

Martin Kanoushev

‘EXCEPTIONAL’ CASES:  
A LEGAL DYNASTY  
OF POLITICAL CRIMES IN BULGARIA

**The Tarnovo Constitution of 16 April 1879 and the Question of the Legal Liability of Ministers**

According to the *Tarnovo Constitution* adopted on 16 April 1879, Bulgaria's first constitution after the country's liberation from Ottoman rule in 1878, the judicial power belonged entirely to the authorities and persons vested with judicial powers, who acted in the name of the Prince. The Prince alone had the right to mitigate or commute punishments in accordance with the rules laid down in the law on criminal procedure. The Prince had the right of pardon, while the right of amnesty belonged to the Prince conjointly with the National Assembly. Those rights of the Prince, however, did not cover sentences passed upon ministers for violations of the Constitution.

The constitutional principles were the following: the Bulgarian Principality was to be governed strictly in accordance with the laws, which were made and promulgated in the forms indicated in the Constitution. No law could be promulgated, complemented, amended or repealed without first being debated and passed by the National Assembly, which also had the right of interpreting its precise meaning. Every law adopted by the National Assembly was submitted to the Prince for his sanction. After being sanctioned by the Prince, the law had to be promulgated in full. Mention had to be made in the promulgation of the law of its adoption by the National Assembly. No law had any force or effect before its promulgation. The National Assembly alone had the right to decide whether all the formalities prescribed by the Constitution had been fulfilled in the publication of a law. Regulations for putting a law into effect and the measures which had to be taken to this end were in the hands of the executive branch of government. But, and this is very important, if the State was threatened by some internal or external danger and the National Assembly could not be convened, then, and in this case only, the Prince could, upon the motion of the Council of Ministers and their joint responsibility, publish ordinances and take measures which would have the same binding force as laws. The extraordinary ordinances and measures were to be submitted for approval

to the first National Assembly which was convened thereafter.

The following civil rights were guaranteed: no one could be punished without being sentenced by a lawful court. Imprisonment and searches could take place only in accordance with the rules laid down by law. No punishment except that prescribed by law could be applied to anyone whomsoever. Torture, as well as the confiscation of property, was prohibited. In the event of a potential threat to public safety, however, the Prince could suspend those provisions in the entire Principality or in parts thereof, but was obligated to submit them for confirmation to the first National Assembly convened thereafter. This article was repealed by the amendments to the Tarnovo Constitution adopted on 11 July 1911.

Members of the government could be brought to trial for crimes entailing ministerial liability according to the following procedure: ministers were appointed and dismissed by the Prince. Ministers were jointly responsible to the Prince and the National Assembly for all measures taken in common, and each one was personally responsible for his acts within his remit. Every official act signed by the Prince had to be countersigned, according to its character, either by all the ministers or by the minister concerned. According to the notorious Article 155, under which political officials were prosecuted and punished throughout the period from 1879 to 1944:

*Ministers may be brought to trial by the National Assembly for treason against the realm or the Prince, for violations of the Constitution, for betrayal or damage caused to the Principality in the furtherance of personal ends.*  
(Konstitutsiya..., 1990, p.14)

Every proposal for bringing a minister to trial had to be presented in writing, with an enumeration of all the charges, and had to be signed by at least one-fourth of the members of the National Assembly. A majority of two-thirds of the members of the Assembly present was necessary in order to bring a minister to trial. Ministers were tried by a special state tribunal, the composition of which was determined by a special law. The Prince could not pardon a minister without the consent of the National Assembly.

Almost two years after the Tarnovo Constitution, an *Act on the Penal Sanctions Which Are Imposed for Crimes Provided for in Article 155 of the Constitution* was adopted on 13 December 1880. According to this Act, a person found guilty of treason against the realm or the Prince was punishable, depending on the type of treason and the degree of guilt, by confinement in fetters for a term of five to fifteen years. A person found guilty of violating the Constitution was punishable, depending on the gravity of the violation and the degree of guilt, by ordinary confinement for a term of one to five years. A person found guilty of betrayal or damage caused to the Principality in the furtherance of personal ends was punishable, depending on the gravity of the damage and the degree

of degree, by ordinary confinement for a term of one to ten years. These penal sanctions were always accompanied by deprivation of political and civil rights for life, and restitution of the damage and loss caused to the State by the respective crime.

A new *Act on the Penal Sanctions Which Are Imposed for Crimes Provided for in Article 155 of the Constitution* was adopted on 9 July 1924. According to this Act, a person found guilty of treason against the realm or the King was punishable by close confinement for a maximum term of ten years. The penal sanction for violating the Constitution or for betrayal was close confinement for a maximum term of five years. The penal sanction for damage caused to the Kingdom in the furtherance of personal ends was close confinement for a maximum term of ten years. These penal sanctions were accompanied by deprivation of civil and political rights according to the Penal Act.

### **The Penal Act of 21 February 1896 and the Problem of 'Political Crimes'**

The *Penal Act* adopted on 21 February 1896 qualified as political crimes only the acts of treason and betrayal. Espionage was included as a political crime through the amendments to the Act adopted on 24 February 1936. Bulgarian citizens and foreigners were to be tried under this Act if they committed treason, betrayal or espionage outside the territory of the country. In such cases Bulgarian citizens or foreigners were to be tried and punished even if they had already been tried and punished in the country where they had committed the crime. Bulgarian citizens were not to be handed over to a foreign country for prosecution or punishment. Foreigners were not to be handed over for political crimes. Persons convicted of political crimes were segregated in special sections of the prisons, taking into consideration their gender and the type of punishment. They were exempt from hard labour, and performed light work at the discretion of the prison administration. They were eligible for early release.

The crime of treason was committed by whoever: murdered or attempted to murder the head of state or the heir to the throne; physically injured and harmed the health of the head of state or the heir to throne or incapacitated them to rule; or betrayed the head of state or the heir to the throne to the enemy, or deprived them of personal freedom by force or threat, or prevented the head of state from exercising his ruling rights. The penal sanction was death in the first case, and close confinement for life in the second and third. The penal sanction for attempted treason was close confinement for a minimum term of ten years. Also qualified as 'treason' were acts aimed at forcibly changing the lawful succession to the throne or the state system or the integrity of the State, or at violating the territorial integrity of the State through forcible cession of part of it to a foreign State. In the first two cases the penal sanction was close confinement for a minimum term of ten years, and in the third, close confinement for life.

Conspiracy to commit treason was punishable by close confinement for a

minimum term of ten years. According to the 1896 *Penal Act*, a conspiracy existed when two or more persons came to an agreement concerning the commission of treason. Preparation for the commission of treason was punishable by close confinement for a maximum term of five years. Any person who directly preached or incited to treason, be it openly or orally, or by spreading or displaying works, images or printed matter, was punishable by close confinement for a term of five to ten years. If the act of preaching or incitement was ineffective, the penal sanction was ordinary confinement. Any person who voluntarily relinquished the preparation or the commenced commission of an act of treason prior to its discovery, and prevented the occurrence of harmful consequences, was released from criminal responsibility for treason. An accomplice in a conspiracy who, prior to the commission of any act other than the agreement to conspire, and before it was discovered by the authorities, left the conspiracy and not only informed the other members thereof but also dissuaded them from going ahead with their enterprise or warned the authorities, was not punishable. The sentence for treason included deprivation of civil and political rights.

The crime of betrayal was committed by any Bulgarian subject who directly or indirectly instigated or incited a foreign State to war or some other hostile act against the Bulgarian State. This crime was punishable by close confinement for a term of ten to fifteen years. If a war or hostile act had followed as a result, the perpetrator was punishable by close confinement for life. Any Bulgarian subject who voluntarily joined a hostile army was punishable by close confinement for a term of ten to fifteen years. Any Bulgarian subject who served in a foreign army and engaged in battle against the Bulgarian army was punishable by close confinement for a maximum term of five years. Any person who: betrayed any fortress, town, fortified location, mountain pass, coast or position, storehouse of arms, supplies or provisions, ships, officers or soldiers; delivered to the enemy any map, plan or description of facilities, movements or enterprises; aided the enemy to invade or advance within the territory of the Bulgarian State; facilitated the enemy to augment its armed forces, supplies or provisions; instigated any riot, mutiny or desertion in the Bulgarian army; arsoned, damaged, demolished or incapacitated: any storehouse of arms, military supplies or provisions, bridge, dam, embankment, fence, railway or other road; served the enemy as a spy or aided an enemy spy; committed any such acts against a State allied to the Bulgarian State or against a military force operating together with the Bulgarian military force, was punishable by life imprisonment. If those acts were committed during wartime, the punishment was death.

The amendments to the *Penal Act* adopted on 24 February 1936 codified five new crimes as 'betrayal'. Any person who made public abroad untrue information damaging the reputation of the Bulgarian people or State, was punishable by close confinement. A person, who, while in the service of the Bulgarian State before a foreign government, intentionally performed his official duties to the detriment of the Bulgarian State, was punishable by death. Any

person who fabricated, forged, destroyed, damaged, concealed or removed any means of proof of a legal relation between the Bulgarian State and a foreign State, was punishable by close confinement for a minimum term of five years. In particularly grave cases, the punishment was imprisonment for life or for a minimum term of ten years. Any person who agreed to accept a reward from a foreign State in exchange for an act threatening the system, government, economy, security, public order or, generally, the interests of the Bulgarian State, was punishable by close confinement for a minimum term of three years. Any person who, at the time of an ongoing or pending war, intentionally failed to fulfill a contract of supply concluded with an agency for the needs of the military capacity of the State or of its allies, or fulfilled it in a manner that frustrated the purpose of the contract, was punishable by close confinement. Any person who divulged to the enemy information related to the safety of the Bulgarian State and which: had been entrusted to him or to whom it had become known through his office or work; or which he had possessed or acquired by force or through theft, appropriation or in a deceitful manner, was punishable by close confinement for a term of ten to fifteen years. If this information had been acquired by the culprit in another manner and he was aware that it had to be kept secret, the punishment was close confinement for a term of five to ten years. Conspiracy to commit betrayal was punishable by close confinement for a maximum term of ten years. Any person who preached or incited to betrayal was punishable by close confinement for a term of two to ten years. The sentence for betrayal included deprivation of civil and political rights.

