and 2005, 125 persons were indicted for drugs smuggling, whereas the defendants charged with other drug-related offences were 4340, or nearly 35 times as many (*Table 2*).

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[23] A narcotic substance is defined as any inebriating or psychotropic substance placed on Schedule 1, 2 or 3 to the law, as well as any other natural or synthetic substance placed on Schedule 1, 2 or 3 to the law, apt to provoke a state of addiction or having a stimulating or depressive effect on the central nervous system or cause hallucinations or disturbance of the motor function, mentation, behavior, perceptions and mood, as well as any other prejudicial effect on the human body (§ 1(11) of the Additional Provisions of the *Law on the Control of Narcotic Substances and Precursors*). A precursor is any substance placed on Schedule 4, including the compounds and the natural products containing such substances, except for medicinal products within the meaning of the *Law on Medicinal Products for Human Consumption*, pharmaceutical preparations, mixtures, natural products and other preparations containing precursors composed in such a way that the precursors cannot be easily extracted or used (§ 1(14) of the Additional Provisions of the *Law on the Control of Narcotic Substances and Precursors*). An analogue defines as any substance not placed on the Schedules to the law but having a chemical structure similar to a narcotic substance and having similar effects on the human body (§ 1(17) of the Additional Provisions of the *Law on the Control of Narcotic Substances and Precursors*).

Table 2: Pre-trial proceedings, bills of indictment presented to court and defendants charged with the production and distribution (Articles 354a-354c of the Criminal Code) and smuggling (Article 242 of the Criminal Code) of narcotic substances for the period 2003–2005

Year		2003	2004	2005
Newly-instituted proceedings	Production and distribution	1,884	2,300	2,955
	Smuggling	54	38	41
Bills of indictment presented to court	Production and distribution	764	1,120	1,725
	Smuggling	20	41	25
Defendants and incriminated individuals	Production and distribution	915	1,326	2,099
	Smuggling	30	61	34

Source: Prosecution Office of the Republic of Bulgaria: Report of Activities, 1999-February 2006 (http://www.prb.bg/php/documents/371.doc).

The penalties carried by the offence of narcotics smuggling are rather severe: from three to fifteen years imprisonment plus a fine from 10,000 to 100,000 Levs for precarious narcotic substances; then from ten to fifteen years imprisonment plus a fine from 100,000 to 200,000 Levs for highly precarious narcotic substances; and, finally, two to ten years imprisonment plus a fine from 50,000 to 100,000 Levs for precursors or for facilities and materials for the production of drugs. In all instances of narcotics smuggling the court may replace the fine with confiscation of the defendant's property, in whole or in part.[24]

The law provides a higher penalty (fifteen to twenty years imprisonment plus a fine from 200,000 to 300,000 Levs) for smuggling drugs where the subject-matter of the offence represents particularly large quantities (i.e. its cash value exceeds 140 times the minimum monthly salary in Bulgaria) and the case is particularly serious (i.e. in light of the harmful consequences inflicted and of other aggravating circumstances the offence committed reveals an extremely high level of danger to the community stemming from both the offence and the offender).

In the event of smuggling narcotics **the preparation towards committing an offence** is punishable as well, the relevant penalty being up to five years in prison (Article 242(9) of the *Criminal Code*). Preparation consists in preparing the means, finding accomplices and, generally, putting in place the conditions necessary to perpetrate the offence contemplated before perpetration has actually started (Article 17(1) of the *Criminal Code*). Preparation is not prosecuted where the offender retracts the crime of his or her own volition (Article 17(3) of the *Criminal Code*).

[24] Until 2002 the courts were entitled to impose for the smuggling of narcotics, in any of its forms, also the penalty of mandatory resettlement which was replaced with probation in 2002. That provision was repealed in 2004.

1.2.3. Petty drug-related offences

In strictly defined cases of smuggling the *Criminal Code* makes it possible for criminal liability to be replaced with a fine of up to 1,000 Levs imposable within an administrative procedure (Article 242(6) of the *Criminal Code*). The requirement is that the offence should qualify as petty, i.e. given the non-existence or insignificance of the crime committed or in view of other attenuating circumstances that offence should reveal a lower level of danger to the community compared to the usual crimes of that category (Article 93, point 9 of the *Criminal Code*). This rule applies both to goods smuggling and to the carrying across the border of narcotic substances and/or their analogues or precursors or facilities and materials for the production of narcotic substances.

The possibility to impose an administrative penalty for petty smuggling offences, especially drug-related smuggling, certainly invites a number of questions. On the one hand, all criminalized acts, except for the preparation, are defined as serious intentional crimes and thus remain beyond the scope of the general rule on commuting criminal liability to an administrative penalty (Article 78a of the *Criminal Code*). The smuggling of narcotics even carries a period of imprisonment starting from a special threshold (i.e. the penalty may not be lower than the minimum prescribed) which only reconfirms the very high level of danger to the community. On the other hand, though, the above special rule on petty smuggling in fact reinstates the effects of the general rule. Last but not least, the ambiguous criteria applicable to defining whether or not an offence is petty pave the way to circumventing the law and avoiding criminal liability for what are extremely serious crimes.

1.2.4. Forfeiture to the State

The *Criminal Code* provides that the items forming the subject-matter of smuggling, be they narcotics or not, shall be forfeited to the state (Article 242(7) of the *Criminal Code*). Forfeiture applies irrespective of whether such items are owned by the offender or by a third party.[25] Where the items are missing or have been transferred, the court must order the forfeiture of their cash equivalent. The provision has not been updated recently to echo the prevailing economic conditions in the country (it was last amended back in 1985) and still reads that the cash equivalent of the subject-matter of the crime shall be calculated based on government-set retail prices.

In addition to the items forming the subject-matter of the crime, forfeiture to the state applies to the transport vehicle or the means used to transport or carry the items, even where that vehicle or means does not belong to the offender (Article 242(8) of the *Criminal Code*).[26] The provision only mentions the means used to carry the goods but it also applies where the subject-matter of

[25] The forfeiture of the subject-matter of smuggling has a wider scope than the forfeiture of the subject-matter of ordinary criminal offences (Article 53(1) of the *Criminal Code*), because forfeiture in the event of smuggling also applies to items that are not owned by the perpetrator.

[26] The forfeiture of the means of transportation or carriage used to perpetrate smuggling is also wider in scope than the forfeiture of items used for committing other types of crimes (Article 53(1) of the *Criminal Code*), as it is irrelevant whether or not the perpetrator is the owner or not.

the crime consists in narcotic substances. In contrast to the items forming the subject-matter of the offence, which are forfeited under any circumstances, there is one exception to the forfeiture of the transport vehicle or the means used to carry the goods: no forfeiture is ordered when the value of that vehicle or means mismatches the seriousness of the offence.

The smuggling of goods and narcotics is also tackled by the *Law on the Forfeiture to the State of Property Acquired from Criminal Activity*. However, there have been very few proceedings opened under that law. Throughout 2006, the Commission for Establishing Property Acquired from Criminal Activity opened no more than three proceedings for finding smuggling-derived assets (amounting to some 3 per cent of all the files opened by the commission).[27]

1.3. Illicit Carrying across the Border of Counterfeit Currency, Securities and Payment Cards

The carrying across the border of counterfeit currency, securities and payment cards is criminalized by Article 244(1) of the *Criminal Code*. The same provision criminalizes the acts of placing in circulation, acquiring and using counterfeit currency and other notes. The penalty envisaged is up to eight years imprisonment. The subject-matter of the offence is very specific and may consist in several groups of items:

- Carrying across the border **counterfeit currency**. The currency must be rated either in Bulgaria or abroad and may be either non-authentic (created by an individual other than the lawful issuer) or forged (created by the lawful issuer and later modified by someone who lacks the power to do so).
- Carrying across the border counterfeit **duty or post stamps**. Duty and post stamps facilitate the payments for government and local fees or postal services. While their issuance and distribution are subject to special arrangements, their falsification is very dangerous and may inflict substantial harm on the state. The law has therefore criminalized both the counterfeiting of duty and post stamps and some individual acts facilitating their placement, *inter alia* their carrying across the border. The provision does not specify the issuer of the counterfeit stamps, so it should also apply to offences involving post and duty stamps issued by any third country.
- Carrying across the border counterfeit **government bonds or other gilt-edged securities**. Government securities, including bonds, entitle their holders to certain rights consisting mainly in claims against the government. They are issued under a special procedure and trade in them is subject to special rules. The legislation mentions specifically only government bonds and other gilt-edged securities, so it is controversial whether or not municipal bonds and other securities are covered as well.
- Carrying across the border **credit and payment cards** which do not constitute securities. The crime of counterfeiting credit and payment cards gains importance in parallel to the increasing use of such cards in commercial transactions. The involvement of Bulgarian nationals in counterfeiting credit or payment cards is far from rare. The language of the provision covers both bank

[27] See *Commission for Establishing Property Acquired from Criminal Activity: Report of Activities, January-December 2006*, Sofia, 2007, p. 12 (in Bulgarian).

payment cards (debit or credit cards)[28] and credit cards issued by other entities, a possibility existing under Bulgarian law. The carrying of counterfeit cards across the border is punishable, whether or not the offence involves debit or credit cards, whether or not they were issued by a bank or another entity and irrespective of whether the issuer is a Bulgarian or foreign person or entity.

Counterfeit currency, stamps, securities, and payment cards might be either unauthentic (i.e. created by a person or entity other than the alleged issuer) or forged (i.e. genuine currency that has been illegally tampered with).

1.4. Foreign Exchange Violations

The Bulgarian *Criminal Code* defines as crimes the violations of the foreign exchange regime, including the violations of the arrangements applicable to the import and export of foreign exchange valuables and the failure to declare such valuables, where the subject-matter of the offence is of particularly large proportions (Article 251(1) of the *Criminal Code*). The foreign exchange regime is set out in the *Law on Foreign Exchange* and its implementing regulations.

- The export and import of **Levs and foreign currencies** is unlimited but a reporting obligation exists when the amount carried exceeds a certain threshold (Article 11 of the *Law on Foreign Exchange*). According to an instrument issued by the Minister of Finance (*Ordinance No. 10 of 2003 on the export and import of cash on hand, precious metals, precious stones and items therewith or thereof and on keeping the customs registers under Article 10a of the Law on Foreign Exchange*) the import or export of cash must be reported to the customs authorities where the amount exceeds EUR 10,000 or its equivalent in Bulgarian Levs or in any other currency. The declaration must show the owner of the cash, the recipient for whom that cash is intended, the value, type, origin and intended use of the funds, the vehicle and its itinerary.
- The export and import of **precious metals and precious stones and of items therewith or thereof** must generally be reported to the customs authorities (Article 14 of the *Law on Foreign Exchange*). Under the ordinance, however, if the carrying across the border is only incidental and serves a personal or family purpose, the reporting requirement applies above a certain threshold.[29]

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[28] The *Law on Cash Remittances, Electronic Payment Instruments and Payment Systems* defines credit cards as a type of payment cards. The law divides bank payment cards into debit cards and credit cards; while a credit card gives its holder access to cash up to a ceiling agreed on in advance between card holder and card issuer, a debit card gives its holder access to cash up to the level of the balance on the underlying bank account or up to a certain limit agreed on between card holder and card issuer (Article 27 of the *Law on Cash Remittances, Electronic Payment Instruments and Payment Systems*).

[29] No obligation to declare exists for the following levels: gold and platinum in an unprocessed or semi-processed form and coins, up to a total weight of 37 grams, irrespective of the content of gold or platinum; jewels and accessories made of gold or platinum alloys, up to a total weight of 60 grams, irrespective of the content of gold or platinum; silver in an unprocessed or semi-processed form and coins, as well as jewels and accessories made of silver alloys, up to a total weight of 300 grams, irrespective of the content of silver; precious stones inlaid in the above-listed items.

The illegal carrying across the border of foreign exchange valuables is a crime solely where the subject-matter of the offence is of particularly large proportions; according to the case-law of the Supreme Court of Cassation that is the case where the value of the items involved exceeds 140 times the minimum monthly salary in Bulgaria.[30] As the minimum monthly salary in 2007 is 180 Levs, the offence would be criminal if it involved cash or other valuables worth over 25,200 Levs.[31]

The penalty set forth is up to six years imprisonment or fine equal to twice the value of the cash or item forming the subject-matter of the offence. Irrespective of the penalty itself, the very subject-matter of the crime, if owned by the perpetrator, is forfeited to the state; alternatively, if the subject-matter of the crime is missing or has been transferred, its cash equivalent is forfeited (Article 251(2) of the *Criminal Code*).

1.5. Illegal Exportation of Listed Cultural Monuments or Archive Records

Bulgarian criminal law makes it a crime to export a listed cultural monument or records forming part of the State Archive, if such exportation is carried out without due authorization (Article 278(3) of the *Criminal Code*). The penalty attaching to that offence is up to five years imprisonment or a fine from 1000 to 5000 Levs. The subject-matter of the offence, if available, is forfeited to the state.

The crime consists in exporting the above-mentioned objects outside the territory of Bulgaria without the authorization needed for that purpose. Depending on its subject-matter, the offence may take one of two forms:

- Exporting a **listed cultural monument**. The legal framework of the activities and operations involving listed cultural monuments is set out by the *Law on Listed Cultural Monuments and Museums*. The latter defines a "listed cultural monument" as any immovable or movable authentic material proof of human presence and activities and of natural processes which has scientific and/or cultural value and is of general importance to the community (Article 3 of the *Law on Listed Cultural Monuments and Museums*). The law prohibits the exportation of listed cultural monuments representing national treasures. The procedure for exporting other listed cultural monuments is set forth in the *Ordinance on the exportation and temporary exportation of movable listed cultural monuments* issued by the Council of Ministers on a proposal from the Minister of Culture and the Minister of Finance. The ordinance provides for an authorization scheme, the relevant authorizations being granted by the Director of the National Centre for Museums, Galleries and Fine Arts.

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[30] See Interpretative Decision No. 1 of 30.10.1998 pronounced in criminal case No. 1/98 by the General Assembly of the Criminal College, Supreme Court.

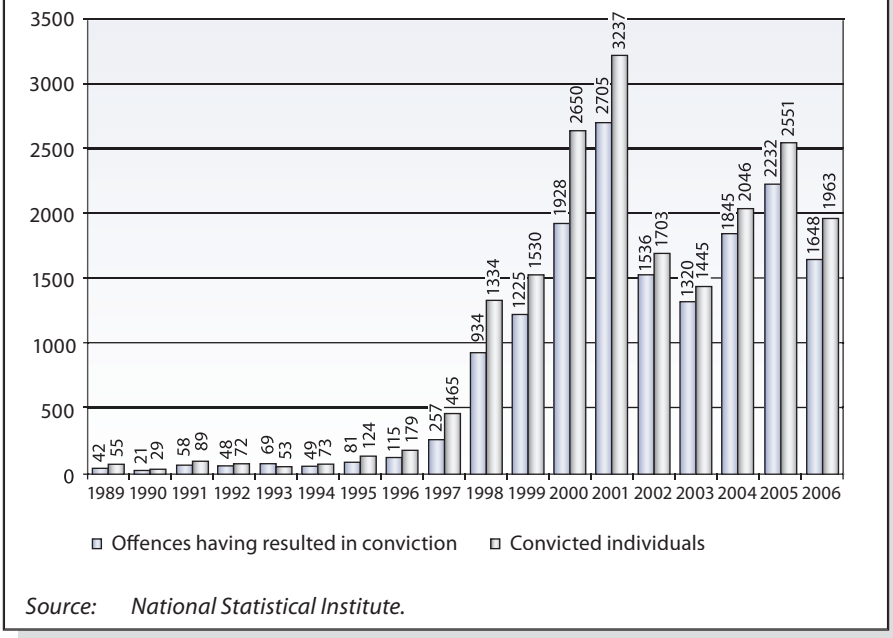
[31] In other words, three separate arrangements exist vis-à-vis the carrying across the border of cash: where the cash is worth less than 10,000 euros (approximately 19,600 Levs), no declaration is required; where the cash is worth between 19,600 Levs and 25,200 Levs, it must be declared with the breach of that obligation carrying administrative penalties; finally, where the cash exceeds 25,200 Levs in value, it must be declared and failure to do so is a criminal offence.

- Exporting **archive records** that form part of the State Archive. The legal regime of public records is set out in the *Law on the State Archive*. The State Archive comprises of valuable overt and confidential documents generated through the operation of government institutions, academic, economic, public and other entities, irrespective of the time, place and method of their creation, which are stored by the bodies in charge of managing the State Archive or are kept track of by those bodies. The fund may also include documents of economic, academic, cultural, political, religious and other nature owned by citizens and citizens' organizations (Article 2 of the *Law on the State Archive*). The exportation of materials forming part of the State Archive outside Bulgaria requires the authorization of the General Archives Department (Article 4(3) of the *Law on the State Archive*).

1.6. Illegal Crossing of the Border and Smuggling of Persons

Illegal border crossing and the smuggling of persons, also collectively referred to as "illegal migration", are the border-related offences most frequently sanctioned along Bulgarian borders. After 1989, the number of criminal cases involving such offences has greatly increased and the number of sentenced persons in 2006 was 35 times higher than in 1989 (*Chart 2*).

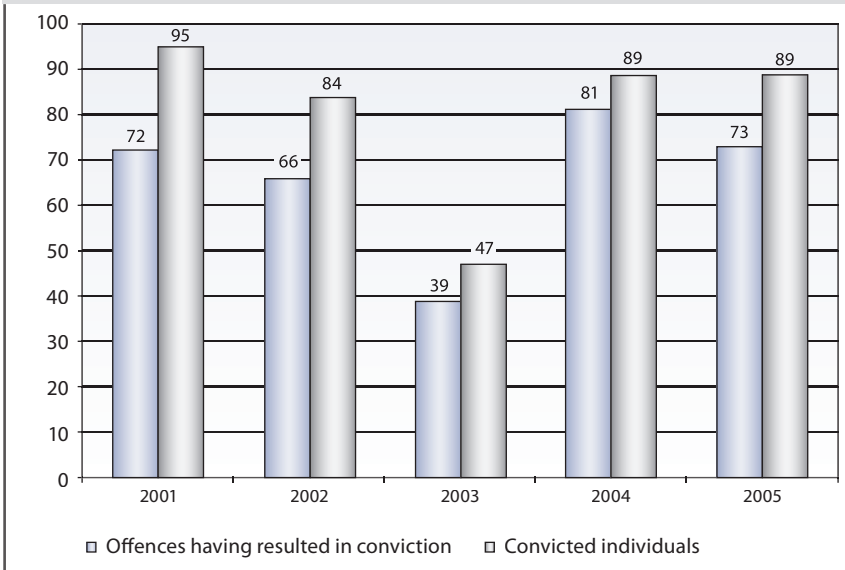
CHART 2: OFFENCES HAVING RESULTED IN CONVICTION AND INDIVIDUALS CONVICTED OF ILLEGALLY CROSSING THE BORDER (ARTICLE 279 OF THE CRIMINAL CODE) FOR THE PERIOD 1989–2006



Source: *National Statistical Institute.*

The criminal proceedings for illegally moving other people across the border (smuggling of persons) are far fewer than those for illegal crossing. This is due to the fact that often times one individual, the smuggler, moves cross-border a whole group and it is generally more difficult to detect that smuggler (*Chart 3*).

CHART 3: OFFENCES HAVING RESULTED IN CONVICTION AND INDIVIDUALS CONVICTED OF SMUGGLING OF PERSONS (ARTICLE 280 OF THE CRIMINAL CODE) FOR THE PERIOD 2001–2005



Source: National Statistical Institute.

1.6.1. Illegal crossing of the border

Illegal border crossing is criminalized in Article 279 of the *Criminal Code* and may take one of two forms:

- Entering or leaving the country across the border **without the authorization of the relevant authorities**;
- Entering or leaving the country across the border **with the authorization of the relevant authorities but at places other than those designed for that purpose**.

The *Criminal Code* reads that the penalty for illegal crossing of the border is up to five years imprisonment (one to six years in the event of a repeated offence[32]) plus a fine from 100 to 300 Levs, which may be replaced, at the discretion of the court, with confiscation of the defendant's property, in whole or in part.[33] Except in the event of a repeated offence, the *Criminal Code* does not define any other forms of that offence that would carry heavier penalties. By contrast, the preparation to commit an illegal crossing of the border is punishable as well (up to two years imprisonment or probation).

The act does not qualify as a crime and the person is not to be held liable under the criminal law where he or she has entered the country in order to avail of the **right of asylum** under the *Constitution*. Under Article 27(2) of the *Constitution*, the Republic of Bulgaria grants asylum to aliens persecuted on the grounds of their opinion or activities in defense of internationally recognized rights and freedoms. The conditions and procedure for granting asylum are laid down in the *Law on Asylum and Refugees*.

[32] A criminal offence is "repeated" if the offender commits a crime after having been convicted by a final sentence for another such crime (Article 28 of the *Criminal Code*).

[33] Until 2002 there was a possibility for the penalty of mandatory resettlement to be imposed, in conjunction with others, on any offender guilty of illegally crossing the border. In 2002 that provision was repealed but another possibility was provided instead, viz. the court could order probation. The 2004 amendments to the *Criminal Code* did away with that possibility as well. Hence, the courts can now only impose imprisonment plus a financial penalty (fine or confiscation). Probation, however, was provided for as an alternative punishment (instead of correctional labor) for attempted illegal border crossings.

1.6.2. Smuggling of persons

Smuggling of persons is criminalized in Article 280 of the *Criminal Code*[34] and also has two different forms:

- Illegally moving across the border separate individuals or groups of people **without the authorization of the relevant authorities**;
- Illegally moving across the border separate individuals or groups of people **with the authorization of the relevant authorities but at places other than those designed for that purpose**.

The penalty prescribed for smuggling of persons is one to six years imprisonment plus a fine from 500 to 1000 Levs. Heavier penalties (one to ten years imprisonment, a fine from 1000 to 3000 Levs and confiscation of the offender's property, in whole or in part) are inflicted for some forms of the offence that reveal a higher level of danger to the community:

- Smuggling a person under the age of 16;
- Smuggling a person without his or her knowledge;
- Smuggling a person who is not a Bulgarian national;
- Using a motor or other vehicle or aircraft (the vehicle is subject to forfeiture if owned by the perpetrator);
- Smuggling of persons organized by a group or organization or committed with the involvement of a public official who has abused his or her official capacity.

It is indeed striking that, unlike the illegal border crossing, the smuggling of persons does not entail heavier penalties in the event of a repeated offence. This legislative solution has to be revisited as the cross-border smuggling of persons is especially dangerous exactly when perpetrated in a systematic way (*inter alia* by individuals who have already been sentenced *in idem* in the past).

1.6.3. Problems in the legal framework of illegal migration

The legal framework of illegal border crossings and smuggling of persons gives rise to some questions. First, by contrast to the illegal crossing of the border, the preparation towards committing smuggling of persons, an offence more dangerous to the community that should be punished more severely, is not punishable for reasons unknown. Secondly, it is difficult to distinguish between the smuggling of persons and some forms of complicity (in particular aiding and abetting) in illegal border crossings. Finally, some inconsistencies transpire in the criminalization of smuggling of persons compared to trafficking in human beings. In the event of trafficking, a heavier penalty is imposed if the victim is under the age of 18, while in the event of smuggling a heavier penalty accrues, completely unreasonably, only if the person smuggled is under the age of 16.

[34] The smuggling of persons across the border was only criminalized in 1997. Before that criminal liability only attached to illegal border crossings.

In order for an offence to be completed (both in the case of illegally crossing the border and smuggling of persons) the country's border must have been crossed. This means that, for all practical purposes, the competent authorities who would detect the finalized offence after the offender left Bulgaria would be those of a neighboring country.

If the offence is detected before the actual border crossing, the perpetrator would be liable for a criminal attempt which, under Bulgarian law, carries the same penalty as the finalized offence, duly taking into account the degree of implementation of the criminal intent and the reasons for which the offence was not finalized (Article 18(2) of the *Criminal Code*).[35]

Amnesty of Illegal Border Crossings Pre-Dating 1989

In 1989, the *Law on Amnesty of 11 May 1989* was passed which granted amnesty for certain criminal offences, *inter alia* the illegal border crossings (including all attempts and preparations) committed by Bulgarian nationals before the passage of the law. Initially, the law required that the Bulgarian nationals convicted of such offences should have returned or should return voluntarily to Bulgaria. That provision was later amended and the requirement for former offenders to return to the country was abolished. The law also provides should be absolved from criminal liability, from the duty to serve the penalty, and from any and all effects of the convictions. The properties confiscated or seized and the fines collected by virtue of final sentences, though, should not be reinstated or reimbursed. What could be reinstated or returned were only the items and cash amounts seized under proceedings pending as of the effective date of the amnesty unless the acquisition or possession of such items or amounts was prohibited or they could be kept by the government on the basis of other laws.

1.6.4. Illegal migration and trafficking in human beings

Unlike trafficking in human beings, illegal border crossing and smuggling of persons are easier to prove as the prosecution office and the investigative authorities are not required to prove the purpose of the criminal act. Suffice it to prove the fact that the border was crossed and the lack of an authorization (where authorization is a *sine qua non*) or failure to cross at a point designed for that purpose (a border-crossing check-point). Therefore, when at risk of being unable to collect sufficient evidence of the criminal purpose of an act the investigative authorities tend to define it as an illegal crossing of the border or smuggling of persons even if the available data suggest that the case might be one of trafficking. This conclusion is corroborated by the criminal proceedings instituted for illegal border crossings or smuggling of persons which by far outnumber those opened for trafficking in human beings.

[35] Nonetheless, no punishment shall be imposed where the offender retracts of his or her own volition the completion of the offence (Article 18(3) of the *Criminal Code*).

1.7. Illegal Carrying across the Border of Hazardous Substances

In 1997, a round of amendments to the *Criminal Code* criminalized the illegal carrying across the border of **hazardous waste**. Five years later, the rule was refined by including a number of other substances, i.e. **toxic chemical substances, biological agents, toxins and radioactive substances**. In terms of its systematic location the crime comes under the heading of *Offences against Health and the Environment*.

Under Article 353b of the *Criminal Code*, the carrying across the border of such substances is a criminal offence only if it occurs **in violation of international treaties** to which Bulgaria is a party. Such international instruments include for example the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*[36], the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management*[37], etc. Those treaties contain the legal definitions of the substances in question as well as the procedure and requirements associated with their transboundary movement. Any cross-border movement of such substances that is at odds with the requirements of the relevant treaty qualifies as a crime and entails criminal liability.

That offence is not a serious one within the meaning of Article 93, point 7 of the *Criminal Code* and carries one to five years imprisonment plus a fine from 1000 to 3000 Levs.

[36] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, ratified by a Law passed by the 37th National Assembly on 18 January 1996, SG, issue 8 of 26.01.1996, published by the Ministry for the Environment, SG, issue 1 of 3.01.1997, in force for Bulgaria as from 16 May 1996.

[37] Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, ratified by a Law passed by the 38th National Assembly on 10 May 2000, SG, issue 42 of 23.05.2000, published by the Committee for the Use of Atomic Energy for peaceful Purposes, SG, issue 63 of 17.07.2001, in force as from 18 June 2001.

2. THE PROCEDURAL FRAMEWORK

The procedure and conditions for investigating into and prosecuting cross-border crimes are set out in the *Criminal Procedure Code* passed in October 2005, in effect as from 29 April 2006. The criminal proceedings instituted and not finalized before the entry into force of the code should be ended under the new rules but all the investigative steps undertaken previously remain valid, although they were carried out under the repealed *Criminal Procedure Code*.

2.1. Pre-trial Proceedings

Under the *Criminal Procedure Code*, the **prosecutor** and the **investigative authorities** are the pre-trial bodies in criminal cases. The current framework provides that the investigative authorities may be either **investigators** or **investigative police officers**.

While investigators are magistrates belonging to the judiciary, investigative police officers are officials of the Ministry of Interior appointed to the office of an "investigative police officer" (Article 52(2) of the *Criminal Procedure Code*). The powers of investigators and investigative police officers are strictly different. Investigators handle solely offences against the state; offences against information classified as state secret and against foreign classified information; offences against peace and humanity; offences committed by individuals endowed with immunity from criminal proceedings, members of the Council of Ministers or public officials within the Ministry of Interior; and offences committed abroad (Article 194(1) of the *Criminal Procedure Code*). All other criminal investigations are vested in investigative police officers. In practical terms, the current *Criminal Procedure Code* places almost **all cases for cross-border crimes in the hands of investigative police officers**. An investigation would be handled by an investigator only incidentally, e.g. where the offence is committed by a senior civil servant or by an officer from the Ministry of Interior or is committed abroad.

Pre-trial proceedings in the period 2001–2006

Before the current *Criminal Procedure Code* came into effect, the pre-trial proceedings were subject to different rules and, accordingly, there was a different pattern of competence-sharing between investigators and investigative police officers, affecting *inter alia* some cross-border cases.

- From 2001 to 2006 the legal rules on the investigation of smuggling of goods and narcotics (Article 242 of the *Criminal Code*) underwent several amendments. Before 1 May 2001 the cases were channeled through police proceedings and were handled by investigative police officers. On 1 May 2001, formal preliminary proceedings became mandatory in those cases and their investigation was entrusted to investigators. Things changed again in 2003 when the preliminary

proceedings for those offences were abolished and replaced by police proceedings and investigation by investigative police officers.[38]

- Up until 2003 the illegal carrying across the border of counterfeit currency, securities and payment cards (Article 244(1) of the *Criminal Code*) and of listed cultural monuments and archive records (Article 278(3) of the *Criminal Code*) were investigated by investigative police officers in the context of police proceedings. In June 2003 those investigations moved to investigators and took the form of preliminary proceedings. Once the new *Criminal Procedure Code* entered into force on 29 April 2006, the competence to investigate such offences was given back to investigative police officers.
- The entry into force of the new *Criminal Procedure Code* did away with the possibility (existing before) for smuggling and foreign exchange violations to be investigated by investigative customs officers.[39] Now the bodies solely competent to conduct such investigations are the investigative police officers at the Ministry of Interior.
- Before the entry into force of the new *Criminal Procedure Code,* the investigation of criminal offences, including cross-border offences, was carried out by investigators whenever the offence was committed abroad and/or the perpetrator was under age or a foreign national. After the new *Criminal Procedure Code* took effect, investigators can only inquire into offences committed abroad.
- The old *Criminal Procedure Code* enabled any prosecutor in a case channeled through police proceedings and investigated by an investigative police officer to transform the police proceeding into a preliminary proceeding and to transfer the investigation to an investigator. That could happen on the basis of the factual and legal complexity of the case which was determined by the prosecutor. Under the new framework the prosecutor no longer has such powers and a case must be investigated by the body specified in the code irrespective of the complexity of the offence at stake.

The existing *Criminal Procedure Code* provides that any investigation is to be managed by a prosecutor from the relevant regional or district prosecution office, depending on the court level at which the case is to be tried. **The pros-**

[38] Because of inadvertence when introducing various amendments, the rules on the investigation of and jurisdiction over smuggling of goods and narcotics and foreign exchange violations had to be changed twice over less than a month. The first amendment moved those cases away from the jurisdiction of the regional courts and entrusted them to the district courts. This, however, meant that the two categories of cases had to be automatically inquired into by investigators, as opposed to investigative police officers, because of the explicit requirement that all cases falling within the jurisdiction of district courts at first instance be routed through the preliminary investigation procedure conducted by investigators. As the law-maker had clearly not intended that effect, a new amendment was enacted virtually instantaneously whereby the jurisdiction of the regional courts over those cases was reinstated and, hence, the investigation remained within the powers of police and customs investigative officers.

[39] The possibility for investigative customs officers to investigate criminal cases for smuggling and foreign exchange violations was introduced in 1999. Initially the customs officials empowered to work as investigative officers were designated by a joint order of the Minister of Interior and the Minister of Finance. In 2003 the rule was changed to the effect that those officials had to be designated by an order issued solely by the Minister of Finance.

ecutor is the master (*dominus litis*) of the pre-trial phase of a criminal justice process and has ample powers. Prosecutors monitor perpetually the progress of investigations, study and check all materials on the file, give instructions in relation to the investigation (where in writing, such instructions are binding on the investigative authorities), participate in investigative steps or undertake such steps personally; they may remove the investigative authority on account of breaches of procedure or take the investigation away from an investigative body and give it to another investigative body, etc. (Article 196(1) of the *Criminal Procedure Code*). The prosecutor is also the authority determining the fate of a case upon completion of the investigation. Prosecutors are not bound by the final recommendation of the investigative authority (i.e. a recommendation to bring a bill of indictment to court or to suspend or terminate the proceedings) and decide themselves whether or not they should remit the case for re-investigation or suspend or terminate the case, or present a bill of indictment to court or propose plea bargaining.

The deadlines for closing the pre-trial phase are set in stone by the *Criminal Procedure Code*. The general rule is that any investigation must be completed and the case must be forwarded to the prosecutor within **two months** as from the institution of the proceedings (Article 234(1) of the *Criminal Procedure Code*). The prosecutor may also set a shorter deadline but if that proves insufficient, he or she may reinstate the duration of the pre-trial stage as provided by the law (Article 234(2) of the *Criminal Procedure Code*). Where the case is complex in law and in fact, a prosecutor from the superior prosecution office may **extend the deadline by a maximum of four months** (Article 234(3) of the *Criminal Procedure Code*). Once the extended deadline has lapsed (i.e. a total of six months as from the institution of the proceedings), the only possibility for a further extension of the time limit is to **obtain an authorization from the Prosecutor General, which should only be given by way of exception**. The investigative steps carried out after the expiration of the final deadline have no legal effect and the evidence gathered after the deadline cannot be relied on by the court when it returns its sentence (Article 324(7) of the *Criminal Procedure Code*). This virtually means that once the final deadline has lapsed, the proceedings should either be terminated or presented to the court with a bill of indictment based on the evidence collected before the deadline.

An important aspect of investigating cross-border offences is the possibility to employ **special intelligence means** which was first introduced in 1997. The new *Criminal Procedure Code* lists exhaustively the offences that may be investigated through such means. The existing rules preclude the use of special intelligence means in investigating illegal border crossing (Article 279(1) of the *Criminal Code*), illegal exportation of listed cultural monuments or archive records (Article 278(3) of the *Criminal Code*), and illegal carrying across the border of hazardous waste or other substances (Article 353b of the *Criminal Code*). Those offences are not serious intentional crimes within the meaning of Article 93, point 7 of the *Criminal Code*, so they may only be investigated through conventional evidence gathering methods. The *Criminal Procedure Code* allows the investigation of all the remaining cross-border offences through special intelligence means including through the new tools of controlled deliveries, trusted transactions, and undercover officers, provided that the relevant facts

cannot be established by any other means or their establishment involves exceptional difficulties.

Special Intelligence Means According to the New Criminal Procedure Code

The new *Criminal Procedure Code* added to the list of special intelligence means some new methods of evidence gathering designed to facilitate the detection of and investigation into certain offences, mostly those committed by organized crime. Those techniques are covered in detail by the *Law on Special Intelligence Means* and include controlled deliveries, trusted transactions, and investigation through an undercover officer.

- "Under-cover officer" is defined as an officer of the competent services authorized to make or keep contact with a controlled individual with a view to obtaining or uncovering information about serious intentional crimes and the organization of criminal activity.
- "Controlled delivery" is defined as the import, export, carrying or transit transportation by the controlled individual through the territory of the country of an object of a criminal offence, with a view of detecting those involved in a trans-border crime.
- "Trusted transaction" is defined as the conclusion by an undercover officer of an apparent sale or another type of transaction involving an item with a view of gaining the trust of the other party involved in it.

Source: Law on Special Intelligence Means.

The procedure for employing special intelligence means is laid down in detail in the *Criminal Procedure Code*. The authorization is issued in advance by the chair of the respective district court (or by a vice-chair authorized by the chair) at the request of the prosecutor in charge of the case. By way of derogation, an authorization might also be issued by the chair of the respective court of appeal or by a vice-chair of that court authorized by the chair. Special intelligence means may generally not be used for longer than two months but the initial two-month period may be extended by the court through a new authorization for four additional months at most.

