

bulgaria

end impunity through universal
jurisdiction - summary

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in April 2009 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Copyright Amnesty International Publications 2008

Index: EUR 15/002/2009
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publishers.

Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

**AMNESTY
INTERNATIONAL**



CONTENTS

INTRODUCTION TO THE PROJECT.....	4
BULGARIA.....	4
RECOMMENDATIONS.....	6

INTRODUCTION TO THE PROJECT

States where genocide, crimes against humanity, war crimes, torture, enforced disappearances and extrajudicial executions occur often fail to investigate and prosecute those responsible.

Since the International Criminal Court and other international courts can only ever bring a handful of those responsible to justice, it falls to other states to do so through universal jurisdiction.

The paper is one of a series on each of the 192 Members of the United Nations.

Each one is designed to help lawyers and victims and their families identify countries where people suspected of committing crimes under international law might be effectively prosecuted and required to provide full reparations. The papers are intended to be an essential tool for justice and can be used by police, prosecutors and judges as well as by defence lawyers and scholars.

Each one also provides clear recommendations on how the government concerned can bring its national law into line with international law.

The series aim to ensure that no safe haven exists for those responsible for the worst imaginable crimes.

BULGARIA¹

The ability of states to act as agents of the international community by investigating and prosecuting conduct abroad which is not linked to the forum state by the nationality of the suspect or the victim or by the harm to the forum state's own interests, also known as universal jurisdiction, is one of the most effective tools against impunity for the most serious crimes under international law.

Bulgaria was one of the first countries to enact legislation enabling its courts to exercise

¹ This paper was prepared by the International Justice Project of Amnesty International's International Secretariat in London, based on research by Elena Kostadinova, a lawyer at the firm of McDermott Will & Emery/ Stanbrook LLP. It was drafted and updated by Stanimira Georgieva, a Bulgarian lawyer working as a volunteer in the International Justice Project, who did substantial additional research and also translated many of the provisions cited. In addition the organization is grateful for comments on the draft by Associate Professor Dr Krasimira Benkova, Associate Professor Dr Irena Ilieva, and Ivanka Ivanova, independent experts, and the Bulgarian Ministry of Foreign Affairs, Ministry of Justice and Ministry of Interior.

universal criminal jurisdiction over ordinary crimes in its very first Penal Code of 1896. However, the current Criminal Code provides for universal jurisdiction over a much more limited scope of crimes. Moreover, there are serious gaps in the legal framework required for the effective prosecution of crimes under international law, including:

- the failure to define expressly certain crimes under international law as crimes under Bulgarian law;
- failure to provide for universal jurisdiction over many crimes under international law;
- failure to define principles of criminal responsibility in accordance with the strictest requirements of international law; and
- a wide range of obstacles to prosecutions and extraditions.

Under the current Criminal Code, Bulgarian courts can exercise universal jurisdiction over crimes defined in Chapter Fourteen (Crimes against Peace and Humanity) of the Bulgarian Criminal Code, which include aggression, genocide, apartheid, war crimes in international and non-international armed conflict and torture during armed conflict, as well as over crimes listed in treaties authorizing states parties to exercise such jurisdiction. However, not only are definitions of these crimes inconsistent with the standards of international law, but the list of crimes against peace and humanity in Chapter Fourteen is incomplete.

Although Bulgaria has defined murder, rape, enforced prostitution, unlawful deprivation of liberty, and unlawful persecution, which are crimes against humanity under the Rome Statute, as ordinary crimes, it has not characterized them as crimes against peace and humanity, and, therefore, has not provided universal jurisdiction over such crimes. Other crimes against humanity, such as extermination, enslavement, sexual slavery, enforced pregnancy, enforced sterilization, enforced disappearances and extrajudicial executions, are not expressly defined in Bulgarian legislation, but some of their elements are covered in the Criminal Code as ordinary crimes. Unlawful deportation and torture are included in Chapter Fourteen of the Criminal Code, but are defined only as war crimes.

Not only ordinary crimes are not subject of universal jurisdiction under Bulgarian law, but also prosecution of mere ordinary crimes can be barred by statute of limitations. In addition, since certain offences are not expressly defined in the Criminal Code, it is possible that the persons responsible would not be prosecuted or extradited. Therefore, Bulgaria is currently a safe haven from prosecution in its courts for foreigners who have committed many crimes under international law abroad against other foreigners.

Bulgaria has enacted legislation implementing its cooperation obligations under the Rome Statute and it has entered into cooperation agreements with other international criminal courts. Nevertheless, it is possible that persons named in arrest warrants issued by the International Criminal Court or any other international criminal court could not be arrested and surrendered to such courts as current legislation and definitions of certain crimes are ambiguous or missing. There are a number of obstacles to extradition, such as the non-extradition of nationals and the principle of dual criminality (requiring the conduct to be criminal in both Bulgaria and the state requesting extradition), which should not apply to

crimes under international law. The provisions in the Criminal Code regarding immunities, bars on retroactive application of law, double jeopardy (*ne bis in idem*), and amnesties also do not make exception for crimes under international law.

In certain circumstances, Bulgarian courts can exercise universal civil jurisdiction over civil claims in criminal proceedings based on universal criminal jurisdiction, but such claims could be barred by statutes of limitations. Moreover, prosecutions of serious crimes (crimes of general nature) can only be initiated by the prosecutor and not by the victims or their heirs.

Bulgaria does not have any special unit to investigate and prosecute crimes under international law and there are no known cases involving universal jurisdiction.

A major overhaul of the legal framework and significant changes are necessary for Bulgaria to ensure that persons responsible for the worst crimes imaginable are not walking freely on the streets of its cities.

This paper makes extensive recommendations for reform of law and practice so that the Bulgaria can fulfil its obligations under international law to investigate and prosecute crimes under international law, to extradite those responsible to another state able and willing to do so in a fair trial without the death penalty or a risk of torture or other cruel, inhuman or degrading treatment or punishment or to surrender them to the International Criminal Court.

RECOMMENDATIONS

Ratify, without any limiting reservations:

- The 2006 International Convention for the Protection of All Persons from Enforced Disappearance, which requires states to extradite or prosecute persons suspected of committing enforced disappearances, and make declarations under Articles 31 and 32 recognizing the competence of the Committee to receive complaints from individuals and states concerning alleged violations of the Convention.
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Define crimes under international law as crimes under international law or amend current legislation to address the concerns mentioned in Section 4 above with regard to the following crimes, including:

- genocide;
- crimes against humanity;
- war crimes in both international and non-international armed conflict;

- torture in both armed conflict and peacetime;
- extrajudicial executions; and
- enforced disappearances,

in accordance with the strictest standards of international law.

Ensure that crimes under international law, expressly defined in accordance with the strictest standards of international law, are included in Chapter Fourteen (Crimes against Peace and Humanity) of the Criminal Code to ensure that Bulgarian courts can exercise universal jurisdiction over them.²

² For the complete list of recommendations to the Bulgarian government, please see the report, prepared by the International Justice Project, Amnesty International: *Bulgaria: End Impunity through Universal Jurisdiction*.

