

Annex III

Implementing legislation questionnaire for State Parties (Bulgaria)

1. Has your government adopted any national legislation implementing the Rome Statute?

Yes, a number of provisions have been adopted with the effect of implementing the Rome Statute.

5. In implementing the statute, did your government draft a stand-alone legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

In order to maintain consistency and a consolidated source of criminal law, the relevant provisions of the Statute have been incorporated into pre-existing law.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes into domestic law?

The Bulgarian Criminal Code does not make reference to the Statute, but it incorporates the substantive crimes into domestic law (**Chapter 14: Crimes against Peace and Humanity (Articles 407-419a)**).

Concerning the criminal proceedings, the Criminal Procedure Code makes common references to the provisions of other international treaties by using the different formulations /see below/.

7. Does the implementing legislation incorporate the following aspects of cooperation within the Court and if so, how?

(a) Arrest and surrender.

EXTRADITION AND EUROPEAN ARREST WARRANT ACT

Chapter one

GENERAL PROVISIONS

Article 4

(1) This Act shall apply in the presence of an international treaty to which the Republic of Bulgaria is a party, supplementing the said treaty in respect of matters that are not provided for therein.

(2) In the absence of an international treaty, the Act shall apply on a basis of reciprocity. Reciprocity shall be established by the Minister of Justice.

(3) (Supplemented, SG No. 49/2010) This Act shall also apply upon receipt of an international Red Notice from the International Criminal Police Organisation (Interpol) seeking arrest and extradition or upon receipt of an alert through the Schengen Information System.

Chapter Three
EXTRADITION PROCEDURE
Section I
Extradition at the Request of Another State
Request for Extradition

Article 13

(1) In cases of urgency the competent authorities of the requesting State may request from the Ministry of Justice or the Supreme Cassation Prosecution Office the provisional arrest of the person sought, prior to submitting a request for extradition.

(2) A request for provisional arrest shall specify the existence of an act of detention, arraignment or of a conviction and the intention of the requesting State to submit a request for extradition. The request must contain information about the criminal offence in respect of which extradition will be requested, and when and where such offence was committed, as well as particulars of the person sought.

(3) Where the request for provisional arrest was submitted by a State with which the Republic of Bulgaria has not concluded a treaty on extradition, the Minister of Justice shall notify the Supreme Cassation Prosecution Office of the existence of reciprocity.

(4) A request for provisional arrest may be sent by mail, telegraph, telex, fax, through the diplomatic channel, the International Criminal Police Organisation (Interpol), or by other means capable of producing a written record evidencing its receipt and content.

(5) Once the person has been located in the territory of the Republic of Bulgaria and his/her identity has been ascertained, the Supreme Cassation Prosecution Office shall detain him/her for a period of up to seventy-two hours and communicate the request for provisional arrest together with all documents to the District Prosecutor under whose geographical jurisdiction the person is located.

(6) Within the period under Paragraph (5) the District Prosecutor shall appoint a defence counsel and an interpreter to the person where he/she has no command of the Bulgarian language and shall lodge an application for his/her provisional arrest with the respective District Court.

(7) (Amended, SG No. 86/2005) The District Court shall examine the application according to the procedure established by Article 64 (3) and (5) of the Criminal Procedure Code and shall pronounce by a ruling imposing thereby a measure of provisional arrest or another measure of procedural coercion to ensure the participation of the person in extradition proceedings. The measure of provisional arrest shall be taken for up to forty days or another period, as provided for in an international treaty to which the Republic of Bulgaria is a party.

(8) A ruling under Paragraph (7) may be appealed and protested before the respective Appellate Court within three days.

(9) The Supreme Cassation Prosecution Office shall forthwith notify the Minister of Justice and the requesting State of the measure imposed.

(10) (Amended, SG No. 86/2005) At the request of the arrested person under the period specified in Paragraph (7) the District Court may modify the measure of provisional arrest into another measure of procedural coercion which can ensure the participation of the person in extradition proceedings, according to the procedure established by Article 65 of the Criminal Procedure Code. The ruling of the District Court may be appealed and protested before the respective Appellate Court within three days.

