

EXECUTIVE SUMMARY

The present written submission to the Committee Against Torture is for the purposes of the examination of the combined 4th and 5th periodic reports of Bulgaria (CAT/C/BGR/4-5) on its implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture). TRIAL will focus on the topic of universal jurisdiction with a view to the effective prosecution of the crime of torture, considered as one of the most important measures to properly implement the Convention Against Torture, ratified by Bulgaria on 16 December 1986.

A detailed review of Bulgarian criminal legislation leads TRIAL to highlight that the legal framework of the State party, despite providing for universal jurisdiction for certain international crimes, is not consistent with the Convention Against Torture. Torture is not separately defined and criminalised, and as such the universal jurisdiction provisions, whilst applicable to torture when committed as a war crime, or acts approximating torture such as the infliction of bodily harm, do not extend to cover all acts of torture.

TRIAL

TRIAL (Swiss Association against Impunity) is an association under Swiss law founded in 2002. It is apolitical and non-confessional. One of its principal goals is the fight against impunity of the perpetrators, accomplices and instigators of genocide, war crimes, crimes against humanity and acts of torture.

In this sense, TRIAL:

- ▶ fights against the impunity of the perpetrators and instigators of the most serious international crimes and their accomplices
- ▶ defends the interests of the victims before Swiss tribunals, international human rights organisms and the International Criminal Court
- ▶ raises awareness among the authorities and the general public regarding the necessity of an efficient national and international justice system for the prosecution of international crimes.

In particular, TRIAL litigates cases before international human rights bodies (UN Treaty bodies and regional courts) and files criminal complaints on behalf of victims before national courts on the basis of universal jurisdiction.

The organisation enjoys consultative status with the UN Economic and Social Council (ECOSOC).

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DEVELOPMENTS

TRIAL appreciates the opportunity to bring to the attention of the Committee Against Torture information regarding the implementation of the Convention Against Torture in Bulgaria.

TRIAL would like to draw the Committee's attention to the fact that the current Bulgarian legislation does not provide for universal jurisdiction for all acts of torture, as there is no separate offence of torture which corresponds with the Convention definition. Torture is included in the Bulgarian Penal Code provisions on crimes against peace and humanity only as an underlying element of war crimes, over which Bulgarian courts are able to exercise universal jurisdiction. Bulgarian courts are also able to exercise universal jurisdiction over crimes where provided for in a treaty to which Bulgaria is a party.

Bulgaria has informed the Committee that the prevailing opinion regarding the introduction of a comprehensive definition of torture has gradually changed and a bill may be introduced to seek to incorporate such a definition into the Penal Code.¹ TRIAL encourages Bulgaria to ensure that any new definition of torture is brought within the scope of the Bulgarian provisions on universal jurisdiction to ensure for the effective prosecution of all acts of torture by Bulgarian courts.

The following sections address the international legal status of universal jurisdiction and the principle of *aut dedere aut judicare*, and current Bulgarian legislation establishing jurisdiction of Bulgarian courts for the crime of torture.

Universal jurisdiction

Universal jurisdiction is the capacity or competence of a state to exercise jurisdiction where none of the traditional bases of jurisdiction exist (i.e. territorial, nationality, passive personality, or protective jurisdiction). It is a form of jurisdiction which does not require any particular nexus between the perpetrator and the forum, allowing for all States to prosecute perpetrators of international crimes, thereby combating impunity by ensuring there is no safe haven for the perpetrators of international crimes.

¹ Combined 4th and 5th Periodic reports of Bulgaria to the Committee Against Torture, CAT/C/BGR/4-5, 3 December 2010, para 193.

The importance of universal jurisdiction is highlighted by the fact that it is States that have the primary responsibility to prosecute suspected international criminals².

