

## SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1318<sup>th</sup> meeting (June 2018) (DH)

Item reference: Action report (27/04/2018)

Communication from Bulgaria concerning the case of ANGELOV v. Bulgaria (Application No. 44076/98), DIMITAR YANAKIEV v. Bulgaria (Application No. 45466/99), PASHOV AND OTHERS v. Bulgaria (Application No. 1152/03), RAHBAR-PAGARD v. Bulgaria (Application No. 20875/07), SIRMANOV v. Bulgaria (Application No. 67353/01)

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Réunion : 1318<sup>e</sup> réunion (juin 2018) (DH)

Référence du point : Bilan d'action (27/04/2018)

Communication de la Bulgarie concernant l'affaire ANGELOV c. Bulgarie (requête n° 44076/98), DIMITAR YANAKIEV c. Bulgarie (requête n° 45466/99), PASHOV et AUTRES c. Bulgarie (requête n° 1152/03), RAHBAR-PAGARD c. Bulgarie (requête n° 20875/07), SIRMANOV c. Bulgarie (requête n° 67353/01)  
**(anglais uniquement)**

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DGI

27 AVR. 2018

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

## **ACTION REPORT**

### **on the Execution of the Judgments of the European Court of Human Rights Included in the Angelov Group of Cases**

#### **1. List of Cases**

This group includes the following cases:

- Angelov v. Bulgaria (44076/98), judgment of 22 April 2004, final on 22 July 2004,
- Rahbar-Pagard v. Bulgaria (45466/99), judgment of 6 April 2006, final on 6 July 2006,
- Sirmanov v. Bulgaria (67353/01), judgment of 10 May 2007, final on 10 August 2007,
- Dimitar Yanakiev v. Bulgaria (1152/03), judgment of 2 July 2009, final on 2 October 2009, and
- Pashov and Others v. Bulgaria (20875/07), judgment of 5 February 2013, final on 5 May 2013.

#### **2. Convention violation found**

This group of cases concerns the impossibility for the applicants to obtain enforcement of state debts due to failure or substantial delay by the administration in abiding by final domestic court judgments in favour of the applicants. The lack of enforcement concerns the periods between 1996 and 1998, 2001 and 2003, 1999 and 2003, 2002 and 2009 and 2004 and 2010 respectively. The judgments ordered state bodies to pay compensation for damages as a result of unlawful conviction, late examination of a request for release, unlawful detention, costs in judicial proceedings and use of force by the police (violations of Article 6 § 1 of the Convention in all cases save for the *Angelov* case and violations of Article 1 of Protocol No. 1 in all cases save for the *Dimitar Yanakiev* case).

In the *Rahbar-Pagard* case, there are also different violations related to the first applicant's pre-trial detention between 1998 and 1999 (Article 5 §§ 3 and 4), the general measures in respect of which have been adopted within the framework of other cases or groups of cases (see below).

#### **3. Individual measures**

The just satisfaction awarded by the Court has been paid to all applicants.

The relevant state institutions have enforced the domestic court judgments delivered in the applicants' favour, save for the case of *Dimitar Yanakiev* where compensation for the unpaid debt was awarded by the Court as a pecuniary damage. The applicant who had been detained in the

case of Rahbar-Pagard was released and died in 2003; the just satisfaction awarded by the Court was paid to the other applicant (her heir).

No further individual measures are necessary for the execution of the present judgments.

#### **4. General measures**

##### ***a) Publication and dissemination of the judgments***

The translation in Bulgarian of the judgments is available on the Ministry of Justice website at <http://www.justice.government.bg/>. The judgments were sent to the competent domestic courts via a circular letter drawing attention to the main conclusions of the ECHR.

##### ***b) Violations of Article 6 and Article 1 of Protocol No. 1***

The Government submit that the Bulgarian Codes of Civil Procedure traditionally do not allow enforcement proceedings against the State. The reason is that in the area of state debts stemming from final judgments the authorities are duty-bound to pay the debts based on the principle of the rule of law and the creditors should not be required to undertake any enforcement proceedings. The Government maintain that these cases are rather isolated and are not indicative of any structural problem.

In particular, Article 519 of the Code of Civil Procedure 2007 provides as follows:

*“1. The enforcement of monetary claims against State bodies is not allowed.*

*2. Monetary claims against State bodies shall be paid out of funds allotted for that purpose in their budgets. For this purpose, the writ of execution shall be presented to the financial department of the [State] body in issue. If no funds have been allocated, the higher [State] body shall take the necessary measures to provide such funds at the latest in the next budget.”*

Thus, the domestic law provides for provisions according to which, in case of lack of funds, the administration is obliged to ask for the relevant funds at the latest in its budget for the next year and carry out the payment as soon as possible. Default interest is also due in case of delayed payment due to lack of funds.

In addition, the Government would like to point out that certain acceleratory procedures are available the Code of Administrative Procedure 2006 (the Code) allowing the possibility for

the affected persons to compel the administration to implement a final judgment. The currently existing legal avenues are set out in:

- (i) Article 290 of the Code which envisages imposition of fines in respect of an administrative official obliged in a court judgment to deliver a non-substitutable action;
- (ii) Article 304 of the Code which provides for the possibility for the courts to impose fines, upon the request of the persons affected, on the responsible official not complying with a final judgment in cases which do not concern enforcement of administrative decisions or judicial decisions in administrative cases under Part V of the Code.

As concerns the remedy under Article 290 of the Code, ECtHR recognised that, as of mid-2012, it appears available and in principle effective and applicants are therefore expected to use it before applying to the Court<sup>1</sup>. However, this avenue is not directly relevant for execution of monetary debts against the State.

