

Bulgaria

1. Introduction

The Bulgarian legal system forms part of the continental legal family and shares the main features of continental law. One of these features is the codification of the main branches of law, among which the Criminal Code (hereinafter: CC) and Criminal Procedure Code (hereinafter: CPC). The present CC, which was adopted in 1968, has been amended many times afterwards; currently Bulgaria is in the process of developing a new CC.¹ The main source of the Bulgarian law of criminal procedure is the mentioned CPC. In view of accession to the EU, a new CPC was adopted in 2005, which came into force on 29 April 2006.² This new code consists of seven parts, of which part three is dedicated to pre-trial proceedings. The measure of remand in custody is one of the coercive measures in the CPC, which can be imposed on accused persons whose appearance in court is to be secured.

In this report, pre-trial detention will be discussed thoroughly. The aim is to give an analysis of the minimum standards in pre-trial detention and the grounds for regular review in Bulgaria. After dealing with some empirical background information in paragraph 2, the legal basis (scope and notion of pre-trial detention) will be discussed in paragraph 3. Paragraphs 4 and 5 concern the grounds for pre-trial detention and the grounds for review of pre-trial detention, respectively. The length of pre-trial detention will be treated in paragraph 6, after which other relevant aspects in relation to pre-trial detention follow (paragraph 7). At last, paragraph 8 will focus on the system of pre-trial detention regarding special groups.

2. Empirical background information

This paragraph analyses the practice of pre-trial detention in Bulgaria. In essence, attention will be paid to the development of the number of pre-trial detainees as well as to the development of different groups of pre-trial detainees, such as juveniles, women and foreigners. In order to give an overview of these developments, data has been collected from several sources, namely: the Centre for Prison Studies (ICPS), the European Sourcebook, and the National Statistical Institute of Bulgaria. The collected information will be discussed in the following sections.

2.1 Prison population according to legal status

The total prison population in Bulgaria is made up of untried prisoners (i.e. prisoners for whom no court decision has yet been reached), prisoners who have been convicted but not yet (finally) sentenced, sentenced prisoners who have appealed their sentence or who are within the statutory time limit for doing so, and, finally, sentenced prisoners. Note that this total number also includes juvenile offenders and mentally ill prisoners held in psychiatric institutions and hospitals.

In 2006, the total prison population in Bulgaria amounted to 12,218 persons. However, sentenced prisoners who had appealed or who were within the statutory time limit for doing so, are not included in this number. Table 1 shows the distribution of the total prison population according to legal status over the years 2001-2006. The numbers provided in this table illustrate the prison population on 1 September of each year.

¹ The most recent amendments came into effect in 2008, SG. 102/28 November 2008.

² SG No. 83/18 October 2005, last amended SG. 109/23 December 2008.

Table 1: Prison population according to legal status

Year		2001	2002	2003	2004	2005	2006
Pre-trial detainees	Untried prisoners (no court decision yet reached)	394	453	350	1,928	841	1,076
	Convicted prisoners but not yet (finally) sentenced	1,169	1,453	1,512	...	393	1,247
	Sentenced prisoners who have appealed or who are within the statutory time limit for doing so (not included in the total prison population)	...	...	...	...	1,568	...
Finally sentenced prisoners		7,720	7,701	8,194	9,007	9,438	9,895
Total prison population		9,283	9,607	10,056	10,935	12,240	12,218
<i>Source: SPACE I (Annual Penal Statistics of the Council Of Europe)</i>							

It is clear that the various categories of prisoners are not always included in the total prison population. Therefore, it is almost impossible to compare the prison population over the years 2001-2006. However, some indication of the development of the prison population – as well as the number of pre-trial detainees – can still be given. The following paragraphs analyse the development of the number of pre-trial detainees during the period 2001-2006.

2.2 Pre-trial detainees as a percentage of the total prison population

Table 2 shows the number of pre-trial detainees as a percentage of the total prison population. The percentages given in Table 2 should, however, be seen as minimum figures, because some categories of prisoners are still missing (see Table 1). Including these missing categories will raise the share of pre-trial detainees among the total prison population.