The amendments to the *Penal Act* adopted on 24 February 1936 also codified the crime of espionage: any person who, in the interest of a foreign State, disclosed a state secret or gathered information with this purpose, was punishable by death or close confinement for a minimum term of ten years. Any person who placed himself at the disposal of a foreign State to serve it as a spy but did not actually commit the said act, was punishable by close confinement for a minimum term of two years. 'State secret' was understood as such facts, information or objects which had to be kept secret from a foreign State in order to guarantee the welfare of the Bulgarian State and especially its safety.

Any person who aided or concealed someone he knew was a spy, was punishable as a direct perpetrator. Any person who failed to duly inform the authorities about an act of betrayal or espionage was punishable by close confinement for a term of three to ten years. Any person who published in the press information that could harm the State's interests, was punishable by close confinement for a maximum term of five years if the act had been committed during peacetime, and for a maximum term of ten years if it had been committed during wartime. In sentencing for espionage, the following were considered as aggravating circumstances: where the state secret had become known to the doer through his office or work, or had been entrusted to him; where he had acquired it by force or through theft, appropriation or in a deceitful manner;

where the crime had been committed at the time of an ongoing or pending war. Espionage committed through negligence was punishable by close confinement for a maximum term of five years if the act had been committed during peacetime, and for a maximum term of ten years if it had been committed during wartime. Any person who, during wartime: committed an act that threatened the neutrality of the State; spread rumours or facts that could lower the morale of resistance; violated an order issued for the purpose of preserving the State's safety, was punishable by close confinement for a minimum term of five years. If the act had been committed through negligence, the penal sanction was close confinement for a minimum term of three years. The same penal sanction was provided for conspiracy to commit espionage. Any person who preached or incited to espionage, was punishable by close confinement for a term of two to ten years. An accomplice in a conspiracy who, prior to the commission of any act other than the agreement to conspire, and before it was discovered by the authorities, left the conspiracy and not only informed the other members thereof but also dissuaded them from going ahead with their enterprise or warned the authorities, was not punishable. The sentence for espionage included a fine of 10 000 to 1 000 000 leva and deprivation of civil and political rights.

Thus, whereas according to the bourgeois *Penal Act* treason, betrayal, and espionage were political crimes, it did not contain a general definition of 'political crime' as such, other than its concrete forms. Such a definition was provided for the first time in the history of Bulgarian law in the *Statutory Ordinance on Extradition and Legal Assistance in Criminal Matters* adopted on 21 March 1935. Here the term and concept of 'political crime' was defined and extended significantly:

*Political crimes shall be crimes directed directly against the existence or security of the State, against the head of state, against the heir to the throne, or against a member of the government in his capacity as such, against the legislative body, against the right to vote, or which aim to harm the good relations between two or more States.*

(Naredba-zakon za ekstradatsiya..., 1935, p.1)

Thus, the Bulgarian legislator codified an objective concept of political crime, that is to say, a concept whose content is defined with a view to the type of protected rights – and not a subjective concept, that is to say, a concept according to which a political crime is an act committed with political motives. (It must be noted here that the socialist legislation inverted the meaning of the concept in question. With the adoption of the *Statutory Ordinance on Defence of People's Power* on 17 March 1945, counter-revolutionary crimes were codified in Bulgarian law for the first time. They were qualified as crimes committed with political motives and with a counter-revolutionary *mens rea*.) According to the juridical logic of the bourgeois legislator, crimes were classified into the

following groups, depending on the target of the act: crimes against the legal rights of the individual person and against the legal rights of the community; in turn, the latter group broke down into crimes directly targeting the State (treason, betrayal, and espionage), and crimes targeting the rights of the public that are of a state nature proper (forging documents and malfeasance in office). On the basis of this criterion, crimes were classified into political and non-political crimes. According to legal theory, political crimes were crimes directed against the existence of the State, the head of state, and political rights.

*Until recently, the Bulgarian legislator understood this concept in a much narrower sense, as referring only to treason, betrayal, and espionage. The Statutory Ordinance on Extradition and Legal Assistance in Criminal Matters provides a definition of the concept of political crime which corresponds to that of theory. This classification is relevant to extradition: extradition for political crimes is inadmissible. This same fundamental criterion – the target of the crime, i.e. the legal right that has been encroached upon – constitutes the basis upon which the entire system of the Special Part of the Penal Act is built.* (Dolapchiev, 1994, p.155)

### **The Trial and Punishment of the Culprits for the National Catastrophe Act of 9 December 1919 and the 'High Treason' Case**

Let us move on to the application of a law in judicial practice. Among the reasons of those who moved the *Trial and Punishment of the Culprits for the National Catastrophe Bill*, we can read the following:

*Bulgaria conducted two wars and both ended in disaster in every respect. Vast national sacrifices and efforts were thrown in vein into the vortices of the war. Incalculable national wealth was wasted. Billions in debts were accrued and now have to be paid. Two hundred thousand graves lie unavenged in lands that were bathed in Bulgarian blood and have remained in foreign hands. High treason and evil was committed against the present and future of the Bulgarian race – and this ugly, unprecedented and unrecorded in human history, extermination and ruining of a nation was committed with the active participation of sons unfortunately born of the Bulgarian land, and of a king whom it had had, for all of three decades, as its head of state and whom it had fed, only to be killed and ruined by him.*

*One year has passed since the second disaster and its authors are still living unpunished; they have not suffered any pangs of conscience for the evil done; they are living with dumb indifference under our sky and provoking the indignation and fury of the ruined nation. When public figures reach the highest levels of the state hierarchy and undertake bold and resolute actions which lead to misfortunate and defeat of the State and the nation, they are obligated to answer with their heads because they had*

*not thought things through well enough and foreseen the dangers, and had waved a bold hand in front of the eyes of Destiny, infuriating it against the nation they represent.*

*This is the reasoning of this bill that must become a law. It comes to punish the culprits for the live wounds on the body of Bulgaria, and that is why it is retroactive. This is a law exacting national retribution from the national villains and criminals. In it is the conscience of indignant Bulgaria and failure to pass it means killing her last hopes of expecting and seeing, at least from now on, her government headed by her sons who will carry, with a deep sense of all-round responsibility, her cross from the terrible and painful present to a brighter future. (Motivi..., 1919, p.1)*

Thus, according to this Act, those who had taken an active part in the declaration of the 1915-1918 war without prior convocation and consultation of the National Assembly, as well as those who had issued and ordered the enforcement of Section III of the Military Penal Act of 23 September 1915 before it was passed by the National Assembly, were to be tried for treason against the realm and violation of the Constitution and were punishable by close confinement for life; those who had acted with a venal motive were punishable by death. The same penal sanction applied to those who had taken an active part in the diplomatic preparation or the direction of the 1915-1918 war in violation of the laws or with a venal motive. National Assembly members and all persons who had taken advantage of their official or public status to exert influence in favour of the preparation or declaration of the war and who had used the situation created by the war for personal gain, were to be tried and punished applying aggravating circumstances under Article 421 of the Penal Act. It states that 'any official who breaches his official duties for the purpose of obtaining an undue benefit for himself or for another, or of causing harm or any damage whatsoever to another, shall be punishable by close confinement for a maximum term of five years' (Nakazatelen zakon, 1896, p.119). The same penal sanction was provided for all other private or official civilian or military persons who, having taken advantage of the war, had conducted speculative transactions that lowered the morale and upset the army and the population, or had committed atrocities in the occupied lands, or had acted with a venal motive for the preparation, declaration, and continuation of the war. Those found guilty of these crimes were also to be punished by deprivation of civil and political rights for life, and sentenced to pay the State for the damages and losses caused by the war. The private property of all persons accused under this Act, including of King Ferdinand, was placed under a preventive attachment to secure the civil action brought by the State. All transactions concluded by the culprits under this Act from 10 September 1915 to 21 June 1918 with regard to the State were subject to the provisions of Article 140 of the *Obligations and Contracts Act*, while all transactions concluded after 21 June 1918 were presumed to have

been colourable and gratuitous until proven otherwise.

The criminal acts under this Act, as a set of acts related to the criminal acts committed by ministers, were reviewed and punished by the state tribunal according to the procedure provided for by the *Trial of Ministers Act*. The judgments were final. Pardons were granted only by a resolution of the National Assembly. Proceedings against all offenders, other than ministers, could be initiated: by the minister of justice and public accusers; on a petition signed by at least fifty members of the National Assembly; *ex officio* by every prosecutor or his deputy at a district, appellate or cassation court. Every citizen was competent, without incurring any liability, to seek from the above-mentioned officials the initiation of criminal prosecution, and they were obligated to grant or reject such petitions, stating reasons. Immediately after receiving a petition, the investigating magistrate was obligated to start an investigation that had to be completed within a time limit of fifteen days; this time limit could be extended by the public accuser or the prosecutor. Investigating magistrates had to take all measures to safeguard the property of the accused against dissipation and concealment. Detention in custody was the only precautionary measure that the investigating authorities were competent to take in order to secure the appearance of the accused. The investigative proceedings were controlled by public accusers and prosecutors who were empowered to demand, at any time, the replacement of the investigating magistrate by reason of unreasonable delay, partiality, incapacity or any action that impeded the investigation.

