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ПОСТОЯННО ПРЕДСТАВИТЕЛСТВО НА  
РЕПУБЛИКА БЪЛГАРИЯ ПРИ СЛУЖБАТА НА ООН И  
ДРУГИТЕ МЕЖДУНАРОДНИ ОРГАНИЗАЦИИ В ЖЕНЕВА



MISSION PERMANENTE DE  
LA REPUBLIQUE DE BULGARIE AUPRES DE L'ONU ET  
LES AUTRES ORGANISATIONS INTERNATIONALES A GENEVE

No 384

Geneva, October 21, 2013

The Permanent Mission of the Republic of Bulgaria to the United Nations and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and referring to a Note Verbale on a study undertaken by the Working Group on Arbitrary Detention, has the honour to transmit information provided by the Bulgarian authorities in reply to the Questionnaire on the right of everyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful.

The Permanent Mission of the Republic of Bulgaria avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration. *imp*

Annex: in accordance with the text – 6 pages.



**Office of the United Nations**  
**High Commissioner for Human Rights**  
**Geneva**

## QUESTIONNAIRE RELATED TO

### THE RIGHT OF EVERYONE DEPRIVED OF HIS OR HER LIBERTY BY ARREST OR DETENTION TO BRING PROCEEDINGS BEFORE COURT, IN ORDER THAT THE COURT MAY DECIDE WITHOUT DELAY ON THE LAWFULNESS OF HIS OR HER DETENTION AND ORDER HIS OR HER RELEASE IF THE DETENTION IS NOT LAWFUL

#### Question № 1.

a) Bulgaria is a party to the International Covenant on Civil and Political Rights of 1976. The International Covenant on Civil and Political Rights (ICCPR) was promulgated in State Gazette 43 on 28 May 1976. The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to abolish the death penalty was also ratified by a law, so was Protocol №6 to the ECHR regarding the abolition of the death penalty /SG 65/1999/.

The principle established by Article 9, item 4 of ICCPR „*Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*” was introduced in the Bulgarian legislation with the following relevant provisions:

#### **Constitution of the Republic of Bulgaria:**

*Article 30, para. 3 of CRB (promulg. SG 56 of 13 July 1991, effective from 13.07.1991):*

#### **Statutory provisions:**

- 1. Article 63 - 65 of the CPC (promulg. SG 86 of 28 October 2005, effective from 29.04.2006);*
- 2. Article 155-165 of the Health Act (Section II of Chapter Five, promulg. SG 70 of 10 August 2004, effective from 01.01.2005) and Article 61, para. 5 (new SG 41 of 2009, effective from 02.06.2009) of the Health Act.*
- 3. Article 63, para. 4 of the Law on the Ministry of Interior (promulg. SG 17 of 24 February 2006, effective from 01.05.2006 );*
- 4. Article 124a, para. 7 (new –SG 52 of 2013, effective from 14.06.2013 ) of the Law on State Agency National Security (promulg. SG 109 of 20 December 2007, effective from 01.01.2008 );*
- 5. Article 13, para. 2 of the Military Police Act (promulg. SG 48 of 24 June 2011, effective from 24.06.2011 ).*

#### Question № 2.

Yes. The mechanism under Article 9, item 4 ICCPR applies to all forms of deprivation of liberty, including compulsory placement in a specialized institution and immigration detention, as well as other forms of administrative detention.

The relevant provisions are as follows:

### **Constitution of the Republic of Bulgaria:**

*Article 30, para. 3 of CRB (promulg. SG 56 of 13 July 1991, effective from 13.07.1991);*