Table 2: Pre-trial detainees as a percentage of the total prison population 2001-2006

Year	Total prison population	Number of pre-trial detainees	Pre-trial detainees as a percentage of the total prison population
2001	9,283	1,563	16.8%
2002	9,607	1,906	19.8%
2003	10,056	1,862	18.5%
2004	10,935	1,928	17.6%
2005	12,240	2,802	22.9%
2006	12,218	2,323	19.0%
<i>Source: SPACE I (Annual Penal Statistics of the Council Of Europe)</i>			

2.3 Pre-trial detention rates

The Bulgarian pre-trial prison population can also be measured using rates (the number of pre-trial detainees per 100,000 of the national population). The pre-trial detention rates are shown in Table 3. Note that these rates, too, should be seen as minimum figures.

Table 3: Pre-trial detention rate 2001-2006

Year	National population*	Number of pre-trial detainees	Pre-trial detention rate
2001	7,891,095	1,563	20
2002	7,845,841	1,906	24
2003	7,801,273	1,862	24
2004	7,761,049	1,928	25
2005	7,718,750	2,802	36
2006	7,679,290	2,323	30

Source: SPACE I (Annual Penal Statistics of the Council Of Europe) and National Statistical Institute of Bulgaria
** Population as of 31 December of the given year*

Table 4: Juveniles in pre-trial detention 2001-2006

Year	Total number of juvenile detainees	Number of juvenile pre-trial detainees	Juvenile pre-trial detainees as a percentage of the total number of juvenile detainees
2001	..	...	...
2002	121	...	...
2003	..	...	...
2004	..	...	...
2005	..	...	...
2006	78	11	14.1%

Source: SPACE I (Annual Penal Statistics of the Council Of Europe)

Table 5: Pre-trial prison population according to nationality 2001-2006

Year	Foreign nationals	Bulgarian nationals	Number of pre-trial detainees
2001	...	...	1,563
2002	...	...	1,906
2003	...	...	1,862
2004	...	...	1,928
2005	131	2,671	2,802
2006	91	2,232	2,323

Source: SPACE I (Annual Penal Statistics of the Council Of Europe)

3. Legal basis: scope and notion of pre-trial detention

3.1 Definition of pre-trial detention

In Bulgaria, pre-trial detention (remand in custody) is defined as a remand measure which may be applied for the purpose of preventing the accused party from absconding, from committing a crime or from frustrating the execution of a sentence that has entered into force (Art. 57 and 58 CPC).

According to the CPC the remand measure may be applied only to the accused party, i.e. to the person who is involved in this capacity under the conditions and order as provided in the CPC. According to Art. 219, paragraphs 1 and 2 of the CPC, where sufficient evidence is collected for the guilt of a certain individual in the perpetration of a publicly actionable criminal offence, and none of the grounds for terminating criminal proceedings are present, the investigative body shall report to the prosecutor and issue a decree to constitute the person as accused party. The investigative body may also constitute the accused party in this particular capacity upon drafting the act for the first investigative action against him/her, of which it shall report to the prosecutor.

Art. 17(2) of the CPC prescribes that a suspect may not be held for more than 24 hours in detention unauthorised by court. The prosecutor may direct detainment of the accused till he/she is brought before the court, but not for more than 72 hours. This is clearly stated in Art. 64(2) of the CPC, according to which, the appearance of the accused before the court shall be ensured without delay by the prosecutor, who, where necessary, may order that the accused be detained up to 72 hours for bringing him/her before the court. The police detention (arrest) of 24 hours according to the Ministry of Interior Act is not included in the maximum time limit of 72 hours, which applies to the detention, ordered by the prosecutor according to Article 64(2) CPC.

3.2 Start and end of pre-trial detention

Pre-trial detention starts once the court of first instance, upon the request of the prosecutor, has issued an order for remand in custody (Art. 64(1) CPC). This order can be issued in the context of pre-trial proceedings, but also during the trial phase. Furthermore, Art. 59(1) of the CPC prescribes that the order/act imposing the measure of pre-trial detention shall indicate the time and place of issuance thereof, the issuing body, the case in which it is issued, the full name of the accused party, the criminal offence for which he/she has been constituted as party to the proceedings in this particular capacity, and the reasons for choosing the measure. The act should be served on the accused party, who shall undertake not to change his/her place of residence without notifying in writing the respective body of his/her new address (Art. 59(2) CPC).

