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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action plan (22/03/2018)

Communication from Bulgaria concerning the case of Group C.G. AND OTHERS v. Bulgaria (Application No. 1365/07)

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Réunion : 1318^e réunion (juin 2018) (DH)

Référence du point : Plan d'action

Communication de la Bulgarie concernant le groupe d'affaires C.G. ET AUTRES c. Bulgarie (Requête n° 1365/07) (*anglais uniquement*)

DGI

22 MARS 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH**ACTION PLAN****on the Implementation of the Judgments of the ECHR in the Group of Cases****C.G. and others****I. List of cases**

Application	Case	Judgment of	Final on
1365/07	C.G. AND OTHERS	24/04/2008	24/07/2008
46390/10	AUAD	11/10/2011	11/10/2012
1537/08	KAUSHAL AND OTHERS	02/09/2010	02/12/2010
41416/08	M. AND OTHERS	26/07/2011	26/10/2011
45237/08	MADAH AND OTHERS	10/05/2012	10/08/2012
31465/08	RAZA	11/02/2010	11/05/2010
58149/08	AMIE AND OTHERS	12/02/2013	12/05/2013
41887/09	GAPAEV AND OTHERS	01/03/2017	01/06/2017
55950/09	GRABCHAK	01/03/2017	01/06/2017
45158/09	KURILOVICH AND OTHERS	01/03/2017	01/06/2017
75832/13	M.M.	02/06/2017	08/09/2017

II. Introduction:

This group of 7 cases concerns shortcomings found in the judicial control carried out in the area of expulsion and deportation of foreign nationals based on national security grounds (violations of Articles 8 and 13). The Court found also a violation of Article 1 of Protocol No. 7 on the ground that the applicants had not been expelled “in pursuance of a decision reached in accordance with law” within the meaning of this provision and that they had not benefited from the procedural safeguards provided for by this provision.

These cases also concern different violations related to the applicants’ detention pending the implementation of these measures, namely: the unlawfulness of this detention (it was not justified due to its extension during a long period of time without the authorities having made diligent efforts to remove the technical obstacles to carry out the expulsion); the non-compliance with the principle of legal certainty, in particular because the destination country had not been indicated in the expulsion decision (in the cases of *M. and others* and *Auad* - violation of Article 5§1 (f)); and the lack of speedy and effective judicial control of the lawfulness of the detention pending expulsion (violations of Article 5§4).

Finally, the *Auad* case concerns the risk of ill-treatment of the applicant if the expulsion order were to be implemented (potential violation of Article 3). Furthermore, in the cases of *Auad* and *M. and others*, the Court found that the courts had failed to examine rigorously and independently the applicants’ claims that they would be at risk of death or ill-treatment in the respective destination countries and criticised the absence of a suspensive remedy for expulsion when such kind of claims are made (violation of Articles 3 and 13).

III. Individual measures

1) Payment of Compensations:

All sums awarded by the European Court were transferred to the applicants' bank accounts.

In the case of *M.M.* the compensation for non-pecuniary damages was paid on 20 November 2017. No additional individual measures seem to be necessary in this case.

2) Other Individual Measures¹:

2.1. *Gapaev and Others*: Mr. Gapaev's compulsory administrative measure concerning the prohibition to enter the territory of the state would expire on 28 May 2018. Meanwhile his family left Bulgaria in 2015. He initiated re-opening of the court proceedings concerning the measures taken against him. By a final decision No 8-1 of 12 January 2018 under adm.c. No C-77/17 the Supreme Administrative Court (SAC) quashed the National Security State Agency (NSSA) order against him. Currently there are no acting compulsory measures against Mr. Gapaev. By letter of the NSSA he was included on the list of undesirable foreigners under art. 21 A of the Foreigners Act for the period 12/01/2018 – 11/01/2028. It seems no other individual measures seem to be necessary in this case.

2.2. *Grabchak*: Mr. Grabchak's compulsory administrative measure concerning the prohibition to enter the territory of the state expired on 05 November 2016. At present is no data that Mr. Grabchak initiated re-opening of the administrative proceedings concerning the measures taken against him. By letter of the NSSA he was included on the list of undesirable foreigners under art. 21 A of the Foreigners Act for the period for the period 20/06/2017 – 19/06/2027.

2.3. *Kourilovich and Others*: Mr. Kourilovich' compulsory administrative measure concerning the prohibition to enter the territory of the state expires on 28 May 2018. He initiated re-opening of the court proceedings concerning the measures taken against him. SAC ruled on reopening the case by Decision 14803/05.12.2017. The decision under the new adm.c. No 14057/17 regarding the expulsion order and the prohibition to enter the territory of the state is pending and decision is awaited by the end of February 2018 (see Appendix 2). By letter of the NSSA he was included on the list of undesirable foreigners under art. 21 A of the Foreigners Act for the period for the period 12/01/2018 – 11/01/2028. The Government will keep the Committee of Ministers informed on the developments under the national proceedings.

Having examined the other individual measures adopted by the Bulgarian authorities in the other cases, the Committee of Ministers considered that no additional measures are necessary with regard to the present cases².

¹ See Appendix 1, letters by the Supreme Administrative Court and the Migration Directorate with the Ministry of Interior.

² As concerns the violations of Article 5: no further measure is required in this context, as all the applicants concerned have been released and have received just satisfaction.