Whilst the status of universal jurisdiction in international law is not definitively established, there are a growing number of States which have provided for universal jurisdiction in their national legislation³. The International Criminal Tribunal for the former Yugoslavia, the judicial body at the forefront of modern international criminal law, was less circumspect, stating that “universal jurisdiction (is) nowadays acknowledged in the case of international crimes.”⁴ In the case of *Furundžija*, the Tribunal noted, specifically in relation to torture, that:

“it would seem that one of the consequences of the *jus cogens* character bestowed by the international community upon the prohibition of torture is that every State is entitled to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction. Indeed, it would be inconsistent on the one hand to prohibit torture to such an extent as to restrict the normally unfettered treaty making power of sovereign States, and on the other hand bar States from prosecuting and punishing those torturers who have engaged in this odious practice abroad. This legal basis for States’ universal jurisdiction over torture bears out and strengthens the legal foundation for such jurisdiction found by other courts in the inherently universal character of the crime. It has been held that international crimes being universally condemned wherever they occur, every State has the right to prosecute and punish the authors of such crimes. As stated in general terms by the Supreme Court of Israel in *Eichmann*, and echoed by a USA court in *Demjanjuk*, “it is the universal character of the crimes in question (*i.e.* international crimes) which vests in every State the authority to try and punish those who participated in their commission”⁵

Aut dedere, aut judicare: States have an obligation to prosecute or extradite persons suspected of torture

The Convention Against Torture was the first human rights treaty to set out the obligation to establish universal

² Indeed, the ad hoc international criminal tribunals (the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda) have concurrent primary jurisdiction in relation to States, whereas the International Criminal Court only has complementary jurisdiction which may only be exercised when States are not competent or not willing to exercise their jurisdiction. It is the States that retain, in most cases, the primary jurisdiction to investigate and prosecute international crimes.

³ Such as, most notoriously, Belgium, as well as Australia, Austria, Canada, Denmark, Finland, France, Germany, Netherlands, Norway, Senegal, Spain, the United Kingdom and the United States of America, see <http://www.amnesty.org/en/international-justice/issues/universal-jurisdiction>, accessed 25 August 2011.

⁴ International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Decision of 2 October 1995 on the defence motion for interlocutory appeal on jurisdiction in the case of *Prosecutor v. Tadić* (no. IT-94-1), para 62.

⁵ International Criminal Tribunal for the former Yugoslavia, Trial Chamber, *Prosecutor v Furundžija*, Judgment of 10 December 1998 (no. IT-95-17/1-T), para 156.

jurisdiction.⁶ Articles 4 to 9 of the Convention set out a matrix of obligations which have the result that States may, and in certain circumstances, must exercise universal jurisdiction.

Article 4 provides that “each State Party shall ensure that all acts of torture are offences under its criminal law”. Article 5(1) provides that “each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 4” and lists three heads of jurisdiction: territorial, nationality and passive personality. Article 5(2) sets out a further requirement for States to establish jurisdiction “over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him.”

Article 6 requires States “in whose territory a person alleged to have committed any offence referred to in Article 4 is present (to) take him into custody or (to) take other legal measures to ensure his presence”. Article 7 requires States in whose territory a person who is suspected of torture is found, “if it does not extradite him, (to) submit the case to its competent authorities for the purpose of prosecution”. Article 8 sets out the requirement that “the offences referred to in Article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties” and Article 9 provides that “States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in Article 4, including the supply of all evidence at their disposal necessary for the proceedings.”

In particular, the combination of Articles 5(2) and 7(1) of the Convention requires States parties to either extradite alleged offenders or to both establish and exercise jurisdiction over alleged offenders, by submitting the case to the competent authorities for the purpose of prosecution. These provisions thus enshrine the principle of *aut dedere, aut judicare*.

Universal jurisdiction is a method of establishing jurisdiction over individuals. The principle of *aut dedere, aut judicare* is more specific. It requires States not only to establish jurisdiction over alleged perpetrators of international crimes who are in their territory (which may include universal jurisdiction, if there is no other applicable form of jurisdiction) but also to exercise such jurisdiction, i.e. to bring proceedings against the suspect – or to extradite the suspect.

