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

Item reference: Action report (03/05/2018)

Communication from Bulgaria concerning the case of DIDOV v. Bulgaria (Application No. 27791/09)

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

Référence du point : Bilan d'action (03/05/2018)

Communication de la Bulgarie concernant l'affaire DIDOV c. Bulgarie (requête n° 27791/09) ***(anglais uniquement)***

ACTION REPORT

DIDOV v. BULGARIA

Application no. 27791/09, judgment of 17/03/2016, final on 17/06/2016

1. Convention violation found

This case concerns the arbitrary detention of the applicant by the police. The Court found that the order for his detention was not based on elements justifying a "reasonable suspicion" that he had committed an offence – the order only mentioned "an offence under Article 195 of the Criminal Code" (a theft), without reference to any other specific circumstances or facts linking the applicant to that offence. In addition, no facts or information substantiating a reasonable suspicion that he had committed an offence were presented during the subsequent domestic proceedings - the only document contained in the applicant's case file referred to a theft committed by an unknown person and instructed the police to investigate, without mentioning the applicant or any relevant data or evidence against him (violation of Article 5 § 1 c)).

In addition, the Court found that the applicant did not have at his disposal a possibility to seek compensation (violation of Article 5 § 5).

The Court also examined the applicant's complaints that he had not been informed of the reasons for his arrest (under Article 5 § 2) and that he had not had any means at his disposal to challenge speedily the lawfulness of his detention and to obtain release (under Article 5 § 4). The Court rejected them as submitted out of time, finding that the six-month time-limit in respect of those complaints had started running upon the applicant's release on 11 July 2007.

2. Individual measures

The applicant is no longer detained.

The compensation awarded has been transferred to the applicant's account within three months from the date on which the judgment has become final in accordance with Article 44 § 2 of the Convention. The Republic of Bulgaria has paid to the applicant the just satisfaction awarded by the Court as follows: EUR 500 in respect of non-pecuniary damage; EUR 1,007 in respect of costs and expenses. The compensation awarded was transferred to the applicant's account on 20 July 2016.

No further individual measures are necessary for the execution of the judgment.

3. General measures

a) Publication and dissemination of the judgment

The translation in Bulgarian of the judgment in the Didov case is available on the Ministry of Justice website at http://www.justice.government.bg/.

The judgement was sent to the competent domestic administrative and judicial authorities (the Ministry of Internal Affairs, the Supreme Administrative Court and the Administrative Court of Burgas) through a letter dated 22.12.2016, drawing their attention on the main conclusions of the ECHR's judgment.

b) Violation of Article 5 § 1 c

The Government would like to point out that the domestic legal framework criticized by the Court in the case at hand, as well as in the case of *Petkov and Profirov*[1], has been repealed and a new legal framework is now in force. The Ministry of Internal Affairs Act of 2006 ("the 2006 Act") was repealed in 2014 and superseded by a new Ministry of Internal Affairs Act adopted on 27 June 2014 ("the 2014 Act").

The police powers under the 2014 Act to arrest and place persons in police custody are laid down in section 72-75 of that Act. Pursuant to these provisions, the police can, based on a written order to that effect, arrest an individual suspected of having committed a criminal offence. The guarantees against arbitrary detention contained in the 2006 Act have been re-integrated in the 2014 Act:

- the detention cannot entail the restriction of any personal rights other than the right to free movement;
- the police is obliged to issue a written detention order in order to take the arrested person to the police detention facility;
- police detention cannot exceed twenty‑four hours;
- the obligation for the police authorities to immediately release the person if the grounds for detention have ceased to exist;
- the persons taken into police custody are entitled to be assisted by counsel, to an interpreter, to inform another person about his/her detention, to appeal the detention order before the courts (sections 72 and 73).

Moreover, additional important guarantees were introduced directly in the 2014 Act[2] concerning:

- the obligation to include in the written detention order an explanation of the following detainee's rights:
  - to challenge the detention order before the court,
  - to be assisted by counsel from the moment of the arrest,
  - to medical assistance,
  - to a telephone call,
  - to an interpreter,
  - to contact the diplomatic authorities if s/he is a foreigner (section 74(2), p. 6);

[1] Appl. No. 50027/08, judgment of 24/06/2014.