### **The Trial of Ministers Act of 9 July 1924 and the 'State Tribunal' Procedure**

Chapter One of this Act qualifies the criminal responsibility of government ministers. A minister was criminally responsible for any crime committed by him in his capacity as a minister, in office or in connection with the latter. The other members of the government were criminally responsible only if they were proved to have been accomplices in the act.

Chapter Two regulates the procedure for trial of ministers by a state tribunal. The National Assembly could bring every minister to trial for treason against the realm or the King, for violation of the Constitution, for betrayal or for damage caused to the Kingdom in the furtherance of personal ends. Ministers accused of these crimes were to be tried by a state tribunal. Every member had the right to submit to the National Assembly a proposal for putting a minister on trial. The proposal had to be presented in writing and signed by at least one-fourth of the members of the National Assembly. It had to contain the facts and circumstances of the charges of crimes under Article 155 of the Constitution. The accused minister had to be notified immediately after the submission of the proposal. Three days later the member who had submitted the proposal had to read it in the National Assembly and justify it orally. The accused minister had the right to offer explanations in his defence, refuting the charges. This

could be followed by debates on the proposal, where the mover, and after him, the accused minister, had the final say. The latter could also take the floor after the speech of every member of the National Assembly. If, after the end of the debates, the National Assembly found the proposal to be reasonable, it had to elect a commission made up of five to nine members to establish in detail the circumstances and facts of the charges. The members of the National Assembly who had signed the proposal could not serve on this commission, but they and the accused minister had to be heard out whenever they asked to. The commission was obligated to conduct an inquiry and to submit a report on the results of the investigation, which was read in the National Assembly and followed by a debate. The National Assembly then had to vote on the issue of the institution of criminal proceedings against the accused minister. A majority of two-thirds of the members of the Assembly present was necessary in order to put the minister on trial. If the vote was positive, the National Assembly had to elect one public accuser and two deputies. The minister of justice then had to be immediately notified of these decisions.

The preliminary investigation in criminal proceedings against a minister initiated by the National Assembly was conducted by a special investigating commission composed of three or five crown judges, appointed by decree on a report by the minister of justice and nominated by the competent courts. The commission consisted of one judge from the criminal departments of the Supreme Court of Cassation, one vice president of the appellate courts, and one vice president of the regional courts; if it consisted of five members, also of one judge at the appellate courts and another vice president of the regional courts. The requisite number of secretaries was appointed from among those employed at the courts in Sofia.

In conducting the preliminary investigation, the commission was guided by the rules provided for by the *Criminal Proceedings Act*. Its decisions were considered to be lawful if they were taken by the majority of members. The commission could also decide to assign the conduct of separate investigative proceedings to just one of its members. The preliminary investigative proceedings were supervised by the public accuser. Both the accused minister and the public accuser could file complaints and protests against wrongful actions of the investigating commission. Such complaints and protests were to be filed with the Supreme Court of Cassation, which ruled on them according to the rules provided for by the *Criminal Proceedings Act*. If, in conducting the preliminary investigation, the commission established that the accused minister had committed acts constituting a crime under Article 155 of the Constitution, which however were not included in the charges in the proposal for putting the minister on trial, the public accuser had to notify the chairman of the National Assembly in writing who, for his part, had to read the notice at the next sitting of the National Assembly. Within the next seven days, every member of the National Assembly could submit a proposal for putting the minister on trial for

the newly discovered crimes. If the National Assembly approved the additional proposal, the chairman had to notify the commission, which had to conduct a preliminary investigation into the new charges.

Upon completing the preliminary investigation, the commission had to send the case file and its final decision to the public accuser, who could demand a further investigation, upon the completion of which he had to immediately submit it to the National Assembly. The commission had to complete its investigations prior to the end of the session during which the decision to institute criminal proceedings against a minister had been taken. The National Assembly had to hear, at a regular sitting, the commission's final decision, debate it, and then resolve, with a majority of two-thirds of the members of the Assembly present and individually for each minister, the question of whether to put him on trial. On the basis of the National Assembly's resolution, the public accuser then had to draw up an indictment and submit it to the president of the Supreme Court of Cassation together with the case file and list of persons to be summoned as witnesses. The case for the prosecution of a minister at the state tribunal was presented by the public accuser and his deputies. They remained in charge of the case after the expiry of the National Assembly's term in office.

The state tribunal consisted of the first president and two judges of the Supreme Court of Cassation, two judges of the Supreme Administrative Court, two judges of each appellate region, the first of the presidents of the appellate court, the second of the presidents of the regional courts, and four reserve members: one each of the judges of the Supreme Court of Cassation, the Supreme Administrative Court, and the presidents of the appellate and regional courts. Apart from the president, the members of the state tribunal were elected by lot two weeks before the day the case was to be heard at a joint public sitting of the Supreme Court of Cassation. The members of the investigating commission could not take part in the drawing of lots. A record was drawn up of the results of the drawn lots, a duplicate copy of which was sent to the minister of justice. The president of the Supreme Court of Cassation had to order the elected members of the state tribunal to be summoned on the day appointed for hearing the case.

The position of president of the state tribunal was assigned to the first president of the Supreme Court of Cassation. The position of accuser was assigned to the public accuser who was assisted by his deputies. The position of secretary was assigned to one or several secretaries of the Supreme Court of Cassation. Members of the state tribunal could be challenged in the cases and according to the procedure provided for by the *Criminal Proceedings Act*. Those who were challenged successfully were replaced. If, due to illness or death, any of the judges could not take part in the proceedings, he was replaced by the respective reserve member. If, due to the same reasons, the president could not chair the proceedings, he was replaced by the most senior judge. While the criminal

proceedings were under way, the judges involved could not be dismissed, promoted or transferred. In conducting the investigation and ruling on the case, the state tribunal was guided by the general procedural rules. The accused could be investigated and tried in absentia. The writ of summons listing the charges had to be published in the *State Gazette* two weeks before the date of the hearing. The judgments of the state tribunal were final and not subject to appeal, but the convicted ministers had the right to petition for pardon. A petition for pardon had to be submitted according to the procedure provided for by the Constitution. If the National Assembly granted the petition, its resolution had to be submitted to the head of state for affirmation.

Chapter Three is titled 'Trial of Ministers by Ordinary Courts'. For crimes constituting malfeasance in office other than those under Article 155 of the Constitution, ministers were tried by appellate courts according to the procedure provided for by the *Criminal Proceedings Act*. Charges were pressed with the permission of the National Assembly. Prior to obtaining such permission, prosecutors could not propose a preliminary investigation or draw up an indictment. For indictable criminal offences and for offences that did not constitute malfeasance in office, ministers were tried according to the procedure provided for by the *Criminal Proceedings Act* by ordinary courts. Charges were pressed by the competent prosecutor who, upon proposing a preliminary investigation or drawing up an indictment, was obligated to present them to the National Assembly for its information. For indictable violations, ministers were tried according to the standard procedure. The penal sanctions of confinement or detention provided for by the law for such violations were replaced as follows: instead of detention, a maximum fine of 500 leva; instead of confinement for a maximum term of three months, a maximum fine of 2000 leva; instead of longer confinement, a maximum fine of 5000 leva. If the laws provided for confinement or fine or detention, only the penal sanction of fine was imposed. For non-indictable criminal offences and violations, ministers were tried according to the standard procedure. If a minister so charged was in office, the case was to be suspended and resumed at a time when the minister so requested or when he vacated office. The prescriptive periods and the procedural time limits ceased to run for the time of the suspension. The court was obligated to notify the minister of the suspension of the case and to send him a duplicate copy of it. Every minister was triable under this Act, both while in office and after resigning. A duplicate of every sentence of a minister that had become enforceable was sent to the National Assembly.