Pre-trial detention shall, however, end when, on the basis of evidence case material, it is no longer reasonable to assume that the accused party has committed a criminal offence or where one of the grounds under Art. 57 is no longer present (Art. 56(1) CPC). Moreover, pre-trial detention shall also end when it is repealed or replaced with another, less severe measure. To this end, Art. 63(3) of the CPC prescribes: where in the pre-trial procedure is found that the danger the accused may abscond or commit another crime is over, the prosecutor shall change by his/her initiative the restraining measure of detainment in custody into a less severe one or shall cancel it.

Next to these substantial grounds, pre-trial detention may also end because of procedural reasons. For instance, Art. 289 of the CPC prescribes that where the court has terminated the criminal proceedings in cases under Art. 24, paragraph 1, section 2-10 and paragraph 4 of the CPC, the court shall revoke the remand measures imposed on the defendant, if grounds for its imposition no longer exist. In case the court has issued a sentence, it should also make pronouncement on the remand measure (Art. 309(1) CPC). In addition, Art. 309(2) of the CPC states that where the court has acquitted the defendant, has exempted him/her from criminal responsibility, has conditionally sentenced him, or has convicted him to punishment less severe than deprivation of liberty, it should also rescind or replace pre-trial detention with the least severe measure provided for by law. In that case, the detained defendant shall be released in the courtroom.

Finally, pre-trial detention ends when the maximum time limit for detention has been reached. To this end, Art. 63(5) prescribes that after expiry of the time limits of remand in custody, the detained person shall be released forthwith by order of the prosecutor.

3.3 Principles underlying pre-trial detention

One of the main principles underlying pre-trial detention under Bulgarian law is the presumption of innocence. The principle of presumption of innocence is codified in Art. 16 of the CPC, which explicitly states that “the accused party shall be presumed innocent until the reverse is established by virtue of an effective verdict”. The presumption of innocence remains with the defendant throughout the criminal procedure until judgment has been pronounced, which is irrevocable as well because all legal remedies have been exhausted, or because the parties concerned have chosen not to avail themselves of the legal remedies still existing.³

Moreover, the measure of pre-trial detention may be applied only where it is adequate and proportional. Although this principle is not explicitly mentioned in the CPC, Art. 3(4) of the Bulgarian Constitution prescribes that “the rights of a defendant shall not be restricted beyond what is necessary for the purposes of a fair trial”. Therefore, Art. 56(3) of the CPC prescribes that, when setting the type of remand measure to be applied on the accused, the court should consider the degree of social risk inherent to the criminal offence, the evidence against the accused party, his/her health condition, as well as his/her family status, occupation, age and other personal data.

3.4 Procedural rights of the accused

During the proceedings, the defendant has a series of rights. A number of these rights are listed in the CPC:⁴

- The defendant has the right to be informed of the criminal offence in relation to which he/she has been constituted as party to the proceedings in this particular capacity and on the basis of what evidence;⁵
- The defendant has the right to remain silent, and the right to provide or refuse to provide explanations in relation to the charges against him/her;
- The defendant has the right to study the case, including the information obtained through the use of special intelligence means and take any abstracts that are necessary to him/her;
- The defendant has the right to adduce evidence;
- The defendant has the right to take part in criminal proceedings; make requests, comments and raise objections; be the last to make statements; and file appeal from acts infringing on his/her rights and legal interests;
- The defendant has the right to an interpreter if he/she does not understand Bulgarian (Art. 21 CPC);
- The defendant has the right to speak last when a question is discussed;
- The defendant has the right to a defence counsel. The accused party shall have the right for his/her defence counsel to take part when investigative actions are taken, as well as in other procedural action requiring the attendance thereof, unless he/she has expressly made waiver of this particular right. In Art. 94 CPC, certain situations are prescribed in which the participation of the defence counsel is mandatory, such as when the accused is remanded in custody or when the accused cannot afford to pay a lawyer fee, wishes to have one and the interests of justice so require. Art. 99 CPC lists the rights of the defence counsel. According to Art. 30(4) Constitution, this right is guaranteed from the moment of detention or of being charged (see also Art. 122 Constitution). The legal situation has been elucidated by Instruction No. 1/167/2003, which specifies that detention starts from the moment a person’s freedom of movement has been restricted.