(11) The prosecutor shall rescind the measure of provisional arrest where, within the period of provisional arrest specified by the court, the Republic of Bulgaria does not receive a request for extradition and the documents under Article 9 (3).

(12) Release of the person shall not be an obstacle to his/her further arrest to the purpose of extradition or to the extradition itself, where the request for extradition is received after expiry of the period under Paragraph (7).

Article 22

The provisions of this Section shall also apply where extradition is requested by an international court.

CRIMINAL PROCEDURE CODE

Chapter thirty-six

PROCEEDINGS IN RELATION TO INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

Section I

Transfer of Sentenced Persons

Article 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.

(b) Interim release and release of persons (acquittal, non-confirmation of charges, etc);

Not explicitly. Nevertheless, according to Article 5, paragraph 4, of the Bulgarian Constitution, all international instruments that have been ratified through the constitutionally established procedure, promulgated and have come into force for the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. Hence, Bulgaria recognizes Rome Statute as a legal basis for cooperation.

(c) Cooperation with OTP investigations;

CRIMINAL PROCEDURE CODE

Chapter thirty-six

PROCEEDINGS IN RELATION TO INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

Section III

International Legal Assistance in Criminal Cases

Grounds and contents of international legal assistance

Article 471

(1) International legal assistance in criminal matters shall be rendered to another state under the provisions of an international treaty executed to this effect, to which the Republic of Bulgaria is a party, or based on the principle of reciprocity. International legal assistance in criminal cases shall also be made available to international courts whose jurisdiction has been recognised 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

Article 472

International legal assistance may be refused if the implementation of the request could threaten the sovereignty, the national security, the public order and other interests, protected by law.

Appearance of witnesses and experts before a foreign national court

Article 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

Article 474

(1) (Amended, SG No. 32/2010, effective 28.05.2010) The judicial body of another state may conduct an interrogation, through a video or phone conference, of an individual who appears as a witness or expert in the criminal proceedings and is located in the Republic of Bulgaria, as well as an interrogation with the participation of an accused party only if such interrogating does not run counter to the fundamental principles of Bulgarian law. An interrogation through a video conference involving the accused party or a suspect may only be conducted upon their consent and once the participating Bulgarian judicial authorities and the judicial authorities of the other state agree on the manner in which the video conference will be conducted.

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

1. The reason why the appearance in person of the individual is undesirable or impossible;
2. The name of the judicial body of the other state;
3. The data of individuals who shall conduct the interrogation;
4. The consent of the individual who shall be interrogated as a witness or expert through a phone conference;

5. Consent of the accused party who will take part in an interrogation hearing through a video conference.

(3) Bulgarian competent authorities in the field of criminal proceedings shall implement requests for interrogation through a video or phone conferences. A request for interrogation through a video or phone conference shall be implemented for the needs of pre-trial proceedings by the National Investigation Service. For the need of judicial proceedings, a request for interrogation through a phone conference shall be implemented by a court of equal standing at the place of residence of the individual, and for interrogation through a video conference - by the Appellate Court at the place of residence of the individual. The competent Bulgarian authority may require the requesting party to ensure technical facilities for interrogation.

(4) The interrogation shall be directly conducted by the judicial authority of the requesting state or under its direction, in compliance with the legislation thereof.

(5) Prior to the interrogation the competent Bulgarian authority shall ascertain the identity of the person who needs to be interrogated. Following the interrogation a record shall be drafted, which shall indicate:

1. The date and location thereof;
2. The data of the interrogated individual and his or her consent, if it is required;
3. The data of individuals who took part therein on the Bulgarian side;
4. The implementation of other conditions accepted by the Bulgarian party.

(6) An individual who is abroad may be interrogated by a competent Bulgarian authority or under its direction through a video or phone conference where the legislation of said other state so admits. The interrogation shall be conducted in compliance with Bulgarian legislation and the provisions of international agreements to which the Republic of Bulgaria is a party, wherein the above means of interrogation have been regulated.