As a matter of practice, employing special intelligence means in the investigation of cross-border offences is only relevant where the criminal activity under investigation is organized or is in progress for a longer period of time, as is the case with trafficking in human beings and narcotics, goods smuggling, etc.

Given that cross-border crimes are often committed by foreign nationals, the pre-trial proceedings in such cases must also satisfy some **special requirements for investigations against aliens**. If a foreign national is arrested in the course of an investigation, the competent authority must immediately notify the Ministry of Foreign Affairs (Article 17(4) of the *Criminal Procedure Code*). Any documents relevant to the investigation and drawn up in a foreign language must be accompanied by a duly authenticated translation into Bulgarian or

a translator must be appointed (Article 134 of the *Criminal Procedure Code*). A translator is involved whenever an individual participating in the proceedings does not master Bulgarian and uses his or her mother tongue or another language (Article 21(1) of the *Criminal Procedure Code*).[40]

2.2. The Trial

The trial phase of the proceedings is triggered by the bill of indictment drawn up by the prosecutor (Article 247(1), point 1 of the *Criminal Procedure Code*).

Based on the general principle that criminal cases fall within the jurisdiction of the **court in whose judicial district the offence was committed** (Article 36(1) of the *Criminal Procedure Code*), cross-border offences are tried by the courts in border areas.[41] When an offence is committed by a Bulgarian national abroad (e.g. smuggling detected by the competent authorities of a neighboring country), the criminal case would be heard by the court in the area in Bulgaria where the defendant has his or her residence or, if he or she has no residence, by the court in whose judicial district the pre-trial proceedings are finalized (Article 37(1) of the *Criminal Procedure Code*). If the offence is committed by an alien abroad, the competent Bulgarian courts would be those in Sofia (Article 37(2) of the *Criminal Procedure Code*).[42]

Depending on the crime, the criminal case for it may be heard by a regional or district court at first instance. Under the current rules the following typical cross-border offences fall within the jurisdiction of **district courts**: smuggling of goods and narcotics (Article 242 of the *Criminal Code*); carrying across the border counterfeit currency, securities and payment cards (Article 244(1) of the *Criminal Code*); and illegal exportation of a listed cultural monument or a record forming part of the State Archive (Article 278(3) of the *Criminal Code*). The district courts also handle at first instance the bribery and trade in influence cases which are also in focus in this study due to the link between cross-border criminality and corruption. **Regional courts** hear at first instance the cases for trafficking in human beings (Articles 159a–159c of the *Criminal Code*); illegal border crossing and smuggling of persons (Articles 279–280 of the *Criminal Code*); illegal carrying across the border of hazardous waste or other substances (Article 353b of the *Criminal Code*); and breaches of the import and export arrangements applicable to currency valuables (Article 251 of the *Criminal Code*).

The current rules on jurisdiction took effect on 29 April 2006. Before that jurisdiction was governed by the former *Criminal Procedure Code* (now repealed).

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[40] The costs for translation at the pre-trial stage are borne by the respective pre-trial authority (Article 189(2) of the *Criminal Procedure Code*). However, if the proceedings finally result in a conviction, such costs, as well as any other costs and expenses, are to be borne by the convicted individual.

[41] Where perpetration starts in the judicial district of one court and continues in the district of another court, jurisdiction goes to the court in whose district the offence is finalized (Article 36(2) of the *Criminal Procedure Code*). Where the crime scene cannot be determined, the court competent to try the case is the one in whose district the pre-trial stage ended (Article 36(3) of the *Criminal Procedure Code*).

[42] According to Article 5 of the *Criminal Code*, the Bulgarian criminal law applies to crimes committed by foreigners abroad if the criminal act affects the interests of the Republic of Bulgaria or those of a Bulgarian national.

Between 2001 and 2006, jurisdiction was changed on several occasions which affected *inter alia* the handling of cross-border offences (*Table 3*).

TABLE 3: INVESTIGATIVE AUTHORITIES FOR AND JURISDICTION OVER CASES FOR CROSS-BORDER OFFENCES FOR THE PERIOD 2001–2006

Period	01.01.2000 – 01.05.2001	01.05.2001 – 03.06.2003	03.06.2003 – 24.06.2003	24.06.2003 – 29.04.2006	Post – 29.4.2006
Trafficking in human beings (Articles 159a–159c of the Criminal Code) [43]	Investigative police officers at the Ministry of Interior Regional courts				
Goods smuggling (Art. 242 of the Criminal Code)	Investigative police officers at the Ministry of Interior and the Customs Regional courts	Investigators Regional courts	Investigators / Investigative police officers at the Ministry of Interior and the Customs District courts	Investigative police officers at the Ministry of Interior and the Customs Regional courts	Investigative police officers at the Ministry of Interior District courts
Physical movements of counterfeit currency, securities and payment cards (Art. 244(1) of the Criminal Code)	Investigative police officers at the Ministry of Interior Regional courts		Investigators District courts		Investigative police officers at the Ministry of Interior District courts
Foreign exchange violations (Art. 251 of the Criminal Code)	Investigative police officers at the Ministry of Interior and the Customs Regional courts		Investigators / Investigative police officers at the Ministry of Interior and the Customs District courts	Investigative police officers at the Ministry of Interior and the Customs Regional courts	Investigative police officers at the Ministry of Interior Regional courts
Physical movement of listed monuments or records (Art. 278(3) of the Criminal Code)	Investigative police officers at the Ministry of Interior Regional courts		Investigators District courts		Investigative police officers at the Ministry of Interior District courts
Illegal border crossings and smuggling of persons (Articles 279– 280 of the Criminal Code)	Investigative police officers at the Ministry of Interior Regional courts				
Physical movements of hazardous waste or other substances (Art. 353b of the Criminal Code)	Investigative police officers at the Ministry of Interior Regional courts				

Source: *Center for the Study of Democracy.*

- Before 2003, all cross-border crimes were handled by the regional courts at first instance. The amendments to the *Criminal Procedure Code* enacted in June 2003 placed the cases for illegal carrying across the border of counterfeit currency, securities and payment cards (Article 244(1) of the *Criminal Code*) and of listed cultural monuments or archive records (Article 278(3) of the *Criminal Code*) within the jurisdiction of district courts. The same

[43] Trafficking in human beings was criminalized in 2002.

change extended to smuggling cases (Article 242 of the *Criminal Code*) and to foreign exchange violations (Article 251 of the *Criminal Code*). However, less than a month after the amendments were enacted the cases for the latter two offences moved back to the regional courts.
- The entry into force of the new *Criminal Procedure Code* in April 2006 included the smuggling of goods and narcotics, which had been heard by regional courts at first instance, in the remit of the district courts.

A court would handle the above cases in different chambers, depending on the seriousness of the offence in question.[44]

- If the offence carries less than five years imprisonment or a lighter penalty, the case is tried by a **single judge** (Article 28(1), point 1 of the *Criminal Procedure Code*). The cross-border crimes pertaining to that category are the illegal carrying across the border of listed cultural monuments or archive records (Article 278(3) of the *Criminal Code*); illegal crossing of the border, unless there is a repeated offence (Article 279(1) of the *Criminal Code*); illegal carrying across the border of hazardous waste or other substances (Article 353b of the *Criminal Code*); preparation towards smuggling of narcotics (Article 242(9) of the *Criminal Code*); and preparation towards illegally crossing the border (Article 279(4) of the *Criminal Code*).
- If the offence carries between five and fifteen years imprisonment, the case is tried by a chamber composed of **a judge and two assessors** (Article 28(1), point 2 of the *Criminal Procedure Code*). The cross-border offences under this heading are all remaining offences which are not to be tried by a sole judge or by a grand chamber.
- If the offence carries at least fifteen years imprisonment or a heavier penalty, the case must be tried by a grand chamber consisting of **two judges and three assessors** (Article 28(1), point 3 of the *Criminal Code*). In terms of border-related cases, grand chambers handle only the smuggling of narcotic substances, their analogues, precursors or facilities or materials for the production of narcotic substances, where the subject-matter of the offence if of particularly large proportions and the case is particularly serious (Article 242(4) of the *Criminal Code*).
- Where an appeal is lodged against the sentence in the case, the court of intermediary appeal and the court of final appeal sit in chambers of three judges (Article 28(2) and (3) of the *Criminal Procedure Code*).

[44] The criteria for appointing the members of the court chamber have not changed over the past 15 years and were taken over by the new *Criminal Procedure Code*.

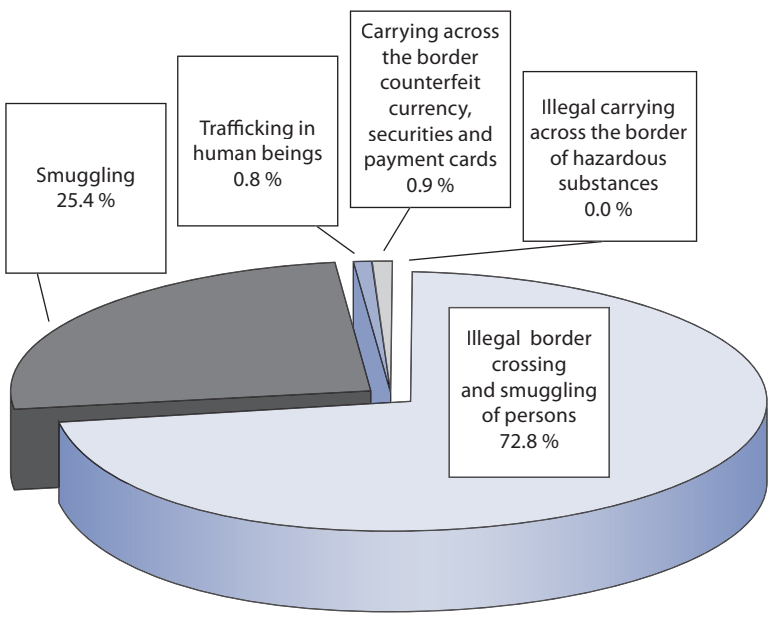
CHAPTER TWO. DISTINCT FEATURES OF CROSS-BORDER CRIMINALITY ALONG BULGARIA'S BORDERS WITH TURKEY AND MACEDONIA, AND ALONG THE SOUTHERN BLACK SEA BORDER

1. GENERAL REMARKS

The analysis of cross-border criminality in the areas that straddle the borders with Turkey, Macedonia and the southern Black Sea region reveals a number of common features and problems. And yet, it is equally possible to single out some specificities that only affect this or that individual area.

A common characteristic of all border areas is that the **prevailing type of crimes** detected, investigated and prosecuted by the competent authorities are **illegal border crossings and smuggling of persons**, on the one hand, **and smuggling of goods and narcotics**, on the other hand. The criminal proceedings for those offences account for over 98 per cent of all proceedings for cross-border crimes instituted by the regional courts in Svilengrad, Malko Tarnovo, Kyustendil, Burgas, Nesebar, Pomorie, and Tsarevo (*Chart 4*). The other types of cross-border crimes (trafficking in human beings, illegal carrying across the border of counterfeit currency, securities and payment cards, exportation of listed cultural monuments and archive records, illegal carrying across the border of hazardous substances, etc.) are of relatively minor importance to the above areas, and in some of those areas no such offences have been detected at all over the past six years. Out of all cross-border crimes analyzed so far, the illegal carrying across the border of hazardous waste and substances is the only offence for which no criminal proceedings have been instituted in any of the areas along the borders with Turkey or Macedonia or the southern Black Sea border.

CHART 4: RELATIVE SHARE OF TRIALS FOR CROSS-BORDER CRIMES INSTITUTED ALONG THE BORDERS WITH TURKEY AND MACEDONIA AND ALONG THE SOUTHERN BLACK SEA BORDER, BY TYPE OF OFFENCE, FOR THE PERIOD 2001–2006



Note: *Data for 2006 do not cover the entire calendar year.*
Source: *The regional courts in Svilengrad, Malko Tarnovo, Kyustendil, Burgas, Nesebar, Pomorie, and Tsarevo.*

In all areas specified, as well as country-wide, the cross-border offences most frequently detected and prosecuted are **illegal crossing of the border and smuggling of persons**. During the last six years those offences have amounted to more than 72 per cent of all cross-border crimes punished by the competent authorities in the areas along Bulgaria's borders with Turkey and Macedonia, and along the southern Black Sea border. A comparison with the total number of such offences in the country, however, shows that between 2001 and 2005 the persons sentenced for illegal migration along those borders were 10.7 per cent of all persons sentenced for that offence in Bulgaria. The other cases of illegal entry into or exit from the country were detected at other frontiers, *inter alia* those with Greece and Romania; the latter became on 1 January 2007 internal EU borders, so the controls there will be looser in future.

The second most frequent crimes, **smuggling of goods and narcotics**, account for nearly a quarter of the total number of criminal cases for cross-border offences in the areas under examination. However, if we compare those data with nation-wide statistics, the prevalent number of persons sentenced for smuggling between 2001 and 2005 actually committed the offences along the borders with Turkey (58.7 per cent) and Macedonia (10.3 per cent).

A notable peculiarity of cross-border offences in the areas in question is that **the defendants and, hence, those convicted, are often not Bulgarian nationals**. This is particularly true of the areas close to the border with Turkey where more than half of the defendants over the past six years have been foreign nationals. As regards the other borders, the number of aliens is smaller than that of Bulgarian nationals but still accounts for a substantial percentage of the total number of defendants and convicted persons.

2. CROSS-BORDER CRIMINALITY ALONG THE BORDER WITH TURKEY

Elhovo Regional Border Section

The protected area consists of the territories of the following municipalities: Tsarevo, Malko Tarnovo, Sredets, Bolyarovo, Elhovo, Topolovgrad, and Svilengrad. In terms of surface and lay, the terrain is woody and moderately rough.

The climate is mild, with no sharp temperature fluctuations, except for the territory of Malko Tarnovo border police station where temperatures may change abruptly and winters are lengthier. The Rezovska, Tundzha, and Maritsa rivers are of particular relevance to the protection of the state border there.

The road network in the wider area is in good state of repair. The roads connecting the border police departments with the regional border section belong to the Category I National Road Network and are easy to pass throughout the year. They are maintained accordingly by the local road agencies in Malko Tarnovo, Sredets, Elhovo, and Svilengrad.

The population of the territory is concentrated in the towns of Malko Tarnovo, Sredets, Bolyarovo, Elhovo, Topolovgrad, Lyubimets, and Svilengrad.

The most important roads are E80 (Haskovo-Svilnegrad); E87 (Burgas-Malko Tarnovo); and the road Elhovo-Lesovo because of the three border check-points with Turkey, viz. Malko Tarnovo, Kapitan Andreevo, and Lessovo.

Source: General Border Police Directorate, Ministry of Interior (http://www.nsgp.mvr.bg)..

The most typical violations found along the border with Turkey are illegal crossing of the border and smuggling. The offences are concentrated mainly near Svilengrad which hosts Kapitan Andreevo, one of the largest border check-points in Europe. In the case law of Svilengrad Regional Court illegal migration and smuggling cases amount to more than half of all the criminal proceedings instituted in the past six years. In the region of Malko Tarnovo, which has the second largest border crossing point on the Bulgarian-Turkish border, the offences are considerably fewer. The majority of detected illegal migration cases end by inflicting criminal sanctions on the offenders and the offence is normally classified as an illegal crossing or smuggling of persons. Trafficking in human beings is in fact rarer. The majority of smuggling cases are channeled through administrative procedures and no criminal proceedings are instituted. The remaining typical cross-border crimes, such as carrying across the border counterfeit currency, securities, payment cards, listed cultural monuments,

hazardous waste, etc., occur less frequently and such criminal proceedings are very few indeed.

2.1. Illegal Migration

The cross-border offence most frequently prosecuted along the border with Turkey is illegal migration. Due to its geographic location, the Bulgarian-Turkish border is amongst the riskiest in terms of illegal crossings, especially inward ones. Only between 1 January 2004 and 31 August 2006 the police officers from the Regional Police Section in Elhovo stopped at the border over 10,000 foreign nationals for established border control violations. During the same period, nearly 2,000 other people were detained for attempted illegal border crossings; one-fourth of them had tried to enter Bulgaria across the so-called "green border", i.e. outside the border crossing points (*Table 4*).

TABLE 4: BORDER CONTROL VIOLATIONS AND INDIVIDUALS ARRESTED IN THE TERRITORY OF ELHOVO REGIONAL BORDER SECTION FOR THE PERIOD JANUARY 2001–AUGUST 2006

Year	2001	2002	2003	2004	2005	2006	Total
Foreign nationals refused entry into Bulgaria due to border control violations	n/a	n/a	n/a	4,394	3,666	2,060	10,120
Attempted illegal border crossings outside border check-points	n/a	n/a	n/a	75	80	30	185
Persons arrested during attempted illegal border crossings outside border check-points	n/a	n/a	n/a	193	186	47	426
Persons arrested upon attempted illegal crossings at border check-points	n/a	n/a	n/a	551	501	379	1,431
Cases of illegal migration (Articles 279–280 of the Criminal Code) and document-related offences (Articles 308, 316 and 318 of the Criminal Code) forwarded to the prosecution office with recommendation to submit case to court	191	59	80	105	127	89	651

Note: *The Ministry of Interior has no detailed information on the border control violations in the area of Elhovo Regional Border Section as regards 2001, 2002 and 2003.*
Source: *Ministry of Interior.*

The data of the Regional Prosecution Office in Svilengrad, which has in its district the Kapitan Andreevo border check-point, shows that from January 2001 to September 2006 a total of 775 pre-trial proceedings were instituted and 606 bills of indictment were presented to court against 953 defendants. The information from Svilengrad Regional Court for the same period is that 620 trials were opened and a total of 958 individuals were convicted, of which 543 were foreign nationals and stateless persons (*Table 5*). Illegal border crossing cases prevailed while smuggling of persons cases were significantly fewer and

the aggravated definition relating to organized crime (smuggling of people organized by a group or organization, Article 280(2), point 5 of the *Criminal Code*) has not been applied in practice.

Table 5: Criminal proceedings and individuals convicted of illegal crossing of the border and smuggling of persons (Articles 279–280 of the Criminal Code) in Svilengrad judicial district for the period January 2001- September 2006

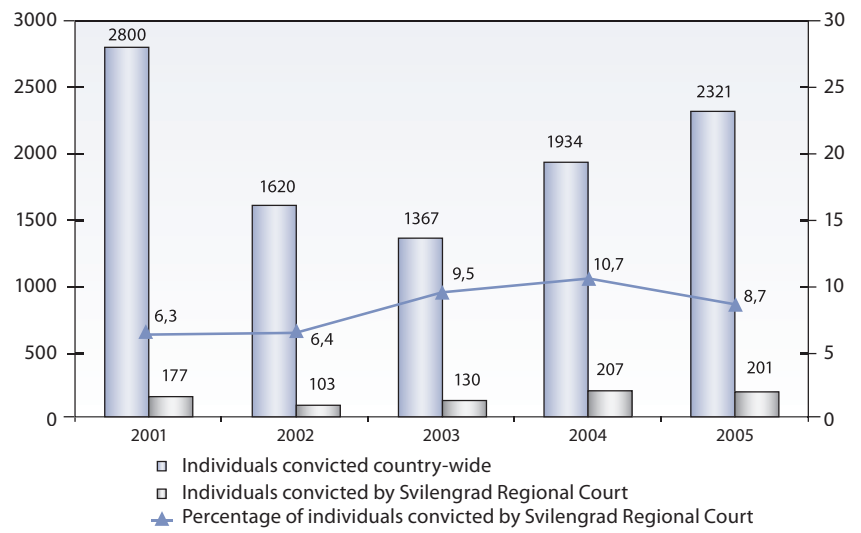
Year	2001	2002	2003	2004	2005	2006	Total
Instituted pre-trial proceedings	215	76	110	140	149	85	775
Suspended / terminated pre-trial proceedings	58	26	13	28	18	8	151
Bills of indictment presented to court	147	56	103	117	110	73	606
Defendants	170	80	139	194	196	174	953
Foreign defendants	24	19	102	161	168	147	621
Instituted trials	150	59	100	116	123	72	620
Suspended / terminated trials	4/39	1/16	0/82	0/74	0/67	0/62	5/340
Trials resolved by conviction / acquittal	145/1	75/1	105/0	120/5	126/1	72/0	643/8
Convicted / acquitted individuals	177/1	103/1	130/0	207/5	201/3	140/0	958/10
Convicted / acquitted foreign nationals and stateless individuals	12/0	20/0	101/0	153/0	178/0	79/0	543/0
Persons with administrative penalties under Article 78a of the Criminal Code	0	0	0	0	0	0	0
Agreements made (plea bargaining)	34	15	80	72	64	55	320
Sentences appealed against	11	10	1	8	6	2	38

Source: Svilengrad Regional Prosecution Office; Svilengrad Regional Court.

Illegal migration cases are amongst those most frequently heard by the Regional Court in Svilengrad. In 2005, illegal border crossing and smuggling of persons proceedings stood at 44.1 per cent of all criminal cases referred to that court. The large number of such cases also contributes to the heavier workload of Svilengrad Regional Court compared to that of other similarly-sized regional courts.

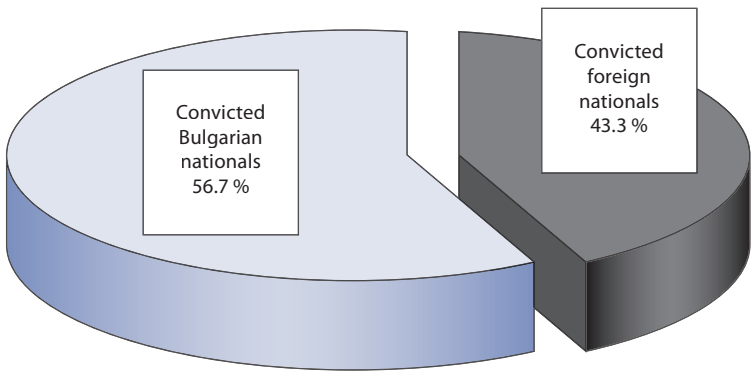
While these are the most frequently prosecuted cross-border offences in the region of Svilengrad, illegal border crossings and smuggling of persons are not exclusively concentrated in that region. The persons convicted of that offence by Svilengrad Regional Court between 2001 and 2005 were 8.1 per cent of the total number of individuals sentenced for the same offence country-wide (*Chart 5*). Many instances of illegal migration occur at other border check-points. This is also true for the borders with Romania and Greece which became internal borders of the European Union on 1 January 2007 and will be stripped of their tight border controls.

CHART 5: PERCENTAGE OF INDIVIDUALS CONVICTED OF ILLEGAL CROSSING OF THE BORDER AND SMUGGLING OF PERSONS (ARTICLES 279–280 OF THE CRIMINAL CODE) BY SVILENGRAD REGIONAL COURT FOR THE PERIOD 2001–2005



Source: *National Statistical Institute, Svilengrad Regional Court.*

CHART 6: INDIVIDUALS CONVICTED OF ILLEGAL CROSSING OF THE BORDER AND SMUGGLING OF PERSONS (ARTICLES 279–280 OF THE CRIMINAL CODE) IN SVILENGRAD JUDICIAL DISTRICT FOR THE PERIOD JANUARY 2001-SEPTEMBER 2006



Source: *Svilengrad Regional Court.*

The border with Turkey is risky in terms of **illegal migration into or across Bulgaria**. Because of its special geographic location that border is amongst those most often used for illegal crossings by emigrants from the Middle East, Central Asia and Africa on their way to Western and Central Europe. As to the illegal emigration of Bulgarian nationals to other countries, it is equally often encountered at the other Bulgarian borders, as many emigrants aim at other European countries.

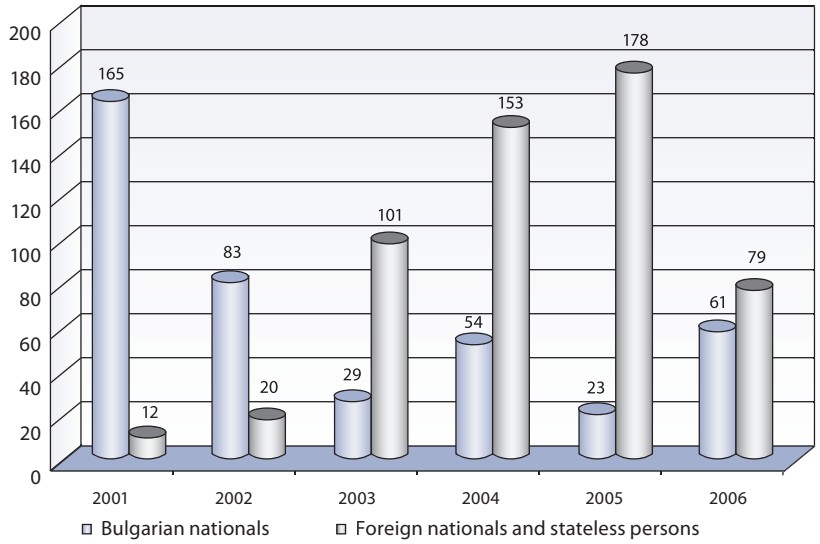
These circumstances explain why the **foreign nationals and stateless persons sentenced for illegal crossing of the border or smuggling of persons outnumber the Bulgarian nationals** convicted of such offences during the past few years in the region of Svilengrad (*Chart 6*).

Moreover, the increase in the number of aliens investigated for and convicted of illegal migration has been more than fifteen-fold in recent years (*Chart 7*). While the convicted aliens were only 12 in 2001 (6.7 per cent of all defendants convicted of that offence by Svilengrad Regional Court), in 2005 they were 178 (88.6 per cent of the total number of those convicted).

When analyzing the illegal migration criminal cases in the region of Svilengrad, another factor should be mentioned as well: in spite of the recurring border control violations quite a few criminal proceedings (primarily against individuals of Kurdish and Iraqi descent[45]) are discontinued as the offenders avail of their right to seek asylum in Bulgaria. Bulgarian legislation (Article 279(5) of the *Criminal Code*) precludes the punishment of individuals having entered the country in order to avail of their right of asylum according to the *Constitution*.

[45] Thus, in 2005 there were two cases for illegal migration in the area of Svilengrad involving 25 individuals (nationals of Iraq) and three smugglers (two Iraqis having refugee status in Bulgaria, who are now in Sofia Prison, and one Bulgarian national who is under house arrest).

CHART 7: INDIVIDUALS CONVICTED OF ILLEGAL CROSSING OF THE BORDER AND SMUGGLING OF PERSONS (ARTICLES 279–280 OF THE CRIMINAL CODE) BY SVILENGRAD REGIONAL COURT FOR THE PERIOD JANUARY 2001-SEPTEMBER 2006



Sources: *Svilengrad Regional Court.*

A striking fact is that **the convictions by far outnumber the acquittals**. Throughout the period in question, 99 per cent of the sentences returned were actually convictions and in the cases of foreign defendants the conviction rate was even 100 per cent. No foreign national or stateless person has been acquitted in a criminal proceeding for an illegal crossing of the border.

The majority of the cases were **resolved at first instance** without further appeals before the higher courts. Very few first-instance sentences (just 5.8 per cent) were challenged. It is disturbing, though, that more than a quarter of the first-instance sentences appealed against were reversed (in whole or in part) or modified by the higher court.

The area around the second largest border check-point along the border with Turkey, near Malko Tarnovo, has appreciably fewer illegal border crossing and smuggling of persons cases. This is partly due to the less advantageous natural conditions (impassable relief, harsher winters, poorer road infrastructure, etc.) in the region of Malko Tarnovo compared to those around Svilengrad. On the other hand, the border here is not sufficiently protected, yet it is not so professionally guarded, a situation that has its latent risks for the future. In 1997, the military defense of the borders was abolished[46] and there are no longer soldiers but only border police officials at the border guard posts. The border police do not guard the border permanently but only go to the posts once or twice a week.

The data of the Regional Prosecution Office in Malko Tarnovo show that 41 pretrial proceedings between 2001 and 2006 were launched for border-related offences (36 for illegal border crossings and 5 for smuggling of persons), and all of them ended up in convictions. The information provided by the Regional Court in Malko Tarnovo shows that during that period 57 trials were instituted against 69 defendants of which 10 were foreign nationals. The prevailing number of cases concerned border crossings by Bulgarian nationals or persons of

[46] Article 62(1) of the *Law on the Defense and Armed Forces of the Republic of Bulgaria* provides that the state border shall be guarded and border controls shall be carried out by the Border Police. Before the amendment of 1997 those tasks had been entrusted to the Border Troops.

Turkish descent. After Turkey abolished the visa requirements,[47] another trend has surfaced as well: attempts by individuals from Afghanistan and other Arab countries to enter Bulgaria. The instances of green border crossings are becoming fewer and smuggling of persons, too, is turning into a rarer occurrence. There have been, however, crossings by groups of people, primarily aliens (Afghanis, Iranians, etc.) who cross Bulgaria in transit on the way to Western Europe. There have also been crossings by pregnant women moving primarily into Greece who have delivered their babies there and sold them.

2.2. Smuggling of Goods and Narcotics

Following illegal migration, the smuggling of goods and narcotics is the second most frequent cross-border crime in the region adjacent the border with Turkey. The border check-point of Kapitan Andreevo is used to route the major flows of illegal drugs from Turkey to Western Europe, as well as of illegal imports from Turkey and the Middle East into Bulgaria.[48]

The smuggling of narcotics grows in parallel to the growing production of synthetic drugs, and the investigation is becoming ever more difficult. The change in government in Afghanistan has resulted *inter alia* in a nearly sevenfold increase in heroin production, further to the expansion of poppy fields. The increased supply pulls prices down, including in Western Europe. While heroin mainly flows from Asia into Europe, synthetic drugs and amphetamines move in the opposite direction.

Narcotics are also smuggled across the green border, i.e. the territory between the geographic border (Kapitan Andreevo) and the border control (Svilengrad). The lack of a border railway station frustrates control as the train passengers are not checked at the border itself. In the event of smuggling, the 15-kilometer "green border" with Turkey is often used as it is not guarded and the goods or narcotics, as the case may be, could be thrown out while the train is in motion.

Between January 2001 and September 2006 the region of Svilengrad, which hosts Kapitan Andreevo border check-point, saw a total of 308 pre-trial proceedings opened for smuggling; 154 bills of indictment were presented to the court against 178 defendants; a total of 169 convictions were returned and 183 persons were convicted (*Table 6*).

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[47] *Visa Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Turkey* (approved by Decision of the Council of Ministers No. 111 of 1993. In force as from 16 April 1993 (on an interim basis) and as from 17 May 1993 (indefinitely). Published by the Ministry for Foreign Affairs, SG, issue 47 of 4.06.1993, am., issue 106 of 3.12.2004, in force for Bulgaria as from 15 September 2004.

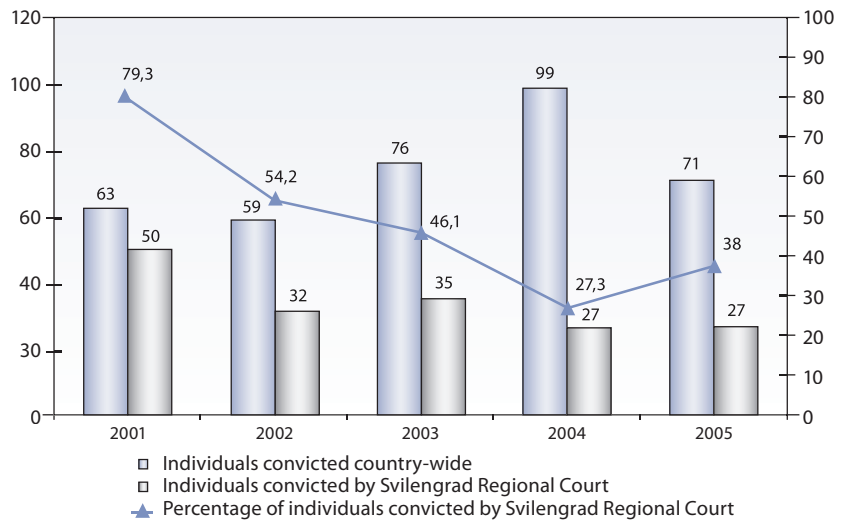
[48] For more details on drugs trafficking and goods smuggling across Kapitan Andreevo border check-point, see *Transportation, Smuggling and Organized Crime*, Center for the Study of Democracy, Sofia, 2004, pp. 95-101.

TABLE 6: CRIMINAL PROCEEDINGS FOR AND INDIVIDUALS CONVICTED OF SMUGGLING OF GOODS AND NARCOTICS (ARTICLES 242–242A OF THE CRIMINAL CODE) IN SVILENGRAD JUDICIAL DISTRICT FOR THE PERIOD JANUARY 2001-SEPTEMBER 2006

Year	2001	2002	2003	2004	2005	2006	Total
Instituted pre-trial proceedings	78	48	50	39	63	30	308
Suspended / terminated pre-trial proceedings	38	19	10	11	28	3	109
Bills of indictment presented to court	32	25	27	29	33	8	154
Defendants (foreign defendants)	35 (22)	29 (19)	36 (19)	31 (20)	37 (20)	10 (8)	178 (108)
Instituted trials	63	31	30	35	30	11	200
Suspended / terminated trials	1/27	0/9	0/17	1/15	0/14	0/5	2/87
Trials resolved by conviction / acquittal	51/2	31/0	27/2	23/2	26/5	11/1	169/12
Convicted / acquitted individuals	50/3	32/0	35/3	27/2	27/5	12/1	183/14
Convicted / acquitted foreign nationals and stateless individuals	40/3	26/0	20/0	10/1	17/2	8/0	121/6
Individuals with administrative penalties under Article 78a of the Criminal Code	0	0	0	0	0	0	0
Agreements made (plea bargaining)	13	4	14	11	12	3	57
Sentences appealed against	24	8	9	15	11	2	69

Source: Svilengrad Regional Prosecution Office, Svilengrad Regional Court

CHART 8: PERCENTAGE OF INDIVIDUALS CONVICTED OF SMUGGLING BY SVILENGRAD REGIONAL COURT FOR THE PERIOD 2001–2005



Source: National Statistical Institute; Svilengrad Regional Court.

Many of the criminal cases for smuggling in Bulgaria originate in the region of Svilengrad. Between 2001 and 2005 nearly half (46.5 per cent) of the persons convicted of smuggling in this country were convicted exactly by the court in Svilengrad. Recently, however, there has been an upward trend in criminal cases for goods smuggling at other Bulgarian borders as well, so the percentage of proceedings in the region of Svilengrad has gradually come down. While in 2001 79.4 per cent of all defendants convicted of smuggling were found guilty by the Regional Court in Svilengrad, in 2005 the number dropped to 38 per cent (*Chart 8*).

Cases of smuggling at the Regional Court in Svilengrad are noticeably fewer than those for illegal border crossing or smuggling of persons and accounted for only 10.8 per cent of all criminal cases instituted by that court in 2005. The limited number of criminal proceedings for smuggling is completely out of proportion to the instances of goods smuggling detected in fact. Between January 2001 and August 2006, over ten thousand administrative liability files were opened by the Territorial Customs Department in Svilengrad and nearly nine thousand penalty warrants were issued for established customs control violations (*Table 7*). However, only 365 files were forwarded to the prosecution office or to investigative police officers at the Ministry of Interior based on available data for customs crimes, and of those, only six related to smuggling. In the end of the day, despite the huge number of customs violations found, only 308 pre-trial proceedings for smuggling were instituted and only 200 criminal cases made it to court.