#### **Legislative provisions:**

1. *Article 61, para. 5 (new - SG 41 of 2009, effective from 02.06.2009) of the Health Act (promulg. SG 70 of 10 August 2004, effective from 01.01.2005);*
2. *Article 63, para. 2 and para. 4 of the Law on the Ministry of Interior (promulg. SG 17 of 24 February 2006, effective from 01.05.2006 );*
3. *Article 91 of the Criminal Code (promulg. SG 26 of 02.04.1968, effective from 01.05.1968) – regarding compulsory hospitalization – termination and modification of compulsory medical measures is made by the court when so required due to a change in the patient's condition or his required treatment. In all cases after 6 months of his placement in a hospital the court shall issue a decision for termination, extension or modification of compulsory treatment.*
4. *Article 15, para. 3 of the Law on Extradition and European Arrest Warrant (promulg. SG 46 of 03.06.2005, effective from 04.07.2005) the ruling of the district court for „arrest" is subject to appeal before the Court of Appeals within three days.*
5. *Article 43, para. 5 of the Law on Extradition and European Arrest Warrant (promulg. SG 46 of 03.06.2005, effective from 04.07.2005) upon request of the detainee the district court may change the detention to another, lighter bail, ensuring his participation in the executory proceedings under EAW.*
6. *Article 1, para. 1 (amm. SG 38 of 1998, amm. SG 27 of 2009, amm. SG 93 of 2011), item 1 of Decree № 904 of 28.12.1963 Against Petty Hooliganism (promulg. SG 102 of 31 December 1963);*
7. *Article 3, para. 1 (Amm. SG 93 of 2011 ), item "a" of Decree № 904 of 28.12.1963 Against Petty Hooliganism;*
8. *Article 3, para. 2 of Decree № 904 of 28.12.1963 Against Petty Hooliganism;*
9. *Article 6 of Decree № 904 of 28.12.1963 Against Petty Hooliganism;*
10. *Article 7 (declared unconstitutional in the section stating "not subject to appeal" in the first sentence, with RAC № 3 of 2011, SG 38 of 2011, amm. SG 93 of 2011) of Decree № 904 of 28.12.1963 Against Petty Hooliganism (promulg. SG 102 of 31 December 1963);*
11. *Article 25, para. 1 (amm. SG 19 of 2009) and Article 30-34 of the Law on the Preservation of Public Order during Sports Events (promulg. SG 96 of 29 October 2004, effective from 30.11.2004 );*
12. *Article 124a, para. 7 (new - SG 52 of 2013, effective from 14.06.2013 ) of the Law on State Agency National Security (promulg. SG 109 of 20 December 2007, effective from 01.01.2008 );*
13. *Article 13, para. 2 of the Military Police Act (promulg. SG 48 of 24 June 2011, effective from 24.06.2011 );*

**Non-legislative provisions:**

*Article 20, item 3 and item 4 (amm. SG 11 of 2012 ) of Ordinance № 13-1201 of 1 June 2010 on the Procedure for Temporary Accommodation of Foreigners, the Organization and Activities of Specialized Institutions for Temporary Accommodation of Foreigners, issued by the Ministry of Interior (promulg. SG 45 of 15 June 2010 Article 20, item 4 (amm. SG 11 of 2012).*

**If the answer is “Yes”, please provide a list of the forms of detention to which this mechanism is applicable.**

This mechanism is applicable to the following forms of detention:

1. Detention for the purposes of pre-trial proceedings.
2. Administrative police detention.
3. Compulsory medical treatment.
4. Detention in pursuance of a request for extradition.
5. Detention in pursuance of an European Arrest Warrant.

**Question № 3.**

Yes. The “detention” and “home arrest” measures shall be ordered by the court mainly as a prevention measure - to prevent the accused person from absconding thus obstructing the conduct of criminal proceedings (Article 57 of the Criminal Procedure Code). Each person against whom “detention” and “home arrest” measure has been ordered and implemented may request modification of the measure at any time of the criminal proceedings. If the request is made during the pre-trial proceedings the prosecutor shall send the case to court immediately, and the court shall hear the request within three days — *Article 65 of the CPC (promulg. SG 86 of 28 October 2005, effective from 29.04.2006).*

**Question № 4.**

Yes. The national law of the Republic of Bulgaria provides for the awarding to and receiving compensation by any person aggrieved by unjust detention.

There is a specific mechanism for immediate release of any person unjustly detained, by a prosecutor’s order while exercising supervision over the legality of enforcement of sentences, other compulsory measures and in the detention facilities. In the course of criminal proceedings the court may find the detention was unjustified and order immediate release of the person through cancellation and modification of the current detention measure or refusal to take detention. Bulgarian legislation does not provide for a time limit for bringing proceedings before the court by the detainee or his lawyer. In case of detention on the basis of an administrative act, de facto the deadline for referral to court is limited by the short time while such a measure can be executed without any ruling by a judicial authority. (Article 30, para. 3 of CRB).

In the criminal proceedings the prosecutor must ensure the appearance of the accused person in court and may order detention for up to 72 hours, the purpose of which is to make sure the accused person appears before the court.

The relevant legislative provisions are as follows:

1. *Article 2, para. 1 (previous wording of Article 2, amm. - SG 43 of 2008, effective from 30.05.2008, amm. - SG 98 of 2012) of the Law on Responsibility of the State and Municipalities for Damages (promulg. SG 60 of 5 August 1988, effective from 01.01.1989);*
2. *Article 51 of Obligations and Contracts Act (promulg. SG 275 of 22 November 1950);*
3. *Article 64, para. 4, para. 8 and para. 9; Article 65, para. 5; Article 309, para. 1 and para. 2 of the Criminal Procedure Code (promulg. SG 86 of 28 October 2005, effective from 29.04.2006);*
4. *Article 146, para. 2, item 1 of the Judiciary Act (promulg. SG 64 of 7 August 2007).*

**Question № 5.**

Yes. The right to initiate proceedings in court can be exercised by the detainee, by his/her lawyer or by an authorized legal representative.