4. Grounds for pre-trial detention

According to Bulgarian law, measures of procedural coercion are applied to the accused. These measures can be divided into two groups: measures securing the appearance of the accused in the proceedings and other coercive measures. According to Art. 56(1) CPC, a restraining measure may be applied to the accused. That is why the application of the restraining measures is not

³ Ibidem.

⁴ See Art. 55.

⁵ According to Art. 63 (7) CPC, the family of the accused shall be immediately notified of a remand in custody.

mandatory and depends on the particular case. These measures are: a signed promise for appearance, bail, house arrest and remand in custody (Art. 58 CPC). Their purpose is explained in Art. 57 CPC: to prevent the accused from absconding, from committing a crime or from frustrating the execution of a sentence that has entered into force. In determining the type of measure to secure appearance, the degree of social risk inherent to the criminal offence, the evidence against the accused party, the health condition, family status, occupation, age and other personal data shall be taken into consideration (Art. 56(3) CPC). Art. 63(1) CPC considers the measure of remand in custody in particular; it states that this measure shall be applied where a reasonable assumption is made that the accused party has committed a criminal offence punishable by deprivation of liberty or another, more severe punishment, and evidence case materials indicate that he/she poses a real risk of absconding or committing another criminal offence.

5. Grounds for review of pre-trial detention

The court system of Bulgaria consists of three instances: first (Regional and District Courts), second (Court of Appeal) and third (Supreme Court of Cassation). Decisions of Regional Courts take effect within seven days of their pronouncement unless appealed. District Courts, at first instance, hear criminal cases and, at second instance, consider appeals against decisions of the Regional Courts; they are free to strike out Regional Court decisions and send the case back for a review or pronounce a new judgment themselves. The Court of Appeal acts as a higher instance for the Regional and District Courts. At the highest instance, the Supreme Court of Cassation hears appeals against District Court decisions at second instance and against decisions of the Court of Appeal.⁶

With regard to decrees pronounced by the prosecutor or investigative bodies in pre-trial proceedings, it must be mentioned that decrees of investigative bodies shall be appealed before the prosecutor and decrees of the prosecutor, which are not subject to judicial review, shall be appealed before a prosecutor with a higher-standing prosecution office, whose decree shall not be subject to further appeal (Art. 200 CPC). Appeals shall not stay the execution of the appealed decree, unless the respective prosecutor has ruled otherwise. The prosecutor is obliged to make a pronouncement on any appeal within three days following its receipt.

Ongoing remand in custody during pre-trial proceedings is subject to judicial control. According to Art. 65 (1) CPC, the accused party or his defence counsel may request transformation of the measure of remand in custody at any time in the course of pre-trial proceedings. The request shall be made through the prosecutor, who shall be obliged to forthwith refer the case to the court. The hearing of the case has to be scheduled within three days after the file has been received in court on the occasion of a public court hearing. The court shall assess all circumstances pertaining to the lawfulness of detention and make pronouncement by a ruling which is to be announced to the parties at the court hearing. A judge's decision in such cases is subject to appellate review. This is why, upon announcing the ruling, the court shall schedule the case before the intermediate appellate review court within seven days in case an accessory appeal or protest will be filed. Where the request has been made by the accused party or his defence counsel and the ruling confirms the measure of remand, the court may set a time limit within which a new request for the same person shall not be admissible. This time limit may not exceed two months after the ruling comes into force, and shall not apply where the request is based on a deterioration of the health condition of the accused party. The ruling shall be subject to appeal and protest before the respective intermediate appellate review instance court within three days. The intermediate appellate review instance court will make pronouncement by a ruling that is to be announced to the parties at the court hearing. The ruling shall not be subject to appeal by accessory appeal or protest.