### **The Statutory Ordinance on Trial by a People's Tribunal of 6 October 1944 and the Revenge against the 'Fascist Atrocities'**

In the reasons to the *Statutory Ordinance on Trial by a People's Tribunal of the Culprits for the Embroilment of Bulgaria in the World War against the Allied Nations and for the Atrocities Related to the Said War*, we read the fol-

lowing:

*9 September 1944 saw the toppling of the government which, as of 1 January 1941, had set our state ship on a disastrous course and faced our country with a catastrophe. Bulgaria was thrown into the World War against the allied democratic states for purposes foreign to the national interests. Our country was aligned with Germany, which started the war for the enslavement of the European nations and for world domination. Bulgaria was reduced to the position of a German vassal. The people were deprived of any possibility to influence the conducted policy. The parliamentary majority did not represent the people: it turned the legislature into an executive body of the government. The deputies from the majority were selected by the government and imposed by the police in elections where there was no freedom of political organization, of speech, and of the press. Through brutal terror, through death sentences under the Defence of the State Act, concentration camps, terrible torture at police stations, indiscriminate killings and fires in towns and villages, through extermination of the brave popular fighters-Partisans in the forests – every popular resistance was suppressed.*

*By the act of 9 September, it has become possible to undertake efforts to deflect the fateful danger that is threatening our country. A decisive step will be taken by declaring officially that the Bulgarian people has nothing to do with the culprits for the policy conducted until 9 September and that it condemns them and their policy. This will be done through the judgment of a people's tribunal, which is demanded by the people and which is a supreme state interest. This judgment will bring satisfaction to the tormented people which have suffered and will continue to suffer the consequences of the conducted policy. This judgment will strengthen Bulgaria's positions before the allied democratic states and restore her good name before the freedom-loving nations in the world.*

(Motivi kam Naredbata-zakon..., 1994, p.1)

Thus, a People's Tribunal was set up to try the perpetrators of crimes provided for by the Statutory Ordinance: ministers in the governments in power from 1 January 1941 to 9 September 1944, members of the Twenty-Fifth Ordinary National Assembly, and other civilian or military officials. The following were punishable by temporary close confinement or close confinement for life, or by death and a maximum fine of 5 000 000 leva: persons who, after 1 January 1944, had jeopardized the security of the State or national interests by concluding international treaties with belligerent states or by deciding to declare war and to conduct a war; senior officials who, after 22 June 1941, had ordered actions violating Bulgaria's declared neutrality with regard to the Soviet Union, thereby aggravating Bulgaria's international position; persons

who, in connection with the declaration and conduct of war against Britain and the USA, had not fulfilled their official duty by failing to take measures to protect the people and the State from moral and material harm; persons who, by their actions, writings, speech or other means, had actively and significantly contributed to the commission or pursuit of the said acts; persons who had used their contacts with the authorities or with the belligerent states, or their official position, to obtain undue benefit for themselves or for another; persons who had been in the service of Germany or its allies, having actively and significantly contributed to the pursuit of these states' policy to the detriment of the interests of the Bulgarian people; persons who had sent Bulgarian troops to Yugoslavia and Greece to persecute these countries' national liberation troops, as well as military personnel who, by their acts of commission or omission, had endangered Bulgarian troops; persons who, in connection with the conducted foreign and domestic policy, had ordered, incited or committed murder, grievous bodily harm, arson, pillage, robbery, and torture; persons who had served and reported to the police, the gendarmerie, and the army information related to the safety or vital interests of the Partisans or fighters for the people's liberties; investigating magistrates, prosecutors, and judges who had shown, in preliminary investigations or through the issued sentences, open partiality and gross overzealousness in supporting the terror, lawlessness and violence conducted against the people.

Those who had concealed or helped someone to escape from the People's Tribunal, although they knew or should have guessed that the said person had committed a crime, were punishable by close confinement for a term of five to fifteen years; spouses, relatives by direct ascending or descending line, and siblings, were not criminally responsible. Those found guilty were deprived of civil and political rights temporarily or for life. Their property was confiscated and forfeited, in full or in part, to the Exchequer. If a person died before or after charges were pressed against him, his property could still be confiscated.

The Council of Ministers appointed a chief people's accuser and the requisite number of accusers. They collected, as quickly as possible, the requisite evidence, pressed charges, determined the detention measure, drew up the indictment, and presented the case for the prosecution at the People's Tribunal. The People's Tribunal consisted of people's judges – Bulgarian subjects of legal age of both genders, elected by the regional committees of the Fatherland Front, and judges appointed by the minister of justice. Each committee elected thirty people's judges from among the best citizens in towns and villages. The panels of judges were appointed as follows: one or more panels made up of thirteen members were appointed to try ministers and members of the National Assembly; four of the judges were appointed by the minister of justice and nine were nominated by the regional committees of the Fatherland Front. The panels sat in Sofia. The most senior of the appointed judges served as president; depending on the number of defendants, panels were appointed for each region; they consisted of one appointed judge who served as president, and four nomi-

nated by the respective regional committee of the Fatherland Front. These panels sat in the regional centres or in one of the district centres; if any one of the appointed judges could not participate, the said judge was replaced by another.

The indictments were sent to the competent tribunal, which handed duplicate copies to the defendants; they could make objections and present proof within seven days. The tribunal appointed a hearing as soon as possible, trying the case freely, by reason and conscience. Defendants could be tried in absentia. Each defendant was entitled to a maximum of two defenders. The tribunal was obligated to conclude the cases filed with it by 1 January 1945 at the latest. After completing the trial proceedings, hearing the prosecution, the defence, and the final plea of the defendant, the tribunal handed down a reasoned judgment that was not subject to appeal and approval. The judgments were executed immediately by the prosecutors at the regional courts.

The people's accuser imposed a preventive attachment and garnishment on the property of the indicters. The heirs were obligated to declare the entire property of a deceased person within fifteen days. Third parties that possessed or held such property were obligated to declare it within seven days. Those who failed to do so were punishable by close confinement and a maximum fine of 1 000 000 leva. Any concealed property was confiscated. All alienation and creations of real rights to the property of the sentenced person, effected after 1 June 1944, were null as to the State *ex lege*. Until proved otherwise, property transferred after 1 January 1941 to spouses, relatives by direct ascending or descending line, siblings or those descending from them, was considered to be the property of the accused. This also held for property acquired after 1 January 1941 by spouses and underage children, save for inherited property.

### **The Statutory Ordinance on Defence of People's Power of 17 March 1945 and the Danger of 'Trespasses by the Class Enemy'**

According to socialist lawyers, the *Statutory Ordinance on Defence of People's Power* adopted on 17 March 1945 was designed to guarantee the defence of the new regime against criminal 'trespasses', which were classified into several groups. First were the class enemy's direct trespasses on people's power, on the newly established political organization of government as a form of proletarian dictatorship. Hence the Statutory Ordinance provided strict penal sanctions for: formation, leadership and membership of an organization which aimed at overthrowing, subverting or weakening people's power; any attempt, with the same aim, to conduct a coup d'état, revolt, riot, terrorist acts or crimes endangering the general public; participation in a group formed to commit any of the said crimes; counter-revolutionary (anti-State) agitation and propaganda; acts directed against the combat capability and morale of the Bulgarian army. Second, crimes against the economic foundations of people's power, the developing socialist property and economic activity in line with the domestic policy of the Bulgarian Communist Party (BCP). Here the following crimes

were codified as political crimes: subversive acts involving trespasses on resources, buildings and facilities, destruction or looting of food stocks; acts of sabotage of private owners and public officials; elements of wrecking (*vreditelstvo*\*) were also included. Third, penal sanctions were provided for aiding and concealment as well as for failure to denounce all crimes included in the Statutory Ordinance. Finally, the Statutory Ordinance classified as statutory offences the elements of acts that did not constitute crimes against the State but materially affected the consolidation of people's power: damage-inflicting excess of official power and trespasses on the life and health of military personnel and members of the police force (the People's Militia).

The Statutory Ordinance provided for capital punishment (or, alternatively, life imprisonment) for all direct trespasses of the class enemy on people's power. Close confinement for life or temporary close confinement was provided for counter-revolutionary (anti-State) agitation and propaganda; crimes directed against the combat capability of the Bulgarian army; aiding and concealment. The penal sanction for subversion and sabotage was death or life imprisonment, and for wrecking and failure to denounce a crime, as well as for spreading fascist literature and harming 'the good relations with a friendly State' – ordinary confinement. Damage-inflicting excess of official power was punishable by close confinement for a maximum term of five years, and killing or causing grave bodily harm to a military member or police officer – by death or life imprisonment. All persons convicted under this Statutory Ordinance were deprived of civil and political rights. They could also be sentenced to pay a fine of up to 500 000 leva. All corporeal things intended or used for the perpetration of a crime were to be forfeited. The sentence for crimes punishable by death, close confinement for life or temporary close confinement included confiscation of property.

By the act adopted on 7 April 1948, all provisions of the *Statutory Ordinance on Defence of People's Power* were included into the *Penal Act* of 21 February 1896, whose Chapter One was revoked as it contained provisions related to the monarchy, which was abolished on 15 September 1946. They concerned crimes involving violent acts and insults against the King and the members of his family. They were replaced with the provisions of the *Statutory Ordinance on Defence of People's Power*, which were included under the heading 'Treason'. First in this series of crimes were formation and membership of an anti-State organization, and attempts against the established regime. Any attempt to conduct a coup d'état, revolt, riot, terrorist acts or crimes endangering the general public by a person, irrespective of whether the said person belonged to an organization or group, was also qualified as a crime. In such cases, the

\* Translator's note: *Vreditelstvo*, lit. 'inflicting damage', is a crime specified in the Penal Code of the Soviet Union in the Stalin era. It is alternatively translated as 'wrecking', 'undermining', 'counter-revolutionary sabotage' or 'sabotage', depending on the context.

penal sanctions for an attempted or consummated crime were the same: leaders and organizers were punishable by death and members by death or close confinement. Next came the provisions providing for capital punishment or life imprisonment for subversive acts. Here the following were codified as crimes: entry into or enlistment in an armed group; propagation or praise of treasonous crimes, racial hatred, spread of fascist literature or insubordination to the people's army or police; criminal acts aimed at lowering the combat capability and morale of the people's army; spread of false rumours, announcements and slanderous assertions regarding the army, the regime, public peace, and relations with a friendly State; formation and participation in a group with the purpose of causing disturbances and perpetrating crimes in a friendly State, as well as harming relations with a foreign State. In the third place, there were provisions qualifying as crimes the aiding and concealment of all crimes qualified as treason and punishable by close confinement; this did not apply to all relatives by direct ascending or descending line, spouses, and siblings. Life imprisonment or capital punishment was provided for killing or causing bodily harm to an official, a military member or police officer in the line of duty. Sabotage was also codified as a crime, punishable by close confinement, and in particularly grave cases, by death or life imprisonment. Those who renounced participation in an underground organization and voluntarily surrendered to the authorities were released from criminal responsibility; however, if the organization had become operational, they were punished applying the most mitigating circumstances. Failure to denounce a treasonous crime was also qualified as treason: whoever knew that any of the said crimes was being planned or had been committed and failed to report this to the authorities was punishable by ordinary confinement. Finally, there were elements classifying as statutory offences any act of printing illegal works and damage-inflicting excess of official power, as well as a provision providing for deprivation of civil and political rights, confiscation of the instrumentalities of the crime, and confiscation of the property of those convicted of treason. The sentence for treason could also include a fine of up to 500 000 leva.