**Question № 6.**

Formal requirements and procedures for a detainee to avail of the right to initiate proceedings before the court so that the latter may decide immediately on the matter of the lawfulness of detention are related to the following prerequisites:

**General prerequisites:**

1. There should be a detention on the basis of an order by the Court or on the basis of an administrative act.
2. There should be a complaint or request for modification of the measure to the competent court filed by a legitimate party.

**Specifics in the criminal proceedings:**

1. The "detention" and "home arrest" measure is a form of procedural coercion ordered by the court upon prosecutor's request.
2. In order to have "detention" and "home arrest" ordered, the person should be charged as accused in the pre-trial proceedings.
3. The prosecutor shall make sure the accused person's appearance before the court for judgment and may order detention to up to 72 hours, within which time the defendant must appear before the court.
4. At any time in the course of the criminal proceeding when "detention" and "home arrest" is ordered the accused person and his/her lawyer may request its modification by the court. If the request is made during the pre-trial proceedings, the Court shall pronounce within three days.

The provisions relevant to the criminal proceedings are *Article 64, Article 65 and Article 270 of the Criminal Procedure Code (promulg. SG 86 of 28 October 2005, effective from 29.04.2006).*

**Question № 7.**

Bulgarian legislation does not provide for a time limit for the detainee to challenge before the court the lawfulness of the detention. According to Article 65 of the Criminal Procedure Code the detainee or his/her lawyer may at any time during the pre-trial proceedings file a request for modification of "detention" measure. In case of detention pursuant to an administrative act, de facto the deadline for referral to court is limited by the short time while such a measure can be executed without any ruling by a judicial authority. (Article 30, para. 3 of CRB).

There is one exception – in cases where only at the request of the accused person and his/her lawyer the court has reviewed the detention in accordance with Article 65 of the CPC and has confirmed it, the court may set a time period within which a new request by the same persons shall be inadmissible.

Clarification – the detention during pre-trial proceedings can not be longer than two months, and as an exception can not be longer than 1 year in case of a serious crime /punishable with more than 5 years in prison/, or can not be longer than 2 years respectively for a crime punishable with at least 15 years in prison or by another more severe punishment.

**Question № 8.**

Yes.

***Interpretative decision № 1 of 25.06.2002 under c.c. № 1/2002 of the Supreme Court of Cassation***

*The decision of the Court to impose the measure "detention" is to be taken on the basis of the assessment of the actual risk accused person to abscond or commit a crime. The lawfulness of detention shall be assessed as of the time when the court is hearing the case. Subject of the assessment shall be all evidences relevant to the measure and gathered in the pre-trial proceedings. The accused and his/her lawyer may present to the court any evidence that the risk of absconding or committing a crime does not exist.*

***Interpretative decision № 3 of 15.11.2012 under interpretative case № 3/2012, of SCC:***

*Bulgarian procedural law does not provide for any grounds for modification of the detention measure already ordered into a stronger one (arrest), apart from those relating to the procedural behavior of the accused person violating the obligations resulting from his status as accused or from the violation of any lighter detention measure. If there are no other criteria to be considered the SCC gives an interpretation whereby the conviction and the effective "imprisonment" can not be taken into account by the deciding court in the ruling in accordance with Article 309, para. 1 of CPC (Article 317, in conjunction with Article 309, para. 1 of CPC by the appellate instance). Setting a stronger detention measure is only allowable in the presence of any of the preconditions set forth in Article 66, para. 1 of CPC.*

2. The right of the detainee to appeal and request revision of **the administrative detention** under the migration legislation in a competitive procedure and ensuring his own participation has been recognized in numerous SCC acts, although **they are not binding**.

They are as follows: *Ruling № 9655 of 29.06.2011 under administrative case № 7107/2011 , VII dept. of SCC; Ruling № 9652 of 29.06.2011 under administrative case № 8176/2011 , VII dept. of SCC; Ruling № 9466 of 28.06.2011 under administrative case № 7111/2011 , VII dept. of SCC; Ruling № 9460 of 28.06.2011 under administrative case №*

*6761/2011 , VII dept. of SCC; Ruling № 9402 of 27.06.2011 and administrative case № 5174/2011 , VII dept. of SCC.*

*By Decision № 8364 of 27.09.2005 under administrative case № 4302/2005 , V dept. of SCC the merits of the administrative detention under the migration legislation are considered from the prospective of realization of the cause (deportation of a foreign national) within a reasonable time frame. In case the deportation has failed the detention is defined as illegal.*