⁶ Besides the Supreme Court of Cassation, there is also a Supreme Administrative Court, but this court plays no role in criminal cases. In addition to the mentioned courts of the judicial system, the Constitution provides for the establishment of a Constitutional Court. This court is not a judicial body and is not part of the regular criminal process. However, it may play a significant role in the regulation of criminal procedure, as it is the only State authority to determine whether or not a provision of the CPC complies with the Constitution.

While Art. 65 CPC considers the review of remand in custody during pre-trial proceedings, there is also a provision in the CPC concerning review of remand measures, including remand in custody, during court proceedings. Art. 270 CPC prescribes that the issue about the reformation of the remand measure may be raised at any time during court proceedings. A new request in relation to the remand measure in the respective instance may only be made in the presence of change in the underlying circumstances.

6. Length of pre-trial detention

6.1 Legal provisions

The maximum time limits for pre-trial detention in Bulgaria are stipulated in Art. 63(4) of the CPC. In essence, this paragraph prescribes that the measure of remand in custody (pre-trial detention) may not last longer than one year in the course of pre-trial proceedings where the accused party has been constituted in this capacity because of a serious intentional criminal offence. However, if the accused party has been constituted in this capacity because of a criminal offence punishable by no less than fifteen years of deprivation of liberty or a heavier punishment, pre-trial detention may not last longer than two years. In all other cases, pre-trial detention in the course of pre-trial proceedings may not last longer than two months. A possibility of extending the terms of pre-trial detention is not provided, because these time limits are legally determined and cannot be exceeded. After they have expired, according to Art. 63(5) CPC, the detainee shall be released without delay by order of the prosecutor.

In order to calculate whether the fixed term for pre-trial detention and/or for an extension of detention has already been reached, the court should consider the rules set out in Art. 183 of the CPC. According to the third paragraph of this article, a term calculated in weeks and months shall expire on the respective day of the last week or on the respective date of the last month. Where the last month has no respective date, the term shall expire on the last day of such month. If the term is calculated in days, the term shall start running on the following day and shall expire at the end of the last day (Art. 183(2) CPC). In case the last day is a holiday, the term shall expire on the first forthcoming business day (Art. 183(4) CPC).

6.2 Practice (jurisdiction, statistics and decisions of the ECtHR)

On several occasions, the Republic of Bulgaria has been convicted by the European Court of Human Rights for its practice of applying excessively lengthy periods of pre-trial detention. As the Court has stressed on many occasions, the persistence of a reasonable suspicion that the person arrested has committed an offence, is a condition *sine qua non* for the lawfulness of continued detention. However, after a certain lapse of time, it will no longer suffice. In such cases, the continued deprivation of liberty should be justified by grounds given by the authorities. Where such grounds are relevant and sufficient, it must also be ascertained whether the competent authorities display special diligence in conducting the proceedings.

The most recent case concerning the issue of lengthy pre-trial detention is that of *Bochev vs. Bulgaria*.⁷ In this case, the Court ruled that the period spent in pre-trial detention by Mr. Bochev, namely seven years, five months and five days, was of such an excessive length that it constituted a violation of Art. 5(3) of the Convention. This article guarantees the right of lawfully arrested or detained persons to be brought to trial within a reasonable time or to be released pending trial. Some other recent cases in which Art. 5(3) was violated with regard to the length of pre-trial detention are: *Kuibishev vs. Bulgaria*, *Mitev vs. Bulgaria*, *Bojilov vs. Bulgaria*, and *E.M.K. vs. Bulgaria*.⁸ In all these cases, the lengthy period of pre-trial detention was not considered justified by the grounds on which it was based.

7. Other relevant aspects

⁷ *Bochev vs. Bulgaria* (Application No. 73481/01).

⁸ *Kuibishev vs. Bulgaria* (Application No. 39271/98), *Mitev vs. Bulgaria* (Application No. 40063/98), *Bojilov vs. Bulgaria* (Application No. 45114/98), *E.M.K. vs. Bulgaria* (Application No. 43231/98).