TABLE 7: CUSTOMS AND FOREIGN EXCHANGE VIOLATIONS IN THE REGION OF SVILENGRAD TERRITORIAL CUSTOMS DEPARTMENT FOR THE PERIOD JANUARY 2001-AUGUST 2006

Year	2001	2002	2003	2004	2005	2006	Total
Administrative liability files opened	786	1,084	1,436	1,376	2,733	2,787	10,202
• For established customs violations	764	1,064	1,424	1,358	2,714	2,777	10,101
• For established foreign exchange violations	22	20	12	18	19	10	101
Penalty warrants issued	622	955	1,340	1,184	2,189	2,483	8,773
• For established customs violations	614	953	1,333	1,177	2,185	2,478	8,740
• For established foreign exchange violations	8	2	7	7	4	5	33
Files forwarded to the prosecution office or to an investigative police officer on suspicion of customs crime	104	116	38	40	35	32	365
Cases forwarded to the prosecution office or other competent authority	17	22	9	15	17	7	87
• Aggravated goods smuggling	0	3	1	1	1	0	6
• Carrying across the border counterfeit currency, securities and payment cards	0	0	0	2	0	1	3
• Foreign exchange violations	17	18	8	12	15	6	76
• Carrying across the border hazardous waste, toxic chemical substances, bio agents, toxins and radioactive substances	0	0	0	0	0	0	0
• Export of listed cultural monuments	0	1	0	0	1	0	2

Source: Svilengrad Territorial Customs Department

The key reason explaining the insignificant number of cases for smuggling in the area of Svilengrad, as well as in any other border area, is the **legal framework of goods smuggling** which defines the act of smuggling as a criminal offence only in a few cases specified by the law. While the carrying across the border of narcotic substances (including analogues, precursors and materials for the production of such substances) almost inevitably qualifies as a criminal

offence if the authorization required is not there (except in petty cases), the situation with goods smuggling differs in that the transfer of items without the knowledge and authorization of customs is a crime only when at least one of the additional requirements listed in the law is satisfied. Practice has shown that **the majority of offenders receive an administrative penalty** and very few of them face criminal liability. This stems primarily from the imperfect legal framework of smuggling and from the lack of unambiguous criteria for defining an individual case as a crime or as an administrative violation.

Noticeably, there has been some growth in the smuggling of narcotics by foreign nationals in the region of Svilengrad. Still, goods smuggling continues to prevail but its dynamics cannot be analyzed one-sidedly. In the great number of cases it is punished as an administrative violation, and the number of goods smuggling-related administrative violations has been decreasing. This is particularly true of the phenomenon known as "peddlar trade" which has been reduced *inter alia* by the restrictions introduced by Turkey, such as prohibitions on the movement of motor vehicles with gas installations, naphtha trucks, the alternation of odd and even number plates on specific days, certification of tax invoices, etc.

As in the case with illegal migration, most defendants (60.7 per cent) and convicted individuals (66.1 per cent) of smuggling **were not Bulgarian nationals**. The convictions again outnumbered substantially the acquittals and accounted for 93.4 per cent of the total number of sentences returned. Compared to illegal border crossing cases, a larger number of smuggling sentences (38.1 per cent) were appealed against, and in almost one third of the cases (28.9 per cent) the higher court reversed the first-instance sentence in whole or in part.

In the region of Malko Tarnovo smuggling cases also come second in terms of criminal cases (after illegal border crossings and smuggling of persons) but are still far fewer than the criminal proceedings in Svilengrad. The reasons are the same as in the case of illegal migration and relate mainly to the disadvantageous natural and infrastructural conditions. From 2001 to 2006, the Regional Prosecution Office in Malko Tarnovo opened 46 pre-trial proceedings for smuggling; all of them were presented to court through bills of indictment and, except for one case, which was still pending at the time of writing, all trials ended in convictions. Twenty-five out of 46 defendants were foreign nationals. After the new *Criminal Procedure Code* came into effect, three instances of aggravated goods smuggling were detected which, under the new rules, fall within the jurisdiction of the District Prosecution Office and the District Court in Burgas.

The item most frequently smuggled is gold moved from Turkey into Bulgaria. Flowers are occasionally smuggled as well, especially on the days preceding some holidays. The smuggling of narcotics comes down to a few incidental instances of trafficking in heroin, although the quantities smuggled have been very large. Most recently, synthetic drugs (amphetamines) have become more popular as items to be smuggled and there have been a few cases of smuggled precursors. The bulk of narcotics smuggling near Malko Tarnovo is orga-

nized and involves mainly aliens, i.e. Turkish nationals (including some people of Bulgarian descent living in Turkey), Romanians as well as Bulgarians.

A major problem frustrating the prosecution of goods smuggling in the area adjacent to the Turkish border is the **lack of criminal proceedings and convictions against persons who act as intermediaries** in the perpetration of the crime or the violation. Such individuals, also known in the region as "guide-women", offer all-inclusive services in relation to the illegal imports from Turkey, including a problem-free crossing of the border.[49]

2.3. Trafficking in Human Beings

Trafficking cases are few and far between and do not shape the structure of criminality in the area along the Turkish border. Some instances, however, have been far from negligible, such as the trafficking of people into Turkey for the purpose of organ (kidneys) removal.

Trafficking in human beings (most frequently Kurds) takes place across the border check-points but without the required permission, and the victims are hidden in different ways. No links have been revealed between the "smugglers" and organized crime, so the offences are most often prosecuted according to the basic definitions contained in the *Criminal Code*.

According to the data of the Regional Prosecution Office in Svilengrad from January 2001 to September 2006 six pre-trial proceedings were instituted in the region of Svilengrad for **trafficking in human beings**, and two bills of indictment were presented to court against eight defendants (all of them Bulgarian nationals). During the same period, two trials were instituted at Svilengrad Regional Court, one of which resulted in a conviction, with four convicted individuals (*Table 8*).

During the same period, not a single pre-trial proceeding was instituted for trafficking in human beings in the region of Malko Tarnovo. One proceeding was transferred by the Regional Prosecution Office in Shumen and was submitted to court. As a result, a trial was instituted against three defendants two of whom plea bargained.

Cases for trafficking in human beings in the region of Malko Tarnovo account for less than 1 per cent of all criminal cases. The bulk of the crimes involve illegal border crossing and smuggling of persons. In the not-so-distant past, when the visa arrangements were still in place, many Bulgarians were trying to cross illegally into Turkey. They were often arrested by the Turkish authorities and returned to Bulgaria on the basis of statements of findings drawn up by a joint Bulgarian-Turkish commission set up under the Bulgarian-Turkish agreement on returning people and animals. Hence, no trials were instituted against those perpetrators in Turkey but the cases were heard in Bulgaria.

[49] For more details on the role of "guide-women" in goods smuggling across the border with Turkey, see *Transportation, Smuggling and Organized Crime*, Center for the Study of Democracy, Sofia, 2004, pp. 49-51.

Table 8: Criminal proceedings, indictments presented to court and defendants convicted of trafficking in human beings (Articles 159a–159c of the Criminal Code) in Svilengrad judicial region for the period January 2001-September 2006

Year	2002	2003	2004	2005	2006	Total
Instituted pre-trial proceedings	1	2	0	1	2	6
Suspended / terminated pre-trial proceedings	0	2	0	1	0	3
Bills of indictment presented to court	1	1	0	0	0	2
Defendants (foreign defendants)	4 (0)	4 (0)	0	0	0	8 (0)
Instituted trials	1	1	0	0	0	2
Suspended / terminated trials	0	0	0	0	0	0
Trials resolved by conviction / acquittal	1/0	0	0	0	0	1/0
Convicted / acquitted individuals	4/0	0	0	0	0	4/0
Convicted (acquitted) foreign nationals	0	0	0	0	0	0
Individuals with administrative penalties under Article 78a of the Criminal Code	0	0	0	0	0	0
Agreements made (plea bargaining)	0	0	0	0	0	0
Sentences appealed against	0	0	0	0	0	0

Source: Svilengrad Regional Prosecution Office, Svilengrad Regional Court

Trafficking in human beings, quite like pimping and prostitution, is organized in advance. Prostitutes are rarely trafficked into Turkey and the Arab countries which explains the existence of only sporadic trafficking cases in the region of Malko Tarnovo (although serious occurrences are seen sometimes, like the case when a whole bus was detected with girls and women from Russia, Poland, etc.). In most cases, though, trafficking victims cross other borders, their groups being initially gathered in Albania, Macedonia and Serbia. Bulgarian women are also recruited and fall victims to human traffickers.

2.4. Other Cross-Border Offences

Between January 2001 and September 2006, a total of ten pre-trial proceedings were opened in the region of Svilengrad for carrying across the border counterfeit currency, securities and payment cards; only one bill of indictment was presented to court, one sentence was returned and one person was convicted (*Table 9*). During the same period, there was no single proceeding for such an offence in the region of Malko Tarnovo.

In the majority of cases the carrying across the border (import and export) of larger amounts of foreign currency than those allowed constitutes an administrative violation punishable following an administrative procedure. In the region of Malko Tarnovo, however, there have been six serious cases of foreign exchange violations in the past few years involving primarily foreign currencies, gold and silver articles. The offenders were mainly foreigners, most of them Turkish nationals owning jewellery shops in the region of Burgas.

TABLE 9: CRIMINAL PROCEEDINGS, BILLS OF INDICTMENTS PRESENTED TO COURT AND DEFENDANTS CONVICTED OF ILLEGAL CARRYING ACROSS THE BORDER OF COUNTERFEIT CURRENCY, SECURITIES AND PAYMENT CARDS (ARTICLE 244(1) OF THE CRIMINAL CODE) IN SVILENGRAD JUDICIAL DISTRICT FOR THE PERIOD JANUARY 2001-SEPTEMBER 2006

Year	2001	2002	2003	2004	2005	2006	Total
Instituted pre-trial proceedings	4	2	3	1	0	0	10
Suspended / terminated pre-trial proceedings	3	0	0	0	0	0	3
Bills of indictment	1	0	0	0	0	0	1
Defendants (foreign defendants)	1 (0)	0	0	0	0	0	1 (0)
Instituted trials	1	0	0	0	0	0	1
Suspended / terminated trials	0	0	0	0	0	0	0
Trials resolved by conviction / acquittal	0	0	0	1/0	0	0	1/0
Convicted / acquitted individuals	0	0	0	1/0	0	0	1/0
Convicted / acquitted foreign nationals and stateless individuals	0	0	0	0	0	0	0
Individuals with administrative penalties under Article 78a of the Criminal Code	0	0	0	0	0	0	0
Agreements made (plea bargaining)	0	0	0	0	0	0	0
Sentences appealed against	0	0	0	0	0	0	0

Source: Svilengrad Regional Prosecution Office, Svilengrad Regional Court.

There have been no criminal proceedings in the past few years for illegal carrying across the border of hazardous substances or for unauthorized exportation of listed cultural monuments along the border with Turkey.

The information of the District Investigation Service in Haskovo suggests that, across the region, several cases of illegal exportation of listed cultural monuments and archive records have been detected and investigated. Between January 2003 and September 2006 eight pre-trial proceedings for such offences against 20 defendants (including one foreign national) were closed by recommendations to commit the case to court but none of them reached the courtroom (*Table 10*).

Table 10: Preliminary proceedings for and defendants charged with exporting listed cultural monuments and records forming part of the State Archive (Article 278(3) of the Criminal Code) in the region of Haskovo District Court for the period January 2001-August 2006

Year	2003	2004	2005	2006	Total
Instituted pre-trial proceedings	2	1	1	0	4
Proceedings taken over, resumed or transformed	4	4	0	0	8
Proceedings completed • by recommendation to refer case to court • by recommendation to terminate case • by recommendation to suspend proceedings	6 5 1 0	5 2 3 0	1 1 0 0	0 0 0 0	12 8 4 0
Defendants (foreign and stateless defendants)	12 (0)	7 (0)	1 (1)	0	20 (1)

Source: Haskovo District Investigation Service.

2.5. Corruption Offences

While cross-border criminality is often associated with corrupt practices, there have been few bribery cases in the areas along the Turkish border. Between January 2001 and August 2006 (data provided by Haskovo District Investigation Service) 19 preliminary proceedings for bribery were instituted in the region of Haskovo; 15 thereof were finalized by recommendations to refer the case to court and charges were brought against 17 individuals (Bulgarian nationals) (*Table 11*).

Table 11: Preliminary proceedings for and individuals charged with bribery (Articles 301–307a of the Criminal Code) at Haskovo District Investigation Service for the period January 2001-August 2006

Year	2001	2002	2003	2004	2005	2006	Total
Instituted pre-trial proceedings	5	2	4	3	4	1	19
Proceedings taken over, resumed or transformed	0	1	0	0	2	0	2
Proceedings completed • by recommendation to refer case to court • by recommendation to terminate case • by recommendation to suspend proceedings	4 3 1 0	4 2 2 0	5 2 3 0	3 2 1 0	5 4 1 0	8 2 1 5	29 15 9 5
Defendants (foreign and stateless defendants)	4 (0)	2 (0)	2 (0)	2 (0)	4 (0)	3 (0)	17 (0)

Source: Haskovo District Investigation Service.

According to information provided by Haskovo District Prosecution Office, from January 2001 to September 2006 a total of 22 pre-trial proceedings were instituted for bribery and 13 individuals were brought to court under 11 bills of indictment (*Table 12*). The data of Haskovo District Court for the same period show that 17 trials were instituted, one case was terminated, 15 ended in sentences and four were plea bargained.[50] The maximum sentence for bribery passed by Haskovo District Court was two years and eight months imprisonment but the sentences in most cases were conditional or the sentenced individual got a non-custodial penalty (i.e. a fine). Items worth a total of 83.739 Levs were forfeited to the state.

TABLE 12: NUMBER OF PRE-TRIAL PROCEEDINGS, BILLS OF INDICTMENT PRESENTED TO COURT AND DEFENDANTS FOR BRIBERY (ARTICLES 301–307A OF THE CRIMINAL CODE) AT HASKOVO DISTRICT PROSECUTION OFFICE FOR THE PERIOD JANUARY 2001-SEPTEMBER 2006

Year	2001	2002	2003	2004	2005	2006	Total
Instituted pre-trial proceedings	1	3	0	4	7	7	22
Suspended / terminated pre-trial proceedings	0	0/1	0	0	0	0/2	0/3
Bills of indictment presented to court	0	2	1	2	4	2	11
Defendants (foreign defendants)	0	2 (0)	1 (0)	3 (0)	4 (0)	3 (0)	13 (0)

Source: Haskovo District Prosecution Office.

Rather than being typical of Haskovo region, the small number of bribery cases actually echoes the generic issue of impunity for bribery country-wide. Bribery and other corruption offences are still rarely prosecuted by the state; this is due both to the difficulties inherent in proving the relevant acts and to the insufficient political will to effectively crack down on corruption.[51]

[50] Before 2003 the district courts only tried passive bribery cases, whereas active bribery was handled by the regional courts. The amendments to the *Criminal Procedure Code* moved all bribery cases within the jurisdiction of the district courts. The new *Criminal Procedure Code* has not changed that.

[51] For more details on the development and prosecution of corruption-relate crime, see *Anti-Corruption Reforms in Bulgaria: Key Results and Risks*, Center for the Study of Democracy, Sofia, 2007, pp. 93-108.

3. CROSS-BORDER CRIMINALITY ALONG THE BORDER WITH MACEDONIA

Kyustendil Regional Border Section

The Regional Border Section in Kyustendil protects a 177.6 kilometer-long segment of the state border with the Republic of Macedonia.

The state border protection is planned for, organized and implemented in conformity with Order No. 2644/27.08.2003 of the Director of the then National Border Police Service, on the basis of the following internal structure of the Regional Border Section: five border police stations, viz. Zlatarevo, Mikrevo, Blagoevgrad, Vaksevo, Gyueshevo; and three border check-points, viz. Zlatarevo, Stanke Lisichkovo, and Gyueshevo.

Gyueshevo border police station is amongst the most important within Kyustendil Regional Border Section. In terms of structure, the Gyueshevo border police station comprises the border check-point near Gyueshevo which is on the motor way between Sofia and Skopje and is used intensively by passengers from Bulgaria to Macedonia and vice versa.

Source: General Border Police Directorate, Ministry of Interior (http://www.nsgp.mvr.bg).

The geographic location of the Bulgarian-Macedonian border gives shape to the cross border criminality in that border area. The criminal offences are similar to those in the areas bordering Turkey but the overall picture has some distinct peculiarities mainly because the border with Turkey is used as an entry point into Bulgaria whereas that with Macedonia serves as an exit point towards Western Europe.

The structure of cross-border criminality along the Bulgarian-Macedonian border resembles that at the border with Turkey but the scale is modest. This bears directly on the number of proceedings and on the number of individuals convicted of such offences. The violations most frequently encountered are illegal migration and smuggling of goods and narcotics. Most offences occur in the territory of Gyueshevo border check-point and fall under the jurisdiction of the regional and district court in Kyustendil. As along the Turkish border, criminal proceedings are instituted mainly for instances of illegal crossing of the border, whereas smuggling, especially that of goods, is punished primarily through administrative procedures. The remaining typical cross-border offences have generated very few criminal cases. Cross-border crimes account for a much smaller percentage of all criminal proceedings handled by the courts in Kyustendil than in the areas along the Turkish border. In 2005 the cases for such offences at the Regional Court in Kyustendil were less than 10 per cent of the aggregate number of trials instituted.

3.1. Illegal Migration

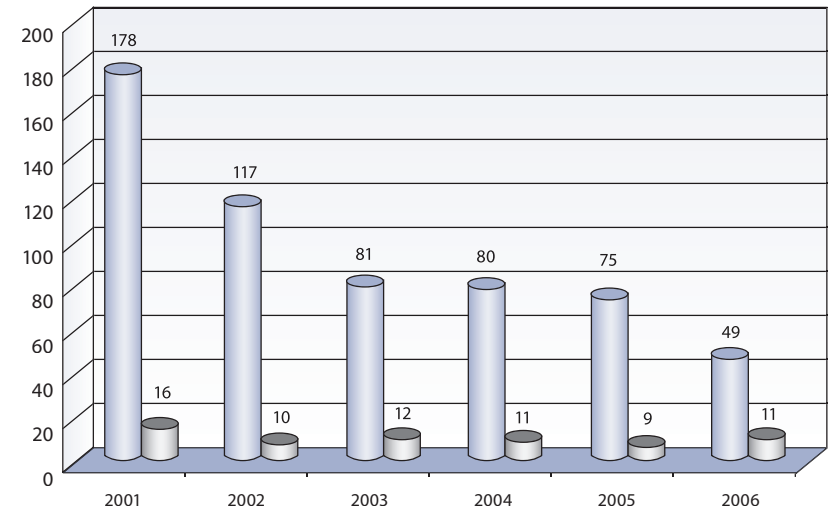
Illegal migration is the criminal offence most often prosecuted along the Bulgarian-Macedonian border. The information of Kyustendil Regional Border Section is that from January 2001 to August 2006 649 persons were arrested for attempted illegal crossings of the Bulgarian-Macedonian border; 69 of them had tried to cross the so-called "green border" beyond the territory of the border check-point (*Table 13*). The trials instituted for illegal border crossing and for smuggling of persons in 2005 were 8.7 per cent of all criminal cases brought before the Regional Court in Kyustendil.

TABLE 13: BORDER CONTROL VIOLATIONS AND INDIVIDUALS ARRESTED IN THE TERRITORY OF KYUSTENDIL REGIONAL BORDER SECTION FOR THE PERIOD JANUARY 2001-AUGUST 2006

Year	2001	2002	2003	2004	2005	2006	Total
Attempted illegal border crossings outside border check-points	7	7	7	9	9	5	44
Persons arrested during attempted illegal border crossings outside border check-points	16	10	12	11	9	11	69
Persons arrested upon attempted illegal crossings at border check-points	178	117	81	80	75	49	580
Cases of illegal migration (Articles 279–280 of the Criminal Code) and document-related offences (Articles 308, 316 and 318 of the Criminal Code) forwarded to the prosecution office with recommendation to submit case to court	49	40	264	61	92	65	571

Source: *Ministry of Interior.*

CHART 9: INDIVIDUALS ARRESTED FOR ILLEGAL BORDER CROSSING IN THE TERRITORY OF KYUSTENDIL REGIONAL BORDER SECTION FOR THE PERIOD JANUARY 2001-AUGUST 2006



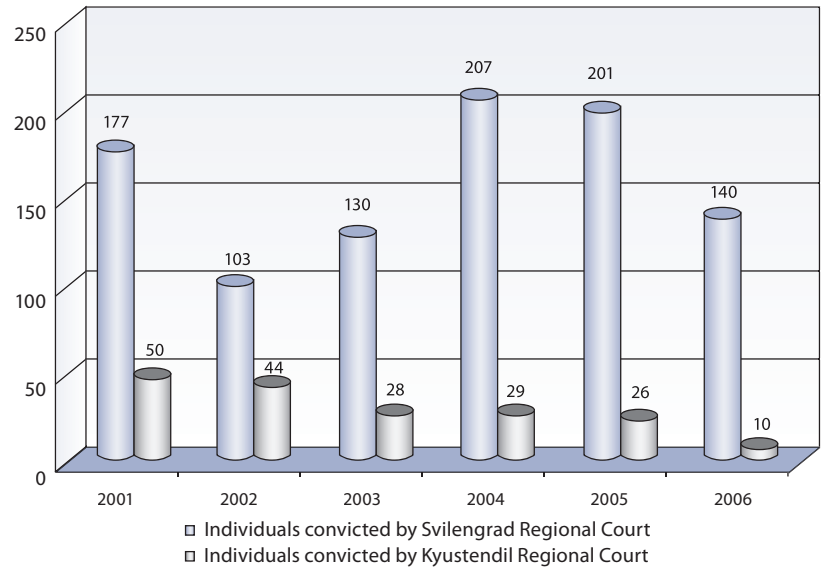
Source: *Ministry of Interior.*

In recent years, there has been a **downward trend in attempted illegal crossings** at the Bulgarian-Macedonian border. The offenders arrested by the Border Police in 2001 were more than twice the number of those apprehended in 2005 (*Chart 9*).

The trials for illegal migration in the area bordering Macedonia are nearly five times fewer than those along the Bulgarian-Turkish border.

From January 2001 to August 2006 the Regional Court in Kyustendil, whose judicial district comprises the border check point near Gyueshevo, instituted a total of 188 trials for illegal migration;

CHART 10: INDIVIDUALS CONVICTED OF ILLEGAL CROSSING OF THE BORDER AND SMUGGLING OF PERSONS (ARTICLES 279–280 OF THE CRIMINAL CODE) BY SVILENGRAD REGIONAL COURT FOR THE PERIOD JANUARY 2001-SEPTEMBER 2006 AND BY KYUSTENDIL REGIONAL COURT FOR THE PERIOD JANUARY 2001-AUGUST 2006



Source: Svilengrad Regional Court, Kyustendil Regional Court.

86 proceedings resulted in convictions and a total of 187 persons were convicted, of whom 39 were foreign nationals (*Table 14*).

TABLE 14: CRIMINAL PROCEEDINGS AND DEFENDANTS CONVICTED OF ILLEGALLY CROSSING THE BORDER AND SMUGGLING OF PERSONS (ARTICLES 279-280 OF THE CRIMINAL CODE) IN KYUSTENDIL JUDICIAL REGION FOR THE PERIOD JANUARY 2001-AUGUST 2006

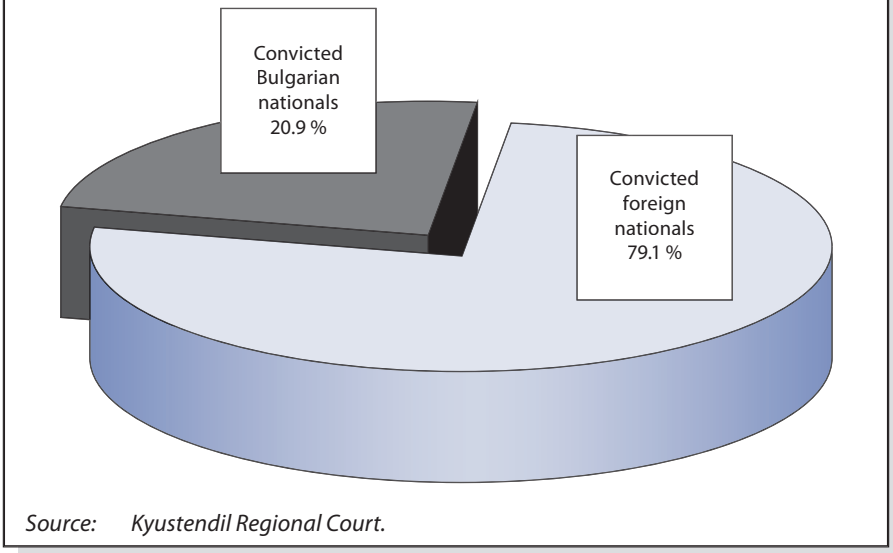
Year	2001	2002	2003	2004	2005	2006	Total
Instituted trials	54	37	20	33	32	12	188
Terminated trials	7	1	0	0	1	0	9
Trials resolved by sentence	31	10	11	17	14	3	86
Convicted / acquitted individuals	50/0	44/0	28/0	29/0	26/0	10/0	187/0
Convicted / acquitted foreign nationals and stateless individuals	6/0	2/0	7/0	11/0	10/0	3/0	39/0
Agreements made (plea bargaining)	18	24	15	10	9	6	82

Source: Kyustendil Regional Court.

Most cases involving illegal border crossing and smuggling of persons in the area of Kyustendil revealed **a low level of danger to the community** and the sentences were relatively light. The most frequent sanctions were fines; only rarely did the court pass imprisonment sentences most of which were conditional and for periods of three or six months. Only one sentence was two years imprisonment conditionally, the highest penalty imposed by the Regional Court in Kyustendil for that type of offence. Almost half of the cases were plea bargained and no sentence was returned at all.

Unlike the situation in Svilengrad, **sentences against Bulgarian nationals prevailed** in the area of Kyustendil. Only one fifth of the defendants found guilty of illegal border crossing or smuggling of persons across the border with Macedonia were foreign nationals or stateless persons (*Chart 11*). One reason is that the border with Macedonia is more often used by Bulgarian nationals striving to illegally leave Bulgaria, whereas the Turkish border often sees foreign nationals or stateless persons trying to illegally get into Bulgaria.

CHART 11: INDIVIDUALS CONVICTED OF ILLEGAL BORDER CROSSING AND SMUGGLING OF PERSONS (ARTICLES 279–280 OF THE CRIMINAL CODE) IN KYUSTENDIL JUDICIAL REGION FOR THE PERIOD JANUARY 2001-AUGUST 2006



Source: Kyustendil Regional Court.

In the region of Kyustendil there was **no single acquittal** returned for an illegal crossing of the border or for smuggling of persons. All persons against whom trials had been opened for such offences were convicted or ended their cases with an agreement endorsed by the court.

Border crossing offences have been on the decrease not least because the new identity papers are harder to forge. Only one document-related offence was registered in January 2007. At the same time, however, some Macedonians who also have Bulgarian citizenship lose or sell their Bulgarian passports to third parties (which constitutes a document-related offence associated with crossing the border). The green border is guarded by border police sentries operating during a specific number of hours, and there have been no soldiers for the last three or four years. The prevailing situation in the region is analyzed and the possible trends are identified on a three-month or six-month basis.

3.2. Smuggling of Goods and Narcotics

Similarly to the situation along the Turkish border, the smuggling of goods and narcotics is the second most frequent offence along the border with Macedonia. Over the past six years the customs officers from the Territorial Customs Department in Kyustendil forwarded to the public prosecution 44 files for established instances of smuggling (*Table 15*). More than half of the cases involved smuggling of narcotics (hashish, marihuana, heroin, amphetamine pills, etc.). The smuggled goods most frequently seized were cigarettes, foodstuffs and miscellaneous equipment (TV sets, CDs, etc.).

TABLE 15: ADMINISTRATIVE LIABILITY FILES FOR CUSTOMS AND FOREIGN EXCHANGE VIOLATIONS AT KYUSTENDIL TERRITORIAL CUSTOMS DEPARTMENT FOR THE PERIOD 2001-2006

Year		2001	2002	2003	2004	2005	2006	Total
Smuggling (goods and narcotics)	Penalty warrants	0	5	1	2	1	1	10
	Files forwarded to the prosecution office	6	6	7	3	11	11	44
Foreign exchange violations	Penalty warrants	1	0	0	0	1	0	2
	Files forwarded to the prosecution office	5	5	4	2	0	0	16
Carrying across the border counterfeit currency	Penalty warrants	1	0	0	0	0	0	1
	Files forwarded to the prosecution office	0	0	0	1	1	0	2

Source: Kyustendil Territorial Customs Department.

Unlike the case with narcotics, where any unauthorized movement of an item across the border is a criminal offence entailing prosecution, in the event of goods smuggling the customs authorities have the discretion to determine whether the act in question is a crime or an administrative violation. The lack of clear statutory criteria for qualifying the offence as a crime often results in opening administrative files for serious offences where the perpetrator should actually face criminal liability. About one tenth of those convicted of smuggling country-wide were found guilty by the Regional Court in Kyustendil whose judicial district includes most of the border with Macedonia, including the border check-point near Gyueshevo. From January 2001 to August 2006 23 convictions were returned for smuggling and 28 out of 38 convicted individuals (73.7 per cent) were foreign nationals or stateless persons (*Table 16*).

TABLE 16: CRIMINAL PROCEEDINGS FOR AND INDIVIDUALS CONVICTED OF SMUGGLING (ARTICLES 242-242A OF THE CRIMINAL CODE) IN KYUSTENDIL JUDICIAL DISTRICT FOR THE PERIOD JANUARY-AUGUST 2006

Year	2001	2002	2003	2004	2005	2006	Total
Instituted trials	16	8	5	9	4	3	45
Terminated trials	4	1	2	0	0	1	18
Trials resolved by sentence	3	5	4	4	5	2	23
Convicted / acquitted individuals	11/0	8/0	5/0	5/3	5/0	4/0	38/3
Convicted / acquitted foreign nationals or stateless individuals	6/0	7/0	3/0	4/3	5/0	3/0	28/3
Agreements made (plea bargaining)	8	2	1	2	0	1	14

Source: Kyustendil Regional Court.

Smuggling cases form an insignificant portion of the case law of Kyustendil Regional Court. The trials opened for such crimes in 2005 were only 1.1 per cent of all criminal proceedings instituted by the court in that year.

Goods smuggling was in higher vogue in the area before 2006, as the then existing *Law on Excise Duty* did not require the forfeiture of the items in question. The current *Law on Excise Duty and Tax Warehouses* provides for a number of situations where the items forming the subject-matter of the offence must be forfeited regardless of who their owner is (Article 124(1) of the *Law on Excise Duty and Tax Warehouses*). The instrumentalities owned by the perpetrator and used to commit an intentional violation under the said law are forfeited to the state unless their value clearly mismatches the seriousness of the violation (Article 124(2) of the *Law on Excise Duty and Tax Warehouses*).

Prevailing is the smuggling of cigarettes from Serbia and Macedonia into Bulgaria due to the low prices which make such items attractive for the Bulgarian market. The cases are numerous but as the quantities involved are usually limited, the violations escape being classified as crimes and are punished through administrative procedures. There have also been instances of smuggling across the green border. The practice of the courts in Kyustendil in smuggling cases, however, is inconsistent because of the diverging valuations of the subject-matter of the offences and the frequent procedural breaches in the event of searches and seizures (e.g. the relevant search or seizure is not conducted by a competent body).

Despite the relatively small number of cases, some proceedings have tackled offences with a very high level of danger to the community, which is corroborated *inter alia* by the severe sentences passed. In seven cases did the court pass a conviction of ten or more years imprisonment plus fines between 100,000 and 150,000 Levs. It is disturbing, though, that some criminal proceedings for smuggling have lasted more than ten years.

In several cases of smuggling in the region of Kyustendil the court also ordered the forfeiture of the items forming the subject-matter of the offence (primarily narcotics) and/or the instrumentality of the crime (usually motor vehicles).

Unlike the case of illegal migration, the sentences against foreign nationals prevail in the event of smuggling, the Bulgarian nationals being only 26.3 per cent of all convicted smugglers. The majority of the foreign nationals sentenced for smuggling came from neighboring countries, such as Macedonia, Turkey, Serbia, and Albania.

3.3. Other Cross-Border Offences

In the past few years, other categories of cross-border crime have been detected along the border with Macedonia more or less incidentally. Between January 2001 and August 2006 two cases were instituted by Kyustendil Regional Court for trafficking in human beings (one in 2004 and one in 2006). One of them was plea bargained with the agreement providing a deferred penalty of six month imprisonment combined with a three-year probation period.

During the same period four proceedings were instituted for the carrying across the border of counterfeit currency, securities and payment cards (two in 2001 and two in 2002, accordingly), five convictions were returned and six persons were convicted, all of them Bulgarian nationals. No criminal proceeding was instituted for illegally moving hazardous waste or substances. In 2004 one illegal cross-border transfer of a listed cultural monument was caught but the preliminary proceedings opened by the District Investigation Service in Kyustendil closed by a recommendation to terminate the case and the file did not go to court.

The foreign exchange violations, including the import and export of bulk cash, can be said to be typical of the region. The sentencing practices of the competent courts in such cases are inconsistent. As regards the application of Article 251(2) of the *Criminal Code*, some judges are of the view that the cash in question is subject to forfeiture regardless of who its owner is, whilst others believe that, if not owned by the perpetrator, the money should be returned to its established owner. A similarly controversial question is whether the whole amount is subject to forfeiture or only the difference between the amount allowed by law and the actual amount moved. Despite the contradictory case law, the Supreme Court of Cassation has not yet issued an interpretative decision to clarify those issues.

3.4. Corruption Offences

Corruption cases in the region of Kyustendil are also very few, even less than those in the region of Haskovo. During the past six years the District Investigation Service in Kyustendil opened no more than eight preliminary proceedings for bribery; seven of them were closed by recommendations to refer the matter to court and charges were brought against eight defendants (*Table 17*). Throughout that period Kyustendil District Court did not institute a single trial for that offence.

Table 17: Preliminary proceedings and defendants for bribery (Articles 301-307a of the Criminal Code) at Kyustendil District Investigation Service for the period January 2001-July 2006

Year	2001	2002	2003	2004	2005	2006	Total
Instituted preliminary proceedings	0	2	1	4	1	0	8
Proceedings taken over, resumed or transformed	1	3	0	1	1	0	6
Proceedings completed • by recommendation to refer case to court • by recommendation to terminate case • by recommendation to suspend proceedings	1 1 0 0	5 1 4 0	1 1 0 0	5 3 1 1	3 1 2 0	1 0 0 1	16 7 7 2
Defendants	2	1	1	3	1	0	8

Source: *Kyustendil District Investigation Service.*

4. CROSS-BORDER CRIMINALITY ALONG THE SOUTHERN BLACK SEA BORDER

Burgas Regional Border Section

The Regional Border Section in Burgas is an immediate successor to the Eighth Border Squad set up back in 1947. The latter was guarding a segment of the state border stretching from Strandzha to Silistra (comprising the border with Turkey along Rezovska River, the entire Black Sea border and the land border with Romania) through the combined forces of 3 border commandant's services, 12 frontier posts and a battalion of coast defense ships. In 1997 the remit of the squad was extended to include the border check-points in the relevant territory. To meet the European requirements and in line with the development concept paper and the Structural Reform Plan for the former National Border Police Service, on 1 September 2002 the Minister of Interior issued an order setting up a Regional Border Section in Burgas. Its territory now consists of a coastline (412 km); a coast-adjacent area (4000 sq. km); internal sea waters (1000 sq. km); territorial sea (7500 sq. km); an adjacent aquatic area (7500 sq. km); and an exclusive economic zone.

Source: General Border Police Directorate, Ministry of Interior (http://www.nsgp.mvr.bg).

Unlike the areas straddling the borders with Turkey and Macedonia, criminality along the southern Black Sea border has a slightly different structure and the criminal proceedings for typical cross-border offences are very few. The total number of trials instituted in 2005 for illegal migration, smuggling of goods and narcotics, trafficking in human beings, and carrying across the border hazardous waste or substances, counterfeit currency and payment cards or listed cultural monuments stood at barely 0.6 per cent of all the criminal proceedings opened by the Regional Court in Burgas.