If the authorities have reasonable grounds to believe that torture has been committed by a person present in their territory, the Convention Against Torture requires them to take the person into custody (or otherwise

⁶ Many international treaties dealing with international crimes provide for a form of universal jurisdiction through the principle of *aut dedere aut judicare*, including the Geneva Conventions of 1949, the Hague Convention for the Suppression of Unlawful Seizure of Aircraft of 1970, the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons of 1973, the International Convention Against the Taking of Hostages of 1979, the International Convention for the Suppression of Terrorist Bombings 1997, the International Convention on the Suppression of the Financing of Terrorism of 1999, the United Nations Convention against Corruption of 2003, and the International Convention for the Protection of All Persons from Enforced Disappearance of 2006.

ensure his presence) and to commence a preliminary inquiry.⁷ Unless another State requests extradition,⁸ the forum State is required to prosecute the alleged offender. The presence of the perpetrator is the only condition to the requirement of a State to bring to justice an alleged torturer.⁹ Thus *aut dedere aut judicare* is an unequal choice – extradition is only an option if a request has been made and the extradition is not contrary to international law.¹⁰ Otherwise, the State must prosecute.

Aut dedere, aut judicare is not a rule of jurisdiction but a principle of law. First, States parties are required to establish jurisdiction over the crime and the suspect, i.e. they must criminalise torture and subsequently ensure the prosecution of any alleged perpetrators of the crime. The purpose is to create jurisdiction without loopholes – using universal jurisdiction in a remedial manner where other approaches or heads of jurisdiction are not available. Second, States parties are required to cooperate in terms of extradition and judicial assistance. Article 8 of the Convention is aimed at removing legal obstacles to extradition from one State party to another, whilst Article 9 provides that all States parties are required to provide judicial assistance to the forum State.

Jurists have argued that the principle of *aut dedere aut judicare* is developing as a rule of customary international law, or indeed, that it has already attained customary status, at least as concerns certain categories of international crimes.¹¹ Consistent reaffirmation of the principle through its inclusion in treaties is put forward as proof that the principle is a positive norm of general international law and a condition for the effective repression of offences which are universally condemned by the international community.¹² The International Law Commission has included the topic “Obligation to extradite or obligation to prosecute” in its current programme of work, including the possibility of elaborating draft articles on the obligation *aut dedere aut judicare*.¹³ The Special Rapporteur, Zdzislaw Galicki, whilst noting that the varying positions of States on the question of the customary basis of the obligation to extradite or prosecute, pointed out that “the critical approach of States to the idea of a possible customary basis for the obligation *aut dedere aut judicare* has been to some extent relaxed.”¹⁴

⁷ Article 6, Convention Against Torture.

⁸ The States listed in Article 5(1) of the Convention Against Torture, namely the territorial State, national State of the alleged offender or national State of the victim.

⁹ See *Suleymane Guengueng et al v Senegal*, CAT/C/36/D/181/2001, 19 May 2006 (*Habré Case*), paras 9.7-9.9 in which the Committee rejected the argument that an extradition request must be made and rejected by the forum State. See also M. Nowak, E. McArthur, *The United Nations Convention Against Torture: A Commentary*, Oxford University Press, 2008, which notes that the drafting process of Articles 5-9 bears out this interpretation.

¹⁰ Nowak and McArthur, above n 8.

¹¹ M. Cherif Bassiouni, E. M. Wise, *Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law*, Martinus Nijhoff Publishers, 1995; Z. Galicki, “Preliminary report on the obligation to extradite or prosecute, International Law Commission”, 58th Session, 2006, A/CN.4/571, paras 40-42.

¹² Above n 5.

¹³ Z. Galicki, “Second report on the obligation to extradite or prosecute”, International Law Commission, 59th Session, 2007, A/CN.4/585, para 18.

¹⁴ Z. Galicki, “Third report on the obligation to extradite or prosecute”, International Law Commission, 60th Session, 2008, A/CN.4/603, para 98.