Several elements in relation to pre-trial detention have already been discussed in the previous paragraphs. Some of the remaining questions, such as whether the time spent in custody on remand is taken into account in the final sentence, whether there is a mechanism for compensation if the accused is not sentenced, whether there are alternatives to pre-trial detention, and the practice regarding the execution of remand in custody, will be treated in this paragraph.

According to Art. 59(1) CC⁹, the time period of detention or home arrest of the convict shall be deducted from the period of serving the punishment of deprivation of liberty or probation. Where the punishment imposed is probation, one day of detention on remand or home arrest shall count as two days. The preceding paragraph shall also be applied, where the convict has been detained under charges for another crime, the proceedings for which were terminated or ended by sentence of acquittal, if the provision of Article 23, paragraph (1) CC may be applied with respect to the acts, i.e. if one act has been an instrument of several crimes or if one person has committed several individual crimes before a verdict has been enacted for any of them.

With regard to compensation in the case of unlawful detention, Sec. 2 of the State and Municipalities Responsibility for Damage Act states that “the State shall be liable for damage caused to [private persons] by the organs of (...) the investigation, the prosecution, the courts (...) for unlawful pre-trial detention, including when imposed as a preventive measure, when it has been set aside for lack of lawful grounds”.

As discussed in paragraph 4, Art. 58 CPC provides four measures for securing the appearance of the accused in the proceedings. Only one measure can be applied to the accused and this must be precisely defined. The aspects that have to be taken into consideration in determining the type of measure are prescribed in Art. 56(3) CPC. As this report focuses on the measure of remand in custody, attention will also be paid to the three alternatives to remand in custody. These are: a signed promise for appearance, bail, and house arrest. The signed promise is an obligation undertaken by the accused not to leave his place of residence without authorisation by the respective authority (Art. 60 CPC). Bail may be provided in cash or in securities. In determining the amount of bail, the property status of the accused shall be taken into consideration. Bail may be deposited by the accused or by another person. The term for submitting bail may not be shorter than three days. The deposited bail must be returned when the accused is exempted from penal responsibility or from serving the imposed punishment without deprivation of liberty, or when he is detained for serving the punishment (Art. 61 CPC). House arrest constitutes a prohibition for the accused to depart from his dwelling without permission by the respective body (Art. 62 CPC).

A few remarks on the execution of remand in custody in practice. Bulgaria has twelve prisons for adults: eight for recidivists and four for first-time offenders. Each prison has a separate wing for remand prisoners, who are always separated from sentenced prisoners. Few remand prisoners are housed in single cells; most accommodations hold at least six detainees.¹⁰

Concerning the conditions of detention in prison establishments, the CPT noted in its last report on Bulgaria¹¹ that overcrowding remains a serious problem. One of the report’s recommendations to the government is to substantially reduce the occupancy rate of the prison establishments, with the aim of providing a minimum of 4 m² per prisoner. With regard to the police cells visited, the CPT reported that “cells seen by the delegation were generally not suitable for holding persons for more than a few hours and certainly not overnight. They were on occasion of a very limited size, usually had no windows and their equipment consisted merely of benches, which in most cases were too narrow for a person to lie down.” The CPT recommended that all police cells where persons are held overnight be enlarged to at least 6 m².¹²

Regarding the treatment of prisoners, the Constitution and law prohibit torture and other inhuman or degrading treatment or punishment. During the CPT’s last visit to Bulgaria, the majority of the persons interviewed by the delegation who were, or had recently been, detained by the police, indicated that they were treated respectfully. Numerous persons with considerable

⁹ This article was amended in 2002 and 2004 (SG No. 92/2002, effective 01.01.2005 with respect to the punishment of probation, amended, SG No. 26/2004, effective 01.01.2004, SG No. 103/2004.

¹⁰ R. Walmsley, *Further Developments in the Prison Systems of Central and Eastern Europe: Achievements, Problems and Objectives*, Heuni 2003, p. 208.

¹¹ CPT/Inf (2008) 12.