The judicial district of Burgas is the second largest in Bulgaria and divides among eight regional courts. A higher number of regional courts (nine) exists only in the judicial district of Sofia District Court. Besides, the territory of Burgas judicial district hosts all possible sorts of borders, i.e. land, sea and air frontiers. This in itself implies the occurrence of quite diverse offences, including cross-border crime. The region of Burgas comprises thirteen municipalities and is a popular tourist destination; because of that the crimes committed by Bulgarian nationals or foreigners reveal specific dynamics. During the summer (high) season the common offences are on the increase and these are often international in nature, e.g. thefts affecting foreigners (both genuine offences and fictitious crimes alleged as a vehicle to commit insurance fraud). This frustrates the procedures and makes them more expensive as all too often the cases are heard after the respective aliens have left which requires the use of letters

rogatory.[52] The past few years have seen a surge of the so-called "Balkan-type criminality" where the perpetrators of criminal offences are nationals of various Balkan countries. Fairly often the offences are committed by nationals of other European countries.

One reason behind that picture is that the very location and economic development of such regions dictate a different nature of international criminality there. As the southern Black Sea is a tourist destination, the cases with some sort of international dimension relate to common offences (thefts, robberies, fraud schemes) where either the perpetrators are foreigners (foreign persons with a criminal record coming to the Bulgarian seaside to engage in different types of illegal activities during the high season) or the victims are foreign nationals (mainly tourists). On the other hand, the vicinity of the sea itself gives rise to numerous specific offences, for example industrial fishing infringements, pollution of the aquatic environment, etc. Smuggling by sea occurs as well but, regretfully, is very hard to prove.

4.1. Illegal Migration

Although the flow of Bulgarian and foreign passengers crossing the border check-points at the Bulgarian sea border has been growing steadily, the small number of attempted illegal border crossings has remained stable. The data of the General Border Police Directorate at the Ministry of Interior shows that from January 2001 to end-September 2006 over one million people crossed the border legally via the border check-points under the jurisdiction of Burgas Regional Border Section. During that period only 49 individuals (20 Bulgarian nationals and 29 foreigners) were arrested when attempting to illegally leave or enter the country (*Table 18*).[53]

[52] It is often impossible to find the victims at the addresses indicated and letters rogatory cannot be executed as the address is either incomplete or wrong, or the person no longer lives there and cannot be duly notified. As a general rule, the execution of letters rogatory takes five months or longer. The procedure is objectively a lengthy one as it involves complex materials, translation, the identification of witnesses, summoning, etc. Moreover, given the perpetual shortage of funds, the materials cannot even be sent out on time, which delays even further the execution of requests.

[53] During the first nine months of 2006, no single person was arrested in the area of Burgas while attempting to cross the frontier illegally. In 2005, the previous year, a total of nine persons were arrested: five of them were harbored onboard a ship in the Port of Burgas, three had irregular papers and one held a false passport.

TABLE 18: RESULTS OF THE OPERATIONS OF BURGAS REGIONAL BORDER SECTION FOR THE PERIOD JANUARY 2001- SEPTEMBER 2006

Year	2001	2002	2003	2004	2005	2006	Total
Persons arrested at state border							
Upon entry	32	0	17	15	0	2	66
• Bulgarians	16	0	5	13	0	02	34
• Aliens	16	0	12	2	0		32
Upon exit	19	14	8	3	1	0	45
• Bulgarians	18	14	5	3	0	0	40
• Aliens	1	0	3	0	1	0	5
Total	51	14	25	18	1	2	111
Persons arrested at border check-points							
Upon entry	1	0	5	8	4	0	18
• Bulgarians	0	0	1	3	0	0	4
• Aliens	1	0	4	5	4	0	14
Upon exit	6	17	3	0	5	0	31
• Bulgarians	2	12	2	0	0	0	16
• Aliens	4	5	1	0	5	0	15
Total	7	17	8	8	9	0	49
Wanted persons arrested at border check-points							
Upon entry	1	4	3	5	14	9	36
• Bulgarians	1	3	3	2	6	6	21
• Aliens	0	1	0	3	8	3	15
Upon exit	2	1	4	3	0	4	14
• Bulgarians	1	1	2	1	0	4	9
• Aliens	1	0	2	2	0	0	5
Total	3	5	7	8	14	13	50
Motor vehicles sought and detained at border check-points							
Upon entry	2	0	0	0	0	0	2
• Bulgarians	0	0	0	0	0	0	0
• Aliens	2	0	0	0	0	0	2
Upon exit	4	2	0	3	2	0	11
• Bulgarians	1	1	0	1	1	0	4
• Aliens	3	1	0	2	1	0	7
Total	6	2	0	3	2	0	13
Persons refused entry into Bulgaria							
Total	77	88	185	218	190	117	875
Persons refused exit from Bulgaria							
• Bulgarians	7	6	3	3	3	6	28
• Aliens	6	9	4	9	2	3	33
Total	13	15	7	12	5	9	61
Persons having crossed legally							
Upon entry	85,259	74,583	81,862	91,521	93,521	76,435	503,411
• Bulgarians	18,435	17,651	15,732	17,567	16,223	11,290	96,898
• Aliens	66,824	56,932	66,130	73,954	77,528	65,145	406,513
Upon exit	83,731	74,253	82,050	91,246	94,172	74,739	500,191
• Bulgarians	18,134	17,463	15,772	17,497	16,177	10,991	96,034
• Aliens	65,597	56,790	66,278	73,749	77,995	63,748	404,157
Total	168,990	148,836	163,912	182,767	187,923	151,174	1,003,602

Source: General Border Police Directorate, Ministry of Interior.

Overall, illegal migration by sea in Bulgaria is characterized by incidental instances of harboring foreign nationals on cargo ships primarily going to EU Member States.[54] After 1 January 2007 the Bulgarian sea border is already an EU external border which has resulted in tightened controls at the port facilities and focusing on ships arriving from risk ports of departure or those flying "risky" flags.

Despite the limited occurrence of illegal migration along the southern Black Sea coast, the cases for such offences are the most numerous compared with any other typical cross-border crime. During the past six years five trials for illegal migration were instituted in the region of Burgas, two sentences were returned and a total of 14 persons were sentenced, 13 of whom were defendants in one case of 2005 (*Table 19*).

Table 19: Criminal proceedings, bills of indictment presented to court and defendants convicted of illegal border crossings and smuggling of persons (Articles 279-280 of the Criminal Code) in Burgas judicial district for the period January 2001-November 2006

Year	2001	2002	2003	2004	2005	2006	Total
Instituted pre-trial proceedings	n/a	n/a	3	1	26	0	30
Suspended / terminated pre-trial proceedings	n/a	n/a	0	0	2/1	0	2/1
Bills of indictment presented to court	n/a	n/a	3	0	5	0	8
Defendants (foreign and stateless defendants)	n/a	n/a	6 (3)	0	5 (0)	0	11 (3)
Instituted trials	0	0	0	1	4	0	5
Terminated trials	0	0	0	0	3	0	3
Trials resolved by sentence	0	0	0	1	1	0	2
Convicted / acquitted individuals	0	0	0	1/0	13/0	0	14/0
Individuals with administrative penalties under Article 78a of the Criminal Code	0	0	0	0	0	0	0
Agreements made (plea bargaining)	0	0	0	0	3	0	3
Sentences appealed against	0	0	0	0	0	0	0

Note: *The Regional Prosecution Office in Burgas has no detailed information on the pre-trial proceedings for illegal migration in 2001 and 2002.*
Source: *Burgas Regional Prosecution Office, Burgas Regional Court.*

However, the data of the Ministry of Interior on the number of police proceedings opened for illegal crossing of the border and smuggling of persons in the area of Burgas diverges greatly from that of the prosecution office. According to the Ministry of Interior, between January 2001 and September 2006 a total

[54] The information covers the period before 1 January 2007 when Bulgaria was not yet an EU Member State.

of 129 pre-trial (police) proceedings were initiated at Burgas Regional Border Section and all of them were forwarded to the prosecution office; of those, 114 were for illegal crossing of the border, ten were for smuggling of persons and four were for trafficking in human beings (*Table 20*).

TABLE 20: REGISTERED ALERTS AND PRE-TRIAL POLICE PROCEEDINGS FORWARDED TO PROSECUTION OFFICE IN RELATION TO ILLEGAL BORDER CROSSINGS (ARTICLE 279 OF THE CRIMINAL CODE), SMUGGLING OF PERSONS (ARTICLE 280 OF THE CRIMINAL CODE) AND TRAFFICKING IN HUMAN BEINGS (ARTICLES 159A-159C OF THE CRIMINAL CODE) IN THE REGION OF BURGAS FOR THE PERIOD JANUARY 2001-SEPTEMBER 2006

Year	2001	2002	2003	2004	2005	2006	Total
Registered alerts	68	33	18	15	14	22	170
Pre-trial (police) proceedings instituted and forwarded to prosecution office	57	26	14	5	12	15	129
• Crossing of the border	55	23	11	5	10	10	114
• smuggling of persons	22	3	2	0	2	1	10
• trafficking in human beings	0	0	1	0	0	4	5

Source: General Border Police Directorate, Ministry of Interior

The situation in the other areas along the southern Black Sea coast is similar. In the area of Tsarevo one trial was instituted for illegal crossing of the border; it was channeled through a summary procedure and resulted in a conviction in 2002. In the area of Nesebar one pre-trial proceeding was initiated in 2003 against one person and the case was plea bargained with the approval of the court. In the area of Pomorie no criminal cases have been initiated under those provisions of the *Criminal Code*.

4.2. Smuggling of Goods and Narcotics

In terms of typical cross-border offences, the region of Burgas is especially threatened by smuggling, in particular that of goods and fuels. However, the smuggling cases again account for a next-to-zero percentage of the crimes detected, investigated and prosecuted along the southern Black Sea border. In the Burgas area in particular, there has been only one smuggling case over the past six years which has resulted in a sentence, moreover an acquittal. The defendants punished were five in total (two of whom were foreign nationals) and all those cases were plea bargained (*Table 21*).

Table 21: Criminal proceedings, bills of indictment presented to court and defendants convicted of smuggling (Articles 242-242a of the Criminal Code) in Burgas judicial district for the period January 2001-November 2006

Year	2001	2002	2003	2004	2005	2006	Total
Instituted pre-trial proceedings	n/a	n/a	0	0	2	2	4
Suspended / terminated pre-trial proceedings	n/a	n/a	0	0	0	1	1
Bills of indictment presented to court	n/a	n/a	0	0	1	0	1
Defendants (foreign and stateless defendants)	n/a	n/a	0	0	1 (0)	0	1 (0)
Instituted trials	3	1	2	4	2	1	13
Terminated trials	2	1	2	3	3	1	12
Trials resolved by sentence	1	0	0	0	0	0	1
Convicted / acquitted individuals	0/2	0	0	0	3/0	2/0	5/2
Individuals with administrative penalties under Article 78a of the Criminal Code	0	0	0	0	0	0	0
Agreements made (plea bargaining)	0	0	0	0	3	1	4
Sentences appealed against	0	0	0	0	0	0	0

Note: *The Regional Prosecution Office in Burgas has no detailed information on the pre-trial proceedings for goods smuggling in 2001 and 2002.*
Source: *Burgas Regional Prosecution Office, Burgas Regional Court.*

The limited number of criminal cases for smuggling in the region of Burgas rings an alarm bell as the region hosts the port of Burgas, the largest sea port of national importance to Bulgaria. The data of the Port Administration Executive Agency show that in 2005, 59 per cent of the sea port cargo in Bulgaria moved through the port of Burgas consisting of Burgas East, Burgas West and Rosenets Burgas.[55] The port of Burgas also channels the major imports of oil and oil products.[56] Against this backdrop, the lack of any convictions for smuggling in the region of Burgas in the past six years is merely striking.

A major reason for the small number of criminal cases for goods smuggling in the Burgas area is the practice encountered in other border areas as well, namely to sanction the violations found only under the administrative legislation. It is extremely rare for a detected case to be classified as a crime and to be investigated and prosecuted under the criminal law. During the last six years 758 cases of goods smuggling were found in the region of Burgas and 644 administrative penalty warrants were issued. Of all violations detected, however, a

[55] Source: Cargo Volumes by Port: 2005, Port Administration Executive Agency (www.port.bg/bg/statistics.html, in Bulgarian).

[56] For more details on goods smuggling by sea and the smuggling of oil products, see *Transportation, Smuggling and Organized Crime*, Center for the Study of Democracy, Sofia, 2004, pp. 28-29 and 84-88.

slim 8.3 per cent (63 cases) were forwarded to the prosecution office which, in turn, remitted around a quarter of them to the customs authorities (*Table 22*).

TABLE 22: CASES OF SMUGGLING OF GOODS FOUND BY BURGAS REGIONAL CUSTOMS DIRECTORATE FOR THE PERIOD JANUARY 2001-OCTOBER 2006

Year	2001	2002	2003	2004	2005	2006	Total
Violations found	140	40	83	107	210	178	758
Forwarded to Regional Prosecution Office	8	6	14	11	6	18	63
Remitted by Regional Prosecution Office	5	2	4	3	1	1	16
Administrative penalty warrants issued	137	36	72	99	204	96	644

Source: Burgas Regional Customs Directorate.

In the other areas along the southern Black Sea border (Pomorie, Nesebar and Tsarevo), there have been no criminal cases for the smuggling of goods and narcotics. One possible explanation is that the ports located in those areas, although dubbed ones "of national importance", are actually small and only serve passengers.

4.3. Trafficking in Human Beings

The situation with human trafficking cases is quite similar. In the area of Burgas, 38 pre-trial proceedings were instituted for trafficking in human beings and 14 bills of indictment were presented to court against 24 defendants. At the same time, however, only three trials were initiated during that period and only seven individuals were convicted (*Table 23*).

There have been even fewer human trafficking cases in the other areas along the coast. From 2002 to 2006, there was no single proceeding for trafficking in either Tsarevo or Pomorie; three pre-trial proceedings were opened in the area of Nesebar (two investigations and one summary police procedure), two of them were referred to court and one person was finally convicted.[57]

[57] All the three pre-trial proceedings instituted by Nesebar Regional Prosecution Office concerned aggravated human trafficking offences which, however, did not involve any cross-border movement of the victims. According to the information of the Regional Prosecution Office and the Regional Court in Nesebar, by December 2006 one of those proceedings had not closed yet, the second was in court and the third one had gone to court and had ended by a conviction that became final (appealed against and upheld in turn by Burgas District Court and the Supreme Court of Cassation); in the latter case the defendant was sentenced conditionally to one year and six months imprisonment (with a probation period of four years) plus a fine of 2,000 Levs.

Table 23: Criminal proceedings, bills of indictment presented to court and defendants convicted of trafficking in human beings (Articles 159a-159c of the Criminal Code) in Burgas judicial district for the period January 2001-November 2006

Year	2002	2003	2004	2005	2006	Total
Instituted pre-trial proceedings	n/a	1	8	11	18	38
Suspended / terminated pre-trial proceedings	n/a	0	1	2/2	5/2	8/4
Bills of indictment presented to court	n/a	1	1	6	6	14
Defendants (foreign and stateless defendants)	n/a	4 (-)	2 (-)	8 (-)	10 (-)	24 (-)
Instituted trials	0	0	2	0	1	3
Terminated trials	0	0	1	0	2	0
Trials resolved by sentence	0	0	0	1	0	1
Convicted / acquitted individuals	0	0	0	2/0	5/0	7/0
Individuals with administrative penalties under Article 78a of the Criminal Code	0	0	0	0	0	0
Agreements made (plea bargaining)	0	0	0	0	2	2
Sentences appealed against	0	0	0	0	0	0

Note: *The Regional Prosecution Office in Burgas has no detailed information on the pre-trial proceedings for trafficking in human beings in 2002.*
Source: *Burgas Regional Prosecution Office, Burgas Regional Court.*

4.4. Other Cross-Border Offences

The number of cases for counterfeit currency, securities and payment cards is equally insignificant. In the area of Burgas, six trials were instituted between January 2001 and November 2006, one case ended in a conviction, five cases were plea bargained and a total of six defendants were sentenced (*Table 24*).

Of the remaining areas, Pomorie is the only one that had criminal cases for such offences in the past six years: four proceedings were instituted in total of which two have been suspended for failure to identify the offender and two were sent to the prosecution offices in other areas based on jurisdictional rules.

As to the remaining types of cross-border offences (illegal movements of hazardous substances or waste and illegal exportation of listed cultural monuments), no relevant criminal proceedings have been instituted along the southern Black Sea border. In terms of smuggling listed cultural monuments, several such cases were detected in the area of Burgas but none of them triggered a criminal proceeding (*Table 25*).

TABLE 24: CRIMINAL PROCEEDINGS, BILLS OF INDICTMENT PRESENTED TO COURT AND DEFENDANTS CONVICTED OF CARRYING ACROSS THE BORDER COUNTERFEIT CURRENCY, SECURITIES AND PAYMENT CARDS (ARTICLE 244(1) OF THE CRIMINAL CODE) IN BURGAS JUDICIAL DISTRICT FOR THE PERIOD JANUARY 2001-NOVEMBER 2006

Year	2001	2002	2003	2004	2005	2006	Total
Instituted pre-trial proceedings	n/a	n/a	26	0	3	0	29
Suspended / terminated trials	n/a	n/a	17/5	0	0	0	17/5
Bills of indictment presented to court	n/a	n/a	1	0	1	0	2
Defendants (foreign and stateless defendants)	n/a	n/a	2 (0)	0	1 (0)	0	3 (0)
Instituted trials	3	1	1	1	0	0	6
Terminated trials	3	1	2	1	0	0	7
Trials resolved by sentence	0	0	0	1	0	0	1
Convicted / acquitted individuals	3/0	0	2/0	1/0	0	0	6/0
Individuals with administrative penalties under Article 78a of the Criminal Code	0	0	0	0	0	0	0
Agreements made (plea bargaining)	3	0	2	0	0	0	5
Sentences appealed against	0	0	0	0	0	0	0

Note: *The Regional Prosecution Office in Burgas has no detailed information on the pre-trial proceedings for carrying across the border of counterfeit currency, securities and payment cards in 2001 and 2002.*
Source: *Burgas Regional Prosecution Office, Burgas Regional Court*

TABLE 25: CASES OF ILLEGAL EXPORTATION OF LISTED CULTURAL MONUMENTS FOUND BY BURGAS REGIONAL CUSTOMS DIRECTORATE FOR THE PERIOD JANUARY 2001-OCTOBER 2006

Year	2001	2002	2003	2004	2005	2006	Total
Violations found	2	0	0	2	1	0	5
Cases forwarded to the prosecution office	2	0	0	2	0	0	4
Cases remitted by the prosecution office	1	0	0	1	0	0	2
Administrative penalty warrants	1	0	0	1	1	0	3

Source: *Burgas Regional Customs Directorate.*

4.5. Corruption Offences

The situation with corruption offences resembles that in the areas near the borders with Turkey and Macedonia. Despite the specificities of the southern Black Sea border areas and the potential risks of corruption, bribery cases are less than a handful. From January 2001 to November 2006 the prosecutors from the regional and district prosecution offices in Burgas presented to the relevant courts 36 indictments of bribery. During the same period Burgas District Court opened 26 trials for bribery and 23 sentences were returned.

5. PROBLEMS WITH THE INVESTIGATION AND PROSECUTION OF CROSS-BORDER OFFENCES AT THE BORDERS WITH TURKEY AND MACEDONIA, AND ALONG THE SOUTHERN BLACK SEA BORDER

Cross-border criminality is growing in complexity and sophistication and this only exacerbates the difficulties inherent in the detection and prosecution of those offences. The existing problems are legislative, on the one hand, as well as financial, organizational, logistical and staffing ones.

5.1. Problems with the Legal Framework and Its Enforcement

As regards the **transfer of the investigation of almost all cross-border crimes to investigative police officers from the Ministry of Interior**, this recent change evokes predominantly negative assessments. It is normally assumed that investigators are more experienced, better qualified and, hence, able to be more efficient in investigating typical border area offences, while investigative police officers have to be trained virtually from scratch.[58] Such negative assessments combine with the insufficient number of investigative police officers and their doubted independence which, in turn, generates fears of the integrity of pre-trial proceedings, especially those for smuggling of goods and narcotics. As the powers to undertake investigative steps are linked to a requirement that the official in question be appointed "investigative police officer" at the Ministry of Interior, the staffing potential of the investigative authorities is considerably restricted. For example, only one investigative police officer has been appointed in the area of Kapitan Andreevo border checkpoint and that official is forced into traveling literally day and night between Dimitrovgrad and Svilengrad. Moreover, cross-border crimes are often detected in the course of routine inspections carried out by customs officers or by officials of the General Border Police Directorate which are not explicitly appointed "investigative officers". In such cases, in order for the procedural steps conducted and the evidence gathered to be valid at all stages of the criminal procedure, an investigative police officer or a prosecutor must be contacted who should institute a criminal proceeding and undertake the relevant steps. Even worse, the items seized by the competent authorities in the context of a validly open administrative liability procedure (e.g. for smuggling) cannot be used as evidence in a later pre-trial proceeding if it is found that the relevant act was in fact a crime.[59] There have already been several instances of criminal proceedings terminated or even acquittals returned in various parts of the country exactly because of the vitiated collection of physical evidence (most often narcotic substances).

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[58] Although less frequently, the opposite view is expressed as well, namely that investigative police officers are better in coordinating with the operatives, e.g. at locations where controlled deliveries are organized, etc.

[59] See Judgment No. 944 of 11.01.2007 of the Supreme Court of Cassation in criminal case No. 379/2006, Second Criminal Division.

Another set of problems stem from the rules on **instituting the pre-trial proceeding by drawing up a record for the first investigative step made** (Article 212(2) of the *Criminal Procedure Code*). On the one hand, the law specifies that this method of opening a criminal justice procedure (which is less formalized than initiating the procedure by a prosecutorial warrant) shall only apply where a crime scene inspection and the relating searches, seizures and eyewitness interviews are carried out, provided that conducting those steps immediately is the only opportunity to collect and preserve evidence. The list of procedural steps valid in this context does not include body searches, although cross-border crimes, especially smuggling, are often detected by discovering prohibited items (e.g. narcotics) on a person's body. In such cases even though the official conducting the body search might be an investigative police officer, the criminal process shall not be deemed instituted and the procedural steps undertaken and the items seized cannot be used in court.

The **change in jurisdiction** over the smuggling of goods and narcotics (i.e. the transfer of those cases from regional to district courts and from regional to district prosecution offices, accordingly) helped to resolve some of the problems that existed earlier. Before the entry into force of the new *Criminal Procedure Code*, smuggling cases under Article 242 of the *Criminal Code* were handled by the regional courts but because of the severe sanctions the legislation required that some cases be tried by five-member grand judicial chambers (comprising two judges and three assessors). That caused particular problems to the smaller regional courts in charge of such trials. For example, while the number of judges in Svilengrad was increased to four, at times it was still necessary to second there judges from other courts for the hearing of individual cases.

The new rules, however, have given rise to novel problems. Thus, whenever the customs authorities detect narcotics smuggled across a border check-point, they must notify the police authorities which, in turn, must notify the district prosecutor who should then make a trip to the respective area for the purpose of conducting a number of procedural steps. Hence, if smuggling was detected by a customs officer at Kapitan Andreevo border check-point, that officer will notify the investigative police officer who then notifies the district prosecutor of Haskovo who should then go to the Regional Court in Svilengrad. The transfer of jurisdiction over these matters from regional to district courts also frustrates the proceedings given the need to transport the detainees.

By far the biggest difficulties stem from the **short deadlines envisaged for both the pre-trial stage and the trial**, as compliance with them has proven next to impossible. This holds in particular for the deadlines for expert assessments, mostly those for narcotics: these take in practice about 6 or 7 months as the areas along the Turkish border, where the issue is indeed topical, have no labs to analyze the substances.

Serious problems are generated by **the unduly severe penalties** provided for in Article 354a of the *Criminal Code*, especially its second paragraph on repeat offences (production, possession, physical movement, etc. of narcotic substances). As the practice stands, cases are more often instituted against the

"mules", so it would be more appropriate for the penalties to be differentiated and reduced by the lawmaker rather than leaving the courts to try and find ways and means to achieve that result in the criminal process.

It is very difficult in the event of smuggling of narcotics to prove the link between the mule and the person who placed the order: the big boss is usually never involved directly, so systematic and extensive efforts are needed in terms of surveillance, physical tracking, etc. The problems are similar in the event of trafficking in human beings or smuggling of persons. The leader usually remains on the loose as he is either a foreign national or has dual nationality. On the other hand, in order to get hold of the smuggler, those who crossed the border illegally are often used as witnesses which eliminates the possibility to prosecute them for illegal migration under Article 279 of the *Criminal Code*.

The execution of **letters rogatory**, mainly by Turkey (and also Greece) seems to be a major problem. During the past eight years, almost no letter rogatory sent by the Regional Court in Svilengrad to Turkey has been executed, while in 2005 alone Bulgaria executed through Haskovo District Court nearly 40 letters rogatory sent by Turkish counterparts. Failure to execute or the delayed execution of letters rogatory entails putting off and, finally, procrastinating the proceedings: hearings merely fail, new letters rogatory have to be sent, etc. One must say that the Bulgarian side is sometimes also slow in honoring such requests.

In spite of the newly-passed *Law on Legal Aid* difficulties exist with the access to legal aid in the border areas and with the virtual lack of case law based on the procedures prescribed by the law. Such difficulties are due mainly to the remoteness of those areas and additionally slow down the criminal process.

Chapter Five
BARRISTERS ON DUTY

Article 28. (1) In emergencies, where measures to prevent absconding and interviews before a judge are at stake, the bar council shall designate a barrister on duty if the defendant or the incriminated person or the suspect has failed to retain defense counsel himself.

(2) A barrister on duty shall also be designated for any individual arrested in conformity with Article 70(1) of the Law on the Ministry of Interior, where they are unable to retain a barrister themselves.

Article 29. (1) Shall be designated barrister on duty the barristers from the National Legal Assistance Register who have expressed their consent to be placed on the list of barristers on duty.

(2) The consent referred to in paragraph (1) may not extend to a period shorter than one month and shall display the barrister's readiness to be designated barrister on duty at any time of the day or night.

(3) The bar council shall keep a list of barristers on duty.

Article 30. (1) The request for a barrister on duty to be designated in the cases referred to in Article 28(1) shall be made by the body in charge of the procedural steps and addressed to the bar council in writing or on the phone at least three hours before the starting time of the respective proceeding.
(2) In the cases referred to in Article 28(2), a barrister on duty shall be chosen from the list of barristers on duty by the police authorities having carried out the arrest.
(3) The body under paragraph (2) must explain to the arrested individual, immediately upon his or her arrest, the right to a barrister on duty and shall notify the barrister chosen from the list who shall proceed forthwith to fulfilling his or her obligations in the context of legal aid.
(4) The obligations under paragraph (3) shall be fulfilled by serving on the arrested person a countersigned copy of a form stating that person's right to use retained counsel or a barrister on duty as of the moment of the arrest.
(5) The barrister on duty shall continue to provide legal aid throughout the stages of the proceedings.

Source: Law on Legal Aid.

5.2. Organizational and Methodological Problems

Most of the competent authorities investigating cross-border crimes still lack **sufficient specific knowledge and skills** in the investigation of cross-border criminality. An analysis of the Supreme Prosecution Office of Cassation thus suggests that the major difficulties with the investigation of drug-related crimes, including drugs smuggling, result from the **inadequate legal background of the officers conducting the emergency investigative steps** (such as searches, body searches, seizures, etc).[60] The breaches of procedure occurring in the course of those steps and the records improperly drawn up often prevent the indictment from being successfully pursued in court.

Some problems of law enforcement ensue from **the lack of a uniform methodology to investigate** cross-border offences. The National Investigation Service has compiled a three-volume manual with methodological guidelines for the investigation of specific types of crimes, including some cross-border offences. It might also benefit the investigative police officers, though given the peculiar investigation of cross-border crime the Supreme Prosecution Office of Cassation might wish to think about developing and approving special methodological guidelines for the investigation of such offences.[61]

[60] See Prosecution Office of the Republic of Bulgaria: Report of Activities, 1999-February 2006, Sofia, 2006 (http://www.prb.bg/php/documents/371.doc, in Bulgarian).

[61] Several years ago the experience gained in Svilengrad was used to develop a methodology for investigating the smuggling of narcotic drugs entitled *Practical Problems in the Fight against Drugs Trafficking and Their Overcoming as a Way to Ensure the Correctness and Efficiency of Investigation*; that work could be refined, updated and utilized.

The problem with **interpreting** during interviews is very serious, especially as the suspects or defendants are often aliens. Thus, it is hard to find interpreters from Albanian, Afghan (Farsi), Romanian or Serbian. There are only a few people speaking Arabic who as a rule work in private companies and are normally unable to respond on time if called, moreover the payment offered is unattractive for them. Similarly, there is no good audiovisual equipment to be used for the conduct and recording of such interviews. Such interviews can be painful and inefficient, especially if the interpreting services are of poor quality.

Staffing problems exist as well: for instance, there is one investigative police officer in the entire district of Haskovo specialized in investigating smuggling of drugs; there are no interpreters from rare languages and, if a statement of finding an offence is drawn up without an interpreter, the case is doomed to failure in court.

5.3. Problems Relating to Facilities and Equipment

There is no appropriate **equipment**, e.g. scanning devices for comprehensive long-vehicle inspections, which generates specific risks against the backdrop of a random-check system; bullet-proof vehicles to transport the drugs (transportation currently takes place by customs minivans and, not infrequently, private cars are used for official purposes); computers and high-speed internet connection, or internet access at all, etc.

There are no **form declarations** in rare languages (Arabic, Albanian, Farsi) for the declaration of carrying currency across the border. This entails the failure of the charges if a case makes it to court.

There is no **laboratory for drug analyses** at the border or in its vicinity, so the samples have to be transported to Sofia where the analyses come back from. The delayed preparation of expert assessments often results in compromising the investigative deadlines. Experts have shared that, if the lab analysis results were not delayed to such an extent, it could take as little as two weeks to convict a "mule".

Another big problem consists in the lack of **sufficient space in the preliminary detention places** which necessitates that the detainees be moved to Sofia. In Svilengrad, there is no genuine detention place in line with the existing requirements: there are only five cells for men and one cell for women, all of them overcrowded (it is a most frequent occurrence to have more than 25 detainees there).

The **number of experts** is **insufficient** and it is impossible to fuel the process with timely expert assessments.

Similarly lacking are **interpreters** from and into rare languages, as well as authorized interpreters or translators able to timely perform urgent translation tasks.

CHAPTER THREE. INTERNATIONAL LEGAL COOPERATION AND INTERNATIONAL LEGAL ASSISTANCE IN CRIMINAL MATTERS IN RELATION TO CROSS-BORDER OFFENCES

Cooperation relative to the investigation and prosecution of cross-border crime takes place along two major axes: firstly, at an intergovernmental level (bilaterally or multilaterally); and secondly, at an inter-agency level, i.e. between the Supreme Prosecution Office of Cassation and the prosecutorial authorities of various third countries, between judicial, customs, and police authorities, etc. The legal bases of that process, however, are still deficient, as are the general international instruments governing cooperation among the law enforcement bodies of different countries in their fight against transnational crime, which is primarily organized crime, both in terms of prevention and in terms of ex-post control.

1. FUNDAMENTALS OF INTERGOVERNMENTAL COOPERATION

The Republic of Bulgaria is a party to a number of multilateral legal instruments covering various aspects of international cooperation in criminal matters, including cross-border crime. The following of these may be singled out as being of particular importance:

- *European Convention on Mutual Assistance in Criminal Matters*, ratified by a Law passed by the 36th National Assembly on 27 April 1994 (State Gazette (hereinafter "SG"), issue 39 of 1994); in force for Bulgaria as from 15 September 1994, published by the Ministry of Justice, SG, issue 8 of 24 January 1995;

European Convention on Mutual Assistance in Criminal Matters

The *European Convention on Mutual Assistance in Criminal* Matters is a fundamental multilateral treaty on mutual assistance in criminal matters. It covers different forms of legal assistance in the context of criminal proceedings for offences falling within the jurisdiction of a requesting Party's judicial authorities as at the time of placing a request for assistance, i.e.:

- Letters rogatory;
- Service of writs and records of criminal verdicts: appearance of witnesses, experts and prosecuted persons;
- Communication of criminal records information;
- Laying of information in connection with criminal proceedings;

- Exchange of information from judicial records.

A letter rogatory in criminal matters consists in a request to procure evidence or to transmit articles to be produced in evidence, records or documents. Article 5 of the Convention enables each Contracting Party to reserve its right to make the execution of letters rogatory for search or seizure of property dependent on one or more of the following conditions:

- That the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;
- That the offence motivating the letters rogatory is an extraditable offence in the requested Party;
- That execution of the letters rogatory is consistent with the law of the requested Party.

The Convention sets forth the procedures for filing requests for assistance and the contents thereof. In the majority of cases the requests are sent by the requesting Party's Ministry of Justice to the requested Party's Ministry of Justice. In a number of scenarios detailed in the Convention, as well as in emergencies, such requests may be sent directly by the judicial authorities of a requesting Party to the requested Party's judicial authorities. The procedure laid down in the Convention is without prejudice to the provisions of any bilateral or multilateral agreements or arrangements in force between the Contracting Parties concerned which provide for the direct transmission of requests for assistance between their respective authorities (Article 15(7) of the Convention). At the same time, the Convention supersedes, in respect of those countries to which it applies, the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties but does not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field. A possibility is provided for the Contracting Parties to conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters **only in order to supplement the provisions of the Convention or to facilitate the application of the principles contained therein**.

The Convention may be derogated from where mutual assistance in criminal matters between two or more Contracting Parties is practiced on the basis of uniform legislation or of a special system providing for the reciprocal application in their respective territories of measures of mutual assistance, and these Parties are, notwithstanding the provisions of the Convention, free to regulate their mutual relations in this field exclusively in accordance with such legislation or system.

- *Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters*, ratified by a Law passed by the 36th National Assembly on 27 April 1994, SG, issue 39 of 1994, in force for Bulgaria as from 15 September 1994, published by the Ministry of Justice, SG, issue 8 of 24 January 1995;
- *Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters*, ratified by a Law passed by the 39th National Assembly on 18 February 2004, SG, issue 16 of 27 February 2004, published by the Ministry of Justice, SG, issue 94 of 22 October 2004, in force for the Republic of Bulgaria as from 1 September 2004;[62]
- *Convention on the Transfer of Sentenced Persons*, ratified by a Law passed by the 36th National Assembly on 27 April 1994, SG, issue 39 of 1994, in force for Bulgaria as from 15 September 1994, published by the Ministry of Justice, SG, issue 8 of 24 January 1995;
- *Additional Protocol to the Convention on the Transfer of Sentenced Persons*, ratified by a Law passed by the 39th National Assembly on 28 January 2004, SG, issue 11 of 10 February 2004, published by the Ministry of Justice, SG, issue 92 of 15 October 2004, in force for Bulgaria as from 1 July 2004;
- *European Convention on the Transfer of Proceedings in Criminal Matters*, ratified by a Law passed by the 39th National Assembly on 28 January 2004, SG, issue 11 of 10 February 2004, issued by the Ministry of Justice, SG, issue 104 of 26 November 2004, in force for Bulgaria as from 1 July 2004;
- *European Convention on the International Validity of Criminal Judgments*, ratified by a Law passed by the 39th National Assembly on 28 January 2004, SG, issue 11 of 10 February 2004, published by the Ministry of Justice, SG, issue 104 of 26 November 2004, in force for Bulgaria as from 1 July 2004.