Certainly the principle of *aut dedere aut judicare* is essential to the effectiveness of the Convention. The Committee has frequently expressed concern regarding the internal laws of States parties which do not confer jurisdiction for acts of torture.¹⁵ See, for example, the Committee's Concluding Observations on Nepal in 2007, in which the Committee stated that it "regrets the absence of universal jurisdiction in domestic legislation for acts of torture, as well as the fact that certain provisions of the draft Criminal Code are not in line with articles 5 to 9 of the Convention" and recommended that the State "take the necessary measures to ensure that acts of torture are made subject to universal jurisdiction under the draft Criminal Code, in accordance with article 5 of the Convention. The State party should also make every effort to ensure compliance with articles 6 to 9 of the Convention".¹⁶ The Committee has also expressed concern regarding limitations on universal jurisdiction provisions, such as the French legislative requirement that the suspect be normally resident on France.¹⁷

In the case of *Suleymane Guengueng et al v Senegal*,¹⁸ the Committee found Senegal to be in violation of Articles 5(2) and 7 of the Convention, in relation to the failure of the Senegalese courts to prosecute or extradite Hissène Habré, the former President of Chad, accused of acts of torture in Chad. Both the Court of Cassation of Senegal and the Dakar Court of Appeal found that they lacked jurisdiction to try Mr Habré, despite his presence on within their territory, in contravention of the obligation under Article 5(2). Further, in the absence of a request for extradition being made at the time when the complainants submitted their complaint in January 2000, Senegal did not prosecute Mr Habré, in contravention of the obligation under Article 7. The Committee found a separate contravention of Article 7 from the time that Belgium issued its extradition request, on 19 September 2005, for the refusal of Senegal to comply with the extradition request. The Committee also noted as a positive development the UK House of Lords judgment of 24 March 1999 in the case of *R v Bartle and the Commissioner of Police for the Metropolis, ex parte Pinochet*, in particular the findings that UK Courts have jurisdiction over acts of torture committed abroad, and that a Head of State does not have immunity for torture.¹⁹

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment also recently expressed concern regarding the prevalence of impunity as one the root causes of the widespread practice of torture, and disappointment with respect to the low number of prosecutions for torture. He highlighted the challenge of effective application of the international legal framework, noting that "torture

¹⁵ See, *inter alia*, Concluding Observations of the Committee against Torture: Ukraine, A/57/44, 21 November 2001, para 5(d); Conclusions and Recommendations of the Committee against Torture: Uganda, CAT/C/CR/34/UGA, 21 June 2005, para 5 (c); Conclusions and Recommendations of the Committee against Torture: Democratic Republic of Congo, CAT/C/DRC/CO/1, 1 April 2006, para 5(b); Conclusions and Recommendations of the Committee against Torture: South Africa, CAT/C/ZAF/CO/1, 7 December 2006, para 17; Conclusions and Recommendations of the Committee against Torture: Benin, CAT/C/BEN/CO/2, 19 February 2008, para 15; Concluding Observations of the Committee against Torture: Indonesia, CAT/C/IDN/CO/, 2 July 2008, para 29.

¹⁶ Conclusions and Recommendations of the Committee against Torture, Nepal, CAT/C/NPL/CO/2, 13 April 2007, para 18.

¹⁷ Conclusions and Recommendations of the Committee against Torture: France, CAT/C/FRA/CO/4-6, 20 May 2010, para 19.

¹⁸ CAT/C/36/D/181/2001, 19 May 2006.

¹⁹ Conclusions and Recommendations of the Committee against Torture: United Kingdom of Great Britain and Northern Ireland, Crown Dependencies, and Overseas Territories, CAT/C/CR/33/3, 10 December 2004, para 3(d).

occurs because national legal frameworks are deficient... Torture persists because national criminal systems lack the essential procedural safeguards to prevent its occurrence, to effectively investigate allegations and to bring perpetrators to justice.”²⁰

Criminalisation of torture in Bulgarian Law

Prohibition of torture

Torture is prohibited by Article 29 of the Bulgarian Constitution which provides:

“(1) No one shall be subjected to torture or to cruel, inhuman or degrading treatment, or to forcible assimilation.”