¹² For more information on the conditions of detention, see the *Annual Report of the Bulgarian Helsinki Committee 2007*, http://www.bghelsinki.org/index.php?module=resources&lg=en&cat_id=24

knowledge of the police force stated that, over the recent years, there had been a change for the better with regard to the manner in which police officers treat persons in their custody. However, a significant number of the persons interviewed did make allegations of physical ill-treatment at the time of their apprehension and/or subsequent questioning by police officers.¹³

To control the actions of the police, a Code of Ethics for police staff has been adopted. Sec. 49 of this Code stipulates that “every member of the police force who witnesses unacceptable or hazardous behaviour on the part of colleagues or acts of violence, inhuman or degrading treatment to any person, should take action for terminating such acts and report to his superior, regardless of the hierarchical position of the perpetrator of the acts”. In the CPC, Art. 205(2) prescribes that 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. Bulgaria also has an Ombudsman, to whom complaints can be filed against violations of human rights.¹⁴

Under normal circumstances, remand prisoners spend one hour a day out of their cells/rooms. They are allowed to be visited not less than twice a week, which is a minimum standard and not a maximum visitation period.¹⁵

8. Special groups

8.1 Juveniles

Under Bulgarian law, juveniles are considered to be: persons who have not accomplished 18 years of age (Art. 32 CC). According to Art. 32(1) of the CC, a juvenile who has not accomplished 14 years of age shall not be criminally responsible. However, if a juvenile has reached the age of 14 but not 18, he/she shall be criminally responsible if he/she could have realised the quality and the importance of the act and handle his conduct (Art. 32(2) CC). Art. 386 of the CPC provides for special rules as regards the pre-trial detention of juveniles who are being criminally prosecuted. Paragraph 1 of this article prescribes that pre-trial detention of juveniles is permissible, although the remand measure of pre-trial detention may only be taken in exceptional cases (Art. 386(2) CPC).

(1) With respect to underage persons, the following remand measures may be taken:

1. Supervision by the parents or the guardian;
2. Supervision by the administration of the educational establishment where the underage person has been placed;
3. Supervision by the inspector at the child pedagogical facility; or by a member of the local Commission for Combating Anti-Social Acts of Minors and Underage Persons;
4. Remand in custody.

(2) The remand measure of custody shall be taken in exceptional cases.

(3) The remand of underage persons in supervision of persons and bodies under paragraph (1), items 1 - 3, shall be accomplished through signature, whereby the latter shall assume the obligation to exercise educative supervision over the underage persons, to watch over their conduct, and to secure their appearance before the investigative body and the court. A fine of up to BGN 500 may be imposed for culpable default by such persons.

(4) In the cases of custody, under aged persons shall be placed in suitable premises apart from adults, their parents or guardians and the principal of the educational establishment where they study being notified immediately thereof.

In pre-trial proceedings, remand in custody cannot exceed one year if the accusation is for a grave intentional crime for which the provided punishment is imprisonment for five years and more, and two years if the accusation is for a particularly grave intentional crime for which the provided punishment is imprisonment not less than fifteen years or life imprisonment. In all other cases, it cannot last more than two months.¹⁶

¹³ CPT/Inf (2008) 12.

¹⁴ The powers of the Ombudsman are laid down in the Law on the Ombudsman. For more information on the Bulgarian Ombudsman, see <http://www.anticorruption.bg/ombudsman/eng/other.php>

¹⁵ Art. 177 of the Regulation for the Implementation of the Law on the Execution of the Penalties.

¹⁶ National Statistical Institute, Bulgaria (2006), *Children in conflict with the law in Bulgaria*. Sofia: National Statistical Institute. Country Analytical Report prepared for the MONEE Project, UNICEF IRC, pp. 10.

8.2 Women

As regards women, the CPC does not contain any special rules for pre-trial detention, but there are such rules in the Law on the Execution of the Penalties and the Regulation for its Implementation.¹⁷ According to Art. 29(3) of this Law, women who deprived of their liberty, shall have the right to rest in case of pregnancy and childbirth in the extent, established for the paid leave of the workers and the employees. The time during the rest shall be considered as working days. According to Article 30 (3) of the same Law the pregnant women and the suckling mothers shall be put in premises, appropriately furnished and meeting the necessary hygiene requirements and under systematic medical control. The children of the women, deprived from liberty, can stay up to one year with their mothers at the nursery at the prison or the reformatory. In these cases their maintenance shall be for the account of the prison or the reformatory. The children At the above mentioned nurseries can stay till rounding three years if they have no relatives to take care about them.