By contrast, only three supplements were introduced into Chapter Two, 'Betrayal and Espionage', which however were very important. First, the disclosure of a state secret was codified as espionage, punishable by death or life imprisonment or close confinement for a minimum term of ten years. Second, the disclosure or gathering of military, economic or other information that did not constitute a state secret but the disclosure of which was prohibited or could harm national interests, was punishable by close confinement for a maximum term of ten years. Finally, the following new provision was included:

*Whoever perpetrates acts against the military capacity of the country, state sovereignty or inviolability, or crosses to the side of the enemies of the People's Republic, shall, unless the offence is subject to a more severe*

*penalty, be punishable by temporary close confinement or close confinement for life, and in particularly important cases, by death.*

(Zakon za izmenenie..., 1948, p.42)

### **The Penal Act of 13 February 1951 and the *Mens Rea* of ‘Counter-Revolutionary Crimes’**

The *Penal Act* adopted on 13 February 1951 was the first act which, according to socialist lawyers, united the penal provisions of socialist law into a systematic whole. Among the reasons of those who moved it, we read the following:

*This is indeed a new law not just because it is based on socialist principles. It is also new in its content, in its form, in the way it systematizes and structures the legal standards. What is most important is that this law is based on socialist notions of the two fundamental concepts: crime and punishment. The special elements classifying acts as statutory offences are also new, being the product of the new conditions in the P[eople's] R[epublic of] B[ulgaria]. The Penal Act has the task of safeguarding the PRB and the social system and legal order established in it. This task consists in preserving the PRB as a socialist state created as the result of the struggles conducted by the Bulgarian people against the fascist regime and of the victory of the people's armed uprising on 9 September 1944.*

(Motivi kam Nakazatelnia zakon, 1951, p.1)

What is the common denominator – counter-revolutionary *mens rea* – of political crimes (crimes against the State) as codified in Chapter One, ‘Crimes against the People’s Republic’, of the 1951 *Penal Act*? To answer this question, we need to problematize the concept of ‘guilt’ which underlies the form of rationality of socialist law. First, we must conceptualize the connection between danger and guilt as understood in socialist law. According to socialist law, guilt was a mental attitude of the perpetrator towards the crime, towards its danger to society and to public order, towards the endangering of socialist relations. In addition to being associated with an unlawful and punishable act, guilt was derivative, complementary, and dependent on the danger. It was not guilt but the danger to society that was the first and basic circumstance that the court had to take into account in determining punishment. Respectively, the degree of guilt was rooted in the degree to which the act and the perpetrator posed a danger to society. Second, the socialist concept of guilt was a class concept, not a neutral or general one. It was the class essence of guilt that was determined by its connection to the social danger of the act. In its turn, the danger determined the political character of the perpetrator’s subjective attitude, and hence the reasons for his or her punishability. The danger of the act also determined the social essence of guilt. The political content of guilt was of prime importance, parallel

with the changes in the class essence of crime in the transition from capitalism to socialism. Third, socialist law arrived at an understanding of the mental attitude of guilt that showed not only its subjective forms but also its objective content. Guilt was the mental attitude of the subject towards the perpetrated crime which, in its combination of intellectual and willful aspects, went counter to the interests of society. In short, *mens rea* and negligence also had to encompass the awareness of the negative consequences of an act. Without awareness of the social danger or at least without the possibility of such awareness, one could not speak of guilt in criminal law. Fourth, in socialist law guilt was not limited to the forms of *mens rea* and negligence. Awareness of social danger was also one of the factors determining the types of guilt. It was this awareness that gave the concept of guilt its political character and excluded its understanding as a formal concept. No one could be liable without having foreseen or at least been able to foresee the class essence of his or her act. The character and degree of guilt, and hence the type of punishment, were directly dependent on the degree of class danger. Finally, it is against this background that it became possible to construct a new type of *mens rea* that was unprecedented in the history of Bulgarian law: counter-revolutionary *mens rea*. Unlike the other types, this *mens rea* (direct, possible, premeditated and affective) did not characterize guilt as the subjective side of every possible crime; it was relevant only to the perpetration of a strictly specified type of acts: the crimes against the People's Republic (treason, betrayal, and espionage; wrecking, subversive acts, and sabotage; other crimes; general crimes [abetting, conspiracy, preparation, concealment, failure to denounce a crime]; crimes against another State of the working people) as specified in Chapter One of the *Penal Code* of 1951.

Here is the substantive logic of the socialist legislator: on the objective side, counter-revolutionary crimes (crimes against the Socialist State) were characterized by the fact of having a negative impact on the very foundations of socialist society. They were acts that could subvert or weaken people's power, creating a danger of its overthrow. On the subjective side, they were possible only if there was criminal intent; they could not be committed through negligence. These crimes could not only objectively affect people's power; they were always perpetrated with an awareness of their negative impact. That is why the character of the act also affected the *mens rea* which, in its socio-political essence, was counter-revolutionary. It consisted in the awareness that the perpetrator was perpetrating an act directed towards the overthrow, subversion or weakening of people's power. If the objective aspects of two crimes coincided, socialist judges had to make a distinction based on the subjective aspect, that is to say, on whether the act had been perpetrated with a counter-revolutionary *mens rea*. Thus, it turns out the latter is a 'meta *mens rea*' with respect to the other types, as well as with regard to the concept of guilt, for it served as the ultimate criterion in the judicial qualification of an act. But who was in fact the perpetrator of crimes against the People's Republic? Any person

who perpetrated a counter-revolutionary crime was, and could not fail to be, an enemy of the people. The perpetrator of every counter-revolutionary crime was always the class enemy; conversely, the perpetration of a counter-revolutionary crime showed that its perpetrator was a class enemy.

Here is a brilliant example that demonstrates the legal logic on which the socialist concept of guilt is based. It shows how, given the same *actus reus* of the crime, one and the same act could have a different impact on social development depending on the type of *mens rea*, that is to say, whether it was perpetrated through negligence, or with an ordinary or counter-revolutionary *mens rea*. This was also the scientific opinion of socialist lawyers on causing death by firearms:

*The act in question is socially dangerous to a different degree depending on whether it was perpetrated intentionally or through negligence, with an ordinary or counter-revolutionary mens rea, with venal motives or in an affective state. The real danger of such acts is not always directly proportional to the immediately caused damage because, if the shot was fired through negligence by an officer training soldiers, then the socially dangerous result is the realization of a heightened probability of the occurrence of such consequences due to the specific character of the professional activity involved. On the other side, the intentional perpetration of such an act indicates that it is an expression of an in itself dangerous determination of the doer to harm socialist social relations, that it is the fruit of a purposive activity which not only increases the probability of the onset of the respective harmful consequences, but also creates a possibility for causing additional ones. It is indisputable that when a shot is fired accidentally it is much less likely to harm the life or health of citizens than if it is fired consciously and deliberately. On the third side, the perpetration of such an act with a counter-revolutionary mens rea reveals that it is directed not only against the life and health of citizens, but also against the political foundations of people's power; this shows that it is not merely a manifestation of bourgeois remnants in the mind of citizens, but also a manifestation of class struggle that will affect above all the rule of the working class, and then also the life of citizens. The existence of counter-revolutionary mens rea indicates that this is not an accidental manifestation of lingering remnants of the bourgeois mentality; it is a unit of the overall chain of activity against the State by the toppled bourgeoisie.*

(Pavlov, 1959, p.453)

Here is how the following crimes are defined in the 1951 *Penal Act*:

What is treason? Whoever forms or leads an organization or group whose aim is to overthrow, subvert or weaken people's democratic power in the People's Republic of Bulgaria through a coup d'état, revolt, riot, terrorist acts or

crimes endangering the general public, shall be punishable by deprivation of liberty for a term of twenty years or by death. Members of such an organization or group shall be punishable by deprivation of liberty for a minimum term of five years. If the organization or group is armed, the punishment shall be deprivation of liberty for a minimum term of ten years, and for members who have gone underground, for a minimum term of fifteen years or by death. Whoever, irrespective of whether he belongs to such an organization or group or not: participates in an attempted coup d'état with a view to forcible seizure of power; participates in a revolt or armed uprising against the authorities; commits terrorist acts against agencies of state power or against public functionaries or commits a crime endangering the general public, shall be punishable by deprivation of liberty for a minimum term of ten years or by death; the leaders and organizers shall be punishable by death.

