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Country Profile – Bulgaria Preliminary Findings on Best Practices

Background

In 2000, Bulgaria gained the status of candidate country with the European Union. On 25 April 2005, Bulgaria signed the treaty of accession to the EU, giving it active observer status. Finally on 1 January 2007, Bulgaria fully acceded.¹ This process however required Bulgaria to take steps to come in line with EU standards on a variety of issues, including torture, state abuse and other related concerns. In reviewing the mechanisms that Bulgaria has created and active steps that have been taken, it should be noted that political will and popular support for these actions was very strong over the last decade, in order to facilitate EU membership as expeditiously as possible.

Law on Torture

Bulgaria has national law at both the Constitutional and secondary levels explicitly preventing torture.² The Constitution states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment, or to forcible assimilation.”³ Various internal laws, for example at the Ministry Level, describe obligations of police and other state officers in the protection of rights of detained persons.⁴ However, the law which prohibits torture in the Penal Code only applies to criminal proceedings, and leaves out many basic aspects of torture in its description, thus leaving international observers concerned that the prohibitions, while strong, are not fully in conformity with international obligations. Bulgaria has additionally ratified all major UN and EU legal instruments pertinent to torture.⁵

Complaints / Reporting

Bulgarian legislation contains a number of provisions concerning action to be taken with respect to cases of ill-treatment. Pursuant to Section 205 (2) of the Criminal Code of Procedure (CPC), public officials are under a legal obligation to immediately inform the prosecutor’s office of any facts related to a criminal offence which may have come to their knowledge. The Code of Ethics of police staff and Instruction No. Iz-1711 of 15 September 2009, both contain specific obligations for the police to report acts of violence or inhuman or degrading treatment to their superiors. Further, the Ministry of Justice has issued specific instructions concerning the obligatory reporting of injuries observed on persons admitted to prisons and investigation detention facilities.

¹European Affairs – History of EU Bulgaria Relations. http://www.euaffairs.government.bg/index.php?page=en_BG-EU Access June 16, 2013.

² Constitution of the Republic of Bulgaria, Chapter 2: *Fundamental Rights and Duties of Citizens*, Article 29; Bulgarian Penal Code Article 287;

³ Constitution of the Republic of Bulgaria, Chapter 2: *Fundamental Rights and Duties of Citizens*, Article 29

⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Bulgarian Government on the Visit to Bulgaria Carried out by the CPT*, p.17 (CPT/Inf 2012); State Gazette #9/26.01.2007 in force from 27 February 2007; Committee Against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention 3 December 2010*, p. 4-5 (CAT/C/BGR/4-5).

⁵ CAT/C/BGR/4-5, p. 4

Investigations

Despite many disparate investigatory mechanisms, no centralized system for investigation of complaints has been set up. Each ministry and government agency (MoI, Ministry of Justice, Ministry of Health Care, Ministry of Education and Science, Ministry of Labor and Social Policy, SAR and the State Agency for Child Protection) has its own complaints follow-up system, including for investigation of alleged acts of torture by officers of these institutions.

If an internal body finds that an offender must be criminally charged, it can file a complaint with the prosecutor's office.⁶ Prosecutors supervise the pre-trial investigation and can give mandatory instructions and even undertake investigation directly.⁷ Under the 2006 CPC, police must inform prosecutors within 24 hours of any criminal investigation that has been opened.⁸ For an investigation to be opened there must be sufficient information regarding the alleged crime.⁹ Once an investigation is opened, it must conclude within two months. In exceptional circumstances, and by permission of the prosecutor, the investigation can be extended.¹⁰

Safeguards

While Bulgaria has largely left control in the Office of the Prosecutor and other State mechanisms on the investigatory and prosecution ends of the spectrum, it has established a number of successful, and relatively inexpensive, safeguards to address the prevention of torture and cruel, inhuman or degrading treatment.

Detention and Notice

In Bulgaria, Detention is defined as occurring at the factual instance, at which point rights must be read, by the detaining officers, to the detained person. To ensure that the factual moment of detention is reported, detention registry forms include two boxes – one for the factual detention and the other for when a detainee is brought into a police station.¹¹

The law obliges the investigating authority to inform the criminal defendant of his/her rights at the time of charging him/her in writing and orally at the factual moment of detention.¹² The rights explained are: the right of the accused to learn the nature and cause of the charges, the evidence on which it is based, the right to testify or remain silent, the right to have a lawyer or to request the appointment of a free lawyer if he/she cannot afford one, the right to read the investigation file, and the right to make motions and appeals. The right to remain silent is non-existent at pre-trial stages.¹³

Once the detained is delivered to a police station, a person must be given and explained a declaration of rights, which lists the rights of access to a lawyer, access to a doctor and

⁶ Criminal Code of Procedure of the Republic of Bulgaria, Section 24 (1)

⁷ CPC, Section 46 (2)

⁸ CPC, Section 212

⁹ CPC, Section 207 (1)

¹⁰ CPC, Section 234 (3)

¹¹ Interview with a duty officer from the Regional Police Station 7, Sofia Bulgaria, April 2013

¹² CPC, Section 219 and 55 (1)

¹³ Interview with Dinko Kanchev, Bulgarian Lawyers for Human Rights April 2013

notification of custody (and, in the case of foreign nationals, to contact a consular office).¹⁴ The detainee must also list names and phone numbers of persons he/she wishes to contact. The form must be signed in four copies, as stated on the form itself.

Medical Assistance

Bulgaria adopted laws that provide access to an independent doctor from the very outset of detention.¹⁵ Medical examinations upon arrival of a detainee are not mandatory, although some detention facilities established a practice of examining all detainees upon arrival.¹⁶ An examination by a doctor of the detainee's choice can be carried out upon the person's request and at his/her expense. A copy of the medical certificate, drawn up after each examination, is to be given to the detainee or his/her lawyer. Further, the results of the examination and any prescriptions should be entered in a special register, and signed by the doctor. The presence of a police officer during the examination is possible only at the doctor's request.

Medical staff performing the examination of newly arrived detainees draw up a certificate which specifies in detail the characteristics, position and size of each injury, the statements made by the detainee, and the medical conclusion.¹⁷ In instances where bodily injury is identified, the case should be immediately reported to the management, who should inform the supervising prosecutor and the General Directorate for the Execution of Punishments. Similar instructions are contained in Regulation № 2 of 22 March 2010 "On the terms and conditions for medical care in places of deprivation of liberty", issued by the Minister of Health and the Minister of Justice and concerning medical examinations at prisons.¹⁸

The views expressed herein do not necessarily represent the views of the European Union

¹⁴ CPT/Inf 2012, p. 20

¹⁵ Instruction No. Iz-1711; CPT/Inf 2012, *citing* the CPC and the Law on the MIA

¹⁶ Interview with OSI-Sofia staff

¹⁷ Order № L-6399 of 26 July 2010 issued by the Minister of Justice (concerning the internal order in investigation detention facilities)

¹⁸ CPT/Inf 2012, p. 20