Bulgaria also participates in many international legal instruments relevant to the fight against cross-border criminality which contain provisions *inter alia* on international cooperation. The following may be cited under this heading:

- *United Nations Convention on Transnational Organized Crime*, ratified by a Law passed by the 38th National Assembly on 12 April 2001, SG, issue 42 of 27 April 2001, published by the Ministry of Interior, SG, issue 98 of 6 December 2005, in force for Bulgaria as from 29 September 2003;
- *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crim*e (also known as the "Palermo Protocol"), ratified by a Law passed by the 38th National Assembly on 12 April 2001, SG, issue 42 of 27 April 2001, published by the Ministry of Interior, SG, issue 98 of 6 December 2005, in force for Bulgaria as from 25 December 2003;
- *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*, ratified by a Law passed by the 38th National Assembly on 12 April 2001, SG,

[62] Bulgaria's 2004 ratification of the *Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, the Additional Protocol to the Convention on the Transfer of Sentenced Persons, the European Convention on the Transfer of Criminal Proceedings* and the *European Convention on the International Validity of Criminal Judgments* triggered amendments to the then *Criminal Procedure Code* that were enacted at the end of 2004. Later, those novel provisions were transferred to the new *Criminal Procedure Code*.

issue 42 of 27 April 2001, published by the Ministry of Interior, SG, issue 98 of 6 December 2005, in force for Bulgaria as from 28 January 2004;

- *Council of Europe Convention on Action against Trafficking in Human Beings*, signed by Bulgaria on 22 November 2006 in Strasbourg, ratified by a Law passed by the 40th National Assembly on 7 March 2007, SG, issue 24 of 20 March 2007;
- *United Nations Convention against Illicit Traffic in Narcotic Drugs And Psychotropic Substances*, adopted by the Conference at its sixth meeting on 19 December 1988, ratified by a Law passed by the National Assembly on 15 July 1992, SG, issue 60 of 24 July 1992, published by the Ministry of Foreign Affairs, SG, issue 89 of 19 October 1993, in force for Bulgaria as from 23 December 1992, corr., issue 58 of 29 June 2001;
- *1995 Agreement on Illicit Traffic by Sea implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, signed on 21 May 2003;
- *International Convention for the Suppression of the Financing of Terrorism*, ratified by a Law passed by the 39th National Assembly on 23 January 2002, SG, issue 11 of 31 January 2002, published by the Ministry of Foreign Affairs, SG, issue 70 of 19 July 2002, in force as from 15 May 2002;
- *European Convention on the Suppression of Terrorism*, ratified by a Law passed by the 38th National Assembly on 14 January 1998, SG, issue 9 of 23 January 1998, published by the Ministry of Justice, SG, issue 95 of 6 November 2001, in force as from 18 May 1998;
- *Protocol Amending the European Convention on the Suppression of Terrorism*, ratified by a Law passed by the 39th National Assembly on 14 January 2004, SG, issue 6 of 23 January 2004;
- *Council of Europe Convention on the Prevention of Terrorism*, ratified by a Law passed by the 40th National Assembly on 15 June 2006, SG, issue 53 of 30 June 2006;
- *United Nations Convention against Corruption*, ratified by a Law passed by the 40th National Assembly on 3 August 2006, SG, issue 66 of 15 November 2006, published by the Ministry of Justice, SG, issue 89 of 3 November 2006, in force for Bulgaria as from 20 October 2006;
- *Criminal Law Convention on Corruption*, ratified by a Law passed by the 38th National Assembly on 12 April 2001, SG, issue 42 of 27 April 2001, published by the Ministry of Justice, SG, issue 73 of 26 July 2002, in force for Bulgaria as from 1 July 2002;
- *Additional Protocol to the Criminal Law Convention on Corruption*, ratified by a Law passed by the 39th National Assembly on 10 December 2003, SG, issue 110 of 19 December 2003, published by the Ministry of Justice, SG, issue 35 of 22 April 2005, in force for Bulgaria as from 1 February 2005.

There is also a number of bilateral instruments on cooperation in the region some of which, however, are either rather obsolete or limited in their scope and legal effects. These are in particular:

- *Treaty on Legal Assistance in Civil and Criminal Matters between the Republic of Bulgaria and the Republic of Turkey*, ratified by virtue of Decree No. 160 of the State Council of 18 February 1976, SG, issue 20 of 9 March 1976, published

by the Ministry of Foreign Affairs, SG, issue 16 of 23 February 1979, in force as from 27 October 1978;

- *Treaty between the Republic of Bulgaria and the Republic of Turkey on the Transfer of Sentenced Persons*, ratified by a Law passed by the 36th National Assembly on 15 July 1993, SG, issue 65 of 1993, published by the Ministry of Justice, SG, issue 61 of 7 July 1995, in force as from 24 June 1995;
- *Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Turkey on Cooperation and Mutual Assistance in Customs Operations*, approved by Decision of the Council of Ministers No. 175 of 30 April 1998, published by the Ministry of Finance, SG, issue 87 of 29 July 1998, in force as from 10 June 1998;
- *Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Turkey on Police Cooperation*, approved by Decision of the Council of Ministers No. 612 of 4 July 2005, published by the Ministry of Interior, SG, issue 70 of 26 August 2005, in force for Bulgaria as from 11 July 2005;
- *Agreement on Cooperation between the Government of the Republic of Bulgaria, the Government of Romania and the Government of the Republic of Turley in the Field of the Fight against Terrorism, Organized Crime, Trafficking in Narcotic Drugs and Psychotropic Substances, Money Laundering, Trafficking in Weapons and Persons, and Other Serious Crimes*, approved by Decision No. 550 of the Council of Ministers of 13 October 1998, published by the Ministry of Foreign Affairs, SG, issue 75 of 28 August 2001, in force as from 29 October 1999;
- *Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Macedonia on Measures to Prevent and Resolve Border Accidents along the Bulgarian-Macedonian State Frontier*, approved by Decision of the Council of Ministers No. 553 of 31 July 2000, published by the Ministry of Interior, SG, issue 84 of 3 September 2002, in force as from 8 March 2002;
- *Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Macedonia on Readmission of Illegal Residents*, approved by Decision of the Council of Ministers No. 266 of 26 April 2002, published by the Ministry of Interior, SG, issue 87 of 13 September 2002, in force as from 19 June 2002;
- *Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Macedonia on Cooperation and Mutual Assistance in the Field of Customs*, approved by Decision No. 322 of the Council of Ministers of 12 June 2000, published by the Ministry of Finance, SG, issue 100 of 25 October 2002, in force as from 15 June 2000;
- *Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Macedonia on Border Police Cooperation*, approved by Decision of the Council of Ministers No. 720 of 16 October 2006, published by the Ministry of Interior, SG, issue 14 of 13 February 2007, in force as from 21 January 2007;
- *Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of Macedonia on Cooperation in the Fight against Terrorism, Organized Crime, Illicit Trafficking in Narcotic Drugs and Precursors, Illegal Migration and Other Serious Crimes*, approved by Decision of the Council

of Ministers No. 162 of 25 March 2002, published by the Ministry of Interior, SG, issue 62 of 11 July 2003, in force as from 26 February 2003;

- *Memorandum of Cooperation between the Ministry of Justice of the Republic of Bulgaria and the Ministry of Justice of the Republic of Macedonia*, signed on 16 May 2005 during an official visit of a Bulgarian Government Delegation to Skopje, Republic of Macedonia;
- *Declaration of the Ministers of Justice and Home Affairs in South Eastern Europe on the Fight against Trafficking in Children and the Protection of Victims of Crime*, signed on 10 December 2003 during the Fourth Regional Forum of Ministers of Justice and Home Affairs in South Eastern Europe.

The thrust of multilateral legal instruments is predetermined by objective factors and their major role vis-à-vis the fundamental aspects of cooperation will become even more vital. This, however, does not entail the automatic disappearance of the need for modern arrangements on bilateral cooperation. On the contrary, the bilateral arrangements concerning a number of organizational and procedural issues should be enhanced and updated.

2. INTERNATIONAL LEGAL ASSISTANCE IN CRIMINAL MATTERS. COOPERATION BETWEEN LAW ENFORCEMENT AND JUDICIAL BODIES

The *Criminal Procedure Code* stipulates that international legal assistance in criminal matters shall be provided in line with an international treaty to which the Republic of Bulgaria is a party or on the basis of reciprocity. International legal assistance in criminal matters is also provided to any international court whose jurisdiction has been recognized by Bulgaria. Such assistance may consist in document service, specific investigative steps, evidence gathering, provision of information, as well as any other activities envisaged by an international treaty to which Bulgaria is a party or available on the basis of reciprocity (Article 471 of the *Criminal Procedure Code*). Assistance may only be refused if the execution of the application at hand might threaten the sovereignty, national security, public order or other interests protected by law (Article 472 of the *Criminal Procedure Code*). The legislation details the procedural rules applicable to witness and expert appearances before foreign courts (Article 473 of the *Criminal Procedure Code*) and to interviewing persons by means of video- or teleconferencing (Article 474 of the *Criminal Procedure Code*).

By virtue of the international agreements to which Bulgaria has subscribed, and in conformity with the country's domestic legislation, the **Ministry of Justice has a key role to play** in the coordination and provision of international legal assistance in criminal matters.

Letters rogatory are sent to another state or to international courts via the Ministry of Justice, unless an international treaty to which Bulgaria is a party provides for a different procedure (Article 475 of the *Criminal Procedure Code*).

A letter rogatory from another state or from an international court is executed under the procedure set forth in Bulgarian legislation or envisaged in an international treaty to which Bulgaria is a party. On request, a letter rogatory may also be executed under the procedure set forth in the legislation of another state or in the statute of the respective international court, provided that this would not be at odds with Bulgarian laws (Article 476(1) of the *Criminal Procedure Code*).

TABLE 26: LEGAL ASSISTANCE FILES OPENED AT THE MINISTRY OF JUSTICE FOR THE PERIOD JULY 2001-JULY 2005

Extraditions	• requested by other states • requested by Bulgaria	269 255
Transfers	• of foreign nationals • of Bulgarian nationals	39 116
Recognition and enforcement proceedings	• enforcement of judgments pronounced by courts in third countries • enforcement in third countries of judgments pronounced by Bulgarian courts	141 35
"Children's files"	• in the context of protecting the interests of children	14
Letters rogatory	• investigative letters rogatory sent by Supreme Prosecution Office of Cassation • prosecutorial letters rogatory concerning foreign nationals • judicial letters rogatory received from third countries concerning criminal and civil matters • Bulgarian judicial letters rogatory addressed to courts in third countries concerning civil and criminal matters	3,440 6,317 10,095 4,268
Criminal records of Bulgarian nationals convicted abroad		19,577

Source: Ministry of Justice: Key Achievements July 2001–July 2005 (http://www.mjeli.government.bg/publications/Dokladi/Report_2001-2005.pdf).

TABLE 27: LETTERS ROGATORY SOUGHT BY BULGARIAN COURTS AND DESIGNATED FOR TURKEY OR MACEDONIA IN RELATION TO CROSS-BORDER CRIMINAL OFFENCES FOR THE PERIOD 2001-2006

Offence	Letters rogatory to Turkey	Letters rogatory to Macedonia
Trafficking in human beings (Articles 159a-159c of the Criminal Code)	0	0
Smuggling of goods or narcotics (Articles 242-242a of the Criminal Code)	9	19
Carrying across the border counterfeit currency, securities and payment cards (Article 244(1) of the Criminal Code)	1	1
Illegal exportation of listed cultural monuments or archive records (Article 278(3) of the Criminal Code)	0	0
Illegal crossing of the border and smuggling of persons (Articles 279-280 of the Criminal Code)	8	0
Illegal carrying across the border of hazardous waste or other substances (Article 353b of the Criminal Code)	0	0
Bribery and other corruption offences (Articles 301-307a of the Criminal Code)	0	0

Source: Ministry of Justice.

The execution of third-country applications for controlled deliveries and cross-border surveillance is carried out by the competent investigative authority. The latter may seek assistance from the police, the customs or any other administrative authority (Article 476(7) of the *Criminal Procedure Code*).

The costs for executing a letter rogatory are split between the parties in conformity with the international treaties to which Bulgaria is a party or based on the principle of reciprocity (Article 477 of the *Criminal Procedure Code*).

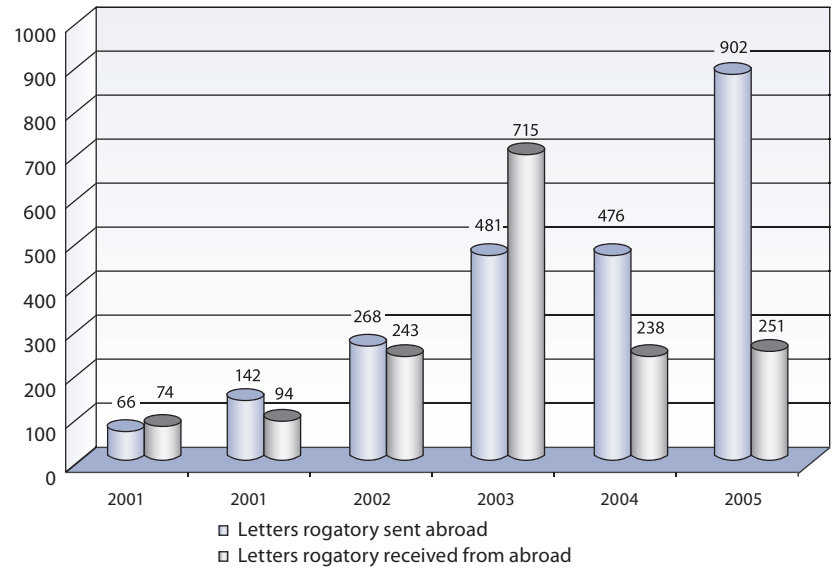
Between 2001 and 2006 the Ministry of Justice received several requests from Bulgarian courts for letters rogatory to be sent to Turkey or Macedonia in relation to cross-border criminal cases; most of those requests involved smuggling of goods or narcotics (*Table 27*).

Table 28: Letters rogatory sent by Turkey or Macedonia in relation to cross-border criminal offences for the period 2001-2005

Offence	Letters rogatory to Turkey	Letters rogatory to Macedonia
Trafficking in human beings (Articles 159a-159c of the Criminal Code)	0	0
Smuggling of goods or narcotics (Articles 242-242a of the Criminal Code)	9	19
Carrying across the border counterfeit currency, securities and payment cards (Article 244(1) of the Criminal Code)	1	1
Illegal exportation of listed cultural monuments or archive records (Article 278(3) of the Criminal Code)	0	0
Illegal crossing of the border and smuggling of persons (Articles 279-280 of the Criminal Code)	8	0
Illegal carrying across the border of hazardous waste or other substances (Article 353b of the Criminal Code)	0	0
Bribery and other corruption offences (Articles 301-307a of the Criminal Code)	0	0

Source: Ministry of Justice.

Chart 12: Letters rogatory received and sent by the Supreme Prosecution Office of Cassation for the period 2000-2005



Source: Prosecution of the Republic of Bulgaria, Report of Activities, 1999-February 2006 (http://www.prb.bg/php/documents/371.doc).

Significantly higher was the number of letters rogatory which the Ministry of Justice received from Turkey or Macedonia (*Table 28*).

In view of the existing constitutional model of the judiciary and the procedural legislation in force in Bulgaria, the country's **public prosecution office** has a lead role in combating crime, including cross-border offences. Therefore, its involvement in international cooperation in this area becomes ever more important.

In this connection, two facts are worth mentioning: first, given the very high level of danger to the community posed by such offences and the major public interests at stake, all proceedings for organized crime (i.e. all crimes committed by an organized criminal group or by order of such a group, trafficking in human beings, smuggling of narcotics and precursors, counterfeiting currency and credit card fraud, offences affecting the financial interests of the EU, corruption, terrorism, etc.) are subject **to a special monitoring arrangement** implemented by the Supreme Prosecution Office of Cassation; second, in view of the increasing workload of the Supreme Prosecution Office of Cassation in the field of international cooperation and international legal assistance, in 2004 **the International Cooperation Section was upgraded into a separate department within the Supreme Prosecution Office**. The department handles a growing number of files and has developed much ampler activities both in terms of drawing up and sending abroad applications for legal assistance in the form

of letters rogatory, and in terms of executing similar applications sent by other countries (*Chart 12*).

Based on information from the Supreme Prosecution Office of Cassation, the letters rogatory sent in by foreign judicial authorities most often concern criminal proceedings for trade in, manufacturing of and trafficking in narcotics, money laundering, counterfeiting currency and payment instruments, smuggling of goods, fraud, etc. Most of those requests are forwarded to the National Investigation Service and are normally executed within **three to four months or, by way of exception, six or more months**.

The letters rogatory received via the Ministry of Justice do not exhaust the number of requests for assistance registered and assigned by the Supreme Prosecution of Cassation. An increasing number of applications for the urgent service of summonses and for certain investigative steps are sent by fax to the Supreme Prosecution Office of Cassation by virtue of the *Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*. The applications for investigative steps sent by fax are assigned to the National Investigation Service immediately. The original applications are then dispatched by formal routes, i.e. from the Ministry of Justice of the respective state to the Ministry of Justice of Bulgaria. Where an investigative letter rogatory has to be sent abroad, Interpol channels are used as well by virtue of Article 4 of the *Second Additional Protocol to the Convention* (in 2005 that opportunity was used on 30 occasions).

Cooperation between the Supreme Prosecution Office of Cassation **and the competent bodies of other countries** develops in conformity with the existing multilateral and bilateral international treaties to which Bulgaria is a party or based on the principle of reciprocity; those arrangements cover the drawing up and sending abroad of applications for legal assistance; the assignment and execution of foreign applications for legal assistance; and the extradition of defendants and convicted persons.

Legal assistance in criminal cases channeled by the Supreme Prosecution Office of Cassation in 2005

In 2005, the International Legal Assistance Department at the Supreme Prosecution Office of Cassation registered a total of 11,385 files, of which 4031 were newly-opened.

Various Bulgarian authorities sent a total of 902 applications for legal assistance in pending pre-trial proceedings broken down along the following lines: 15 cases for trafficking in and manufacturing of narcotics; 5 cases for money laundering; 8 cases for trafficking in human beings and enticement into prostitution; 1 case for an organized criminal group, etc.

Foreign judicial authorities sent to Bulgaria 251 applications for legal assistance of which 156 were assigned to the National Investigation Service. The applications relating to proceedings for trading in, manufacturing of

or trafficking in narcotics were 19, those for money laundering and counterfeiting currency or payment instruments were 15, those for fraud were 21, those for smuggling of goods were 14, etc.

In 2005, the Supreme Prosecution Office of Cassation received 66 foreign applications for the extradition of foreign nationals (compared to 112 in 2004) and 88 applications from various Bulgarian judicial authorities for the extradition of persons to Bulgaria (compared to 35 in 2004).

Also registered were 10 newly-received applications for the transfer of foreign nationals convicted in Bulgaria (compared to 40 in 2004) and 40 requests for the transfer of Bulgarian nationals convicted abroad (compared to 43 in 2004), for the purpose of serving sentences.

As regards the application of the *European Convention on the International Validity of Criminal Judgments*, in 2005 there was one case where a judgment from the Kingdom of the Netherlands for trafficking in human beings and money laundering was immediately forwarded to the competent District Court in Burgas for the relevant judicial procedure to be undertaken.

Source: Prosecution of the Republic of Bulgaria, Report of Activities, 1999-February 2006 (http://www.prb.bg/php/documents/371.doc).

The Supreme Prosecution Office of Cassation receives and sends the applications for the **transfer of criminal proceedings**, where the latter are at the pre-trial stage (if the proceedings have moved to the trial stage, transfer applications are handled by the Ministry of Justice). The transfer of criminal proceedings is covered by Section IV of Chapter Thirty-Six of the *Criminal Procedure Code*. Where an application to transfer criminal proceedings abroad is granted, it is immediately forwarded to the authorities competent to handle the case under the Bulgarian *Criminal Procedure Code*. An application for a transfer abroad is accepted if 13 cumulative conditions, set forth in Article 478(2) of the *Criminal Procedure Code*, have been met: 1. the act for which the application was made constitutes a criminal offence under Bulgarian legislation; 2. the offender is capable of criminal liability under Bulgarian legislation; 3. the offender has his or her permanent domicile in the territory of Bulgaria; 4. the offender is a Bulgarian national; 5. the offence to which the application relates is not considered a political crime or related to a political crime or a military crime; 6. the application is not aimed at persecuting or prosecuting the individual concerned on account of his or her race, religion, nationality, ethnic origin, sex, civil status or political opinion; 7. a criminal proceeding has started in Bulgaria against the offender for the same or different offence; 8. the transfer of proceedings benefits the finding of the truth and the most important evidence is located in the territory of Bulgaria; 9. the execution of the penalty, if imposed, enhances the convicted person's chances of social rehabilitation; 10. the offender's personal appearance may be ensured in the proceeding in Bulgaria; 11. the sentence, if pronounced, may be executed in Bulgaria; 12. the application does not run counter to Bulgaria's international obligations; 13. the

application does not run counter to the fundamental principles of Bulgarian criminal law and criminal procedure.

The new *Criminal Procedure Code* enables the Supreme Prosecution Office of Cassation to set up joint investigation teams with other countries by seconding Bulgarian prosecutors and investigative bodies to such teams. In such cases an agreement is made between the competent authorities of the participating states concerning the operations to be undertaken, the duration of the mandate and the members of the joint investigation team. In the territory of Bulgaria, a joint investigation team must abide by the provisions of the international treaties, the agreement referred to above, and Bulgarian legislation (Article 476(3) of the *Criminal Procedure Code*). The Supreme Prosecution Office of Cassation may send applications to other countries for the use of undercover officers, controlled deliveries and cross-border surveillance in investigations, and entertains similar applications sent by other countries (Article 476(4) of the *Criminal Procedure Code*). Under the law, should the Bulgarian state border be crossed in an emergency in order to conduct cross-border surveillance in Bulgarian territory, the Supreme Prosecution Office of Cassation must be notified immediately. It decides on whether such cross-border surveillance should be continued or discontinued, in line with the conditions and the procedure set out in the *Law on Special Intelligence Means* (Article 476(6) of the *Criminal Procedure Code*).

Cooperation between the prosecution office and foreign competent authorities has been enhanced by the entry into force of the *Law on Extradition and the European Arrest Warrant*. That law vested the Supreme Prosecution Office of Cassation with drawing up requests for international searches or extradition requests addressed to foreign bodies in relation to defendants in pending pretrial proceedings or convicted persons.

The scope of application of the *Law on Extradition and the European Arrest Warrant* is determined by the following factors:

- The existence of an international treaty, to which Bulgaria is a party, with the law complementing any such treaty in relation to matters not covered therein;
- The reciprocity, established by the Minister of Justice, in cases where no international treaty exists;
- The receipt of an Interpol Red Notice issued for the purpose of arrest and extradition.

In order for extradition to be allowed, **double criminality** is a *sine qua non*, i.e. the offence should constitute a crime both under Bulgarian legislation and under the laws of the requesting state and should carry at least one year imprisonment or a custodial measure or heavier penalty (Article 5(1) of the *Law on Extradition and the European Arrest Warrant*). An act is deemed to constitute a criminal offence in both countries where, irrespective of any differences in the definitions of the crime, the main elements are the same.

An extradition request may also be granted for the purpose of serving a prison sentence or custodial measure imposed on the individual in the requesting state provided that such sentence or measure has a duration of at least four months.

The law sets out the conditions and the procedure for conducting the arrest and transfer of a person, for the purpose of prosecution or serving a prison sentence or custodial measure, between Bulgaria and the Member States of the European Union based on a **European Arrest Warrant** (Articles 35 et seq. of the *Law on Extradition and the European Arrest Warrant*). A European Arrest Warrant is issued in respect of individuals who have committed offences punishable under the laws of the issuing state by at least one year imprisonment or a custodial measure or by a heavier penalty or if the prison sentence or custodial measure imposed has a duration of at least four months. The law provides for an **exception from the double criminality requirement** when it comes to issuing European Arrest Warrants for some crimes which are particularly dangerous to the community and therefore carry in the issuing state at least three years in prison or a heavier penalty, or for which a custodial measure is envisaged requiring detention for at least three years (Article 36(2) of the *Law on Extradition and the European Arrest Warrant*). Those comprise some typical cross-border and related offences, e.g.:

- Participation in an organized criminal group;
- Terrorism;
- Trafficking in human beings;
- Illegal trafficking in narcotic and psychotropic substances;
- Illegal trafficking in weapons, ammunitions and explosives;
- Corruption;
- Fraud, including fraud affecting the financial interests of the European Communities within the meaning of the *Convention on the Protection of the European Communities' Financial Interests* of 26 July 1995;
- Computer crimes and computer-related crimes;
- Crimes against the environment, including illegal trafficking in endangered species of fauna and flora;
- Assisting in the illegal entry into and stay in the country;
- Illegal trade in human organs and tissues;
- Illegal trafficking in artifacts, including antique items and works of art;
- Illegal trafficking in hormonal substances and other stimulators of growth;
- Illegal trafficking in nuclear or radioactive material;
- Trade in unlawfully possessed vehicles;
- Crimes falling within the jurisdiction of the International Criminal Court;
- Unlawful seizure of aircraft or ships, etc.

The enforcement of that novel legislation should facilitate and speed up international cooperation in criminal matters.

The already existing internal network involving the district prosecution offices and some major regional prosecution offices contributes to enhancing the operation of the prosecution as a whole but there is no adequate legal framework providing for the extension of the internal network and its connection

to the European network. The participation of judges and prosecutors in the national network is decided on by the Supreme Judicial Council in line with secondary legislation issued by the Minister of Justice. The ratification of the *2000 Convention on Mutual Legal Assistance in Criminal Matters in the European Union* is still to take place.

Regional cooperation is vital in the combat against cross-border crime. Good contacts and cooperation, albeit informal, have developed at the border with Turkey between the respective Bulgarian and Turkish agencies (mainly between the respective border police, investigative and prosecutorial authorities). Information from last year suggests that those contacts improve perpetually (for example, there is operational exchange of mutually helpful information between Edirne and Haskovo). Practice has demonstrated that the exchange of information via the prosecutorial authorities is easier, while information exchanges by police routes take longer as the data have to go through a liaison officer in Ankara (although police in Edirne have carried out one or two very serious operations against organized crime due to their cooperation with the Bulgarian services).

Similarly, official meetings have taken place between the prosecution offices of Haskovo and Edirne, as well as meetings to establish operational contacts between law enforcement bodies on both sides of the border. Officially the contacts between Turkish magistrates and their Bulgarian counterparts are indirect and slow and go via the Turkish Ministry of Justice, while the procedure available to policemen is even more cumbersome. Bulgarian prosecutors, in turn, cannot travel to Turkey unless authorized by the Prosecutor General but at times it is compelling to establish emergency contacts within the matter of just a few hours.

At the same time, the majority of drug trafficking cases are still detected by the Bulgarian authorities and the Turkish counterparts have become more efficient only recently. As regards trafficking in human beings and smuggling of persons, more extensive assistance should be provided by the Turkish side as the individuals who accompany the immigrants to the border (or expect the immigrants on the other side) are predominantly foreign nationals.

Those involved in the process of investigating and prosecuting cross-border crimes in the region are of the view that communication with Turkey is generally difficult: letters rogatory are executed slowly; even writs of summons are not served on their addressees. There seems to be a general finding that the execution of letters rogatory by the relevant authorities of other foreign countries (especially the United Kingdom and Russia) is a slow process as well. This necessitates the **review of the bilateral and multilateral instruments as well as of the domestic legal rules** and their improvement so as to enhance the efficiency of international cooperation in combating cross-border crime.

CHAPTER FOUR. RECOMMENDATIONS

Based on the analysis of the situation with cross-border crime, of the domestic and international legal instruments governing the fight against it and of the operation of the institutions empowered to enforce those instruments, several categories of recommendations have emerged.

1. LEGISLATIVE AMENDMENTS SUGGESTED TO THE NATIONAL ASSEMBLY AND THE INSTITUTIONS HAVING LEGISLATIVE INITIATIVE

- The *Criminal Code* should be amended and supplemented with a view to:

  – Introducing a new aggravated offence consisting in the **smuggling of persons** (Article 280(2) of the *Criminal Code*) and covering **repeat offending**.
  – Introducing clear-cut criteria **to distinguish between cases of smuggling of goods** (Article 242(1) of the *Criminal Code*) that qualify as **crimes** and those that are to be sanctioned as **administrative violations** (for example by providing a legal definition of the concepts of "large proportions", "systematically" carrying out an activity, etc.).
  – Repealing the provision that makes it possible to impose an administrative fine for the petty smuggling of goods or, if the provision is kept, including a reference to the level of the fine set in the customs legislation.
  – **Differentiating the criminal liability for smuggling of narcotics** and providing for lighter penalties for people who only carry the drugs without being members of an organized network (the so-called "mules").
  – Providing for the **exemption from criminal liability of offenders who cooperate with the competent authorities** to help detect the accomplices in smuggling offences (similarly to Article 109(4) of the *Criminal Code* which reads that a participant in an organized criminal group shall not be held liable if he voluntarily surrenders to the authorities and divulges the organization or the group before another offence has been committed).
  – Extending the scope of the rule that criminalizes the sale and warehousing of excise goods devoid of excise duty stamps (Article 234 of the *Criminal Code*). This provision now covers only the situations where the goods are sold or warehoused but other scenarios should be added, e.g. situations where the goods are physically carried by or stored in a vehicle.
  – Enabling the court to also order, in the event of smuggling of goods and narcotics, **disqualification from taking a specific state or public position or from exercising the right to practice a specific profession or activity**. Such a legislative amendment would be especially relevant

where customs officials or border police officers, etc. are involved in the perpetration of an offence.
- Criminalizing **customs fraud** as it is currently beyond the scope of any criminal provision and ways and means are sought to define such offences under other provisions of the *Criminal Code*. The following approaches may be adopted here: inserting a separate definition of the criminal offence of customs fraud, similarly to the provisions on tax evasion (Article 255 of the *Criminal Code*), or providing for heavier penalties for document-related crimes (Articles 308 et seq. of the *Criminal Code*) having as their subject matter a customs declaration or another customs document, etc.

- The *Criminal Procedure Code* should be amended so as to facilitate the investigation of cross-border crimes by *inter alia*:

  - Fine-tuning the provision requiring that only the persons appointed "investigative police officers" at the Ministry of Interior have the capacity to act as investigative authorities. The text should enable **a wider range of police officers to undertake procedural and investigative steps**, especially in emergencies, as acting swiftly in such circumstances is the only possibility to collect and preserve evidence.
  - Reinstating **customs investigation** that existed before the entry into force of the new *Criminal Procedure Code*. The unwarranted abolition of the possibility of customs officials to act as investigative officers in cases of smuggling and foreign exchange violations has engendered difficulties in practice. Customs officers are better prepared to work on goods smuggling than the investigative police officers at the Ministry of Interior, so their involvement in the investigation of such offences would make the investigative bodies much more efficient.
  - Extending the scope of the procedure to institute criminal proceedings by virtue of the record of the first procedural step and **adding body searches to the list of emergency procedural and investigative steps** undertaken in such cases.
  - Rethinking **jurisdiction over the smuggling of goods and narcotics**. The new *Criminal Procedure Code* changed the jurisdiction over those cases and moved them from regional court level to district court level but the district courts are further away from the border compared to regional courts and investigations are frustrated as the investigative bodies are often forced into traveling a long distance to the respective district court in order to obtain an authorization or approval of the procedural steps they have undertaken or to seek orders for coercive measures, including those to prevent absconding.
  - Introducing a possibility for the **procedural steps made during administrative liability procedures** with a view to seizing physical evidence, and the records drawn up on such occasions **to be fully admissible in court criminal proceedings**.
  - Improving the conditions and the procedure for deploying the **newly-introduced special intelligence means** (undercover officers, trusted transactions and controlled deliveries) by providing *inter alia* for inter-

viewing the immediate superior of an undercover officer instead of or in addition to interviewing the officer him or herself.
- Improving the rules on **interviewing witnesses with secret identity** so as to avoid any chances for their identification from the information contained in the transcripts or in any other documents on the file (e.g. by banning expressly the insertion of certain data in the verbatim records of the interviews).
- Introducing a requirement for the so-called **"certifying witnesses" to be interviewed before a judge**.
- Envisaging a possibility **to interview the investigative body** who drew up the respective verbatim record, in his or her capacity as a witness in the case, which is standard practice in many European countries.

Proposed amendments to the Criminal Procedure Code

"Further to the analysis of the enforcement of the new *Criminal Procedure Code*, and independently of the positive results reported on, the task force has identified some problems connected with the application of the new rules. This has dictated the drafting of proposals to amend the *Criminal Procedure Code*. The *Draft Law Amending and Supplementing the Criminal Procedure Code* presented to the Parliament by a group of MPs proposes the following major changes:

- Providing, within short terms, for a sufficient number of officials endowed with investigative powers, so as to enhance the efficiency of police operations in pre-trial proceedings; vesting all police officers with investigative functions.
- Extending the statutory time limits for investigation from two to at least six months, with a possibility for a six-month extension.
- Enabling the police officers having conducted an investigation to testify in court.
- Enabling the head of a police unit implementing an undercover operation to testify in court on behalf of the officer who acted under cover.
- Abolishing the requirement for certifying witnesses to participate in the conduct of any procedural steps at the pre-trial stage."

Source: Efficiency of Pre-trial Proceedings: The Effects of the Criminal Procedure Code Analyzed (analysis made by the Interagency Monitoring Task Force for the Criminal Procedure Code, 9 March 2007).

- Amending the *Law on the Ministry of Interior* and/or its implementing regulations so as to define **unequivocal criteria for the number of investigative police officers** in the country's different regions; elements to be taken on board (besides the size of the population) include the peculiar features of and the criminogenic factors in the region in question. Many areas, especially border-adjacent ones, now experience a genuine deficit of investigative police officers.

- Changing the procedure for imposing **administrative penalties for smuggling of goods** as set out in the *Law on Customs*; in particular, some scenarios should **exclude the possibility for an agreement** between the offender and the sanctioning administrative body, e.g. where the subject-matter of the offence exceeds a certain value threshold or in the event of repeat offending. The existing possibility to make such agreements leaves the door wide-open for imposing the minimum statutory penalty and ordering the payment of just a quarter of the value of the items involved and of the vehicle used as an instrumentality, instead of heading for forfeiture. That privilege should not be applicable to serious instances of smuggling of goods as it is conducive to corruption.

- The *Law on Extradition and the European Arrest Warrant* should be amended so as to extend the powers of prosecutors, inter alia by **introducing an interim arrest procedure pending the receipt of a European arrest warrant**, similarly to the procedure allowing for the interim arrest of an individual pending the receipt of an extradition request.

- Rules should be introduced on **the level and sharing of costs between the pre-trial authorities and the courts** in order to change the current situation where expert witnesses set themselves the fees for their own assessments in the pre-trial proceeding and the courts reimburse the costs incurred by the Ministry of Interior. The decisions to fund large expert assessments are currently made by the Supreme Judicial Council. The rules thus introduced should reflect recent changes in the process, in particular the fact that the majority of the pre-trial authorities no longer belong to the judiciary.

In addition to the specific amendments proposed, a general recommendation in the long run is to make the legislation more stable, to enact amendments more rarely and only where they are well thought-out and compelling, as that would stabilize law enforcement as well. There seems to be a universally recognized need for **interpretative decisions of the Supreme Court of Cassation** to provide guidance for the application of the laws, in particular the new *Criminal Procedure Code* and some of the latest amendments to the *Criminal Code*.