As concerns the other violations:

IV. General measures

1) Legislative measures envisaged

1.1. Risk of ill treatment in the destination country (Articles 3 and 13):

- i. Lack of automatic suspensive effect to the remedy applicable where an arguable claim about a substantial risk of death or ill treatment in the destination country is made. Lack of mentioning of the destination country in a legally binding act which is amenable to appeal:

The amendments of Section 44a of the Aliens Act in March 2013 allow the courts to examine the issue of a substantial risk of ill treatment in the destination country. In case of appeal, domestic courts are entitled to suspend the execution of the order based on art. 166, para 4 of the Administrative Procedural Code.

The Government would like to point out that by Order No P-157 from 23 August 2017 the Prime Minister of the Republic of Bulgaria established an interinstitutional working group whose purpose is to propose a draft of a new Migration Law. It will unite the entire migration legislation in one act and will replace the acting Aliens Act, the Asylum and Refugees Act and the European Union Citizens, Who Are Not Bulgarian Citizens, and Members of Their Families Entry and Residence in and Departure from the Republic of Bulgaria Act. The working group comprises of representatives of the Ministry of Justice, the Ministry of Interior and the Ministry of Foreign Affairs. The Court's case-law on the matter will be duly taken into account in the course of preparation of the new legislation. The initial deadline for the final draft was 31 December 2017, however due to the complexity of the matter the term was prolonged. The Government will keep the Committee of Ministers informed on the developments thereof.

The Government will keep the Committee of Ministers duly informed on the developments in this regard.

- *Raza, Auad and Madah and Others*: The applicants were not expelled and the expulsion orders against them were quashed. Therefore, the Committee considered, during its 1136th (Raza case), 1179th (Auad) and 1222nd (Madah and Others) meetings, that no further individual measure was required.

- *Kaushal and Others* and *M. and Others*: the restrictive measures in respect of Mr Kaushal were quashed without him being included in the list of undesirable foreigners. The applicants in the case of M. and Others left Bulgaria of their own will without providing a power of attorney to enable their lawyer to request the reopening of the domestic judicial proceedings. The Committee therefore considered during its 1222nd meeting that no further measures were required in these cases.

- *Amie and Others*: on 02/04/2014, the Supreme Administrative Court confirmed the restrictive measures against the applicant (i.e. the decision ordering his expulsion and the prohibition on entering Bulgaria). At its 1222nd meeting, the Committee granted the authorities' request for confidentiality so that they could provide a copy of this judgment classified as "secret" and invited them not to proceed with the expulsion of Mr Amie pending the assessment of the individual measures. The authorities provided a copy of this judgment in 2015. Finally, in their latest action plan, they indicated that the applicant entered Bulgaria most recently on 6 December 2016 and that he currently resides there.

- *C.G. and Others*: following the latest decision of the Committee, the authorities indicated that the validity of the restrictive measures taken against the applicant had expired in June 2015 and they considered that no further measures were necessary. On 13 January 2017, they indicated that the applicant had entered Bulgaria in January 2016.

ii. Mandatory immediate enforcement of expulsion based on public order considerations, without possibility to assess the necessity of this immediate enforcement in individual cases (violation of Article 1 of Protocol 7)

The Aliens Act provides for the immediate enforcement of the expulsion order based on public order grounds. However, in case of appeal, domestic courts are entitled to suspend the execution of the said order based on art. 166, para 4 of the Administrative Procedural Code. Amendments in this regard will be discussed during the elaboration of the new Migration Law (see p. i above).

1.2. Lack of publicity of judicial decisions concerning appeals against expulsion measures

The Supreme Administrative Court specified that its practice is not to publish the judgments delivered in classified cases on its Internet site.

There is no legal possibility to make public only part of a judgment delivered in proceedings concerning an appeal against an expulsion order if the proceedings are classified, however the foreigner and his lawyer have access to the entire text of the judgment.

By letter, dated 30 January 2018, the Ministry of Justice requested the Supreme Administrative Court's opinion on the necessity of legislative changes with regard to the publicity of judgments delivered in classified cases. Upon positive reply, an inter-institutional working group will be set up in order to elaborate the respective provisions in the Protection of Classified Information Act.

2) Legislative measures already adopted

The authorities have, over the years adopted numerous measures to secure protection against arbitrariness and comply with the requirements of Articles 8 and 13. The legal framework was amended in 2007, 2009 and 2011. Currently, the proportionality of expulsion measures is subject to judicial review. The burden of proof lies with the administration and the Supreme Administrative Court can request the submission of evidence by the administration, subject to the "need to know" principle. The persons concerned and their lawyers are authorised to acquaint themselves with all the elements of the file. The Supreme Administrative Court verifies the existence of certain facts demonstrating a serious risk to national security and/or public order related to the particular behaviour of a foreign national, as well as the proportionality of the expulsion measure.

3) Translation, Publication and Dissemination of the ECHR Judgments

The ECHR's judgments were translated in Bulgarian and are available on the Ministry of Justice of the Republic of Bulgaria official website: <http://www.justice.government.bg> and disseminated to the concerned institutions. Several training courses for judges relating to the implementation of Article 8 of the Convention have been organized by the National Institute of Justice.

Information on the present group of cases and the measures necessary for their execution were included in the last four annual reports of the Minister of Justice to the National Assembly.

Conclusion:

The Government of the Republic of Bulgaria is of the view that a number of measures have already been taken in order to address the specific reasons for the violations found in the cases of this group. Further information will be provided in due time concerning the measures under consideration and at the latest by the end of January 2018.

Sofia, February, 2018

APPENDICES:

1. Appendix 1: Letters by the Supreme Administrative Court and the Migration Directorate with the Ministry of Interior
2. Appendix 2: Protocol of 23.01.2018 under adm.c. № 14057/2017 SAC