What is betrayal? Whoever incites a foreign State or public group abroad to war or to some other hostile act against the People's Republic, shall be punishable by deprivation of liberty for a minimum term of ten years. If war or a hostile act follows as a result, the punishment shall be death or deprivation of liberty for a term of twenty years. Any Bulgarian citizen, who voluntarily joins a hostile army or armed group during wartime or takes part in a hostile military action against the People's Republic, shall be punishable by death. Whoever perpetrates an act against the military capacity of the country with the purpose of lowering the combat capability and morale of the armed forces, shall be punishable by deprivation of liberty for a minimum term of ten years, and in particularly grave cases, by death. Whoever perpetrates an act against the sovereignty of the People's Republic or against the inviolability of its territory or crosses to the side of its enemies, shall be punishable by deprivation of liberty for a maximum term of fifteen years.

What is espionage? Whoever, in the interest of a foreign State or of an outlawed organization, discloses or attempts to disclose or gathers information with the purpose of disclosing a state secret, shall be punishable by death or by deprivation of liberty for a minimum term of ten years. Whoever places himself at the disposal of a foreign state or of an outlawed organization to serve it as a spy, shall be punishable by deprivation of liberty for a minimum term of five years. 'State secret' shall be understood as such military, political, economic or other facts, information and objects which have to be kept secret from another country in order to guarantee the interests of the People's Republic and especially its safety. The following circumstances shall be considered as aggravating: where the state secret has been entrusted to the culprit or to whom it has become known through his office or work, or through the use of force or through theft, appropriation or in a deceitful manner, or when the act of espionage is committed during wartime.

What is wrecking (*vreditelstvo*)? Whoever, with the purpose of impeding supplies in the country, disturbing society, causing difficulties for the regime or

undermining its authority, disrupts or subverts the industry, agriculture, transport, trade, monetary circulation, the banking system or separate economic enterprises by using state agencies or enterprises or by obstructing their operation, shall be punishable by deprivation of liberty for a minimum term of ten years, and in particularly grave cases, by death.

What is a subversive act? Whoever, with the same purpose, damages, destroys or steals military supplies and equipment, means of public communication or transportation, installations or machines, mining facilities, public buildings, roads, bridges, water conduits, gas pipelines, power lines, construction projects, supplies and other materials serving for public use, shall be punishable by deprivation of liberty for a maximum term of twenty years, and in particularly grave cases, by death.

What is sabotage (*sabotazh*)? Whoever, with the same purpose, fails to fulfil, in full or in part, or negligently fulfils economic duties or tasks with which he has been entrusted, shall be punishable by deprivation of liberty for a minimum term of one year, and in particularly grave cases, by deprivation of liberty for a minimum term of ten years or by death.

Which are the other crimes against the People's Republic? Whoever makes public offensive, slanderous or false assertions damaging the reputation of the Bulgarian people or of the People's Republic, shall be punishable by deprivation of liberty for a term of one to five years and a maximum fine of 8000 leva. Whoever insults the coat of arms, flag or national anthem of the People's Republic, shall be punishable by deprivation of liberty for a maximum term of one year. Whoever voices an opinion, publishes circumstances or perpetrates acts that may harm the good relations with a foreign State or undermine its prestige, shall be punishable by deprivation of liberty for a maximum term of five years. Whoever preaches a fascist or any other anti-democratic ideology or imperialist aggression, spreads or conceals fascist or any other anti-democratic literature, shall be punishable by deprivation of liberty for a maximum term of five years.

Which are the general crimes against the People's Republic? Whoever preaches, praises or approves the perpetration of crimes against the People's Republic or openly incites to such, shall be punishable by deprivation of liberty for a maximum term of ten years. Conspiracy to commit the said crimes shall be punishable by deprivation of liberty for a minimum term of five years; organizers and leaders of such conspiracies shall be punishable by deprivation of liberty for a minimum term of ten years. An accomplice in a conspiracy who, prior to the commission of any act other than the agreement to conspire, and before it is discovered, leaves the conspiracy and informs the authorities, shall not be punishable. Preparation of such crimes shall be punishable by deprivation of liberty for a maximum term of fifteen years and a maximum fine of 20 000 leva. Whoever shelters or conceals the perpetrator of a crime against the People's Republic, shall be punishable by deprivation of liberty for a maximum term of fifteen years. If the act was committed through negligence, the punish-

ment shall be deprivation of liberty for a maximum term of three years. Failure to denounce a crime against the State, known to be in preparation or carried out, shall be punishable by deprivation of liberty for a maximum term of three years. Any official who fails to denounce a crime against the State committed by a subordinate, shall be punishable by deprivation of liberty for a maximum term of five years. Whoever allows the printing of incriminated works, shall be punishable by deprivation of liberty for a maximum term of ten years, or by a maximum fine of 12 000 leva if the act was committed through negligence.

Which are the crimes against another State of the working people? The punishments provided for the crimes against the People's Republic shall also apply to those who commit the same crime against another State of the working people or a military force operating together with the Bulgarian military force. The sentence for counter-revolutionary crimes shall include deprivation of civil and political rights, and total or partial confiscation of property.

### **The Penal Code of 2 April 1968 and the Defence of 'Developed Socialist Society'**

On 2 April 1968 a new *Penal Code* of the People's Republic of Bulgaria was adopted. The question is: what state policy had to be implemented through this law, which necessarily corresponds to 'the established developed socialist society and guarantees its effective defence'? The answer is: the economy of penal repression in the Bulgarian version of classical socialism contained three main requirements. The first was to use the minimum amount of repression possible, optimally combining coercive and educative elements in punitive measures. It was assumed that in socialist society crime rates tended to decrease, as a result of which the sphere of state intervention in fighting crime narrowed down while the sphere of application of the moral factor widened. The second was to maximally increase the efficiency of educative influence by differentiating criminal responsibility and improving the system of legal sanctions. Therefore, severe punishments were provided for grave crimes and dangerous recidivists, while for lighter offences there was a possibility for judicial intervention without isolating the perpetrator from society. The third was to urgently increase the role of the socialist public in the fight against crime by replacing penal repression with measures exercising an educative influence. The result: personal persuasion and educative influence were assumed to be the key elements for successful application of the legal standards.

The question is: which were the most significant changes in the structure and content of Chapter One, 'Crimes against the People's Republic', that corresponded to the new economy of penal repression characteristic of classical socialism?

First, just as in the 1951 *Penal Act*, so too in the 1968 *Penal Code* treason is the gravest political crime. According to the 1968 *Penal Code*, whoever participates, with the purpose of overthrowing, subverting or weakening state

power in the People's Republic, in an attempted coup d'état, or in a revolt, or in an armed uprising, shall be punishable by deprivation of liberty for a term of ten to twenty years or by death. Whoever takes the life, with the same purpose, of a state or public functionary, shall be punishable by deprivation of liberty for a term of twenty years or by death; the punishment for causing grave bodily harm to a state or public functionary shall be deprivation of liberty for a term of five to fifteen years. Perpetration of a crime against the State endangering the general public shall be punishable by deprivation of liberty for a term of ten to twenty years or by death.

Second, as in the 1951 *Penal Act*, are the political crimes of betrayal and espionage. According to the 1968 *Penal Code*, whoever incites a foreign State or public group abroad to war or to another hostile act against the People's Republic, shall be punishable by deprivation of liberty for a term of five to fifteen years. The same punishment is provided for those who perpetrate an act with the purpose of provoking war or another hostile act against the People's Republic. Any Bulgarian citizen who, during wartime, voluntarily joins a hostile army or armed group or takes part in a hostile military action against the People's Republic, shall be punishable by deprivation of liberty for a term of ten to twenty years or by death. Any Bulgarian citizen who leaves the country or refuses to return to the country, with the purpose of serving a foreign State or organization to the detriment of the People's Republic, shall be punishable by deprivation of liberty for a term of three to ten years. If this person is a military serviceman, the punishment shall be deprivation of liberty for a term of five to fifteen years.

Whoever discloses, or gathers with the purpose of disclosing to a foreign State or foreign organization, information that constitutes a state secret, shall be punishable by deprivation of liberty for a term of ten to twenty years or by death. If the doer voluntarily discloses the offence committed to the authorities, the doer shall be punished applying mitigating circumstances. Whoever places himself at the disposal of a foreign State or of a foreign organization to serve it as a spy, but has not perpetrated the above-mentioned act, shall be punishable by deprivation of liberty for a term of five to fifteen years. The perpetrator shall not be punishable if he voluntarily surrenders to the authorities.

Third in the 1968 *Penal Code* are the political crimes of subversion and sabotage (*vreditelstvo*). It must be noted that unlike the 1951 *Penal Act*, here the term *sabotazh* is absent, while subversion is qualified as a more significant crime than sabotage (*vreditelstvo*). According to the 1968 *Penal Code*, whoever, with the purpose of weakening state power or causing it difficulties, destroys or damages buildings, construction projects, installations, facilities, means of transportation or communication, or important public property, shall be punishable by deprivation of liberty for a term of five to fifteen years, and in particularly grave cases, by deprivation of liberty for a term of twenty years or by death. Whoever, with the same purpose, disrupts or subverts the industry, transport, agriculture, the monetary and banking system, other branches of the

economy or economic enterprises, by impeding their activity or by not fulfilling important economic tasks with which he has been entrusted, shall be punishable by deprivation of liberty for a term of three to ten years, and in particularly grave cases, by deprivation of liberty for a term of five to fifteen years.