2. RECOMMENDED ORGANIZATIONAL AND TECHNICAL MEASURES

- Relevant to the Supreme Judicial Council, the Supreme Prosecution Office of Cassation, and the Ministry of Interior:

  - **A joint decision-making mechanism** for the investigation of crimes, including cross-border ones, should be created by the Supreme Judicial Council, the Supreme Prosecution Office of Cassation and the Ministry of Interior, while making full use of any other existing mechanisms (e.g. joint guidelines, instructions and other instruments).[63]
  - A modern **unified methodology** for investigating cross-border criminality should be developed under the guidance of the Supreme Prosecution Office of Cassation, to be approved by the Supreme Judicial Council and the Minister of Interior and applied by investigators and investigative police officers working on such offences. The methodology should provide for uniform procedures and their implementation and for the same format of the relevant documents (this should be coordinated with judges from other European countries, also in view of the future recognition of judgments). It should also set out rules on the **exchange of information** and on the access to closed cases and to existing investigative and trial methods applicable to cross-border crimes. Moreover, investigators and investigative police officers all too often come across the same problems and experience similar needs in terms of legal framework, logistics, equipment, and staffing.
  - Joint decisions should be made to enhance communication and coordination between the court and the pre-trial authorities; this requires *inter alia* the implementation of communication **software** enabling the contacts between different institutions and the usage of the data arrays of the Ministry of Interior as well as the implementation and use of **joint information systems** equally accessible to the pre-trial bodies and the courts, especially those operating in the same territory (the systems of citizens' administrative registration cannot serve that purpose as they are incomplete and not fully up to date).
  - Judges, prosecutors, investigators and police officers should be offered **incentives** to work in remote areas, e.g. financial, social and other arrangements should be put in place while also thinking about **enhancing their professional knowledge and skills** (such as introducing higher remuneration in border areas but also conducting more frequent assessments and audits, providing training, technical equipment, etc.); likewise, joint training initiatives (covering *inter alia* European law) should be organized locally for representatives of all law enforcement and judicial institutions.

[63] For example, Instruction No. 1 of 22.03.2004 on the operation of and interaction between pre-trial authorities, Instruction No. И-19/22.06.2006 on the setting up of joint investigation teams involving the Prosecution and the Ministry of Interior to combat organized crime, Guidelines issued by the Prosecutor General, the Supreme Prosecution Office of Cassation and the Minister of Interior on the operation of prosecution offices in assigning, conducting and closing preliminary inquiries, on synchronizing the criteria for instituting pre-trial proceedings, police or prosecutorial inquiries, etc.

- The budget of the judiciary and that of the Ministry of Interior should be allocated in a differentiated manner and **sufficient resources** should be earmarked to meet the needs of law enforcement and the courts for **translation and interpreting services into and from rare languages**, especially in those judicial districts where such resources are badly needed because of the existence of border check-points.
- The problems with **escorting defendants** should be resolved; as under the new *Criminal Procedure Code* the investigation services only handle a limited number of criminal offences, the court-martials primarily guard the court buildings, while escorting is done by the Ministry of Interior based on an informal agreement.

• Relevant to the Ministry of Finance and the Customs Agency:

- Special training should be provided, as well as measures **to enhance the professional knowledge and skills of the officials in charge of drawing up statements of or issuing penalty warrants for customs violations**. The main drawbacks identified affect exactly the statements that describe the finding of administrative offences. They usually contain no description of the act representing an offence, nor is there any reference to the substantive provision infringed (the statements often refer to Article 233 of the *Law on Customs* but this is the rule prescribing the sanction for administrative offences and not the provision transgressed by the offender). The *Law on Excise Duty and Tax Warehouses* provides for forfeiture in strictly defined situations, but forfeiture is occasionally overlooked in the penalty warrants or is sometimes based on the *Law on Administrative Offences and Penalties*. The problem is that, if a penalty warrant only refers to Article 20 of the *Law on Administrative Offences and Penalties* without specifying any of its three paragraphs and the court reverses the warrant in its entirety, the offender goes unpunished and receives back the goods at stake.[64] A paragraph of Article 20 should be cited expressly so that the court could eventually uphold at least the forfeiture aspect of the penalty warrant challenged before it.
- The **mobile squads should include prosecutors, investigators and investigative police officers** in order to be more efficient.
- Model import and export declarations should be introduced in more languages, including rare ones, especially those spoken by nationals of the riskiest countries. At present there are no declaration forms even in the languages of some neighboring states, e.g. Romanian, which blocks completely the proving of an offence or of the lawful actions undertaken by the competent authorities.
- An appropriate legal instrument should be used to provide for **a compulsory expert assessment** of the goods smuggled based on market prices.
- The customs services should be equipped with state-of-the-art border inspection equipment to exclude the risks inherent in random checks

[64] 90 per cent of the penalty warrants issued by the customs authorities in the area of Kyustendil are reversed by the court; while this is often due to the insufficient skills and poor qualification of the officials in charge of drawing up the statements of breaches found, doubts of corruption are not out of place either.

(e.g. scanners to inspect long-haul vehicles; such equipment exists in most countries, including Turkey).
– Laboratories should be set up in the border areas to make expert assessments of the drugs seized in order to avoid the delays resulting from the expert assessments being made in Sofia as these often compromise the two-month statutory deadline for investigation. Similarly, the customs authorities should be equipped with special steel storage boxes, camouflage dressing, electronic scales and bullet-proof vehicles for transporting the drugs.

- Relevant to the Ministry of Interior and the General Border Police Directorate:

  – The necessary measures should be undertaken to **improve the guarding of borders** (especially the so called "green borders" outside the territory of border check-points as well as the Black Sea border) and to reinforce the professional capacity of border guards.
  – Measures should be taken to improve the **interaction among the various services and units**, starting from the initial information for a cross-border offence through to the closure of an investigation. It is equally indispensable to provide that when operations are undertaken by different services, in particular the Directorate-General for Combating Organized Crime, the investigation leads and probabilities should be discussed with the prosecutor right from the outset rather than at a later point where he or she might no longer be able to react. Often times this is the reason for the lack of sufficient evidence and the raids remain nothing more than show-off exercises that only serve to feed glorious media reports of "detected crimes", "dismantled criminal groups" and the like. The functions of each unit and institution in the chain of investigating and prosecuting crime should be clearly defined and distinguished from those of other entities.

- Relevant to the Criminological Research Board at the Ministry of Justice:

  – A **data bank of cross-border crimes** should be created and their dynamics should be monitored and analyzed.

- Relevant to the Supreme Prosecution Office of Cassation:

  – The existing **Uniform Information System (UIS)** for automated file and case management should be extended and made operational in the remaining prosecution offices (other than the pilot ones). That would enable the electronic exchange of data with other bodies in the judiciary and the executive involved in the fight against crime, as well as monitoring the progress of criminal cases from day one of their registration to the service of the sentence imposed on the defendant.
  – Full use should be made of the **data exchange communication link**, which existed already at the end of 2005, developed for the exchange of information between prosecution offices and investigative bodies in specific cases of organized crime, serious economic crimes and corruption cases (including some cross-border offences) subject to spe-

cial monitoring because of their extremely high level of danger to the community.[65]
- **Joint professional capacity-building meetings between prosecutors and investigative police officers** should be organized more frequently and in fact regularly, to discuss different facets of cross-border criminality and investigation work.
- The Supreme Prosecution Office of Cassation should initiate and coordinate joint operations with law enforcement, *inter alia* by putting together **joint teams** to combat the various types of cross-border crimes.
- The Supreme Prosecution Office of Cassation should play an active part in organizing **cross-border meetings with prosecutors from Turkey and Macedonia** to boost regional cooperation and to ensure swifter and direct data exchange for cross-border crimes.

• Relevant to the Supreme Judicial Council, the Ministry of Interior, the Ministry of Finance, and the National Institute of Justice:

- **Training** should be provided **for the representatives of all judicial and law enforcement bodies** involved in the fight against cross-border criminality, in view of their roles in that process and the novelties in the legal framework. Such training is rather scant at present, especially that offered to prosecutors and other investigative authorities.
- **Training** should be organized **for customs officers with the involvement of judges**, so as to overcome the drawing up of inadequate statements of violations and penalty warrants; it is exactly such drawbacks that entail the reversal of many of those acts by the courts.
- **A larger number of seminars** should be organized **within the framework of the continuous training of prosecutors and judges to deal with the topics of international cooperation and the European Arrest Warrant**, while emphasizing the practical dimensions and involving as speakers practicing magistrates with sufficient experience in the day-to-day work on such issues.

• Relevant to the Ministry of Justice:

- The **Unified Information System against Crime** should be finally phased in and become operational. While the development of that system has been expected for more than 10 years now, its successful implementation may strengthen significantly the interplay among all

[65] That information system links in a network the Supreme Prosecution Office of Cassation with all specialized units within the prosecution offices in the country, on the one hand, and the information systems of the National Investigation Service and, hence, of the Ministry of Interior, on the other hand. See *Prosecution Office of the Republic of Bulgaria: Report of Activities, 1999-February 2006* (http://www.prb.bg/php/documents/371.doc, in Bulgarian).

institutions in charge of combating crime and those involved in prosecuting cross-border crime in particular.[66]

- An **updated bilateral legal assistance treaty with Turkey** should be proposed and negotiated in order to help the investigation and prosecution of cross-border crimes by both parties. The amended treaty should provide for an emergency procedure for the collection of evidence, a possibility that currently exists only for temporary arrests. Thus, in the event of temporary arrest the request may be forwarded or handed over in any possible way. If such a provision were applicable to evidence gathering, the execution of letters rogatory would be accelerated, a factor of uttermost importance in the context of cross-border crime. The Turkish counterparts should also be offered a reciprocal attitude in relation to legal assistance and any relating formalities, as assistance from Bulgaria is currently channeled through the Ministry of Justice and the Supreme Prosecution Office of Cassation, while there is one sole intermediary in Turkey, viz. the Ministry of Justice. It would be appropriate to introduce a deadline, albeit non-binding, for the execution of letters rogatory and that deadline should be sufficiently short. Equally necessary is the introduction of a simplified mechanism for the mutual recognition of certain pieces of evidence (e.g. by means of authentication by a government agency specified in the treaty or otherwise), for instance evidence already collected by the authorities of the requested state on a different occasion.[67]
- A draft law should be prepared and presented to the Council of Ministers (via the Minister of Justice) to **ratify the *2000 Convention on Mutual Legal Assistance in Criminal Matters in the European Union***.
- An adequate legal framework should be proposed to set up an **internal network of prosecutors** (contact points at local prosecution offices) who should be in charge of the tasks stemming from international legal assistance in criminal matters.

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[66] Already in December 1997 the Parliament passed a Decision whereby it obliged the Government and the National Statistical Institute to develop and implement such a system in cooperation with the judiciary. The rules on the operation of the system were initially embedded in the *Law on Statistics* (1999) and then moved to the *Law on the Judiciary* (2002), while the Ministry of Justice was identified as the institution in charge. Throughout the years, various Government strategy papers, programs and plans referred to numerous deadlines for the system's implementation but most of those papers have been disregarded in actual fact. The new *Law on the Judiciary* (2007) provides for more detailed provisions on the structure and operation of the system.

[67] At present, based on informal contacts with their Turkish counterparts, the investigative authorities often times exchange information as to whether an individual has a criminal record in the other country. In order for such information to be usable in court, however, it has to be supplied by official channels, which may eventually take a year or two; it is even possible for the information to be entirely withheld.

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The percentage of cross-border crimes does not seem excessive against the backdrop of overall criminality. Fluctuations are possible, though, and it may well go up after Bulgaria's accession to the European Union as some Bulgarian borders have become external borders of the Union. Whatever the share of cross-border crimes, the measures to combat them are of major importance to national and Union security alike. The recommendations offered above aim at strengthening law enforcement and the justice process in the areas adjacent to external Union frontiers. They are addressed to the legislature, to the executive and its various agencies, to those in power and to the bodies vested with the management of the judiciary.

At the same time, cross-border criminality is especially dangerous when intertwined with political corruption and the unlawful funding of political parties. While that connection might not transpire as clearly now as at the outset of the transition period, it has not been disrupted and, in parallel to petty corruption, impedes on a daily basis the detection and prosecution of serious criminal and other offences. Hence, anti-corruption reforms are crucial for the fight against cross-border crime, amongst others. In addition to the in-house measures launched by different institutions, a more effective criminal justice and efficient application of other means to counter crime, including assets forfeiture, are urgently needed.

ANNEX 1: LIST OF LAWS AND REGULATIONS CITED IN THE REPORT

1. **Criminal Code**, published, SG, issue 26 of 2.04.1968, in force as from 1.05.1968, corr., issue 29 of 12.04.1968, amended, issue 92 of 28.11.1969, amended and supplemented, issue 26 of 30.03.1973, suppl., issue 27 of 3.04.1973, am., issue 89 of 15.11.1974, in force as from 1.03.1975, am. and suppl., issue 95 of 12.12.1975, am., issue 3 of 11.01.1977, suppl., issue 54 of 11.07.1978, issue 89 of 9.11.1979, am. and suppl., issue 28 of 9.04.1982, in force as from 1.07.1982, corr., issue 31 of 20.04.1982, suppl., issue 44 of 5.06.1984, am. and suppl., issue 41 of 28.05.1985, suppl., issue 79 of 11.10.1985, corr., issue 80 of 15.10.1985, am. and suppl., issue 89 of 18.11.1986, corr., issue 90 of 21.11.1986, am., issue 37 of 16.05.1989, in force as from 16.05.1989, issue 91 of 24.11.1989, in force as from 24.11.1989, issue 99 of 22.12.1989, in force as from 22.12.1989, suppl., issue 10 of 2.02.1990, am., issue 31 of 17.04.1990, am. and suppl., issue 81 of 9.10.1990, in force as from 9.10.1990, issue 1 of 4.01.1991, issue 86 of 18.10.1991, corr., issue 90 of 1.11.1991, am., issue 105 of 19.12.1991, suppl., issue 54 of 3.07.1992, in force as from 3.07.1992, am. and suppl., issue 10 of 5.02.1993, issue 50 of 1.06.1995; Judgment No. 19 of 12.10.1995 of the Constitutional Court of the Republic of Bulgaria, SG, issue 97 of 3.11.1995; suppl., issue 102 of 21.11.1995, in force as from 21.01.1996, am. and suppl., issue 107 of 17.12.1996, issue 62 of 5.08.1997, am., issue 85 of 26.09.1997; Judgment No. 19 of 21.11.1997 of the Constitutional Court of the Republic of Bulgaria, SG, issue 120 of 16.12.1997; suppl., issue 83 of 21.07.1998, am. and suppl., issue 85 of 24.07.1998, suppl., issue 132 of 10.11.1998, in force as from 1.01.1999, am., issue 133 of 11.11.1998, am. and suppl., issue 153 of 23.12.1998, issue 7 of 26.01.1999, am., issue 51 of 4.06.1999, issue 81 of 14.09.1999, in force as from 15.12.1999, am. and suppl., issue 21 of 17.03.2000, issue 51 of 23.06.2000; Judgment No. 14 of 23.11.2000 of the Constitutional Court of the Republic of Bulgaria, SG, issue 98 of 1.12.2000; suppl., issue 41 of 24.04.2001, am., issue 101 of 23.11.2001, issue 45 of 30.04.2002, am. and suppl., issue 92 of 27.09.2002, issue 26 of 30.03.2004, issue 103 of 23.11.2004, in force as from 1.01.2005, issue 24 of 22.03.2005, issue 43 of 20.05.2005, in force as from 1.09.2005, am., issue 76 of 20.09.2005, in force as from 1.01.2007, am. and suppl., issue 86 of 28.10.2005, in force as from 29.04.2006, issue 88 of 4.11.2005, am., issue 59 of 21.07.2006, in force as from the date of entry into force of Bulgaria's Treaty of Accession to the European Union, 1.01.2007, am. and suppl., issue 75 of 12.09.2006, in force as from 13.10.2006, issue 102 of 19.12.2006, issue 38 of 11.05.2007.

2. **Criminal Procedure Code**, published, SG, issue 86 of 28.10.2005, in force as from 29.04.2006.

3. **Criminal Procedure Code (repealed)**, published, SG, issue 89 of 15.11.1974, in force as from 1.03.1975, corr., issue 99 of 20.12.1974, issue 10 of 4.02.1975, am., issue 84 of 28.10.1977, am. and suppl., issue 52 of 4.07.1980, issue 28 of 9.04.1982, in force as from 1.07.1982, corr., issue 38 of 14.05.1982, am. and suppl., issue 89 of 18.11.1986, in force as from 1.12.1986, issue 31 of 17.04.1990, corr., issue 32 of 20.04.1990, issue 35 of 2.05.1990, am. and suppl., issue 39 of 7.05.1993, issue 109 of 28.12.1993, issue 110 of 30.12.1993, issue 84 of 14.10.1994, issue 50 of 1.06.1995, suppl., issue 107 of 17.12.1996, am., issue 110 of 30.12.1996, am. and suppl., issue 64 of 8.08.1997, corr., issue 65 of 12.08.1997, am. and suppl., issue 95 of 21.10.1997,

issue 21 of 20.02.1998, in force as from 1.04.1998; Judgment No. 9 of the Constitutional Court of the Republic of Bulgaria of 14.04.1998, SG, issue 45 of 21.04.1998; suppl., issue 26 of 23.03.1999, am. and suppl., issue 70 of 6.08.1999, in force as from 1.01.2000; Judgment No. 14 of the Constitutional Court of the Republic of Bulgaria of 30.09.1999, SG, issue 88 of 8.10.1999; am. and suppl., issue 42 of 27.04.2001, am., issue 74 of 30.07.2002, am. and suppl., issue 50 of 30.05.2003, issue 57 of 24.06.2003, in force as from 24.06.2003, issue 26 of 30.03.2004, suppl., issue 38 of 11.05.2004, am. and suppl., issue 89 of 12.10.2004, am., issue 103 of 23.11.2004, in force as from 1.01.2005, am. and suppl., issue 46 of 3.06.2005, in force as from 4.07.2005, repealed, issue 86 of 28.10.2005, in force as from 29.04.2006.

4. **Law on Foreign Exchange**, published, SG, issue 83 of 21.09.1999, in force as from 1.01.2000, am., issue 45 of 30.04.2002, am. and suppl., issue 60 of 4.07.2003, am., issue 36 of 30.04.2004, in force as from 31.07.2004, issue 105 of 29.12.2005, in force as from 1.01.2006, am. and suppl., issue 43 of 26.05.2006, in force as from the date of entry into force of Bulgaria's Treaty of Accession to the Eruopean Union, issue 54 of 4.07.2006, am., issue 59 of 21.07.2006, in force as from the date of Bulgaria's Treaty of Accession to the European Union, 1.01.2007.

5. **Law on Administrative Offences and Penalties**, published, SG, issue 92 of 28.11.1969, am., issue 54 of 11.07.1978, suppl., issue 28 of 9.04.1982, in force as from 1.07.1982, am. and suppl., issue 28 of 8.04.1983, in force as from 1.07.1983, am., issue 101 of 27.12.1983, suppl., issue 89 of 18.11.1986, am. and suppl., issue 24 of 27.03.1987, am., issue 94 of 23.11.1990, issue 105 of 19.12.1991, am. and suppl., issue 59 of 21.07.1992, issue 102 of 21.11.1995, issue 12 of 9.02.1996, am., issue 110 of 30.12.1996, am. and suppl., issue 11 of 29.01.1998, suppl., issue 15 of 6.02.1998, in force as from 1.01.1999 - am., issue 89 of 3.08.1998; am., issue 59 of 26.05.1998, suppl., issue 85 of 24.07.1998, issue 51 of 4.06.1999, am. and suppl., issue 67 of 27.07.1999, in force as from 28.08.1999, suppl., issue 114 of 30.12.1999, in force as from 31.01.2000, am., issue 92 of 10.11.2000, in force as from 1.01.2001, issue 25 of 8.03.2002, am. and suppl., issue 61 of 21.06.2002, am., issue 101 of 29.10.2002, in force as from 1.01.2003, suppl., issue 96 of 29.10.2004, in force as from 30.11.2004, issue 39 of 10.05.2005, in force as from 11.08.2005, am. and suppl., issue 79 of 4.10.2005, am., issue 30 of 11.04.2006, in force as from 1.03.2007, issue 33 of 21.04.2006, am. and suppl., issue 69 of 25.08.2006, suppl., issue 108 of 29.12.2006, in force as from 29.12.2006.

6. **Law on Excise Duty (repealed)**, published, SG, issue 19 of 2.03.1994, in force as from 1.04.1994, am. and suppl., issue 58 of 27.06.1995, am., issue 70 of 8.08.1995, in force as from 8.08.1995, am. and suppl., issue 21 of 12.03.1996, issue 56 of 2.07.1996, in force as from 1.07.1996, suppl., issue 107 of 17.12.1996, am. and suppl., issue 51 of 27.06.1997, issue 15 of 6.02.1998, in force as from 1.01.1999 - am., issue 89 of 3.08.1998, am. and suppl., issue 153 of 23.12.1998, in force as from 1.01.1999, issue 103 of 30.11.1999, in force as from 1.01.2000, issue 102 of 15.12.2000, in force as from 1.01.2001, issue 110 of 21.12.2001, in force as from 1.01.2002, issue 45 of 30.04.2002, in force as from 30.04.2002, issue 118 of 20.12.2002, in force as from 1.01.2003, corr., issue 9 of 31.01.2003, suppl., issue 37 of 22.04.2003, am., issue 103 of 25.11.2003, in force as from 1.01.2004, am. and suppl., issue 112 of 23.12.2003, in force as from 1.01.2004, am., issue 53 of 22.06.2004, in force as from 22.06.2004, am. and suppl., issue 113 of 28.12.2004, in force as from 1.01.2005, repealed, issue 91 of 15.11.2005, in force as from 1.07.2006, except for Articles 11(9) and (10), 12c, 17a(10), § 2(25) of the Additional Provisions, § 26 of the Transitional and Final Provisions of the Law Amending and Supplementing the Law on Excide Duty (SG, issue 110 of 2001) and § 20 of the Transitional and Final Provisions of the Law Amending and Supplementing the Law on Excise Duty (SG, issue 118 of 2002) which shall apply up until the passage of a Law on Duty-Free Trade, am.,

issue 95 of 29.11.2005, in force as from 1.03.2006, am. and suppl., issue 100 of 13.12.2005, in force as from 1.01.2006, am., issue 105 of 29.12.2005, in force as from 1.01.2006.

7. **Law on Excise Duty and Tax Warehouses**, published, SG, issue 91 of 15.11.2005, in force as from 1.01.2006, am., issue 105 of 29.12.2005, in force as from 1.01.2006, am., issue 30 of 11.04.2006, in force as from 12.07.2006, issue 34 of 25.04.2006, in force as from 1.07.2007 - am., as regards the entry into force, issue 80 of 3.10.2006, in force as from 3.10.2006, am. and suppl., issue 63 of 4.08.2006, in force as from 4.08.2006, issue 81 of 6.10.2006, issue 105 of 22.12.2006, in force as from 1.01.2007, am., issue 108 of 29.12.2006, in force as from 1.01.2007, issue 31 of 13.04.2007, in force as from 13.04.2007.

8. **Law on Amnesty of 11.05.1989**, published, SG, issue 37 of 16.05.1989, in force as from 16.05.1989.

9. **Law on the Safe Use of Nuclear Energy**, published, SG, issue 63 of 28.06.2002, am. and suppl., issue 120 of 29.12.2002, issue 70 of 10.08.2004, in force as from 1.01.2005, am., issue 76 of 20.09.2005, in force as from 1.01.2007, issue 88 of 4.11.2005, issue 105 of 29.12.2005, in force as from 1.01.2006, issue 30 of 11.04.2006, in force as from 12.07.2006, issue 11 of 2.02.2007.

10. **Law on Combating Trafficking in Human Beings**, published, SG, issue 46 of 20.05.2003, am., issue 86 of 28.10.2005.

11. **Law on the State Archive**, published, SG, issue 54 of 12.07.1974, am., issue 63 of 6.08.1976, issue 35 of 3.05.1977, am. and suppl., issue 55 of 17.07.1987, issue 12 of 8.02.1993, issue 109 of 18.12.2001, in force as from 1.01.2002.

12. **Law on the Export Control of Arms, Ammunitions and Dual Use Technologies**, published, SG, issue 11 of 2.02.2007.

13. **Law on Extradition and the European Arrest Warrant**, published, SG, issue 46 of 3.06.2005, in force as from 4.07.2005, am., issue 86 of 28.10.2005, in force as from 29.04.2006.

14. **Law on the Control of Narcotic Substances and Precursors**, published, SG, issue 30 of 2.04.1999, in force as from 3.10.1999, am., issue 63 of 1.08.2000, issue 74 of 30.07.2002, issue 75 of 2.08.2002, in force as from 2.08.2002, am. and suppl., issue 120 of 29.12.2002, in force as from 29.12.2002, issue 56 of 20.06.2003, am., issue 76 of 20.09.2005, in force as from 1.01.2007, am. and suppl., issue 79 of 4.10.2005, am., issue 103 of 23.12.2005, issue 30 of 11.04.2006, in force as from 12.07.2006, suppl., issue 75 of 12.09.2006, in force as from 13.10.2006, am., issue 82 of 10.10.2006, issue 31 of 13.04.2007, in force as from 13.04.2007.

15. **Law on the Control of Foreign Trade in Arms and in Possible Dual Use Goods and Technologies (repealed)**, published, SG, issue 102 of 21.11.1995, in force as from 21.01.1996, am. and suppl., issue 75 of 2.08.2002, in force as from 3.09.2002, suppl., issue 93 of 19.10.2004, in force as from 1.01.2005, repealed, issue 11 of 2.02.2007.

16. **Law on Explosives, Firearms and Ammunitions Control**, published, SG, issue 133 of 11.11.1998, am. and suppl., issue 85 of 17.10.2000, in force as from 17.10.2000, issue 99 of 22.10.2002, issue 71 of 12.08.2003, in force as from 12.08.2003, suppl., issue 102 of 20.12.2005, am., issue 105 of 29.12.2005, in force as from 1.01.2006, issue 17 of 24.02.2006, in force as

from 1.05.2006, issue 30 of 11.04.2006, in force as from 12.07.2006, am. and suppl., issue 38 of 9.05.2006, in force as from the date of entry into force of Bulgaria's Treaty of Accession to the European Union, 1.01.2007, am., issue 11 of 2.02.2007.

17. **Law on the Ministry of Interior**, published, SG, issue 17 of 24.02.2006, in force as from 1.05.2006, am., issue 30 of 11.04.2006, in force as from 12.07.2006, issue 102 of 19.12.2006, am. and suppl., issue 105 of 22.12.2006, in force as from the date of entry into force of Bulgaria's Treaty of Accession to the European Union, 1.01.2007, am., issue 11 of 2.02.2007, issue 31 of 13.04.2007, issue 41 of 22.05.2007.

18. **Law on Customs**, published, SG, issue 15 of 6.02.1998, in force as from 1.01.1999, am., issue 89 of 3.08.1998, am. and suppl., issue 153 of 23.12.1998, in force as from 1.01.1999, issue 30 of 2.04.1999, in force as from 3.10.1999, am., issue 83 of 21.09.1999, am. and suppl., issue 63 of 1.08.2000, issue 110 of 21.12.2001, in force as from 1.01.2002, suppl., issue 76 of 6.08.2002, am. and suppl., issue 37 of 22.04.2003, am., issue 95 of 28.10.2003, suppl., issue 38 of 11.05.2004, am. and suppl., issue 45 of 31.05.2005, am., issue 86 of 28.10.2005, in force as from 29.04.2006, suppl., issue 91 of 15.11.2005, in force as from 1.01.2006, am. and suppl., issue 105 of 29.12.2005, in force as from 1.01.2006, am., issue 30 of 11.04.2006, in force as from 12.07.2006, am. and suppl., issue 105 of 22.12.2006, in force as from 1.01.2007.

19. **Law on the Defense and Armed Forces of the Republic of Bulgaria**, published, SG, issue 112 of 27.12.1995, in force as from 27.02.1996, am. and suppl., issue 67 of 6.08.1996, issue 122 of 19.12.1997, am., issue 70 of 19.06.1998, issue 93 of 11.08.1998, in force as from 1.04.1999, issue 152 of 22.12.1998, in force as from 1.01.1999, am. and suppl., issue 153 of 23.12.1998, in force as from 1.01.1999, am., issue 12 of 12.02.1999, suppl., issue 67 of 27.07.1999, in force as from 28.08.1999, am., issue 69 of 3.08.1999, in force as from 3.08.1999, am. and suppl., issue 49 of 16.06.2000, in force as from 16.06.2000, suppl., issue 64 of 4.08.2000, in force as from 1.01.2001, am., issue 25 of 16.03.2001, in force as from 31.03.2001, issue 34 of 6.04.2001, in force as from 6.04.2001, issue 1 of 4.01.2002, in force as from 1.01.2001, am. and suppl., issue 40 of 19.04.2002, in force as from 19.04.2002, am., issue 45 of 30.04.2002, issue 119 of 27.12.2002, in force as from 1.01.2003, issue 50 of 30.05.2003, issue 86 of 30.09.2003, in force as from 1.01.2004, am. and suppl., issue 95 of 28.10.2003, am., issue 112 of 23.12.2003, in force as from 1.01.2004, am. and suppl., issue 93 of 19.10.2004, am., issue 111 of 21.12.2004, in force as from 21.12.2004, am. and suppl., issue 27 of 29.03.2005, issue 38 of 3.05.2005, am., issue 76 of 20.09.2005, in force as from 1.01.2007, am. and suppl., issue 88 of 4.11.2005, issue 102 of 20.12.2005, issue 105 of 29.12.2005, in force as from 1.01.2006, am., issue 30 of 11.04.2006, in force as from 12.07.2006, issue 36 of 2.05.2006, in force as from 1.07.2006, am. and suppl., issue 56 of 11.07.2006, in force as from 1.06.2006, issue 82 of 10.10.2006, suppl., issue 91 of 10.11.2006, issue 102 of 19.12.2006, am., issue 11 of 2.02.2007, am. and suppl., issue 41 of 22.05.2007.

20. **Law on the Forfeiture to the State of Property Acquired from Criminal Activity**, published, SG, issue 19 of 1.03.2005, am., issue 86 of 28.10.2005, in force as from 29.04.2006, issue 105 of 29.12.2005, in force as from 1.01.2006, issue 33 of 21.04.2006, issue 75 of 12.09.2006, in force as from 13.10.2006.

21. **Law on Listed Cultural Monuments and Museums**, published, SG, issue 29 of 11.04.1969, am., issue 29 of 10.04.1973, issue 36 of 8.05.1979, issue 87 of 11.11.1980, issue 102 of 29.12.1981, issue 45 of 8.06.1984, issue 45 of 13.06.1989, issue 10 of 2.02.1990, issue 14 of 16.02.1990, am. and suppl., issue 112 of 27.12.1995; Judgment No. 5 of the Constitutional

Court of the Republic of Bulgaria of 21.03.1996, SG issue 31 of 12.04.1996; am., issue 44 of 21.05.1996, in force as from 1.06.1996, issue 117 of 10.12.1997, in force as from 1.01.1998, issue 153 of 23.12.1998, in force as from 1.01.1999, am. and suppl., issue 50 of 1.06.1999, issue 55 of 25.06.2004, in force as from 1.01.2005, am., issue 28 of 1.04.2005, in force as from 1.04.2005, issue 94 of 25.11.2005, in force as from 25.11.2005, am. and suppl., issue 21 of 10.03.2006, am., issue 30 of 11.04.2006, in force as from 12.07.2006.

22. **Law on Legal Aid**, published, SG, issue 79 of 4.10.2005, in force as from 1.01.2006, am., issue 105 of 29.12.2005, in force as from 1.01.2006, issue 17 of 24.02.2006, in force as from 1.05.2006, issue 30 of 11.04.2006, in force as from 12.07.2006.

23. **Law on Special Intelligence Means**, published, SG, issue 95 of 21.10.1997, suppl., issue 70 of 6.08.1999, in force as from 1.01.2000, am., issue 49 of 16.06.2000, in force as from 16.06.2000, issue 17 of 21.02.2003, suppl., issue 86 of 28.10.2005, in force as from 29.04.2006, am., issue 45 of 2.06.2006, issue 82 of 10.10.2006.

24. **Law on Statistics**, published, SG, issue 57 of 25.06.1999, am. and suppl., issue 42 of 27.04.2001, am., issue 45 of 30.04.2002, issue 74 of 30.07.2002, issue 37 of 4.05.2004, in force as from 4.08.2004, issue 39 of 10.05.2005, in force as from 11.08.2005, am. and suppl., issue 81 of 11.10.2005, suppl., issue 88 of 4.11.2005.

25. **Law on the Judiciary (repealed)**, published, SG, issue 59 of 22.07.1994; Judgment No. 8 of the Constitutional Court of the Republic of Bulgaria of 15.09.1994, SG issue 78 of 27.10.1994; Judgment No. 9 of the Constitutional Court of the Republic of Bulgaria of 30.09.1994, SG issue 87 of 25.10.1994; Judgment No. 17 of the Constitutional Court of the Republic of Bulgaria of 3.10.1995, SG issue 93 of 20.10.1995; suppl., issue 64 of 30.07.1996, in force as from 30.07.1996; Judgment No. 19 of the Constitutional Court of the Republic of Bulgaria of 29.10.1996, SG, issue 96 of 8.11.1996; am. and suppl., issue 104 of 6.12.1996, in force as from 7.01.1997, am., issue 110 of 30.12.1996, issue 58 of 22.07.1997, issue 122 of 19.12.1997, issue 124 of 23.12.1997, in force as from 1.04.1998 - issue 21 of 20.02.1998, issue 11 of 29.01.1998, am. and suppl., issue 133 of 11.11.1998; Judgment No. 1 of the Constitutional Court of the Republic of Bulgaria of 14.01.1999, issue 6 of 22.01.1999; am., issue 34 of 25.04.2000, in force as from 1.01.2001, issue 38 of 9.05.2000, suppl., issue 84 of 13.10.2000, am., issue 25 of 16.03.2001, in force as from 31.03.2001, am. and suppl., issue 74 of 30.07.2002; Judgment No. 11 of the Constitutional Court of the Republic of Bulgaria of 14.11.2002, issue 110 of 22.11.2002; Judgment No. 13 of the Constitutional Court of the Republic of Bulgaria of 16.12.2002, SG, issue 118 of 20.12.2002; am. and suppl., issue 61 of 8.07.2003, in force as from 8.07.2003, am., issue 112 of 23.12.2003, in force as from 1.01.2004, am. and suppl., issue 29 of 9.04.2004, in force as from 9.04.2004, am., issue 36 of 30.04.2004, in force as from 31.07.2004, suppl., issue 70 of 10.08.2004, in force as from 1.01.2005; Judgment No. 4 of the Constitutional Court of the Republic of Bulgaria РБ of 7.10.2004, SG, issue 93 of 19.10.2004; Judgment No. 4 of the Constitutional Court of the Republic of Bulgaria of 21.04.2005, SG, issue 37 of 29.04.2005; am., issue 43 of 20.05.2005, in force as from 1.09.2005, suppl., issue 86 of 28.10.2005, in force as from 29.04.2006, issue 17 of 24.02.2006, in force as from 1.05.2006; Judgment No. 1 of the Constitutional Court of the Republic of Bulgaria of 7.03.2006, SG, issue 23 of 17.03.2006 ; am. and suppl., issue 30 of 11.04.2006, in force as from 1.01.2007, issue 39 of 12.05.2006, in force as from 12.05.2006, repealed, issue 64 of 7.08.2007.

26. **Law on the Judiciary**, published, SG, issue 64 of 7.08.2007.

27. **Law on Asylum and Refugees**, published, SG, issue 54 of 31.05.2002, in force as from 1.12.2002, am. and suppl., issue 31 of 8.04.2005, am., issue 30 of 11.04.2006, in force as from 12.07.2006.

28. **Ordinance No. 10 of 2003 on the export and import of cash on hand, precious metals, precious stones and items therewith or thereof and on keeping the customs registers under Art. 10a of the Law on Foreign Exchange**, issued by the Minister of Finance, published, SG, issue 1 of 6.01.2004, am., issue 48 of 15.06.2007.

29. **Ordinance on the exportation and temporary exportation of movable listed cultural monuments**, enacted by Regulation of the Council of Ministers No. 281 of 18.10.2004, published, SG, issue 96 of 29.10.2004, in force as from 1.01.2005, am., issue 51 of 21.06.2005, in force as from 21.06.2005, issue 14 of 14.02.2006, in force as from 14.02.2006.

