

Penn State International Law Review

Volume 14
Number 3 *Dickinson Journal of International Law*

Article 8

5-1-1996

Bulgaria

Svetla Konstantinova

Follow this and additional works at: <http://elibrary.law.psu.edu/psilr>

 Part of the [Comparative and Foreign Law Commons](#)

Recommended Citation

Konstantinova, Svetla (1996) "Bulgaria," *Penn State International Law Review*: Vol. 14: No. 3, Article 8.
Available at: <http://elibrary.law.psu.edu/psilr/vol14/iss3/8>

This Article is brought to you for free and open access by Penn State Law eLibrary. It has been accepted for inclusion in Penn State International Law Review by an authorized administrator of Penn State Law eLibrary. For more information, please contact ram6023@psu.edu.

Bank Secrecy: The Law and Practice In Bulgaria

Svetla Konstantinova*

I. Introduction

The changes taking place in the countries of Eastern Europe since the turbulent end of the 1980s have brought significant changes in the Bulgarian economy and legislation. The transition from a centrally-planned economy to a free market economy in Bulgaria also necessitated some major changes and reforms in the legal framework. The adoption of the New Constitution¹ in 1991 was the beginning, followed by other new laws and by-laws forming the new structure and function of the banking system. Most important among these laws are the Law of Bulgarian National Bank (1991)² and the Banks and Crediting Activities Law (1992).³ These laws, for the first time, provide for the legal regulation of "banking secrecy" in Bulgaria.

II. The Constitution of the Republic of Bulgaria

Article 6 of this basic law of Bulgaria proclaims the equality of all citizens before the law.⁴ This means that citizens are not entitled to any special privileges based on a law or a by-law. This principle of equality among citizens would be violated in the instance that any information on particular individuals or, for example, their financial standing, is disclosed to an unauthorized governmental body or other interested persons. Knowledge of such private facts would place some individuals in an unequal position in relation to others. The principle of equality also applies to cases

* Chief Legal Advisor, Bulgarian-Russian Investment Bank, Sofia, Bulgaria.

1. BULG. CONST. (Promulgated State Gazette No. 56/13.07.1991).

2. Law on the Bulgarian National Bank, State Gazette No. 50 (1991) [hereinafter LBNB].

3. Banking and Crediting Activities Law, State Gazette No. 25/27.03.1992, amended SG No. 62/1992; 59 & 109/1993; 63/1994 & 63/1995 [hereinafter BCAL].

4. BULG. CONST. art. 6.

where information should be kept secret in the interest of a corporation.⁵

Another provision, Article 19 states that, "the state shall establish and guarantee equal legal conditions for economic activity to all citizens and corporate entities by preventing any abuse of a monopoly states and unfair competition, and by protecting the consumer."⁶ This provision sets the foundations of economic equality of entities. From this viewpoint, illegal infringement upon bank secrecy would violate legal equality of economic entities, just as it would violate the rights of any Bulgarian citizen.

Consequently, the violation of banking secrecy, when unlawfully practiced, is in contradiction with the constitutional principle of equality of all citizens before the law. Likewise, it ignores the prerequisite that laws should provide for equal legal opportunities for performance of economic activities.

The Constitution recognizes, in principle, the right to different types of secrets, such as those relating to private communications or correspondence, and trade and production.⁷ Keeping a secret is treated as one of the basic rights of citizens and as a prerequisite of personal freedom. Personal freedom in Bulgaria is, to a great extent, based on the individual's economic independence from the state. In this sense, bank secrecy can be treated as an element of the economic freedom of the individual.

Article 41 stipulates: "Everyone shall be entitled to seek, obtain or disseminate information,"⁸ while Article 57 reads: "Rights shall not be abused, nor shall they be exercised to the detriment of the rights or the legitimate interests of others."⁹ Due to the conflict of interests arising from these two paragraphs, the Constitution further provides that the right of information "shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality."¹⁰

A bank secret is a legally protected secret.¹¹ At the same time, keeping this secret may harm the interests of other citizens, juridical persons, or the public interest. Therefore, its disclosure

5. For example, a trading company.

6. BULG. CONST. art. 19, para. 2.

7. *See id.* art. 17, para. 3; art. 32, para. 1.