(7) The interrogation through a video or phone conference under Paragraph 6 shall be carried out in respect of pre-trial proceedings by the National Investigation Service, whereas in respect of trial proceedings - by the court.

(8) The provisions of Paragraphs 1 - 5 shall apply mutatis mutandis to the interrogation of individuals under Paragraph 6.

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

Article 475

(1) A letter rogatory for international legal assistance shall contain data about: the body filing the letter; the subject and the reasoning of the letter; full name and citizenship of the individual to whom the letter refers; name and address of the individual on whom papers are to be served; and, where necessary - the indictment and a brief description of the relevant facts.

(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

Article 476

(1) Request for international legal assistance shall be executed pursuant to the procedure provided by Bulgaria law or pursuant to a procedure provided by an international agreement to which the Republic of Bulgaria is a part. A request may also be implemented pursuant to a procedure provided for in the law of the other country or the statute of the international court, should that be

requested and if it is not contradictory to the Bulgarian law. The other country or international court shall be notified of the time and place of execution of the request, should that be requested.

(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 Means Act.

(7) The implementation of requests for controlled delivery or cross-border observations filed by other states shall be carried out by the competent investigation authority. It shall be able to request assistance from police, customs and other administrative bodies.

Costs for execution of request

Article 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.

(d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes;

Bulgaria confirms implementation of these provisions through Articlec 469 and 471, paragraph 2, item 5, of the Penal Procedure Code.

CRIMINAL PROCEDURE CODE

Chapter thirty-six

PROCEEDINGS IN RELATION TO INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

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

Article 469

(Supplemented, SG No. 15/2010, amended, SG No. 25/2012, effective 28.04.2012)

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 recognised and enforced pursuant to this section.

Section III
International Legal Assistance in Criminal Cases

Grounds and contents of international legal assistance

Article 471

(1) International legal assistance in criminal matters shall be rendered to another state under the provisions of an international treaty executed to this effect, to which the Republic of Bulgaria is a party, or based on the principle of reciprocity. International legal assistance in criminal cases shall also be made available to international courts whose jurisdiction has been recognised 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.

(e) Enforcement of sentences:

CRIMINAL PROCEDURE CODE
Chapter thirty-six
PROCEEDINGS IN RELATION TO INTERNATIONAL COOPERATION IN
CRIMINAL MATTERS
Section II

Recognition and enforcement of a sentence issued by a foreign national court

Article 470a

(New, SG No. 25/2012, effective 28.04.2012)

The provisions of this Section shall apply save insofar as otherwise provided for in a law or in an international treaty which has been ratified, has been promulgated and has entered into force for the Republic of Bulgaria.

(f) Witness protection;

PROTECTION OF INDIVIDUALS AT RISK IN RELATION TO CRIMINAL PROCEEDINGS ACT

Chapter Three INTERNATIONAL COOPERATION

Article 26

On grounds of an international agreement to which the Republic of Bulgaria is a party or based on mutuality the Protection Bureau may request and provide assistance in the implementation of protection as herein set forth.

Article 27

(1) (Previous Article 27, SG No. 66/2008, effective 26.09.2008) In presence of the conditions under Art. 26, the Protection Bureau may:

1. (Amended, SG No. 66/2008, effective 26.09.2008) Move (relocate) an individual under protection in another state, if his/her protection cannot be arranged in the Republic of Bulgaria;
2. Request the provision of temporary residence for a fixed period to the individual under protection in another state, as well as personal physical protection, where necessary;
3. Provide residence to an individual transferred to the Republic of Bulgaria within the framework of a Programme for Protection, at the request of the other state;
4. Provide temporary residence in the Republic of Bulgaria to a foreign individual under protection for the period indicated in the request of the other state, as well as personal physical protection, where necessary.

(2) (New, SG No. 66/2008, effective 26.09.2008, amended, SG No. 21/2014, effective 9.04.2014) The Prosecutor General shall inform the Chairperson of the Protection Board of the measures undertaken under paragraph 1 within three days.

(g) Other forms of cooperation (see in particular article 93 of the Rome Statute)

Yes. See Articles 471-477 of the Criminal Procedure Code.