Torture not constituting other international crimes

The Bulgarian Penal Code does not provide for the specific offence of torture. Other provisions must thus be applied to prosecute acts that constitute torture. For instance, Articles 128 to 130 of the Penal Code criminalise the infliction of bodily injury²¹, whilst Article 143 provides for the crime of coercion as follows: “A person who compels another to do, to omit or to suffer something contrary to his will, using for that purpose force, threats or abuse of his authority, shall be punished by deprivation of liberty for up to six years.”²² Article 287 further criminalises “unlawful coercive action” of a public official, acting in the course of his or her duties, for the purpose of obtaining information or a confession.

Torture and other international crimes

Certain acts of torture, in the context of war crimes, are criminalised under Articles 410, 411 and 412 in Chapter 14 “Crimes Against Peace and Humanity” of the Bulgarian Penal Code.

Article 410 provides:

“A person who in violation of the rules of international law for waging war:

(a) perpetrates or orders the perpetration of, on wounded, sick, shipwrecked persons or sanitary personnel, acts of murder, tortures, or inhuman treatment, including biological experiments, inflicts or orders grave sufferings, mutilation or other impairments of health to be inflicted to such persons;

(...)

shall be punished by deprivation of liberty for a term of from five up to twenty years, or by life imprisonment without substitution.”

²⁰ Final report of Manfred Nowak: “Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”, A/65/273, 10 August 2010.

²¹ Article 128 refers to “severe bodily injury”, Article 129 refers to “medium bodily injury”, and Article 130 refers to “trivial bodily injury”.

²² See also Article 143a, which refers to holding a person hostage to coerce third parties, and Article 144 which refers to coercion through threats to the person or property or the person or property of next-of-kin.

Article 411 provides:

“A person who in violation of the rules of international law for waging war:

(a) perpetrates or orders to be perpetrated with regard to prisoners of war murder, tortures or inhuman treatment, including biological experiments or causes or orders grave sufferings, mutilation or other impairments of health to be inflicted on such persons;

(...)

shall be punished by deprivation of liberty for a term of from five up to twenty years or by life imprisonment without substitution.”

Article 412 provides:

“A person who in violation of the rules of international law for waging war:

(a) perpetrates or orders with regard to the civil population murders, tortures, inhuman treatment, including biological experiments to be perpetrated, causes or orders grave sufferings, mutilation or other serious impairments of health to be inflicted;

(...)

shall be punished by deprivation of liberty for a term of from five up to twenty years or by life imprisonment without substitution.”

Therefore, under Bulgarian law, torture is not criminalised as an autonomous offence that should be prosecuted irrespective the existence of an armed conflict. Indeed, torture is a crime regardless of whether it is committed during armed conflict or during peace time, regardless of the scope or application of the international laws of war, and regardless of status of the victim of the act of torture. As such, Bulgarian law neither contains a comprehensive definition of torture as set out in Article 1 of the Convention Against Torture, nor specifically criminalises torture as required under Articles 2 and 4 of the Convention Against Torture.

Article 5(4) of the Bulgarian Constitution provides that international treaties which have been ratified form part of the legislation of the State, and prevail over any conflicting domestic legislation. This means that the Convention Against Torture can, in theory, be directly applied in Bulgaria. However, Ruling No. 7 of the Bulgarian Constitutional Court of 2 August 1992 determined that international crimes contained in treaties must first be incorporated into the Penal Code in order to be applied by Bulgarian courts, stating that “in order to incorporate the crimes stipulated in international treaties in the national law, the elements of each particular crime and the relevant penalty have to be defined through a domestic legislative act”.²³ In order to fulfil the requirements of Articles 2 and 4 of the Convention Against Torture, Bulgaria must take effective legislative

²³ Constitutional Court Ruling No 7, 2 August 1992, translated by Amnesty International, *Bulgaria. End Impunity through Universal Jurisdiction*, No Safe Haven Series, 2009, p 11.

measures to criminalise torture by ensuring that torture is separately defined and specifically criminalised in its domestic legislation, and by ensuring that all acts of torture are offences under its criminal law.