ANNEX 2: CRIMINAL CODE OF THE REPUBLIC OF BULGARIA (EXCERPT)

Art. 159a. (New, SG, issue 92/2002) (1) An individual who recruits, transports, hides or admits individuals or groups of people in view of using them for sexual activities, forceful labor, dispossession of bodily organs or holding them in forceful subjection, regardless of their consent, shall be punished by deprivation of liberty of one to eight years and a fine of up to BGN eight thousand (8,000).

(2) Where the act under par. 1 has been committed:
1. with regard to an individual who has not turned eighteen years of age;
2. through the use of coercion or by misleading the individual;
3. through kidnapping or illegal deprivation of liberty;
4. through abuse of a status of dependency;
5. through the abuse of power;
6. through promising, giving away or receiving benefits,

punishment shall be deprivation of liberty from two to ten years and a fine of up to BGN ten thousand (10,000).

(3) (New, SG No. 75/2006) Where the act under paragraph 1 has been committed in respect to a pregnant woman to the purpose of selling her child, the punishment shall be deprivation of liberty of up to ten years and a fine from BGN 5,000 to BGN 15,000.

Art. 159b. (New, SG No. 92/2002) (1) An individual who recruits, transports, hides or admits individuals or groups of people and guides them over the border of the country with the objectives under Article 159a, paragraph 1, shall be punished by deprivation of liberty from three to eight years and a fine of up to BGN ten thousand (10,000).

(2) (Supplemented, SG No. 75/2006, in force as from 13.10.2006) Where the act under par. 1 has been committed in presence of characteristics under Article 159a, paragraphs 2 and 3, the punishment shall be deprivation of liberty from five to ten years and a fine of up to BGN fifteen thousand (15,000).

Art. 159c. (New, SG No. 92/2002) Where acts under Articles 159a and 159b qualify as dangerous recidivism or have been committed at the orders or in implementing a decision of an organized criminal group, the punishment shall be deprivation of liberty from five to fifteen years and a fine of up to BGN twenty thousand (20,000), the courts being also competent to impose confiscation of some or all possessions of the perpetrator.

Art. 242. (Amended, SG No. 95/1975) (1) (Amended, SG No. 10/1993, amended, SG No. 26/2004) A person who carries across the border of this country goods without the knowledge and permission of the customs, where this is effected:
a. by persons systematically practicing such activity;
b. (Amended, SG No. 26/2004) by making use of a document with untrue content, of a false or counterfeited document or of a document of another;

c. by an official who is in direct connection with the customs authorities;
d. (Amended, SG No. 95/1975, supplemented, SG No. 92/2002, supplemented, SG No. 26/2004) where highly effective or poisonous substances, explosives, arms or ammunition, nuclear material, equipment or other sources of ionizing radiation have been carried across, or components or precursors for these, as determined in a law or an instrument of the Council of Ministers;
e. (Amended, SG No. 95/1975) goods and objects for commercial and industrial purposes in big quantities;
f. (New, SG No. 62/1997) in premeditation by two or more persons;
g. (New, SG No. 92/2002) by an individual acting at the orders or in implementing a decision of an organized criminal group,

shall be punished for qualified contraband by deprivation of liberty for up to ten years and by a fine from BGN twenty thousand to one hundred thousand.

(2) (2) (New, SG No. 95/1975, amended, SG No. 10/1993 r, amended, SG No. 62/1997, amended, SG No. 21/2000) A person who carries across the border of this country, without a due permit, drugs and/or analogues thereof shall be punished, in case of high risk drugs, by deprivation of liberty for ten to fifteen years and by a fine from BGN one hundred thousand up to two hundred thousand and, in case of risk drugs - by deprivation of liberty for three to fifteen years and by a fine from BGN ten thousand up to one hundred thousand.

(3) (New, SG No. 21/2000) A person who carries across the border of this country, without being duly authorized, precursors or installations and materials for the production of drugs shall be punished by deprivation of liberty for two to ten years and by a fine from BGN fifty thousand up to one hundred thousand.

(4) (New, SG No. 89/1986, amended, SG No. 10/1993, repealed, renumbered from paragraph 4, SG No. 50/1995, amended, SG No. 62/1997, renumbered from paragraph 3, amended, SG No. 21/2000) Where the object of contraband under the preceding paragraphs comprises particularly great quantities and the case is particularly grave and where a person under (f) of paragraph 1 is a customs official, the punishment shall: in the cases under paragraph 1 - deprivation of liberty for five to fifteen years and a fine from BGN fifty thousand up to two hundred thousand, and in the cases under paragraphs 2 and 3 - deprivation of liberty for fifteen to twenty years and a fine from BGN two hundred thousand up to three hundred thousand.

(5) (Renumbered paragraph 2, amended, SG No. 95/1975, amended, SG No. 28/1982, in force as of 1.07.1982, renumbered paragraph 4, amended, No. 89/1986, renumbered paragraph 5, amended, SG No. 50/1995, renumbered paragraph 4, amended, SG No. 21/2000, amended, SG No. 92/2002, amended, SG No. 103/2004, in force as of 1.01.2005) In cases under paragraph 1, sub-paragraphs (a), (d) and (e), as well as cases under paragraphs 2, 3 and 4, the court may, instead of a fine, impose confiscation of part or the whole property of the culprit.

(6) (Renumbered paragraph 3, amended, SG No. 95/1975, amended. SG No. 28/1982, in force as of 1.07.1982, renumbered paragraph 5, amended, SG No. 89/1986, amended, SG No. 10/1993, renumbered paragraph 6, SG No. 50/1995, amended, SG No. 62/1997, renumbered paragraph 5, amended, SG No. 21/2000) In minor cases under paragraphs 1, 2 and 3, the punishment shall be a fine from one hundred to BGN three hundred, imposed under administrative procedure.

(7) (Renumbered paragraph 4, amended, SG No. 95/1975, renumbered paragraph 6, amended, SG No. 89/1986, renumbered paragraph 7, SG No. 50/1995, renumbered paragraph 6, SG No. 21/2000) The object of the contraband shall be confiscated in favor of the state, regardless of whose ownership it may be, and should it be missing or appropriated, the equivalent amount shall be adjudged at the respective state retail prices.

(8) (Renumbered paragraph 5, amended, SG No. 95/1975, renumbered paragraph 7, amended, SG No. 89/1986, renumbered paragraph 8, SG No. 50/1995, renumbered paragraph 7, SG No. 21/2000) The transport or carrying means, used for transportation or carrying the goods subject of contraband, shall be confiscated in favor of the state even where it does not belong to the perpetrator, except where its value obviously does not correspond to the gravity of the crime.

(9) (New, SG No. 41/1985, renumbered paragraph 8, amended, SG No. 89/1986, renumbered paragraph 9, amended, SG No. 50/1995, renumbered paragraph 8, amended, SG No. 21/2000) For preparations under paragraphs 2, 3 and 4 the punishment shall be deprivation of liberty for at most five years. Paragraph 7 shall apply to such cases..

Art. 244. (1) (Amended, SG No. 62/1997, amended and supplemented, SG No. 24/2005) A person who passes into circulation forged bank notes, coins, or Government securities under the preceding article, acquires or makes use of such, knowing that they are forged, or carries across the border of Bulgaria any such notes and coins, shall be punished by deprivation of liberty for up to eight years.

(2) (New, SG No. 62/1997) The punishment under the preceding paragraph shall also be imposed on a person who holds such notes, coins or securities in large quantities.

Art. 251. (Repealed, SG No. 10/1993, new, SG No. 50/1995) (1) A person who violates the provision of a law, a regulative act of the Council of Ministers, or of a promulgated act of the Bulgarian National Bank on the regime of transactions, import, export or other activities related to currency valuables or the obligations for declaration thereof, and where the value of the object of the crime is of particularly large amount, shall be punished by deprivation of liberty for up to six years or by a fine to the double amount of the object of the crime.

(2) The object of the crime shall be confiscated in favor of the state, and where it is missing or it has been appropriated, its equivalent value shall be adjudged.

Art. 278. (Amended, SG No. 28/1982, in force as of 1.07.1982) (1) (Amended, SG No. 10/1993, amended, SG No. 92/2002, amended, SG No. 26/2004) A person who destroys or damages a cultural monument or archive materials, included as part of the state archives, unless his act constitutes a graver crime, shall be punished by deprivation of liberty for up to three years or by a fine from BGN five hundred to one thousand, as well as by public censure.

(2) (New, SG No. 10/1993, amended, SG No. 92/2002, amended, SG No. 26/2004) An official who, in violation of the law issues permission for destruction, demolition, damaging, modification or export of a cultural monument, shall be punished by deprivation of liberty for up to five years or by a fine from BGN one thousand to five thousand.

(3) (Renumbered paragraph 2, amended, SG No. 10/1993, amended, SG No. 92/2002, amended, SG No. 26/2004) A person who without a due permit takes beyond the country's fron-

tiers a cultural monument or archive materials included in the State Archives, shall be punished by deprivation of liberty for up to five years or by a fine from one thousand to BGN five thousand. The object of the crime shall be confiscated in favor of the state pursuant to Article 53, paragraph 1, letter "b".

(4) (Renumbered paragraph 3, amended, SG No. 10/1993, amended, SG No. 92/2002, amended SG No. 26/2004) A person who without a due permit sells an object under the preceding paragraph, being of the knowledge or supposing that it may be taken out of the country, shall be punished by deprivation of liberty for up to two years or by a fine from BGN one thousand to five thousand, and the object of the crime shall be confiscated in favor of the state pursuant to Article 53, paragraph 1, letter "b".

(5) (Amended, SG No. 28/1982, in force as of 1.07.1982, renumbered paragraph 4, amended, SG No. 10/1993, amended, SG No. 92/2002, amended, SG No. 26/2004) In particularly grave cases the punishment shall be: under paragraph 1 - deprivation of liberty for one to five years and a fine from BGN five thousand to ten thousand; under paragraphs 2 and 3 - deprivation of liberty for two to six years a fine from BGN five thousand to ten thousand; and under paragraph 4 - deprivation of liberty for one to three years and a fine from BGN five thousand to ten thousand. The court may also rule deprivation of rights under Article 37, paragraph 1, subparagraphs 6 and 7. The object of the crime shall be confiscated in favor of the state pursuant to Article 53, paragraph 1, letter "b".

Art. 279. (1) (Amended, SG No. 10/1993, amended, SG No. 92/2002, amended, SG No. 103/2004, in force as of 01.01.2005) A person who enters or crosses the frontier of the country without a permit from the respective bodies of the government or, though with a permit, but not through the places specified for that purpose, shall be punished by deprivation of liberty for up to five years and by a fine of from BGN one hundred to three hundred.

(2) (New, SG No. 28/1982, in force as of 01.07.1982, amended, SG No. 10/1993, amended, SG No. 92/2002, amended, SG No. 103/2004, in force as of 01.01.2005) If the act under paragraph 1 has been committed for a second time, the punishment shall be deprivation of liberty for one to six years and a fine from BGN one hundred to three hundred.

(3) (Renumbered paragraph 2, amended, SG No. 28/1982, in force as of 01.07.1982) In the cases under the preceding paragraphs the court may, instead of a fine, impose confiscation of part or of the whole of the culprit's property.

(4) (Renumbered paragraph 3, amended, SG No. 28/1982, in force as of 01.07.1982, amended, SG No. 103/2004, in force as of 01.01.2005) Preparation for a crime under paragraphs 1 and 2 shall be punished by deprivation of liberty for up to two years or by probation.

(5) (Renumbered paragraph 4, amended, SG No. 28/1982, in force as of 01.07.1982) No one shall be punished who enters the country to avail himself of the right of asylum in accordance with the Constitution.

Art. 280. (Amended, SG No. 28/1982, in force as of 01.07.1982, repealed, SG No. 37/1989, new, SG No. 62/1997) (1) A person who takes across the frontiers of this country individuals or groups of persons without permission from the respective authorities, or with permission but not through the points designated therefor, shall be punished by deprivation of liberty for one to six years and a fine of BGN five hundred to one thousand.

(2) The punishment shall be deprivation of liberty from one to ten years, a fine from one to BGN three thousand and confiscation of part of or the entire property of the perpetrator, if:
1. the person taken across the frontier is less than 16 years of age;
2. the person has been taken across the frontier without his/her knowledge;
3. the person taken across the frontier is not Bulgarian citizen;
4. a motor vehicle, an aircraft or another means of transportation has been used;
5. the crossing of the frontier has been organized by a group or organization and has been carried out with the participation of an official, who has abused his official position.

(3) In the cases under paragraph 2, item 4, the means of transportation shall be appropriated by the state, if it was owned by the perpetrator.

Art. 353b. (New, SG No. 62/1997, supplemented, SG No. 92/2002) A person who, in violation of international treaties to which the Republic of Bulgaria is a party, carries over the border of this country hazardous waste, toxic chemical substances, biological agents, toxic and radioactive substances, shall be punished by deprivation of liberty for one to five years and a fine of BGN one thousand to three.

ANNEX 3: CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF BULGARIA (EXCERPT)

Chapter thirty-six.
PROCEEDINGS IN RELATION TO INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

Section I.
Transfer of Sentenced Persons

Competent body

Art. 453. (1) The transfer of individuals sentenced by a court of the Republic of Bulgaria to the purpose of serving their punishment in the state of which they are the nationals, and the transfer of Bulgarian citizens sentenced by a foreign court for the purpose of serving their punishment in the Republic of Bulgaria shall be decided by the Prosecutor-General in an agreement with the competent body of the other state, in the case where consent of the sentenced individual in writing is available.

(2) A decision on the transfer of a sentenced individual may also be taken after service of his/her punishment has begun.

Transfer in the absence of consent by the individual

Art. 454. (1) The consent of a Bulgarian national convicted by a foreign court or of a foreign national convicted by a Bulgarian court shall not be required, where:

1. The sentence or a subsequent administrative decision of the sentencing state includes an expulsion (deportation) order or another act, by virtue of which the individual, following his/her release from an institution for deprivation of liberty, may not stay within the territory of the sentencing state;
2. Before serving his or her sentence the sentenced individual has escaped from the sentencing state to the territory of the state whose national he or she is.

(2) In cases falling under para 1, item 1, before issuing a decision for transfer, the opinion of the sentenced person shall be taken into account.

Setting the place, time and procedure for delivery and admission of the sentenced person

Art. 455. The place, time and procedure for delivery and admission of the convicted person shall be determined by agreement between the Prosecutor General and the competent body of the other state.

Request for detention

Art. 456. (1) (1) Where information is available that an individual sentenced by a Bulgarian court is located on the territory of the state whose national he or she is, the Prosecutor-General

may extend a request to the foreign country's authorities to detain said individual, in respect of whom a request shall be made for the enforcement of his or her sentence to be taken over, notifying that a sentence for such individual has come into effect.

(2) In the event a request for the detention of a Bulgarian national has been received from another state, Article 64 and 68 shall apply mutatis mutandis.

Decision of the court on issues relevant to the execution of the sentence

Art. 457. (1) After the sentenced individual arrives in the Republic of Bulgaria or it has been found that he or she is located on its territory, the Prosecutor-General shall forward the sentence accepted for execution and the materials attached thereto, to Sofia City Court, with a proposal to resolve the issues relevant to its execution.

(2) The court shall decide on the proposal by ruling at a court hearing with the participation of a prosecutor and with summonsing of the sentenced individual.

(3) The ruling shall specify the number and date of the sentence admitted for execution, the case in which it has been issued, the text of the law of the Republic of Bulgaria providing for responsibility for the crime committed, the term of punishment by deprivation of liberty imposed by the foreign court, and the initial regime shall be determined for serving the punishment.

(4) Where under the law of the Republic of Bulgaria the maximum term of deprivation of liberty for the committed crime is shorter than that fixed in the sentence, the court shall decrease the imposed punishment to that term. Where the law of the Republic of Bulgaria does not provide for deprivation of liberty for the crime committed, the court shall determine a punishment which most fully corresponds to that imposed with the sentence.

(5) The pre-trial detention and the punishment already served in the state in which the sentence has been pronounced shall be deducted, and where the punishments are different the same shall be taken into consideration in determining the term of the punishment.

(6) The additional punishments imposed with the sentence shall be subject to execution if such are provided in the respective text of the legislation of the Republic of Bulgaria, and they have not been executed in the state in which the sentence has been pronounced.

(7) The ruling of the court shall be subject to appeal before Sofia Appellate Court.

Execution of a judgment of a foreign court for the revocation or modification of a sentence

Art. 458. (1) A judgment modifying a sentence issued by the court of the other state after the transfer of the sentenced individual shall be admitted for execution pursuant to the procedure under the Article 457.

(2) A judgment for the revocation of a sentence issued by the court of the other state after transfer of the sentenced individual shall be immediately enforced at the orders of the Prosecutor-General.

(3) Where the sentence of the foreign court has been revoked and a new investigation or trial of the case has been ruled, the issue of the institution of criminal proceedings against the person delivered to the purpose of serving punishment shall be decided by the Prosecutor-General pursuant to the laws of the Republic of Bulgaria.

Review of the sentence

Art. 459. (1) The sentence with respect to an individual transferred or admitted pursuant to this Section to the purpose of serving punishment shall be subject to review only by the competent bodies of the state in which it has been issued.

(2) Where the sentence with respect to an individual transferred to the purpose of serving punishment in another state is revoked or modified, the Supreme Prosecution Office of Cassation shall forward a copy of the judgment to the competent body of that state. If a new investigation or trial of the case has been ruled, all the necessary materials therefore shall also be forwarded.

Termination of punishment service in the event of amnesty

Art. 460. (1) In the event of amnesty in the Republic of Bulgaria, service of punishment under a foreign sentence admitted for execution shall be terminated pursuant to the general procedure.

(2) In the event of amnesty in the state in which the sentence admitted for execution has been issued, service of the punishment shall be terminated immediately by order of the Prosecutor-General.

(3) In the event of amnesty in the Republic of Bulgaria, the Prosecutor-General shall notify immediately the competent body of the state to which the individual has been transferred for serving the punishment.

Force and effect of the sentence

Art. 461. The sentence accepted for execution pursuant to this Section, as well as the decision for its modification or revocation, shall have the force and effect of sentence and decision issued by a court of the Republic of Bulgaria.

Application of the provisions of this Section

Art. 462. The provisions of this Section shall be applicable unless otherwise agreed in an international agreement to which the Republic of Bulgaria is a party.

Section II.
Recognition and enforcement of a sentence issued by a foreign national court

Conditions necessary for the recognition and execution of sentences issued by foreign national courts

Art. 463. An effective sentence issued by a foreign national court shall be recognized 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 recognized 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.

Conditions necessary for a refusal to recognize and execute a sentence issued by a foreign national court

Art. 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.

Procedure for recognition

Art. 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 honor 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 judgment 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 judgment 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.

Effect of the judgment, recognizing a sentence issued by a foreign national court

Art. 466. (1) A judgment whereby a sentence issued by a foreign national court has been recognized 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 recognized 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 recognized 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.

Remand in custody

Art. 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 judgment 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.

Execution procedure

Art. 468. (1) The district court at the place of residence of the sentenced individual shall be competent to rule on the execution of a judgment, recognizing 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 judgment 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 rules 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 recognized 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 recognized.

Recognition and enforcement of other judicial acts

Art. 469 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.

Necessary conditions for requests addressed to another state for the recognition and execution of a sentence issued by a Bulgarian court

Art. 470. A request addressed to another state for the recognition and enforcement of a sentence issued by a Bulgarian court shall be made by the respective Bulgarian court and sent by the Ministry of Justice where:

1. The sentenced individual has his or her permanent residence in said other state;
2. The execution of the sentence in the other state may improve the chances of the sentenced person for re-socialization;
3. The individual has been sentenced to deprivation of liberty and has already started serving or should serve another punishment of deprivation of liberty in said other state;
4. The other state is the state of origin of the sentenced individual and it has stated its wish to admit the sentence for service;
5. The punishment may not be executed in the Republic of Bulgaria, even as a result of extradition.

Section III.
International Legal Assistance in Criminal Cases

Grounds and contents of international legal assistance

Art. 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 process;
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.

Refusal of international legal assistance

Art. 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.

Appearance of witnesses and experts before a foreign national court

Art. 473. (1) Appearance of witnesses and experts before foreign national judicial bodies shall be allowed only if assurance is provided, that the individuals summonsed, regardless of their citizenship, shall not incur criminal liability for acts committed prior to summonsing. In the event they refuse to appear, no coercive measures may be taken in respect thereof.

(2) The surrender of individuals remanded in custody to the purpose of being interrogated as witnesses or experts shall be only admitted under exceptional circumstances at the discretion of a panel of the respective district court, based on papers submitted by the other country, or an international court, provided the individual consents to being surrendered, and his/her stay in another state does not extend beyond the term of his/her remand in custody.

Interrogation of individuals through a video or phone conference

Art. 474. (1) The judicial body of another state may conduct the interrogation, through a video or phone conference, of an individual who appears as a witness or expert in the criminal proceedings and is in the Republic of Bulgaria, where so envisaged in an in international agreement to which the Republic of Bulgaria is a party. 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. An interrogation through a video or phone conference may only be conducted where this does not stand in contradiction to fundamental principles of Bulgarian law.

(2) The request for interrogation filed by a judicial body of the other state should indicate:
1. 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 para 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.

Procedure for submission of a request to another country or international court

Art. 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.

(2) A letter rogatory for international legal assistance shall be forwarded to the Ministry of Justice, unless another procedure is provided by international treaty to which the Republic of Bulgaria is a party.

Execution of request by another country or international court

Art. 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.

(2) Request for legal assistance and all other communications from the competent authorities of another state which are sent and received by fax or e-mail shall be admitted and implemented by the competent Bulgarian authorities pursuant to the same procedure as those sent by ordinary mail. The Bulgarian authorities shall be able to request the certification of authenticity of the materials sent, as well as to obtain originals by express mail.

(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 Instruments 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.

Costs for execution of request

Art. 477. The costs for execution of request shall be distributed between the countries in compliance with international treaties to which the Republic of Bulgaria is a party, or on the basis of the principle of reciprocity.

Section IV.
Transfer of Criminal Proceedings

Transfer of criminal proceedings from another state

Art. 478. (1) A request for the transfer of criminal proceeding by another state shall be sent to:

1. The Supreme Prosecution Office of Cassation - in respect of pre-trial proceedings;
2. The Ministry of Justice - in respect of trial proceedings.

(2) A request for the transfer of criminal proceedings by another state shall be admitted by the authority under paragraph 1 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 offender has his or her permanent residence on the territory of the Republic of Bulgaria;
4. The offender is a national of the Republic of Bulgaria;
5. The offence in respect of which a request has been made is not considered a political or politically associated, nor a military offence;
6. The request does not aim at prosecuting or punishing the person due to his or her race, religion, nationality, ethnic origin, sex, civil status or political affiliations;
7. Criminal proceedings in the Republic of Bulgaria in respect of the same or another offence have been initiated against the offender;
8. The transfer of proceedings is in the interest of discovering the truth and the most important pieces of evidence are located on the territory of the Republic of Bulgaria;
9. The enforcement of the sentence, should one be issued, will improve the chances of the sentenced person for re-socialization;
10. The personal appearance of the offender may not be ensured in proceedings in the Republic of Bulgaria;
11. The sentence, if one is issued, may be enforced in the Republic of Bulgaria;
12. The request does not contradict international obligations of the Republic of Bulgaria;
13. The request does not stand in contradiction to the fundamental principles of Bulgarian criminal and criminal procedural law.

(3) Should the authority under paragraph 1 honor the request, it shall forthwith refer it to the competent criminal proceedings authorities, in accordance with the provisions of this code.

(4) Any procedural action taken by a body of the requesting state in accordance with its national law shall enjoy in the Republic of Bulgaria the same evidentiary power as it would enjoy if it were taken by a Bulgarian authority.

Transfer of criminal proceedings to another state

Art. 479. (1) Where the individual against whom criminal proceedings have been instituted in the Republic of Bulgaria is the national of another state or has his or her permanent residence in another state, the authorities under paragraph 2 may file a request for the transfer of criminal proceedings to said state.

(2) The request for transfer of criminal proceedings to another state at the proposal of competent Bulgarian authorities in the field of criminal proceedings shall be filed:
1. The Supreme Prosecution Office of Cassation - in respect of pre-trial proceedings;
2. The Ministry of Justice - in respect of trial proceedings.

(3) A request for the transfer of criminal proceedings to another state may be extended, where:

1. The extradition of an individual who committed the offence from the requested state is impossible, is not allowed or has not been requested for other reasons;
2. It is opportune for criminal proceedings to take place in the requested state in order to establish the facts, determine the sentence or enforce it;
3. The individual who committed the offence is or shall be extradited to the requested state or his or her appearance at the criminal proceedings in said state in person is possible due to other reasons;
4. The extradition of an individual who has been sentenced by a Bulgarian court and the sentence has taken effect is impossible or not allowed by the requested state or where the enforcement thereof in said state is impossible.

(4) If the requested state allows the transfer of criminal proceedings, they may not be pursued on the territory of the Republic of Bulgaria against the individual who committed the offence and the sentence imposed under paragraph 3, item 4 in respect of the offence in relation to which criminal proceedings have been transferred, shall not be enforced.

(5) Pre-trial authorities or the court may pursue criminal proceedings or refer the sentence for enforcement, where the requested state:
1. Once it has admitted the request for transfer does not institute any criminal proceedings;
2. Subsequently rescinds its decision to transfer the criminal proceedings;
3. Does not pursue the proceedings.

Decision by subsidiary competence

Art. 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.

ANNEX 4: EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Ratified by a law, passed by the 36th National Assembly on 27.04.1994, SG No. 39/1994. In force for the Republic of Bulgaria as of 15.09.1994. Published by the Ministry of Justice, SG No. 8/24.01.1995..

PREAMBLE

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity among its members;

Believing that the adoption of common rules in the field of mutual assistance in criminal matters will contribute to the attainment of this aim;

Considering that such mutual assistance is related to the question of extradition, which has already formed the subject of a Convention signed on 13th December 1957,

Have agreed as follows:

Chapter I
GENERAL PROVISIONS

Article 1

1. The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.
2. This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

Article 2

Assistance may be refused:

a. if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;

b. if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country.

Chapter II
LETTERS ROGATORY

Article 3

1. The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

2. If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.
3. The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request.

Article 4

On the express request of the requesting Party the requested Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents.

Article 5

1. Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, reserve the right to make the execution of letters rogatory for search or seizure of property dependent on one or more of the following conditions:
   a. that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;
   b. that the offence motivating the letters rogatory is an extraditable offence in the requested country;
   c. that execution of the letters rogatory is consistent with the law of the requested Party.
2. Where a Contracting Party makes a declaration in accordance with paragraph 1 of this article, any other Party may apply reciprocity.

Article 6

1. The requested Party may delay 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.
2. Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned by the requesting Party to the requested Party as soon as possible unless the latter Party waives the return thereof.

CHAPTER III

SERVICE OF WRITS AND RECORDS OF JUDICIAL VERDICTS – APPEARANCE OF WITNESSES, EXPERTS AND PROSECUTED PERSONS

Article 7

1. The requested Party shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting Party.

Service may be effected by simple transmission of the writ or record to the person to be served. If the requesting Party expressly so requests, service shall be effected by the requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

2. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested Party that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting Party. The requested Party shall, if the requesting Party so requests, state whether service has been effected in accordance with the law of the

requested Party. If service cannot be effected, the reasons shall be communicated immediately by the requested Party to the requesting Party.

3. Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, request that service of a summons on an accused person who is in its territory be transmitted to its authorities by a certain time before the date set for appearance. This time shall be specified in the aforesaid declaration and shall not exceed 50 days.

This time shall be taken into account when the date of appearance is being fixed and when the summons is being transmitted.

Article 8

A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting Party and is there again duly summoned.

Article 9

The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting Party shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

Article 10

1. If the requesting Party considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the requested Party shall invite the witness or expert to appear.

The requested Party shall inform the requesting Party of the reply of the witness or expert.

2. In the case provided for under paragraph 1 of this article the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.
3. If a specific request is made, the requested Party may grant the witness or expert an advance. The amount of the advance shall be endorsed on the summons and shall be refunded by the requesting Party.

Article 11

1. A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 in so far as these are applicable.

Transfer may be refused:

   a. if the person in custody does not consent;
   b. if his presence is necessary at criminal proceedings pending in the territory of the requested Party;
   c. if transfer is liable to prolong his detention, or
   d. if there are other overriding grounds for not transferring him to the territory of the requesting Party.

2. Subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of the person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary docu-

ments, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested.

A Contracting Party may refuse to grant transit to its own nationals.

3. The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his release.

Article 12

1. A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.
2. A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.
3. The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

CHAPTER IV
JUDICIAL RECORDS

Article 13

1. A requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.
2. In any case other than that provided for in paragraph 1 of this article the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the requested Party.

CHAPTER V
PROCEDURE

Article 14

1. Requests for mutual assistance shall indicate as follows:
   a. the authority making the request,
   b. the object of and the reason for the request,
   c. where possible, the identity and the nationality of the person concerned, and
   d. where necessary, the name and address of the person to be served.
2. Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.

Article 15

1. Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.

2. In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.
3. Requests provided for in paragraph 1 of Article 13 may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.
4. Requests for mutual assistance, other than those provided for in paragraphs 1 and 3 of this article and, in particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities.
5. In cases where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).
6. A Contracting Party may, when signing this Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, give notice that some or all requests for assistance shall be sent to it through channels other than those provided for in this article, or require that, in a case provided for in paragraph 2 of this article, a copy of the letters rogatory shall be transmitted at the same time to its Ministry of Justice.
7. The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Contracting Parties which provide for the direct transmission of requests for assistance between their respective authorities.

Article 16

1. Subject to paragraph 2 of this article, translations of requests and annexed documents shall not be required.
2. Each Contracting Party may, when signing or depositing its instrument of ratification or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, reserve the right to stipulate that requests and annexed documents shall be addressed to it accompanied by a translation into its own language or into either of the official languages of the Council of Europe or into one of the latter languages, specified by it. The other Contracting Parties may apply reciprocity.
3. This article is without prejudice to the provisions concerning the translation of requests or annexed documents contained in the agreements or arrangements in force or to be made between two or more Contracting Parties.

Article 17

Evidence or documents transmitted pursuant to this Convention shall not require any form of authentication.

Article 18

Where the authority which receives a request for mutual assistance has no jurisdiction to comply therewith, it shall, ex officio, transmit the request to the competent authority of its country and shall so inform the requesting Party through the direct channels, if the request has been addressed through such channels.

Article 19

Reasons shall be given for any refusal of mutual assistance.

Article 20

1. Subject to the provisions of Article 10, paragraph 3, execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody carried out under Article 11.

CHAPTER VI
LAYING OF INFORMATION IN CONNECTION WITH PROCEEDINGS

Article 21

1. Information laid by one Contracting Party with a view to proceedings in the courts of another Party shall be transmitted between the Ministries of Justice concerned unless a Contracting Party avails itself of the option provided for in paragraph 6 of Article 15.
2. The requested Party shall notify the requesting Party of any action taken on such information and shall forward a copy of the record of any verdict pronounced.
3. The provisions of Article 16 shall apply to information laid under paragraph 1 of this article.

CHAPTER VII
EXCHANGE OF INFORMATION FROM JUDICIAL RECORDS

Article 22

Each Contracting Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Ministries of Justice shall communicate such information to one another at least once a year. Where the person concerned is considered a national of two or more other Contracting Parties, the information shall be given to each of these Parties, unless the person is a national of the Party in the territory of which he was convicted.

CHAPTER VIII
FINAL PROVISIONS

Article 23

1. Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
2. Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.
3. A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

Article 24

A Contracting Party may, when signing the Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities.

Article 25

1. This Convention shall apply to the metropolitan territories of the Contracting Parties.

2. In respect of France, it shall also apply to Algeria and to the overseas Departments, and, in respect of Italy, it shall also apply to the territory of Somaliland under Italian administration.
3. The Federal Republic of Germany may extend the application of this Convention to the Land of Berlin by notice addressed to the Secretary General of the Council of Europe.
4. In respect of the Kingdom of the Netherlands, the Convention shall apply to its European territory. The Netherlands may extend the application of this Convention to the Netherlands Antilles, Surinam and Netherlands New Guinea by notice addressed to the Secretary General of the Council of Europe.
5. By direct arrangement between two or more Contracting Parties and subject to the conditions laid down in the arrangement, the application of this Convention may be extended to any territory, other than the territories mentioned in paragraphs 1, 2, 3 and 4 of this article, of one of these Parties, for the international relations of which any such Party is responsible.

Article 26

1. Subject to the provisions of Article 15, paragraph 7, and Article 16, paragraph 3, this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties.
2. This Convention shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field.
3. The Contracting Parties may conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.
4. Where, as between two or more Contracting Parties, mutual assistance in criminal matters is practised on the basis of uniform legislation or of a special system providing for the reciprocal application in their respective territories of measures of mutual assistance, these Parties shall, notwithstanding the provisions of this Convention, be free to regulate their mutual relations in this field exclusively in accordance with such legislation or system. Contracting Parties which, in accordance with this paragraph, exclude as between themselves the application of this Convention shall notify the Secretary General of the Council of Europe accordingly.

Article 27

1. This Convention shall be open to signature by the members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary General of the Council.
2. The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.
3. As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

Article 28

1. The Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, provided that the resolution containing such invitation obtains the unanimous agreement of the members of the Council who have ratified the Convention.
2. Accession shall be by deposit with the Secretary General of the Council of an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 29

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary General of the Council received such notification.

Article 30

The Secretary General of the Council of Europe shall notify the members of the Council and the government of any State which has acceded to this Convention of:

a. the names of the signatories and the deposit of any instrument of ratification or accession;
b. the date of entry into force of this Convention;
c. any notification received in accordance with the provisions of Article 5 – paragraph 1, Article 7 – paragraph 3, Article 15 – paragraph 6, Article 16 – paragraph 2, Article 24, Article 25 – paragraphs 3 and 4, Article 26 – paragraph 4;
d. any reservation made in accordance with Article 23, paragraph 1;
e. the withdrawal of any reservation in accordance with Article 23, paragraph 2;
f. any notification of denunciation received in accordance with the provisions of Article 29 and the date on which such denunciation will take effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 20th day of April 1959, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to the signatory and acceding governments.

ANNEX 5: ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Ratified by a law, passed by the 36th National Assembly on 27.04.1994, SG No. 39/1994. In force for the Republic of Bulgaria as of 15.09.1994. Published by the Ministry of Justice, SG No. 8/24.01.1995.

The member States of the Council of Europe, signatory to this Protocol,

Desirous of facilitating the application of the European Convention on Mutual Assistance in Criminal Matters opened for signature in Strasbourg on 20th April 1959 (hereinafter referred to as "the Convention") in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,

Chapter I

Article 1

The Contracting Parties shall not exercise the right provided for in Article 2.a of the Convention to refuse assistance solely on the ground that the request concerns an offence which the requested Party considers a fiscal offence.

Article 2

1. In the case where a Contracting Party has made the execution of letters rogatory for search or seizure of property dependent on the condition that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party, this condition shall be fulfilled, as regards fiscal offences, if the offence is punishable under the law of the requesting Party and corresponds to an offence of the same nature under the law of the requested Party.
2. The request may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the requesting Party.

Chapter II

Article 3

The Convention shall also apply to:

a. the service of documents concerning the enforcement of a sentence, the recovery of a fine or the payment of costs of proceedings;
b. measures relating to the suspension of pronouncement of a sentence or of its enforcement, to conditional release, to deferment of the commencement of the enforcement of a sentence or to the interruption of such enforcement.

CHAPTER III

Article 4

Article 22 of the Convention shall be supplemented by the following text, the original Article 22 of the Convention becoming paragraph 1 and the below-mentioned provisions becoming paragraph 2:

"2 Furthermore, any Contracting Party which has supplied the above-mentioned information shall communicate to the Party concerned, on the latter's request in individual cases, a copy of the convictions and measures in question as well as any other information relevant thereto in order to enable it to consider whether they necessitate any measures at national level. This communication shall take place between the Ministries of Justice concerned.""