8. Does the implementing legislation designate a channel of communication with the Court?

Extradition and European Arrest Warrant Act

Chapter Three

EXTRADITION PROCEDURE

Section I

Extradition at the Request of Another State

Request for Extradition

Article 9

(1) A request for extradition shall be submitted by a competent authority of the requesting State in writing with the Ministry of Justice of the Republic of Bulgaria.

(2) A request for extradition can also be communicated through the diplomatic channel, the International Criminal Police Organisation (Interpol) or by other means of communication which may be arranged between the requesting State and the Republic of Bulgaria.

Article 13

(4) A request for provisional arrest may be sent by mail, telegraph, telex, fax, through the diplomatic channel, the International Criminal Police Organisation (Interpol), or by other means capable of producing a written record evidencing its receipt and content.

Chapter Five

SURRENDER BASED ON A EUROPEAN ARREST WARRANT

Section II

Execution of European Arrest Warrant Issued by Another EU Member State

Article 38a

(New, SG No. 52/2008)

(1) The reception of a European arrest warrant may be effected through:

1. the Schengen Information System (SIS);
2. the telecommunications system of the European Judicial Network;
3. the bodies of the International Criminal Police Organisation (Interpol);
4. electronic mail or facsimile transmission;
5. any secure means allowing establishment of the authenticity of the European arrest warrant.

(2) The European arrest warrant shall be received directly by the District Court under whose jurisdiction the person is located, except in the cases under Items 1, 2 or 3 of Paragraph (1).

Receipt of European Arrest Warrants through the Schengen Information System.

CRIMINAL PROCEDURE CODE

Chapter thirty-six

PROCEEDINGS IN RELATION TO INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

Section II

Recognition and enforcement of a sentence issued by a foreign court

Article 465

(1) A request for the recognition of a sentence issued by a foreign court in the Republic of Bulgaria shall be extended by the competent authority of the other state concerned to the Ministry of Justice.

(2) The Ministry of Justice shall refer the request together with the sentence and other relevant documents attached thereto to the district court at the place of residence of the sentenced individual. Where the latter does not live in this country, Sofia City Court shall be competent to examine the request.

Section III

International Legal Assistance in Criminal Cases

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

Article 475

(1) A letter rogatory for international legal assistance shall contain data about: the body filing the letter; the subject and the reasoning of the letter; full name and citizenship of the individual to

whom the letter refers; name and address of the individual on whom papers are to be served; and, where necessary - the indictment and a brief description of the relevant facts.

(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

Article 476

(1) Request for international legal assistance shall be executed pursuant to the procedure provided by Bulgaria law or pursuant to a procedure provided by an international agreement to which the Republic of Bulgaria is a part. A request may also be implemented pursuant to a procedure provided for in the law of the other country or the statute of the international court, should that be requested and if it is not contradictory to the Bulgarian law. The other country or international court shall be notified of the time and place of execution of the request, should that be requested.

(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.

9. Does the implementing create a central national authority or designate a national focal point for cooperation with the Court?

— The Ministry of Justice is a central national authority for cooperation on extraditions, including based on a EAW, recognition and enforcement of a sentence issued by a foreign court and on international legal assistance.

10. Does the implementing legislation provide for the privileges and immunities of the Court?

According to Article 5, paragraph 4, of the Bulgarian Constitution, all international instruments that have been ratified through the constitutionally established procedure, promulgated and have come into force for the Republic of Bulgaria, shall be considered part of the domestic legislation of the country.

On 15.06.2006 (SG, No. 52/27.06.2006) Bulgaria has ratified by law the Agreement on the Privileges and Immunities of the International Criminal Court.

11. What obstacles, if any, did your government face in its efforts to implement the provisions of the Statute? How did your government manage to overcome such obstacles?

12. Did your government benefit from any form of assistance in the process of implementing the Statute?

13. Has your government initiated or considered additional steps for the implementation of the Statute in national legislation?

Bulgaria assesses the necessity of reviewing its national legislation in view of ratifying the Kampala amendments to the Rome Statute of the ICC.