The Committee has frequently expressed concern at the lack of a comprehensive definition of torture,²⁴ and has recently made a number of recommendations that States Parties ensure that the definition of torture incorporates all elements contained in Article 1 of the Convention.²⁵ In its Concluding Observations on Bulgaria in 2004, the Committee Against Torture had already expressed concern regarding the absence of a definition of torture consistent with the Convention²⁶ and recommended that Bulgaria adopt a definition of torture that covers all the elements contained in Article 1 of the Convention Against Torture and incorporate this into its Penal Code.²⁷ Unfortunately, Bulgaria has not implemented this recommendation to date.

Jurisdiction of Bulgarian Courts to prosecute acts of torture

Scope of jurisdiction

The Bulgarian Penal Code provides for extraterritorial jurisdiction over ordinary crimes committed abroad by Bulgarian citizens (Article 4), as well as jurisdiction based on the principle of state interests over ordinary crimes committed by foreigners abroad (Article 5). Article 6(1) provides for universal jurisdiction over crimes against peace and humanity committed by foreigners abroad, “affecting the interests of another country or foreign citizens” and Article 6(2) provides for jurisdiction over “other crimes committed by foreign citizens abroad, where this is stipulated in an international agreement, to which the Republic of Bulgaria is a party”.

Under Article 5(2) of the Convention Against Torture, Bulgaria is required to establish jurisdiction over suspected perpetrators of torture who are found on Bulgarian territory, and under Article 7, to prosecute or extradite such suspected perpetrators. Article 6(2) of the Bulgarian Penal Code gives Bulgarian courts the jurisdiction, through the Convention Against Torture, to prosecute such acts of torture as are contained in Bulgarian legislation (such as the infliction of bodily injury) on the basis of universal jurisdiction. Bulgarian courts can also exercise universal jurisdiction for acts of torture when committed as a war crime, pursuant to

²⁴ Conclusions and Recommendations of the Committee Against Torture: Lithuania, CAT/C/CR/31/5, 5 February 2004, 5(a); Conclusions and Recommendations of the Committee against Torture: Bulgaria, CAT/C/CR/32/6, 11 June 2004, para 5(a); Conclusions and Recommendations of the Committee Against Torture: Bahrain, CAT/C/CR/34/BHR, 21 June 2005, para 6 (b); Conclusions and Recommendations of the Committee Against Torture: Uganda, CAT/C/CR/34/UGA, 21 June 2005, para 5(a); Conclusions and Recommendations of the Committee against Torture: Sri Lanka, CAT/C/LKA/CO/2, 15 December 2005, para 5; Conclusions and Recommendations of the Committee Against Torture: Qatar, CAT/C/QAT/CO/1, 25 July 2006, para 10; Conclusions and Recommendations of the Committee Against Torture: Nepal, CAT/C/NPL/CO/2, 13 April 2007, para 12; Concluding Observations of the Committee Against Torture: Yemen, CAT/C/YEM/CO/2/Rev.1, 25 May 2010, para 7.

²⁵ Concluding Observations of the Committee Against Torture: Switzerland, CAT/C/CHE/CO/06, 25 May 2010, para 5; Concluding Observations of the Committee Against Torture: Ghana, CAT/C/GHA/CO/1, 15 June 2011, para 9; Concluding Observations of the Committee Against Torture: Monaco, CAT/C/MCO/CO/4-5, 17 June 2011, para 7; Concluding Observations of the Committee Against Torture: Kuwait, CAT/C/KWT/CO/2, 28 June 2011, para 7.

²⁶ Conclusions and Recommendations of the Committee against Torture, Bulgaria, 2004, CAT/C/CR/32/6, 11 June 2004, para 5 (a).