Fourth, the *Penal Code* of 1968 contains a new section, 'Anti-State Agitation and Propaganda', which is not found in the 1951 *Penal Act*. According to the provisions in this section, whoever, with the purpose of weakening state power in the People's Republic or causing it difficulties, preaches a fascist or any other anti-democratic ideology, praises the perpetration of crimes against the People's Republic or incites to such crimes, spreads slanderous assertions about the State and social system, or spreads literature with such content, shall be punishable by deprivation of liberty for a maximum term of five years.

Fifth in the 1968 *Penal Code* is the section titled 'Other Crimes'. According to its provisions, whoever forms or leads an organization or group which aims to perpetrate crimes against the People's Republic, shall be punishable by deprivation of liberty for a term of three to twelve years; for a member of such an organization or group, the punishment shall be deprivation of liberty for a maximum term of ten years. If the organization or group has been created on the instruction or with the assistance of a foreign State, the punishment shall be deprivation of liberty for a term of ten to fifteen years in the first case, and from three to twelve years in the second. A member of such an organization or group, who voluntarily surrenders to the authorities and reveals the existence of the organization or group before another crime has been committed, shall not be punishable. Planning and preparation of a crime against the People's Republic shall be punishable by deprivation of liberty for a maximum term of ten years. The same punishment is provided for those who shelter or conceal a perpetrator of a crime against the State. Failure to denounce a crime against the People's Republic, known to be in preparation or carried out, shall be punishable by deprivation of liberty for a maximum term of three years. These provisions shall not apply to the spouse, relatives by direct ascending or descending line, and siblings of the concealed person and their spouses.

Sixth, the last section in both the 1951 *Penal Act* and 1968 *Penal Code* is called 'Crimes against Another State of the Working People'. According to this section, the punishments provided for the crimes against the People's Republic shall also apply to those who commit the same crime against another State of the working people or a military force operating together with the Bulgarian military force.

The sentence for crimes against the People's Republic may also include deprivation of civil and political rights, and total or partial confiscation of property. The amendments to the *Penal Code* adopted on 9 April 1982 also provided for an additional punishment of compulsory (re)settlement for a term of one to three years after serving the prison sentence.

To sum up: the strategy of the authorities aimed at increasing the social

effectiveness of penal sanctions, which had to correspond to the new historical conditions resulting from the construction of a developed social society in Bulgaria. According to the 1951 *Penal Act*, punishment is imposed with the purpose of: rendering enemies of the people harmless; depriving the perpetrator of the possibility of committing further crimes; correcting and re-educating the perpetrator to observe the regulations of socialist society; exercising an educating influence on other members of society. The 1968 *Penal Code* stipulates that punishment is imposed with the purpose of: correcting and re-educating the sentenced person to observe the laws and regulations of socialist society; exercising a warning influence on him and depriving him of the possibility of committing further crimes; and exercising an educating and warning influence on the other members of society. The differences are more than obvious: according to the 1968 *Penal Code*, special and general prevention is achieved, first, through an educating influence; then through a warning influence; and only as a last resort, through the deterrent effect of forced confinement. Hence also the practical need for differentiating the methods, for a greater variety of the possible penal sanctions: extending the range of penal sanctions that do not include deprivation of liberty; strict procedures for determining the punishment for repeat offenders and recidivists; flexible rules for applying educational measures vis-à-vis minors; more possibilities for conditional sentencing and early release; wide application of release from service of sentences through their regulated replacement with measures exercising public influence. The motive: this variety of penal sanctions was aimed at making fuller use of the potential possibilities of punitive repression in the combat of crime with a view to improving its efficiency while applying the mildest possible forms of educative influence. This is also evidenced by the logic of the socialist legislator who, in constructing the system of penal sanctions in the 1968 *Penal Code*, was guided by the actual state and historical dynamics of crime. There had been a relative stability, and in separate periods, even an increase in the absolute number of some types of crime. This had necessitated keeping the most severe punishments for political crimes but also introducing new measures that would contribute to the attainment of the objectives of the law while minimizing the use of repression. The legislative result: the bulk of the hitherto applied punishments remained the same; the general 'deprivation of rights' was replaced with deprivation of specific rights; a new penal sanction was introduced: compulsory (re)settlement.

### **The Penal Code after 10 November 1989 and the Changes in 'Crimes against the Republic'**

As is to be expected, after 10 November 1989 (insofar as a new comprehensive penal code has not been adopted to date) some sections and provisions of the 1968 *Penal Code* were revised, mainly along the following two lines: the respective acts were qualified as crimes against the Republic, and the penal sanctions were reduced and made relevant to the new system of punishments

(life imprisonment with or without the possibility of commutation, deprivation of liberty, probation, confiscation of property, fine, deprivation of the right to hold specified state or public offices, to exercise specified professions or activities, or to hold already received orders, titles or awards, deprivation of military rank, public censure).

The question is: which are the old and the new political crimes that form the historically specific face of contemporary Bulgarian society? To answer this question, I will analyze the structure and content of Chapter One of the Special Part of the effective *Penal Code*, titled 'Crimes against the Republic'.

The heading of Section I is unchanged: 'Treason', and the elements of the acts which it classifies as statutory offences literally repeat the political crimes characteristic of the communist regime in Bulgaria. The only difference is that the death penalty has been replaced with life imprisonment with or without the possibility of commutation. According to the provisions in this section, whoever, with the purpose of overthrowing, subverting or weakening state power in the Republic, takes part in an attempted coup aimed at forcible seizure of power, or in a revolt, or in an armed uprising, shall be punishable by deprivation of liberty for a term of ten to twenty years, or by life imprisonment with or without the possibility of commutation. Whoever, with the purpose of subverting or weakening state power in the Republic or causing it difficulties, takes the life of a state or public functionary, shall be punishable by deprivation of liberty for a term of twenty years or by life imprisonment with or without the possibility of commutation. The punishment for causing grievous bodily harm to such a person shall be deprivation of liberty for a term of five to fifteen years. Whoever, with the same purpose, causes through arson, explosion, flooding or any other act endangering the general public, the death of one or more persons, shall be punishable by deprivation of liberty for a term of fifteen to twenty years or by life imprisonment with or without the possibility of commutation. Here we find a 'new' crime, which was codified with the amendments to the Penal Code adopted on 28 May 1985: kidnapping and hostage-taking. Whoever takes someone hostage, making the release of the hostage conditional on the fulfilment of a certain condition by the State, by an organization, or by a third party, shall be punishable by deprivation of liberty for a term of three to ten years. Where the perpetrator threatens that if the condition set by him is not fulfilled he will cause the death of or bodily harm to the hostage, the punishment shall be deprivation of liberty for a term of five to fifteen years.

The heading of Section II is also unchanged: 'Betrayal and Espionage', and so are half of the elements of the acts which it classifies as statutory offences. Betrayal: whoever incites a foreign State or public group to war or to another hostile act against the Republic, shall be punishable by deprivation of liberty for a term of five to fifteen years. Whoever takes the life of a representative of a foreign State with the purpose of causing a war or international complications against the Republic, shall be punishable by deprivation of liberty

for a term of ten to twenty years or by life imprisonment with or without the possibility of commutation. The punishment for causing grievous bodily harm to such a person shall be deprivation of liberty for a term of five to fifteen years. Whoever, with the purpose of reducing the defensive capacity of the Republic, causes mutiny or insubordination in the Bulgarian army, or desertion therefrom, or disrupts its training or its supply, shall be punishable by deprivation of liberty for a term of five to fifteen years; or, in case of serious consequences or during wartime, of ten to twenty years or life imprisonment with or without the possibility of commutation.

Espionage: whoever discloses, or gathers with the purpose of disclosing to a foreign State or to a foreign organization, information which constitutes a state secret, shall be punishable by deprivation of liberty for a term of ten to twenty years or by life imprisonment with or without the possibility of commutation. Where the perpetrator voluntarily discloses his activity to the authorities, mitigating circumstances shall be taken into consideration. Information qualifying as a state secret shall be determined by a law. Whoever places himself at the disposal of a foreign State or organization to serve it as a spy, shall be punishable by deprivation of liberty for a term of five to fifteen years. The perpetrator shall not be punishable if he voluntarily surrenders to the authorities.

Section III is again titled 'Subversion and Sabotage', and here the only difference from communist times is that the death sentence has been replaced with life imprisonment. Whoever, with the purpose of weakening state power or causing it difficulties, destroys or damages public buildings, construction projects, installations, equipment, means of transportation or communication, or other important public property, shall be punishable for subversion by deprivation of liberty for a term of five to fifteen years, or in particularly grave cases, by deprivation of liberty for a maximum term of twenty years or life imprisonment with or without the possibility of commutation. Whoever, with the same purpose, disrupts or subverts the industry, transport, agriculture, the monetary and banking system, other branches of the economy or economic enterprises, by impeding their activity or by not fulfilling the tasks with which he has been entrusted, shall be punishable for sabotage by deprivation of liberty for a term of three to ten years, or in particularly grave cases, of five to fifteen years.