8. *Id.* art. 41, para. 1.

9. *Id.* art. 57, para. 2.

10. BULG. CONST. art. 41, para. 1.

11. *See generally id.* ch. 2.

may be necessary. Sometimes the disclosure of a bank secret may be in the best interest of the very holder of that right of secrecy.

III. Law of the Bulgarian National Bank (LBNB), 1991: An Overview

Under the provisions of Article 4, the Bulgarian National Bank is forbidden to "... make public and deliver to other persons information obtained which is of confidential banking or commercial character for the banks and the other participants in the money turnover. . . ." ¹²

Article 13 provides: "... the Governor, Deputy Governors and other members of the Managing Board shall be sworn in to abide by the law ... and to keep banking and commercial secrets." ¹³ Another relevant article to bank secrecy found in the laws of the LBNB is article 23. Article 23 defines as an "official secret," "... negotiations, the deals contracted, the amount of the clients' deposits and their operations, the information received by the Bank, and all details of the Bank's and its clients' activities which represent official or commercial secret[s] for them." ¹⁴

IV. Banks and Crediting Activities Law (BCAL), 1992

This law provided the first legal definition of a "bank secret," as follows: "facts and circumstances concerning the assets and transactions on accounts and deposits of the bank's clients. . . ." ¹⁵ The same article stipulates that the use of a bank secret for unlawful gain is prohibited by law and disclosing the secret is only permitted in explicitly stated cases. ¹⁶ Article 47 further determines the persons bound by bank secrecy. These individuals are, "Bank employees, members of the managing and controlling bodies of the bank, officials from the Central Bank, liquidators, as well as any other person working for the bank. . . ." ¹⁷

Additionally, disclosure of bank secrecy, depending on the circumstances, may be either lawful or forbidden. Cases of lawful disclosure (knowledge) of bank secrets are exhaustively listed in the BCAL. ¹⁸ For example, discovery of a bank secret is lawful where

12. LBNB, *supra* note 2, art. 4, para. 2.

13. *Id.* art. 13, para. 1.

14. *Id.* art. 23, para. 2.

15. BCAL, *supra* note 3, ch.8, art. 47, para. 1.

16. *See id.*

17. *Id.* ch.8, art. 47, para. 1.

18. *See id.* ch.8, art. 47, para. 5.

a bank's employees are acquainted with information of a confidential character in the process of and in relation to the performance of their official duties.¹⁹ A bank secret may also be publicized to employees of the Central Bank,²⁰ as well as to employees of other banks as an exchange of information between banks.²¹ Access to bank secrets is permitted for persons in official contractual relations with the bank, working for the protection of its interests and included in the number of persons bound with banking secrecy, as specified in Art. 47 of the BCAL.²²

The right of bank secrecy has been established in the clients' best interest. It becomes effective at the conclusion of a contract with the bank.²³ The client has an unrestricted command of his or her holdings in bank accounts.²⁴ The client has the right to order that information of a confidential character regarding his or her accounts is be disclosed to a third party.²⁵ In certain instances, it may be in the client's best interest that such information is disclosed.²⁶

In this and other cases, where the disclosure of information of a particular account is required, banks may provide information with the express written consent of the account holder.²⁷ The written authorization should specify the exact information which may be disclosed by the bank, to whom, when, to what extent, and other conditions in this relation.²⁸

In the case of such disclosure, the bank and its staff may not disclose more information than what was explicitly authorized in writing.²⁹ Any deviation from the authorization shall be unlawful with all ensuing consequences, including penal law penalties.³⁰

In addition to cases of client's consent, a bank secret may be disclosed under a court injunction. The law provides for this second alternative in Art. 47, paragraphs (4), (5) and (6) of the BCAL.³¹

19. *Id.*

20. LBNB, *supra* note 2, art. 4, para. 1.

21. BCAL, *supra* note 3, ch.5, art. 3, para. 2; art. 31.

22. *Id.* ch.8, art. 47.