²⁷ Above n 25, para 6(a).

Article 6(1) and Chapter 14 of the Penal Code. Therefore Bulgarian legislation provides for universal jurisdiction over acts of torture not constituting crimes against peace and humanity as well as torture as a war crime.

Exercise of jurisdiction

There do not appear to be any provisions requiring the presence of the suspect on Bulgarian territory in order to commence investigations or proceedings. Nor do there appear to be any provisions providing for the mandatory prosecution of suspects where extradition is not requested or is refused.²⁸ However, as the basis for jurisdiction under Article 6(2) of the Bulgarian Penal Code is the Convention Against Torture itself, and the Convention is binding law in Bulgaria due to Article 5(4) of the Constitution, it is arguable that the Bulgarian authorities must interpret this provision in line with the *aut dedere aut judicare* requirements of the Convention, namely, that all suspected perpetrators of torture who are found in Bulgaria over whom the Bulgarian courts exercise jurisdiction under this provision must be prosecuted or extradited.

CONCLUSIONS

Torture is not separately defined as a crime under Bulgarian law, in contravention of Article 4 of the Convention Against Torture. Whilst Bulgarian criminal law contains provisions regarding torture in the context of war crimes, as well as provisions for the infliction of bodily harm, this is not sufficient to fulfil the requirements of the Convention.

Bulgarian courts have universal jurisdiction over crimes against peace and humanity, which include torture as a war crime. Bulgarian courts are also able to exercise universal jurisdiction over other crimes where this is provided for in a treaty to which Bulgaria is a party. In this way, Bulgarian courts could prosecute torture under the Penal Code provisions such as inflicting bodily harm on the basis of universal jurisdiction. But in such cases, torture under all of its constitutive elements could still not be fully prosecuted on the basis of universal jurisdiction, as a definition of torture in accordance with the Convention is lacking. Further, as the Convention may be directly applied, despite the lack of domestic provisions regarding the presence requirement of a suspect, or mandatory prosecution in the absence of extradition request, it would appear that the Bulgarian authorities must prosecute or extradite all perpetrators of torture found on Bulgarian territory.

TRIAL therefore respectfully submits to the Committee Against Torture that the current state of Bulgarian legislation does not fully implement the Convention Against Torture, due to the absence of a definition of torture in conformity with Article 1 of the Convention and the absence of the specific offence of torture in conformity with Articles 2 and 4 of the Convention. TRIAL encourages Bulgaria to ensure that all acts of torture, as provided for in the Convention, are included within the scope of its universal jurisdiction provisions.

²⁸ See Article 479 “Transfer of criminal proceedings to another state” of the Criminal Procedure Code which provides “(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.” (Emphasis added).

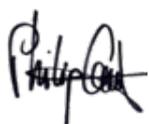
RECOMMENDATIONS

TRIAL respectfully suggests that the Committee Against Torture take the following action:

1. During the dialogue with Bulgaria:
 - a. request the State Party to explain the continued lack of a precise definition of torture;
 - b. ask for clarification regarding the existence of jurisdiction over the crime of torture as defined by the Convention when the suspect is present in Bulgaria; and
 - c. ask for clarification regarding the actual exercise of jurisdiction over suspected perpetrators of torture in cases where extradition is not requested or is refused.

2. After the dialogue with Bulgaria:
 - a. recommend that the State Party ensure that the crime of torture is separately defined and criminalised in Bulgarian law;
 - b. recommend that the State Party ensure that all acts of torture, and not only those constituting war crimes, are capable of being prosecuted under universal jurisdiction provisions; and
 - c. recommend that the State Party ensure that all suspected perpetrators of acts of torture who are found on Bulgarian territory, are either extradited, or prosecuted, if necessary under the universal jurisdiction provisions of Article 6 of the Penal Code.

TRIAL remains at the full disposal of the Committee Against Torture should it require additional information and takes the opportunity of the present communication to renew to the Committee the assurance of its highest consideration.



Philip Grant
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