8.3 Foreigners

As regards foreigners, the CPC does not contain any special rules for pre-trial detention, but there are such rules in the Law on the Execution of the Penalties and the Regulation for its Implementation.

8.4 Alleged terrorists

With regard to alleged terrorists, there are no special rules for pre-trial detention.

Bibliography

Literature

A.M. van Kalmthout, J. Robberts & S. Vinding (eds.), *Probation and Probation Services in the EU accession countries*, Nijmegen: Wolf Legal Publishers, 2003

B. Stankov, *Criminal Justice Systems in Europe and North America, Bulgaria*, Heuni 1996

G. Marinova, "Bulgarian Criminal Procedure: The New Philosophy and Issues of Approximation", *Review of Central and East European Law* 31 (2006)

K. Kangspunta, M. Joutsen, N. Ollus and S. Nevala (eds.), *Profiles of Criminal Justice Systems in Europe and North-America 1990-1994*, Heuni 1999

L. Gruev, "Grundzüge der Bulgarischen Strafprozessordnung von 2005", *Zeitschrift für die Gesamte Strafrechtswissenschaft*, 120. Band, 2008 Heft 1.

McBride, J., European Committee on Crime Problems, *Analysis of the questionnaire on the 'Law and Practice of Member States regarding the Use of Remand in custody' (2003)*

National Statistical Institute, Bulgaria (2006), *Children in conflict with the law in Bulgaria*. Sofia: National Statistical Institute. Country Analytical Report prepared for the MONEE Project, UNICEF IRC.

R. Walmsley, *Further Developments in the Prison Systems of Central and Eastern Europe: Achievements, Problems and Objectives*, Heuni 2003

¹⁷ According to Art. 128 of the Law on the Execution of the Penalties, its provisions for sentenced prisoners shall also be applied to the accused who is remanded in custody.

R. Walmsley, European Committee on Crime Problems, *Analysis of Responses to Questionnaire 2 on the Conditions of Detention of remand Prisoners in Member States*, PC-DP (2004) 6

Republic of Bulgaria, T. Hinova and E. Trendafilova-Batchvarova, Kluwer Law International 1999 – Criminal Law – Suppl. 14 (November 1998).

Internet sources

Annual Report of the Bulgarian Helsinki Committee 2007:

http://www.bghelsinki.org/index.php?module=resources&lg=en&cat_id=24

Bulgaria, Country Reports on Human Rights Practices, March 11, 2008, released by the Bureau of Democracy, Human Rights, and Labor of the US Department of State:

<http://www.state.gov/g/drl/rls/hrrpt/2007/100552.htm>

CPT reports on Bulgaria:

<http://www.cpt.coe.int/en/states/bgr.htm>

Prison Brief for Bulgaria:

http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=130

Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, Council of Europe, Visit to Bulgaria 17-20 December 2001, Strasbourg, 10 April 2002 and follow-up report on Bulgaria (2001-2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights of 29 March 2006, CommDH(2006)6:

<https://wcd.coe.int/ViewDoc.jsp?id=980807&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679> and

<https://wcd.coe.int/ViewDoc.jsp?id=983989&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

SPACE I (Annual Penal Statistics of the Council of Europe) – 2001 - 2006 Enquiry

World Pre-trial/Remand Imprisonment List, January 2008:

<http://www.kcl.ac.uk/depsta/law/research/icps/downloads.php?searchtitle=World%20Pre-trial&search=search&type=0&month=0&year=0&lang=0&author>

World Female Imprisonment List, August 2006:

<http://www.kcl.ac.uk/depsta/law/research/icps/downloads.php?searchtitle=world+female+imprisonment+list&type=0&month=0&year=0&lang=0&author=&search=Search>