23. *See generally id.* ch.5 (relations between Banks and the person they serve).

24. *Id.*

25. BCAL, *supra* note 3, ch.8, art. 47.

26. For example, to prove the client's solvency to creditors.

27. BCAL, *supra* note 3, ch.8, art. 47, para. 4.

28. *Id.*; information on file with author.

29. BCAL, *supra* note 3, ch.5, art. 30, para. 2.

30. *See generally* LBNB, *supra* note 2, sec. IX.

31. BCAL, *supra* note 3, ch.8, art. 47, paras. 4,5,6.

In such cases, the Bulgarian court may order disclosure of a bank secret upon demand of the prosecutor. This order is granted provided there is evidence that a crime has been committed. It is also granted when evidence is provided by the manager of a regional tax office in relation to the taxation of tax-liable persons under the conditions provided for by the Law.³² The court rules on such orders at a closed session within 24 hours of the request.³³

The right of bank secrecy, however, is still a prerogative of the bank client. It is the client's individual right, which may be infringed upon only in the cases provided for by the law. Even after it has been lawfully disclosed, a bank secret remains confidential in Bulgaria.

V. The Problems of Money Laundering

Fighting money laundering will always be an issue of conflict with bank secrecy. The new law on the Central Service of Control of Organized Crime (CSCOC) became effective on September 1, 1995.³⁴ This new department is a special agency under the Ministry of Internal Affairs designed to combat organized crime.³⁵ One of the CSCOC's major areas of activity is fighting organized crime in the Bulgarian financial and economic system. The focus of the CSCOC is tracking the investment of proceeds from criminal activities,³⁶ proceeds and acquisition of property from criminal activities,³⁷ and forgery, printing and circulation of counterfeit currency and securities.³⁸

Pursuant to Article 17 of the Law, the powers of the CSCOC include the right to banking, financial, and commercial information.³⁹ The Law provides that such information shall be provided by traders, banks, governmental bodies and organizations for the purpose of detecting and seizing of proceeds from organized crime.⁴⁰

Article 22, para (2) provides for the CSCOC's right to interact with its counterparts in foreign countries and with international

32. *Id.* para. 5.

33. *Id.* para. 6.

34. Central Service for Combatting Organized Crime Act, 37th Nat. Assembly (1995) [hereinafter Organized Crime Act].

35. *Id.* ch.1, art. 1.2.

36. *Id.* ch.1, art. 2.1, para. 5(a).

37. *Id.* para. 5(b).

38. *Id.* para. 5(c).

39. Organized Crime Act, *supra* note 34, art. 17.

40. *Id.*

organizations.⁴¹ Interaction may be effected under international agreements concluded and ratified by and effective in the Republic of Bulgaria, such as the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime.⁴² Signed and ratified in 1993 in accordance with the Bulgarian Constitution, the Convention was incorporated into local legislation.⁴³

VI. Conclusion

In compliance with its ensuing international legal obligations for integrating Bulgarian law with the legal system of the Council of Europe member-countries, the Bulgarian law on preventing money laundering has been drafted. The submission of the draft law and of other amendments of laws relating to this issue to the Bulgarian Parliament is forthcoming. With the adoption of the drafted laws and by-laws, regulating bank secrecy and preventing money laundering will be completed in Bulgaria. Establishing adequate legislation and maintaining an active intergovernmental cooperation are the basic means of globally preventing financial crime. Bulgaria, like many European countries, strives to make bank secrecy a fair and important part of its economic structure.

41. *Id.* art. 22, para. 2.

42. Convention of the Council of Europe on Laundering.

43. *Id.*; see also Organized Crime Act, *supra* note 34, ch.V, art. 22, para. 2.