CHAPTER IV

Article 5

1. This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.
3. In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.
4. A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

Article 6

1. Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 7

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
2. Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

Article 8

1. Reservations made by a Contracting Party to a provision of the Convention shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to the declarations made by virtue of Article 24 of the Convention.
2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:
   a. not to accept Chapter I, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article I, or not to comply with letters rogatory for search or seizure of property in respect of fiscal offences;
   b. not to accept Chapter II;
   c. not to accept Chapter III.
3. Any Contracting Party may withdraw a declaration it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
4. A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional claim the application of that provision in so far as it has itself accepted it.
5. No other reservation may be made to the provisions of this Protocol.

Article 9

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Contracting Parties in application of Article 26, paragraph 3, of the Convention.

Article 10

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 11

1. Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.
3. Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 12

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

   a. any signature of this Protocol;
   b. any deposit of an instrument of ratification, acceptance, approval or accession;
   c. any date of entry into force of this Protocol in accordance with Articles 5 and 6;
   d. any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 7;
   e. any declaration received in pursuance of the provisions of paragraph 1 of Article 8;
   f. any reservation made in pursuance of the provisions of paragraph 2 of Article 8;
   g. the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 8;

h. any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 17th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

ANNEX 6: SECOND ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Ratified by a law, passed by the 39th National Assembly on 18.02.2004, SG No. 16/2004. In force for the Republic of Bulgaria as of 1.09.2004. Published by the Ministry of Justice, SG No. 94/22.10.2004.

The member States of the Council of Europe, signatory to this Protocol,

Having regard to their undertakings under the Statute of the Council of Europe;

Desirous of further contributing to safeguard human rights, uphold the rule of law and support the democratic fabric of society;

Considering it desirable to that effect to strengthen their individual and collective ability to respond to crime;

Decided to improve on and supplement in certain aspects the European Convention on Mutual Assistance in Criminal Matters done at Strasbourg on 20 April 1959 (hereinafter referred to as "the Convention"), as well as the Additional Protocol thereto, done at Strasbourg on 17 March 1978;

Taking into consideration the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, as well as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981,

Have agreed as follows:

Chapter I

Article 1
Scope

Article 1 of the Convention shall be replaced by the following provisions:

"1. The Parties undertake promptly to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.
2. This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.
3. Mutual assistance may 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 Party by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.
4. Mutual assistance shall not be refused solely on the grounds that it relates to acts for which a legal person may be held liable in the requesting Party."

Article 2
Presence of officials of the requesting Party

Article 4 of the Convention shall be supplemented by the following text, the original Article 4 of the Convention becoming paragraph 1 and the provisions below becoming paragraph 2:

"2. Requests for the presence of such officials or interested persons should not be refused where that presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance."

Article 3
Temporary transfer of detained persons to the territory of the requesting Party

Article 11 of the Convention shall be replaced by the following provisions:

"1. A person in custody whose personal appearance for evidentiary purposes other than for standing trial is applied for by the requesting Party shall be temporarily transferred to its territory, provided that he or she shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 of this Convention, in so far as these are applicable.

Transfer may be refused if:

a. the person in custody does not consent;
b. his or her presence is necessary at criminal proceedings pending in the territory of the requested Party;
c. transfer is liable to prolong his or her detention, or
d. there are other overriding grounds for not transferring him or her to the territory of the requesting Party.

2. Subject to the provisions of Article 2 of this Convention, in a case coming within paragraph 1, transit of the person in custody through the territory of a third Party, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested. A Party may refuse to grant transit to its own nationals.
3. The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his or her release." "

Article 4
Channels of communication

Article 15 of the Convention shall be replaced by the following provisions:

"1. Requests for mutual assistance, as well as spontaneous information, shall be addressed in writing by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels. However, they may be forwarded directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party and returned through the same channels.
2. Applications as referred to in Article 11 of this Convention and Article 13 of the Second Additional Protocol to this Convention shall in all cases be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.
3. Requests for mutual assistance concerning proceedings as mentioned in paragraph 3 of Article 1 of this Convention may also be forwarded directly by the administrative or judicial authorities of the requesting Party to the administrative or judicial authorities of the requested Party, as the case may be, and returned through the same channels.
4. Requests for mutual assistance made under Articles 18 and 19 of the Second Additional Protocol to this Convention may also be forwarded directly by the competent authorities of the requesting Party to the competent authorities of the requested Party.

5. Requests provided for in paragraph 1 of Article 13 of this Convention may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 of this Convention shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.
6. Requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the Convention may be made directly to the competent authorities. Any Contracting State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of this paragraph, deem competent authorities.
7. In urgent cases, where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).
8. Any Party may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to make the execution of requests, or specified requests, for mutual assistance dependent on one or more of the following conditions:
   a. that a copy of the request be forwarded to the central authority designated in that declaration;
   b. that requests, except urgent requests, be forwarded to the central authority designated in that declaration;
   c. that, in case of direct transmission for reasons of urgency, a copy shall be transmitted at the same time to its Ministry of Justice;
   d. that some or all requests for assistance shall be sent to it through channels other than those provided for in this article.
9. Requests for mutual assistance and any other communications under this Convention or its Protocols may be forwarded through any electronic or other means of telecommunication provided that the requesting Party is prepared, upon request, to produce at any time a written record of it and the original. However, any Contracting State, may by a declaration addressed at any time to the Secretary General of the Council of Europe, establish the conditions under which it shall be willing to accept and execute requests received by electronic or other means of telecommunication.
10. The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Parties which provide for the direct transmission of requests for assistance between their respective authorities."

Article 5
Costs

Article 20 of the Convention shall be replaced by the following provisions:

"1. Parties shall not claim from each other the refund of any costs resulting from the application of this Convention or its Protocols, except:
   a. costs incurred by the attendance of experts in the territory of the requested Party;
   b. costs incurred by the transfer of a person in custody carried out under Articles 13 or 14 of the Second Additional Protocol to this Convention, or Article 11 of this Convention;
   c. costs of a substantial or extraordinary nature.
2. However, the cost of establishing a video or telephone link, costs related to the servicing of a video or telephone link in the requested Party, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses in the requested Party shall be refunded by the requesting Party to the requested Party, unless the Parties agree otherwise.

3. Parties shall consult with each other with a view to making arrangements for the payment of costs claimable under paragraph 1.c above.
4. The provisions of this article shall apply without prejudice to the provisions of Article 10, paragraph 3, of this Convention."

Article 6
Judicial authorities

Article 24 of the Convention shall be replaced by the following provisions:
"Any State shall at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities. It subsequently may, at any time and in the same manner, change the terms of its declaration."

CHAPTER II
Article 7
Postponed execution of requests

1. The requested Party may postpone action on a request if such action would prejudice investigations, prosecutions or related proceedings by its authorities.
2. Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
3. If the request is postponed, reasons shall be given for the postponement. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

Article 8
Procedure

Notwithstanding the provisions of Article 3 of the Convention, where requests specify formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to fundamental principles of its law, unless otherwise provided for in this Protocol.

Article 9
Hearing by video conference

1. If a person is in one Party's territory and has to be heard as a witness or expert by the judicial authorities of another Party, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 7.
2. The requested Party shall agree to the hearing by video conference provided that the use of the video conference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Party has no access to the technical means for video conferencing, such means may be made available to it by the requesting Party by mutual agreement.

3. Requests for a hearing by video conference shall contain, in addition to the information referred to in Article 14 of the Convention, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.
4. The judicial authority of the requested Party shall summon the person concerned to appear in accordance with the forms laid down by its law.
5. With reference to hearing by video conference, the following rules shall apply:
   a. a judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party. If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
   b. measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties;
   c. the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws;
   d. at the request of the requesting Party or the person to be heard, the requested Party shall ensure that the person to be heard is assisted by an interpreter, if necessary;
   e. the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Party.
6. Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.
7. Each Party shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory, in accordance with this article, and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.
8. Parties may at their discretion also apply the provisions of this article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving the accused person or the suspect. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Parties concerned, in accordance with their national law and relevant international instruments. Hearings involving the accused person or the suspect shall only be carried out with his or her consent.
9. Any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it will not avail itself of the possibility provided in paragraph 8 above of also applying the provisions of this article to hearings by video conference involving the accused person or the suspect.

Article 10
Hearing by telephone conference

1. If a person is in one Party's territory and has to be heard as a witness or expert by judicial authorities of another Party, the latter may, where its national law so provides, request the

assistance of the former Party to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 6.

2. A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.
3. The requested Party shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.
4. A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the Convention, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.
5. The practical arrangements regarding the hearing shall be agreed between the Parties concerned. When agreeing such arrangements, the requested Party shall undertake to:
   a. notify the witness or expert concerned of the time and the venue of the hearing;
   b. ensure the identification of the witness or expert;
   c. verify that the witness or expert agrees to the hearing by telephone conference.
6. The requested Party may make its agreement subject, fully or in part, to the relevant provisions of Article 9, paragraphs 5 and 7.

Article 11
Spontaneous information

1. Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the competent authorities of another Party information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.
2. The providing Party may, pursuant to its national law, impose conditions on the use of such information by the receiving Party.
3. The receiving Party shall be bound by those conditions.
4. However, any Contracting State may, at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to be bound by the conditions imposed by the providing Party under paragraph 2 above, unless it receives prior notice of the nature of the information to be provided and agrees to its transmission.

Article 12
Restitution

1. At the request of the requesting Party and without prejudice to the rights of bona fide third parties, the requested Party may place articles obtained by criminal means at the disposal of the requesting Party with a view to their return to their rightful owners.
2. In applying Articles 3 and 6 of the Convention, the requested Party may waive the return of articles either before or after handing them over to the requesting Party if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.
3. In the event of a waiver before handing over the articles to the requesting Party, the requested Party shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles.

4. A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Party to collect taxes or duties from the rightful owner.

Article 13
Temporary transfer of detained persons to the requested Party

1. Where there is agreement between the competent authorities of the Parties concerned, a Party which has requested an investigation for which the presence of a person held in custody on its own territory is required may temporarily transfer that person to the territory of the Party in which the investigation is to take place.
2. The agreement shall cover the arrangements for the temporary transfer of the person and the date by which the person must be returned to the territory of the requesting Party.
3. Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Party.
4. The transferred person shall remain in custody in the territory of the requested Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from which the person was transferred applies for his or her release.
5. The period of custody in the territory of the requested Party shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Party.
6. The provisions of Article 11, paragraph 2, and Article 12 of the Convention shall apply mutatis mutandis.
7. Any Contracting State may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that before an agreement is reached under paragraph 1 of this article, the consent referred to in paragraph 3 of this article will be required, or will be required under certain conditions indicated in the declaration.

Article 14
Personal appearance of transferred sentenced persons

The provisions of Articles 11 and 12 of the Convention shall apply mutatis mutandis also to persons who are in custody in the requested Party, pursuant to having been transferred in order to serve a sentence passed in the requesting Party, where their personal appearance for purposes of review of the judgement is applied for by the requesting Party.

Article 15
Language of procedural documents and judicial decisions to be served

1. The provisions of this article shall apply to any request for service under Article 7 of the Convention or Article 3 of the Additional Protocol thereto.
2. Procedural documents and judicial decisions shall in all cases be transmitted in the language, or the languages, in which they were issued.
3. Notwithstanding the provisions of Article 16 of the Convention, if the authority that issued the papers knows or has reasons to believe that the addressee understands only some other language, the papers, or at least the most important passages thereof, shall be accompanied by a translation into that other language.
4. Notwithstanding the provisions of Article 16 of the Convention, procedural documents and judicial decisions shall, for the benefit of the authorities of the requested Party, be accompanied by a short summary of their contents translated into the language, or one of the languages, of that Party.

Article 16
Service by post

1. The competent judicial authorities of any Party may directly address, by post, procedural documents and judicial decisions, to persons who are in the territory of any other Party.
2. Procedural documents and judicial decisions shall be accompanied by a report stating that the addressee may obtain information from the authority identified in the report, regarding his or her rights and obligations concerning the service of the papers. The provisions of paragraph 3 of Article 15 above shall apply to that report.
3. The provisions of Articles 8, 9 and 12 of the Convention shall apply mutatis mutandis to service by post.
4. The provisions of paragraphs 1, 2 and 3 of Article 15 above shall also apply to service by post.

Article 17
Cross-border observations

1. Police officers of one of the Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorised to continue their observation in the territory of another Party where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

On request, the observation will be entrusted to officers of the Party in whose territory it is carried out.

The request for assistance referred to in the first sub-paragraph must be sent to an authority designated by each Party and having jurisdiction to grant or to forward the requested authorisation.

2. Where, for particularly urgent reasons, prior authorisation of the other Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorised to continue beyond the border the observation of a person presumed to have committed offences listed in paragraph 6, provided that the following conditions are met:
   a. the authorities of the Party designated under paragraph 4, in whose territory the observation is to be continued, must be notified immediately, during the observation, that the border has been crossed;
   b. a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay.

Observation shall cease as soon as the Party in whose territory it is taking place so requests, following the notification referred to in a. or the request referred to in b. or where authorisation has not been obtained within five hours of the border being crossed.

3. The observation referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:
   a. The officers conducting the observation must comply with the provisions of this article and with the law of the Party in whose territory they are operating; they must obey the instructions of the local responsible authorities.
   b. Except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted.

c. The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity.
d. The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence.
e. Entry into private homes and places not accessible to the public shall be prohibited.
f. The officers conducting the observation may neither stop and question, nor arrest, the person under observation.
g. All operations shall be the subject of a report to the authorities of the Party in whose territory they took place; the officers conducting the observation may be required to appear in person.
h. The authorities of the Party from which the observing officers have come shall, when requested by the authorities of the Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

4. Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.
5. The Parties may, at bilateral level, extend the scope of this article and adopt additional measures in implementation thereof.
6. The observation referred to in paragraph 2 may take place only for one of the following criminal offences:
   - assassination;
   - murder;
   - rape;
   - arson;
   - counterfeiting;
   - armed robbery and receiving of stolen goods;
   - extortion;
   - kidnapping and hostage taking;
   - traffic in human beings;
   - illicit traffic in narcotic drugs and psychotropic substances;
   - breach of the laws on arms and explosives;
   - use of explosives;
   - illicit carriage of toxic and dangerous waste;
   - smuggling of aliens;
   - sexual abuse of children.

Article 18
Controlled delivery

1. Each Party undertakes to ensure that, at the request of another Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.
2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Party, with due regard to the national law of that Party.

3. Controlled deliveries shall take place in accordance with the procedures of the requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.
4. Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 19
Covert investigations

1. The requesting and the requested Parties may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).
2. The decision on the request is taken in each individual case by the competent authorities of the requested Party with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Parties with due regard to their national law and procedures.
3. Covert investigations shall take place in accordance with the national law and procedures of the Party on the territory of which the covert investigation takes place. The Parties involved shall co-operate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.
4. Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of paragraph 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Article 20
Joint investigation teams

1. By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

a. a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;
b. a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.

A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out.

2. In addition to the information referred to in the relevant provisions of Article 14 of the Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.
3. A joint investigation team shall operate in the territory of the Parties setting up the team under the following general conditions:

a. the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
b. the team shall carry out its operations in accordance with the law of the Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in sub-paragraph a, taking into account the conditions set by their own authorities in the agreement on setting up the team;
c. the Party in which the team operates shall make the necessary organisational arrangements for it to do so.

4. In this article, members of the joint investigation team from the Party in which the team operates are referred to as "members", while members from Parties other than the Party in which the team operates are referred to as "seconded members".
5. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.
6. Seconded members of the joint investigation team may, in accordance with the law of the Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Party of operation and the seconding Party.
7. Where the joint investigation team needs investigative measures to be taken in one of the Parties setting up the team, members seconded to the team by that Party may request their own competent authorities to take those measures. Those measures shall be considered in that Party under the conditions which would apply if they were requested in a national investigation.
8. Where the joint investigation team needs assistance from a Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.
9. A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.
10. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Parties concerned may be used for the following purposes:
    a. for the purposes for which the team has been set up;
    b. subject to the prior consent of the Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Party concerned or in respect of which that Party could refuse mutual assistance;
    c. for preventing an immediate and serious threat to public security, and without prejudice to sub-paragraph b. if subsequently a criminal investigation is opened;
    d. for other purposes to the extent that this is agreed between Parties setting up the team.
11. This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.
12. To the extent that the laws of the Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other

than representatives of the competent authorities of the Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.

Article 21
Criminal liability regarding officials

During the operations referred to in Articles 17, 18, 19 or 20, unless otherwise agreed upon by the Parties concerned, officials from a Party other than the Party of operation shall be regarded as officials of the Party of operation with respect to offences committed against them or by them.

Article 22
Civil liability regarding officials

1. Where, in accordance with Articles 17, 18, 19 or 20, officials of a Party are operating in another Party, the first Party shall be liable for any damage caused by them during their operations, in accordance with the law of the Party in whose territory they are operating.
2. The Party in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.
3. The Party whose officials have caused damage to any person in the territory of another Party shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.
4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Party shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Party.
5. The provisions of this article shall apply subject to the proviso that the Parties did not agree otherwise.

Article 23
Protection of witnesses

Where a Party requests assistance under the Convention or one of its Protocols in respect of a witness at risk of intimidation or in need of protection, the competent authorities of the requesting and requested Parties shall endeavour to agree on measures for the protection of the person concerned, in accordance with their national law.

Article 24
Provisional measures

1. At the request of the requesting Party, the requested Party, in accordance with its national law, may take provisional measures for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests.
2. The requested Party may grant the request partially or subject to conditions, in particular time limitation.

Article 25
Confidentiality

The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

Article 26
Data protection

1. Personal data transferred from one Party to another as a result of the execution of a request made under the Convention or any of its Protocols, may be used by the Party to which such data have been transferred, only:
   a. for the purpose of proceedings to which the Convention or any of its Protocols apply;
   b. for other judicial and administrative proceedings directly related to the proceedings mentioned under (a);
   c. for preventing an immediate and serious threat to public security.
2. Такива данни могат да бъдат използвани за други цели, ако за това е дадено предварително съгласие от договарящата страна, от която са предадени данните, или от субекта на данните.
3. Such data may however be used for any other purpose if prior consent to that effect is given by either the Party from which the data had been transferred, or the data subject.

3. Any Party may refuse to transfer personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols where
   – such data is protected under its national legislation, and
   – the Party to which the data should be transferred is not bound by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, done at Strasbourg on 28 January 1981, unless the latter Party undertakes to afford such protection to the data as is required by the former Party.
4. Any Party that transfers personal data obtained as a result of the execution of a request made under the Convention or any of its Protocols may require the Party to which the data have been transferred to give information on the use made with such data.
5. Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, require that, within the framework of procedures for which it could have refused or limited the transmission or the use of personal data in accordance with the provisions of the Convention or one of its Protocols, personal data transmitted to another Party not be used by the latter for the purposes of paragraph 1 unless with its previous consent.

Article 27
Administrative authorities

Parties may at any time, by means of a declaration addressed to the Secretary General of the Council of Europe, define what authorities they will deem administrative authorities for the purposes of Article 1, paragraph 3, of the Convention.

Article 28
Relations with other treaties

The provisions of this Protocol are without prejudice to more extensive regulations in bilateral or multilateral agreements concluded between Parties in application of Article 26, paragraph 3, of the Convention.

Article 29
Friendly settlement

The European Committee on Crime Problems shall be kept informed regarding the interpretation and application of the Convention and its Protocols, and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of their application.

CHAPTER III

Article 30
Signature and entry into force

1. This Protocol shall be open for signature by the member States of the Council of Europe which are a Party to or have signed the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.
3. In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit.

Article 31
Accession

1. Any non-member State, which has acceded to the Convention, may accede to this Protocol after it has entered into force.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession.
3. In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession.

Article 32
Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
2. Any State may, at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the

expiration of a period of three months after the date or receipt of such notification by the Secretary General.

Article 33
Reservations

1. Reservations made by a Party to any provision of the Convention or its Protocol shall be applicable also to this Protocol, unless that Party otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to any declaration made in respect or by virtue of any provision of the Convention or its Protocol.
2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the right not to accept wholly or in part any one or more of Articles 16, 17, 18, 19 and 20. No other reservation may be made.
3. Any State may wholly or partially withdraw a reservation it has made in accordance with the foregoing paragraphs, by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.
4. Any Party which has made a reservation in respect of any of the articles of this Protocol mentioned in paragraph 2 above, may not claim the application of that article by another Party. It may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 34
Denunciation

1. Any Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
3. Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 35
Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Protocol of:

a. any signature;
b. the deposit of any instrument of ratification, acceptance, approval or accession;
c. any date of entry into force of this Protocol in accordance with Articles 30 and 31;
d. any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.
Done at Strasbourg, this 8th day of November 2001, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the non-member States which have acceded to the Convention..

ANNEX 7: TREATY BETWEEN THE PEOPLE'S REPUBLIC OF BULGARIA AND THE REPUBLIC OF TURKEY ON LEGAL ASSISTANCE IN CIVIL AND CRIMINAL MATTERS

Ratified by Decree No. 160 of the State Council of 18.02.1976, SG No. 20/9.031976. Published by the Ministry of Foreign Affairs, SG No. 16/23.02.1979, in force as of 27.10.1978.

The People's Republic of Bulgaria and the Republic of Turkey,

Being anxious to regulate mutual legal assistance in civil and criminal matters on the basis of the principles of sovereignty and national independence, equality of rights and non-interference with internal affairs,

Have decided to conclude this Treaty and for that purpose have appointed as their plenipotentiaries:

The State Council of the People's Republic of Bulgaria:

Mr. Petar Mladenov,

Minister of Foreign Affairs,

and

The President of the Republic of Turkey,

Mr. Ishan Sabri Caglayangil,

Minister of Foreign Affairs,

Who, having exchanged full powers, found in good and due form, have agreed as follows:

CHAPTER ONE
LEGAL PROTECTION

Article 1

1. The nationals (natural and legal persons) of each Contracting Party shall avail in the territory of the other Contracting Party of the same treatment as the other Party's own nationals as regards the legal protection of their person, property and rights.
2. They shall have unfettered access to the courts, the prosecution offices and the notary offices and may participate as plaintiffs and defendants in proceedings under the same conditions and formalities as the other Party's own nationals.

Article 2

1. The nationals of each Contracting Party who bring an action or step in proceedings pending before the courts of the other Contracting Party shall be exempt from providing a guarantee, however designated, in their capacity as foreigners or because of the fact that they have no domicile or residence in the territory of the State where they participate in proceedings as plaintiffs and defendants, provided, however, that they are domiciled in the territory of a Contracting Party.
2. Where nationals of a Contracting Party have brought an action or have stepped in pending proceedings without providing a guarantee pursuant to the foregoing paragraph and the costs of the proceedings are awarded to them, the judgment that has taken effect shall be enforced in the territory of the other Contracting Party in the forms provided for in the legislation of that Party but free of charge, without any right of appeal being vested in the

party to proceedings to which the costs were awarded and without any hearing of parties.

3. When deciding on an application to authorize enforcement, the competent authority shall verify solely whether the judgment has entered into force in accordance with the legislation of the Party in which it was returned. In order for that condition to be fulfilled, it shall be sufficient that the competent authority of the requesting Contracting Party make a declaration establishing that the judgment has entered into force. The competence of the latter authority shall be certified by the Ministry of Justice of the requesting State.

Applications to authorize enforcement made in accordance with paragraph 2 shall be handed over to the competent authorities through the Ministries of Justice of the Contracting Parties and the expenses for translating a judgment on costs that has entered into force shall be added to the costs of proceedings.

Article 3

1. The nationals of a Contracting Party shall avail in the territory of the other Contracting Party of free legal aid under the same conditions as the nationals of the Party in which they are domiciled.
2. The certificate stating that an individual is financially vulnerable shall be issued by the authorities in the area where the applicant normally resides or, if no such area exists, by the authority in the area where the applicant currently resides. Where the applicant's residence is not in the Contracting Parties, it shall be sufficient to provide a certificate issued by the diplomatic or consular representative of the Party to which the applicant belongs.

If an applicant does not reside in the Party in which he or she lodged the application, the certificate stating that the individual is financially vulnerable shall be legalized free of charge by the diplomatic or consular representative of the Party in which it has to be produced.

Article 4

The Ministries of Justice of the two Contracting Parties shall provide each other, upon request, with information on their legislation.

Chapter Two
JUDICIAL ASSISTANCE

Article 5

1. The Contracting Parties shall provide each other with legal assistance in civil and criminal matters.
2. The Contracting Parties shall fulfill the formalities relating to legal assistance as follows: in the People's Republic of Bulgaria, through the Ministry of Justice and the General Prosecution Office; in the Republic of Turkey, through the Ministry of Justice.

Article 6

Either Contracting Party may decline a request for legal assistance from the other Contracting Party made under the provisions of this Treaty if:

a. the application concerns a political offence or an offence connected with a political offence;
b. the application concerns a war crime which does not constitute a criminal offence under the general law;
c. the nature of the application is such as to prejudice that Party's sovereignty, security or public order.

Article 7

1. Each Contracting Party shall use its language in the requests for legal assistance.
2. The documents required for according legal assistance under the provisions of this Treaty shall be drawn up by the competent authorities of the Contracting Parties in the forms provided for in their legislation.
3. The documents concerning legal assistance in civil and criminal matters shall be accompanied by an authenticated translation in the language of the other Contracting Party.

Article 8

The Contracting Parties undertake to provide each other with copies or excerpts of the verdicts of guilty returned against nationals of the other Contracting Party that have entered into force so that these could be registered by the criminal records office, as well as with a fingerprints fiche, if such fiches are being kept.

Article 9

1. Either Contracting Party may address to the other Contracting Party letters rogatory in civil and criminal matters in view of carrying out steps pertaining to an investigation, criminal prosecution, to finding evidence, interviewing defendants, hearing witnesses, expert witnesses, victims, private complainants, providing expert assessments or to the handing over of files and papers. The requested Contracting Party shall execute any letter rogatory in conformity with its own legislation.
2. The execution of letters rogatory for searches and seizures of items shall be admissible under the condition that:
   a. the criminal offence motivating the letter rogatory is one which may give rise to surrender and is punishable under the legislation of the requested Contracting Party; and
   b. the execution of the letter rogatory is compatible with the legislation of the requested Contracting Party.
3. The requested Contracting Party shall hand over authenticated copies or photocopies of the files and papers sought. Nonetheless, if the requesting Contracting Party explicitly requires to be supplied with the originals, such a request shall be acted upon to the extent possible.

The items as well as the originals of files and papers handed over in execution of a letter rogatory shall be returned by the requesting Party to requested Contracting Party once that becomes possible, unless the latter Party expressly relinquishes such files and papers.

4. The requested Contracting Party reserves the right to delay the handing over of items, files and papers if it needs those for proceedings in progress.

Член 10

1. Either Contracting Party shall serve any and all types of documents drawn up by the judicial authorities of the other Contracting Party in conformity with the existing laws and procedural rules in the country.

It shall hand over to the other Contracting Party a declaration confirming such service. Where service could not take place, the requested Contracting Party shall communicate the reasons for that to the requesting Contracting Party.

2. Each Contracting Party reserves the right to serve documents on its own nationals by non-coercive means through its diplomatic or consular representatives.

Article 11

A request for legal assistance must contain:

   a. a list of the documents enclosed to the request;

b. an indication of the authority having generated the instrument handed over, the names, capacity and nationality of the parties, the address and nationality of the addressee, and the nature of the instrument;
c. the names, address and nationality of the defendants and of the arrested and convicted persons;
d. the subject-matter of the letter rogatory and the details necessary for its execution;
e. a description and legal qualification of the criminal act.

Article 12

1. A witness or expert witness who has failed to act upon a writ of summons to appear, even though such summons may have contained an explicit order, may not be subjected to any sanction or coercive measure, unless he has later voluntarily appeared in the territory of the requesting Party and has been duly summoned again there.
2. No witness or expert witness, irrespective of his or her nationality, who has appeared based on a writ of summons before the judicial bodies of the requesting Contracting Party may be prosecuted or arrested in the territory of that Contracting Party for offences committed prior to their leaving the territory of the requested Contracting Party.
3. The immunity provided for in this Article shall cease to exist if a witness or expert witness has had an opportunity to leave the territory of the requesting Contracting Party in the course of fifteen consecutive days as from the date on which their presence was no longer necessary to the judicial authorities but nonetheless remained in that territory.

Article 13

1. The costs incurred in the territory of each Contracting Party for the execution of a request for legal assistance in criminal matters shall be borne by that Contracting Party.
2. The costs incurred for the execution of a request for legal assistance in civil matters shall be borne by the natural and legal persons having sought the procedural step motivating such request for legal assistance.
3. The provision of paragraph 2 shall apply to the costs of legal assistance relating to individual rights in criminal matters.

CHAPTER THREE
SURRENDER

Article 14

The Contracting Parties undertake to surrender to each other, under the rules and conditions set forth in this Chapter, persons who are subject to investigation or who have been convicted by the judicial authorities of the requested Contracting Party but find themselves in the territory of the requested Contracting Party.

Article 15

1. Surrender shall be possible for offences carrying, under the legislation of both Contracting Parties, imprisonment or a custodial security measure involving deprivation of liberty for at least one year or a heavier penalty.
2. Where, in the territory of the requesting Contracting Party, a penalty has been imposed or a security measure has been applied for offences provided for in paragraph 1 of this Article, the sanction imposed must be of at least six-month duration.
3. Surrender shall also be possible in the event of attempt and complicity, subject to the conditions set forth in this Article.

Article 16

No surrender shall be possible in the following cases:

a. where the offence is a political offence or an offence connected with a political offence;
b. where the offence is a war crime and does not constitute a criminal offence under the general law;
c. where the individual whose surrender is sought has the nationality of the requested Contracting Party;
d. where the offence has been committed in the territory of the requested Contracting Party;
e. where the offence is covered by the statute of limitations or amnesty has followed in conformity with the legislation of a Contracting Party;
f. where proceedings have started in the requested Contracting Party against the individual whose surrender is sought for an offence which may give rise to surrender or where the judicial authorities have pronounced on that offence by means of a verdict that has entered into force;
g. where the criminal prosecution has ensued from a complaint by the victim.

Article 17

The Contracting Parties shall undertake the steps relating to surrender by diplomatic channels.

Article 18

1. The following shall be enclosed to any request for surrender presented to the other Contracting Party:
   a. an arrest warrant or a tracing and arrest warrant or a verdict that has entered into force;
   b. a document stating the nature of the offence while indicating the date and place where it was committed;
   c. an identity document or other documents containing information on the identity of the defendant or the convicted person;
   d. a document containing a description of the appearance of the defendant or the convicted person (if existing);
   e. a photograph of the defendant or the convicted person, if available;
   f. a fingerprints fiche of the defendant or the convicted person (if existing);
   g. the text of the legislative provisions considered applicable or considered applied with respect to the offence committed by the defendant or the convicted person.
2. The requested Contracting Party may seek additional information if the information provided pursuant to the foregoing paragraph is incomplete. The other Contracting Party must reply to such a request within one month. This time limit may be extended by the Contracting Parties for good reasons.

Article 19

The requested Contracting Party shall carry out the steps relating to surrender, including the arrest of the person sought, upon receiving the request for surrender with the necessary information and documents.

Article 20

In an emergency, the Contracting Parties may request the temporary detention of a person sought.

A request for temporary detention shall state the nature of the offence, the existence of an arrest warrant or a verdict that has entered into force, as well as information on the date and place of committing the offence.
A request for temporary detention may be handed over in any manner whatsoever.
The requested Contracting Party shall carry out the steps necessary in relation to the temporary detention and shall notify the other Contracting Party of the outcome. Temporary detention may not last for longer than 18 days.
Where necessary, on an application from the requesting Contracting Party the duration of temporary detention may be extended up to two months.

Article 21

1. The requested Contracted Party has the right to authorize or refuse the surrender of a person in conformity with the provisions of this Treaty.
2. The requested Contracting Party may, after having pronounced on the request for surrender, delay the surrender of a requested person due to the development of an investigation or criminal prosecution by its own authorities, or if the person has been sentenced and must serve in its territory a penalty imposed for an offence other than that for which surrender is sought.

Article 22

The requested Contracting Party shall communicate to the requesting Contracting Party its decision concerning the surrender.
In the event of consent, the requesting Contracting Party shall be notified of the date and place of surrender, as well as of the duration of detention undergone by the person whose surrender is sought.
If the person sought is not surrendered on the date set, he or she may be released after the expiration of one month.
The requested Contracting Party may refuse to surrender a person who has not been received by the other Contracting Party if that person is sought again for the same offence.
Should the person sought abscond and return to the territory of the requested Contracting Party, the requesting Contracting Party may request again his or her surrender without producing the documents listed in Article 17 of this Treaty.

Article 23

The Contracting Parties shall draw up the documents relating to surrender in the form provided for by their laws and procedures.

Article 24

No person surrendered in conformity with this Treaty may be subjected to an investigation or prosecuted, brought to justice or arrested for the execution of a penalty or security measure, or be subjected to any restriction on his or her personal freedom for an offence committed before the surrender and other than that for which the person was surrendered, save in the following cases:

a. where the requested Contracting Party has expressly agreed to that;
b. where the person surrendered has had the possibility but failed to leave the territory of the Contracting Party to which he or she had been surrendered or where he or she returned to that Party after having left it.

Article 25

In the event that a third party seeks the surrender of the same person, the requested Contracting Party shall decide as to which request to act upon.

Article 26

1. On an application from the requesting Contracting Party, the requested Contracting Party shall seize the items listed below, to the extent possible under its legislation, and shall hand them over to the requesting Contracting Party:
   a. items which can serve as physical evidence;
   b. items stemming from the offence and found on the person sought at the time of his or her arrest or discovered later.

The items listed shall be handed over to the requesting Contracting Party upon the surrender of the person or, where that is impossible, later by mail.

2. The items referred to in paragraph 1 shall be handed over even where the surrender has been granted but could not be executed due to the death or absconding of the person sought.
3. The items referred to may be detained temporarily or handed over under the condition to be returned back if they are necessary for purposes of criminal prosecution in the territory of the requested Contracting Party.
4. In all those cases the rights of the requested Contracting Party or of any third parties in or to those items shall be reserved. If such rights still exist upon the completion of proceedings, the items shall be returned as quickly as possible and free-of-charge to the requested Contracting Party.

Article 27

The Contracting Parties undertake to authorize in conformity with the provisions of this Treaty the transit across their territories of persons surrendered by a third country.

Article 28

1. The costs incurred before the surrender of a person shall be borne by the requested Contracting Party and those incurred after such surrender shall be borne by the requesting Contracting Party.
2. The costs associated with surrender by transit shall be borne by the requesting Contracting Party.

Article 29

1. Either Contracting Party shall, in conformity with its legislation, undertake criminal prosecution against a national of its own based on a notification from the other Contracting Party.
2. For that purpose, the Contracting Party notified shall be supplied with evidentiary material.
3. The notification referred to above shall be made through a competent authority.
4. The Contracting Party concerned shall be informed of the way in which its notification has been acted upon.

Article 30

The Contracting Parties undertake to communicate to each other the outcome of any investigation and criminal prosecution undertaken against any person surrendered and to hand over to each other authenticated copies of any verdict that has entered into force.

Chapter Four
FINAL PROVISIONS

Article 31

The entry into force of this Treaty shall cause the Convention between Bulgaria and Turkey on Surrender concluded on 23rd December 1929 to lose its effect.

Article 32

1. This Treaty shall be subject to ratification and shall enter into force 30 days after the exchange of the ratification instruments which shall take place in Sofia.
2. This Treaty is concluded sine die. Either Contracting Party may denounce it by giving six-month notice.

In witness whereof the plenipotentiaries of the Contracting Parties have signed this Treaty and have affixed their seals thereto.

Done at Ankara, this 2nd day of September 1975, in two original counterparts in French.

For the People's Republic of Bulgaria	For the Republic of Turkey
Mr. Petar Mladenov Minister of Foreign Affairs	Mr. Ishan Sabri Caglayangil Minister of Foreign Affairs

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