Section IV is still titled 'Other Crimes'. Here the first provision is an edited version of the provision that qualified the crimes of anti-State agitation and propaganda during the communist regime: whoever preaches a fascist or any other anti-democratic ideology or forceful change of the social and state system as established by the Constitution of the Republic of Bulgaria, shall be punishable by deprivation of liberty for a maximum term of three years or by a maximum fine of BGN 5000. Whoever insults the coat of arms, the flag or the anthem of the Republic of Bulgaria, shall be punishable by deprivation of liberty for a maximum term of two years or by a maximum fine of BGN 3000. The second provision is the only new provision that did not exist during the

socialist period and which codifies, for the first time in the history of Bulgarian law, terrorism as a crime against the Republic. It was introduced into the *Penal Code* with the amendments adopted on 27 September 2002. Whoever, with the purpose of causing disturbance or fear among the population, or threatening or forcing an agency of state power, a member of the public or a representative of a foreign State or international organization to perform or omit part of his duties, commits any of the following crimes: wilful murder, grievous bodily harm, kidnapping, destruction or damage of the property of another, transmission of false calls or misleading signals for help, accident or alarm, arson, explosion, flooding, trade in arms and ammunition, damage of transport vehicles, hijacking an aircraft, endangering traffic safety, damage of means of communication, pollution of water sources, the soil or air, dissemination of toxic substances and epidemic diseases, violation of nuclear or radiation safety regulations, shall be punishable for terrorism by deprivation of liberty for a term of five to fifteen years; where death has been caused, the punishment shall be deprivation of liberty for a term of fifteen to thirty years or life imprisonment with or without the possibility of commutation. Whoever collects or provides instrumentalities for the perpetration of this crime, knowing or presuming that the said instrumentalities will be used for that purpose, shall be punishable by deprivation of liberty for a term of three to fifteen years and a maximum fine of BGN 30 000. The object of this offence shall be forfeited to the Exchequer, and, where the said object is not available or has been alienated, the cash equivalent thereof shall be awarded. This section of the *Penal Code* ends with the elements of forming, leading and participating in an organization or group which aims to commit crimes against the Republic. Here the changes after 10 November 1989 do not concern the legal description of the crimes themselves but the penal sanctions, which are less severe than those provided for under the communist regime. The punishment for forming or leading an organization or group whose aim is to commit crimes against the Republic shall be deprivation of liberty for a maximum term of twelve years, and for participating in such an organization or group – for a maximum term of ten years. A participant, who surrenders to the authorities and reveals everything he knows about the organization or group and thereby facilitates the proving of the criminal offences committed by the said organization or group, shall be punished applying exceptionally mitigating circumstances. A member of such an organization or group, who voluntarily surrenders to the authorities and reveals the existence of the organization or group before a crime has been committed, shall not be punishable. Preparation to commit treason, betrayal, subversion, sabotage or a terrorist act shall be punishable by deprivation of liberty for a maximum term of six years. The provisions on concealment and failure to report were revoked with the very first amendments to the *Penal Code* after 10 November 1989, along with those on 'offences against another State of the working people'. However, a person convicted of a crime against the Republic may still be deprived of the right to

hold specified state or public offices, to exercise specified professions or activities, or to hold already received orders, titles or awards, as well as of military rank. The court may also decree partial or total confiscation of the convicted person's property.

## REFERENCES

- Dolapchiev, N. [1945], (1994) *Nakazatelno pravo [Criminal Law]*. Sofia: Bulgarian Academy of Sciences Press.
- Konstitutsiya na Balgarskoto Knyazhestvo [Constitution of the Bulgarian Principality] [1879], (1990) In: *Balgarski konstitutsii i konstitutsionni proekti [Bulgarian Constitutions and Draft Constitutions]*. Sofia: Dr Petar Beron State Publishing.
- Motivi kam Naredbata-zakon za sadene ot naroden sad vinovnitsite za vavlichane Bulgariya v Svetovната vojna shreshtu sayuzenite narodi i za zlodeyaniyata, svarzani s neya [Reasons to the Statutory Ordinance on Trial by a People's Tribunal of the Culprits for the Embroilment of Bulgaria in the World War against the Allied Nations and for the Atrocities Related to the Said War] (1944) *Darzhaven vestnik [State Gazette]*, 219, 6 October.
- Motivi kam zakonoproekta za Nakazatelen kodeks [Reasons to the Draft Penal Code] (1956) *Izvestiya [Proceedings]*, 12, 10 February.
- Motivi kam zakonoproekta za Nakazatelen kodeks [Reasons to the Draft Penal Code] (1968) *Darzhaven vestnik [State Gazette]*, 26, 2 April.
- Motivi kam zakonoproekta za Nakazatelen zakon [Reasons to the Penal Bill] (1951) *Darzhaven vestnik [State Gazette]*, 13, 13 February.
- Motivi kam zakonoproekta za sadene i nakazanie na vinovnitsite za narodnata katastrofa [Reasons to the Trial and Punishment of the Culprits for the National Catastrophe Bill] (1919) *Darzhaven vestnik [State Gazette]*, 203, 9 December.
- Nakazatelen kodeks [Penal Code] (1956) *Izvestiya [Proceedings]*, 12, 10 February.
- Nakazatelen kodeks [Penal Code] (1968) *Darzhaven vestnik [State Gazette]*, 26, 2 April.
- Nakazatelen zakon [Penal Act] (1896) Sofia: State Publishing House.
- Nakazatelen zakon [Penal Act] (1951) *Izvestiya [Proceedings]*, 13, 13 February.
- Nakazatelni i ustroystveni zakoni [Penal and Organic Laws]* (1982) Sofia: Nauka i izkustvo.
- Naredba-zakon za ekstradatsiya i sadebna pomosht po nakazatelni dela [Statutory Ordinance on Extradition and Legal Assistance in Criminal Matters] (1935) *Darzhaven vestnik [State Gazette]*, 64, 21 March.
- Naredba-zakon za sadene ot naroden sad vinovnitsite za vavlichane Bulgariya v Svetovната vojna shreshtu sayuzenite narodi i za zlodeyaniyata, svarzani s neya [Statutory Ordinance on Trial by a People's Tribunal of the Culprits for the Embroilment of Bulgaria in the World War against the Allied Nations and for the Atrocities Related to the Said War] (1944) *Darzhaven vestnik [State Gazette]*, 219, 6 October.
- Naredba-zakon za zashchita na nardonata vlast [Statutory Ordinance on Defence of People's Power] (1945) *Darzhaven vestnik [State Gazette]*, 38, 17 March.
- Pavlov, S. (1959) *Nakazatelen protses na NRB [Criminal Proceedings in the People's Republic of Bulgaria]*. Sofia: Nauka i izkustvo.
- Zakon za izmenenie i dopalnenie na Nakazatelniya kodeks [Act to Amend and Supplement the Penal Code] (1982) *Darzhaven vestnik [State Gazette]*, 28, 9 April.

- Zakon za izmenenie i dopalnenie na Nakazatelniya kodeks [Act to Amend and Supplement the Penal Code] (1985) *Darzhaven vestnik* [State Gazette], 41, 28 May.
- Zakon za izmenenie i dopalnenie na Nakazatelniya kodeks [Act to Amend and Supplement the Penal Code] (1989) *Darzhaven vestnik* [State Gazette], 99, 22 December.
- Zakon za izmenenie i dopalnenie na Nakazatelniya kodeks [Act to Amend and Supplement the Penal Code] (1995) *Darzhaven vestnik* [State Gazette], 50, 1 June.
- Zakon za izmenenie i dopalnenie na Nakazatelniya kodeks [Act to Amend and Supplement the Penal Code] (1998) *Darzhaven vestnik* [State Gazette], 153, 23 December.
- Zakon za izmenenie i dopalnenie na Nakazatelniya kodeks [Act to Amend and Supplement the Penal Code] (2002) *Darzhaven vestnik* [State Gazette], 92, 27 September.
- Zakon za izmenenie i dopalnenie na Nakazatelniya kodeks [Act to Amend and Supplement the Penal Code] (2004) *Darzhaven vestnik* [State Gazette], 26, 30 March.
- Zakon za izmenenie i dopalnenie na Nakazatelniya kodeks [Act to Amend and Supplement the Penal Code] (2006) *Darzhaven vestnik* [State Gazette], 75, 12 September.
- Zakon za izmenenie i dopalnenie na Nakazatelniya kodeks [Act to Amend and Supplement the Penal Code] (2007) *Darzhaven vestnik* [State Gazette], [State Gazette], 38, 11 May.
- Zakon za izmenenie i dopalnenie na Nakazatelniya zakon [Act to Amend and Supplement the Penal Act] (1948) *Darzhaven vestnik* [State Gazette], 80, 7 April.
- Zakon za nakazaniyata, koito se nalagat za prestapleniya, predvideni v chl. 155 ot Konstitutsiyata [Act on the Penal Sanctions Which Are Imposed for Crimes Provided for in Article 155 of the Constitution] (1880) *Darzhaven vestnik* [State Gazette], 91, 13 December.
- Zakon za nakazaniyata, koito se nalagat za prestapleniya, predvideni v chl. 155 ot Konstitutsiyata [Act on the Penal Sanctions Which Are Imposed for Crimes Provided for in Article 155 of the Constitution] (1924) *Darzhaven vestnik* [State Gazette], 78, 9 July.
- Zakon za nakazatelnoto sadoproizvoidstvo [Criminal Proceedings Act] (1897) *Darzhaven vestnik* [State Gazette], 77, 7 April.
- Zakon za sadene i nakazanie na vinovnitsite za narodnata katastrofa [Trial and Punishment of the Culprits for the National Catastrophe Act] (1919) *Darzhaven vestnik* [State Gazette], 203, 9 December.
- Zakon za sadene na ministrите [Trial of Ministers Act] (1924) *Darzhaven vestnik* [State Gazette], 84, 17 July.
- Zakon za zadalzheniyata i dogovorite [Obligations and Contracts Act] (1892) *Darzhaven vestnik* [State Gazette], 268, 5 December 12.