[2] Prior to the adoption of the 2014 Act, similar guarantees were included in the Rules on the Implementation of the Ministry of Internal Affairs Act of 2006 (section 63) and in a ministerial act (Instruction № Із-1711 of 15.09.2009 on the furnishing of premises accommodating persons detained in the police detention facilities under the Ministry of Interior and on the functioning of these facilities).

- the requirement to present to the detainee a declaration for signature stating that the person has been informed about his/her rights and wishes or not to entertain any of them (section 74(3));
- the requirement to present the written detention order to the detainee for signature, to provide him/her with a copy of it and to enter it in a special register (section 74(3), (5) and (6)).

Most importantly, the 2014 Act contains an obligation for the police authorities to include in the written detention order "**the factual and legal grounds for the detention**" (section 74(2), p. 2)[3]. Therefore, when making an order under section 74(1) of the 2014 Act the police are now under a statutory obligation to specify the factual circumstances substantiating the suspicion required.

This obligation has been reflected in the more recent case-law of the domestic courts on challenges of legality of detention orders. In a number of occasions, the domestic courts have quashed the detention orders as unlawful specifically because the orders had failed to refer to the relevant factual circumstances for placing the persons in police custody. As a matter of example, the courts found that the mere reference in the detention order to the respective Article in the Criminal Code, without mentioning of any concrete factual circumstances, could not be accepted as a fulfilment of the obligation to state the factual grounds for the detention[4]. Similarly, the courts found that the sole mentioning in the detention order that "information existed that the person had taken a bribe", without any particular facts about it, could not be accepted as sufficient factual justification for the detention[5].

In view of the above, the Government consider that at present the applicable legal framework on police arrest and detention contains sufficient safeguards for ensuring that police detention is based on specific circumstances or facts substantiating a reasonable suspicion that the person concerned has committed an offence.

The Government would also like to point out that in the present judgment the Court found a violation because of lack of concrete information satisfying an objective observer that the applicant may have committed an offence. The Court did not find necessary to examine the question whether the detention was also deficient for not being effected with the purpose of investigating further and bringing the applicant before a competent legal authority (as it did in the case of *Petkov and Profirov*). Therefore, the latter question is examined in the case of *Petkov and Profirov* and the Government will provide updated information in that respect to the Committee of Ministers in the context of the supervision of this particular case.

The Government therefore consider that the above-mentioned legislative measures, as well as the dissemination of the judgment and drawing the attention of the domestic courts to the conclusion of the Court should be sufficient to prevent any future similar violations.

[3] Introduced with an amendment of 20 February 2015.
[4] Judgment of the Supreme Administrative Court No. 12710 of 26.11.2015 in an administrative case No. 15223/2014; Judgment of the Sofia Administrative Court No. 8416 of 30.12.2016 in an administrative case No. 11132/2016; Judgment of the Sofia Administrative Court No. 2527 of 14.4.2016 in an administrative case No. 4064/2015; Judgment of the Yambol Administrative Court No. 103 of 09.10.2015 in an administrative case No. 142/2015.
[5] Judgment of the Stara Zagora Administrative Court of 18.12.2015 in an administrative case No. 426/2015.

c) Violation of Article 5 § 5

The possibility to request compensation exists under Bulgarian law on the condition that the police detention is declared unlawful (section 1(1) of the State and Municipalities Responsibility for Damage Act 1988). The finding of a violation is related to the approach adopted by the domestic courts in the case at hand concerning the assessment of the lawfulness of the applicant's detention. As evident from the more recent case-law of the domestic courts, this assessment is now made in compliance with the standards established by the Court in the present judgment.

Therefore, the Government consider that dissemination of the judgment and drawing the attention of the domestic courts to the conclusion of the Court should be sufficient to prevent any future similar violations.

4. Conclusions

In conclusion the Government consider that the measures adopted have remedied the consequences for the applicant of the violations of the Convention found by the Court in this case, that these measures will prevent new similar violations and that Bulgaria have complied with its obligation under 46 §1 of the Convention. The Government therefore look forward to the Committee's decision to close the examination of this case.

03 May 2018
Sofia, Bulgaria