As concerns the avenue under Article 304 of the Code, the Court held in 2013 that it could not be considered effective within the meaning of Article 13 because the applicant could not take part in the proceedings and could not appeal against the refusal to impose a fine<sup>2</sup>.

Without prejudice to the above findings of the Court, and its findings under Article 13 in the recent judgment in *Chorbov* case, the Government submit that a study of the recent practice of the domestic courts demonstrates that the remedy under Article 304 of the Code is starting to evolve into a proper complaints procedure against delayed state debts. The courts have been accepting in principle that Article 304 could be used as a legal avenue to compel the state authorities to pay delayed debts by means of imposition of fines on the responsible officials<sup>3</sup>.

In a number of cases between 2014 and 2017, the administrative courts adjudicated on the merits of the complaints about delayed state debts. In at least two cases the courts imposed fines on the respective officials for over-a-year delayed enforcement of state debts<sup>4</sup>. In six other cases the courts, although ultimately refusing to impose fines, found that either the delay was objectively justified due to lack of means in the state body's budget for the current financial year (the delay having been just a few months), or that the delay was not long enough yet to necessitate imposition of a fine (but would be problematic if the payment would not be made in the subsequent year), or that the payment was not due anymore as the state body had deducted

<sup>1</sup> See *Dimitar Yanakiev v. Bulgaria* (No. 2), no. 50346/07, § 60

<sup>2</sup> See *Stoyanov and Tabakov v. Bulgaria*, no. 34130/04, § 99

<sup>3</sup> See, for instance, Judgment № 4254 of 03.10.2011 in an administrative case № 3195/2011 r. of the Sofia Administrative Court, or Decision № 10739 of 18.07.2011 in an administrative case № 8004 / 2011 of the Supreme Administrative Court.

<sup>4</sup> See Order № 1869 of 30.8.2017 in an administrative case № 572/2017 of the Pazardzhik Administrative Court, and Order № 1868 of 30.8.2017 in an administrative case № 573/2017 of the Pazardzhik Administrative Court.

from the amounts due the counter-claims it had against the applicant, or because there have been a successful enforcement with a delay of just a few months<sup>5</sup>. Therefore, it could be concluded that Article 304, as applied by the domestic courts in the recent case-law, starts to evolve into a proper legal avenue for compelling state institutions to enforce state debts and is an additional safeguard to avoid violations of Article 1 of Protocol 1 of the Convention.

The Government take note of the fact that in a recent judgment of 25 January 2018 in the *Chorbov* case<sup>6</sup>, the Court examined a complaint about lack of payment of a state debt and found a violation of Article 1 of Protocol No. 1 in that respect and a violation of Article 13 (due to the lack of specific procedure under Bulgarian law meeting the requirements of Article 13 capable of speeding up or redressing the negative consequences of delayed enforcement concerning pecuniary claims against the State). In particular, the Government take note of that fact that the Court expressed the view that while States have a wide margin of appreciation in providing such a remedy in a manner consistent with their own legal system and traditions, a remedy with respect to delayed enforcement of claims against the State should still exist.

In the light of the findings in the recent *Chorbov* case and the information presented above, the Government consider the following:

- The main outstanding issue in the area of enforcement of state debts concerns the lack of a remedy, meeting the requirements of Article 13 of the Convention, to complain against a failure or substantial delay by the administration in abiding by final domestic court judgments in favour of the applicants. This issue will be addressed in the context of the execution of the recent *Chorbov* case where the Court found a violation of Article 13 taken in conjunction with Article 1 of Protocol No.1.

- As to the present group of cases, they only concern violations of Article 1 of Protocol No. 1 of a relatively isolated nature. Much has been done to secure prompt payments and put in place procedures to compel the administration to implement final judgments rendered in favour of private persons. Given that these cases do not concern a violation of Article 13, the Government consider that, based on the important progress achieved so far in order to meet the requirements of Article 1 of Protocol No. 1 in similar situations, the examination of the present cases could be closed by the Committee.

### ***c. Violations of Article 5 §§ 3 and 4***

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<sup>5</sup> See Order № 1874 of 30.8.2017 in an administrative case № 571/2017 of the Pazardzhik Administrative Court, Order № 2136 of 15.7.2015 in an administrative case № 432/2015 of the Pleven Administrative Court, Order of 2014 in an administrative case № 3103/2014 of the Varna Administrative Court, Judgment № 412 of 26.1.2015 in an administrative case № 9248/2014 of the Sofia Administrative Court, Order № 216 of 10.1.2017 in an administrative case № 5892/2016 of the Varna District Court, Order № 540 of 28.07.2017 in an administrative case № 195/2017 of the Gabrovo Administrative Court.

<sup>6</sup> Appl. no. 39942/13.

The questions raised by the violations of the right of the first applicant in the Rahbar-Pagar case, guaranteed by Article 5 were examined in a number of cases whose supervision was closed, in particular *Asenov and Others* (ResDH (2000)109), *Nikolov and Shishkov* (CM/ResDH (2007)158), *Evgeni Ivanov* (CM/ResDH (2012)164) and *Bochev* (CM/ResDH (2017)382).

#### **4. Conclusions**

The Government of the Republic of Bulgaria considers that all measures taken have fulfilled the requirements of the ECtHR judgments and no further examination is necessary in this respect and look forward to the Committee's decision to close the examination of these cases.

The Government note that the issue of the effective remedies, within the meaning of Article 13 of the Convention, for speeding up or redressing the negative consequences of delayed enforcement concerning claims against the State is entirely taken over in the context of the examination of the *Chorbov* case.

The Government also note that the issues concerning the impossibility for the applicants to obtain enforcement of state debts due to the liquidation of the State entity against which the damages were awarded remain under the supervision of the Committee in the context of the recent Gavrilov judgment.

27 April 2018  
Sofia, Bulgaria