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Meeting: 1172 meeting (4-6 June 2013) (DH)

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Communication from Bulgaria concerning the case of Angelova and Iliev against Bulgaria (Application No. 55523/00)

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Réunion : 1172 réunion (4-6 juin 2013) (DH)

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Communication de la Bulgarie concernant l'affaire Angelova et Iliev contre Bulgarie (requête n° 55523/00) (*anglais uniquement*).

ACTION REPORT

on the Implementation of the Judgments of the ECHR in the Group of Cases ANGELOVA - ILIEV

I. List of cases

Application	Case	Judgment of	Final on
55523/00	ANGELOVA-ILIEV	26/07/2007	26/10/2007
72663/01	NIKOLAY DIMITROV	27/09/2007	27/12/2007
19406/05	ZASHEVI	02/12/2010	02/03/2011
33114/03	GENCHEVI	10/02/2011	10/05/2011
44862/04	DIMITROVA and Others	27/01/2011	27/04/2011
23302/03	ANNA TODOROVA	24/05/2011	24/08/2011
32662/06	BISER KOSTOV	10/01/2012	10/04/2012
49669/07	P.M.	24/01/2012	24/04/2012
52744/07	DIMOVI	06/11/2012	13/02/2013
43606/04	YOTOVA	23/10/2012	23/01/2013

II. Introduction:

The group of cases Angelova – Iliev is related to *violation of article 2 and article 3* under the Convention, specifically the lack of effective investigation into deaths or alleged ill-treatment inflicted by private individuals.

Some of the cases concern also other aspects of breach under the Convention, such as:

- The failure of the authorities to investigate a possible racist motive in the attack on the applicants' relative (violation of article 14 in conjunction with Article 2 of the Convention) - cases of Angelova and Iliev and Yotova;
- The impossibility of the victims to participate effectively in the investigation and have their views heard (Dimitrova and Others case);
- The ineffectiveness of the civil procedure for damages initiated by the applicant (Anna Todorova case);
- To provide protection to key witnesses for the relevant investigation (Zashevi case).

III. The Facts:

Angelova - Iliev Case (Application 55523/00)

The applicants are respectively a mother and a brother to Mr. Angel Dimitrov Iliev, who was of Roma origin. He was attacked and killed by a group of teenagers who later submitted that the violence was motivated by the victim's Roma ethnicity.

Nikolay Dimitrov Case (Application 72663/01)

The applicant claimed that he was subject to extortion. Following his complaint in August 1997 the competent authorities initiated criminal investigation. In June 2000 the proceedings were terminated by the Prosecutor's Office due to lack of evidence for a crime. The decree of the prosecutor was not subject to appeal.

Zashev Case (Application 19406/05)

The applicants are parents of Mr. Ivaylo Zashev who was shot and killed by people trying to rob him and his brother.

Genchev Case (Application 33114/03)

The application is submitted by the wife and the two sons of Mr. Jovcho Genchev who was killed on February 28, 1994. The body of Mr. Genchev was found nearby to the village where he lived. According to the medical report Mr. Genchev was badly stabbed and apparently this was the reason for his death.

Dimitrova and Others Case (Application 44862/04)

The applicants are relatives of Mr. Georgi Gerasimov who was severely injured in a fight between two groups of people and shortly afterwards died of his injuries. Only one of the perpetrators was charged for causing the death of Mr. Gerasimov. The applicants were not duly informed of the court's decision. A reopening of the criminal proceedings was refused.

Anna Todorova Case (Application 23302/03)

The son of the applicant suffered a car accident in 2004 and passed away shortly afterwards due to his heavy injuries. Although a criminal investigation started immediately, it took more than five years during which the responsible state organs allowed a number of shortcomings in the gathering and assessment of evidence. The investigation was finally discontinued in 2003. Meanwhile the applicant initiated a civil case for tort as well but it was dismissed after the discontinuation of the criminal proceedings.

Biser Kostov Case (Application 32662/06)

The applicant was suspected for a theft in a small supermarket in Yambol. Two men from the supermarket staff had beaten him before the police arrival. Later on, two police officers arrived and drove the applicant to the police station in order to establish the circumstances regarding the theft. Meanwhile, the applicant claimed to be badly injured and requested medical care. On the same day the applicant was admitted in a hospital where it was found that he had broken ribs and other serious injuries.

P.M. (Application 49669/07)

The applicant was a victim of a sexual abuse, committed by private individuals. At the time of the commitment of the crime the applicant was at the young age of thirteen. The authorities delayed more than ten years to establish the truth and to punish the offenders.

Dimovi (Application 52744/07)

The applicants are relatives of Ms. Dimova who was badly wounded in a fire and died several days later. A criminal investigation against unidentified perpetrator was initiated immediately but later on the investigation was neglected. Though there was an instruction by a procurator from the Prosecutor General Office to continue the investigation, the Regional prosecutor abandoned the investigation again. On September 20, 2006 the Razgrad District Court pronounced a "verdict of not guilty" which later was confirmed by the Shoumen Regional Court. The applicants claimed that the investigation of the Ms. Dimova death was ineffective.

Yotova (Application 43606/04)

On July 13, 1999 the applicant (with Roma origin) was shot and badly injured. As a result she was certified as a disabled person with 75% invalidity.

The crime was committed after a quarrel in a disco club between young people, some of them with Roma origin. There were plenty of facts proving racist motive for the crime but the

authorities omitted to investigate such grounds for the crime.

IV. Individual Measures:

1) Payment of Compensations:

All sums awarded by the European Court were transferred to the applicants' bank accounts, including the recently awarded compensations under Yotova and Dimovi cases.

2) Other Individual Measures:

2.1. Nikolay Dimitrov: After the renewal a number of witnesses were interrogated by request of Mr. Dimitrov. The accused V.P. was reported for national search. On 30.03.2012 the case was brought to the applicant and he submitted his requests, notes and objections. The case was also brought to the accused S.P. and V.S. Part of Mr. Dimitrov requests were granted, new witnesses were interrogated, identifications of persons were performed, etc. On 01.06.2012 the case was once more brought to the victim and to the accused, Mr. Dimitrov making requests, notes and objections once more. On 07.06.2012 the file was sent to the Regional Prosecutor's Office – Silistra with opinion for termination on the basis of art.243, para 1 Criminal Procedural Code (CPC). On 14.06.2012 a prosecutor with the RPO – Silistra terminated the criminal proceedings by a decree in which it was ascertained that with regard to the crime under art. 144, para 3 CC (Threat) the absolute prescription has expired and with regard to the crime under 213a, para 2, p. 2 and 4 (Blackmail) the accusation was unfounded.

2.2. Biser Kostov: Following the ECtHR judgment by request of the Prosecutor General the Supreme Court of Cassation ("SCC") resumed the criminal proceedings concerning the medium bodily injury caused to Mr. Kostov with a decision from 05.07.2012. The investigative file was returned to the Regional Prosecutor's Office – Yambol. Several investigative actions are being performed by the authorities including interrogations of all witnesses and appointment of a new forensic expert report. The term of the investigation has been prolonged up to 03.06.2013.

2.3. Dimitrova and others: On April 19, 2011 the Prosecutor General forwarded a request to the Supreme Court of Cassation for the resumption of the case concerning Mr. Gerasimov's death. By Decision No 381 from 11 October 2011, the SCC resumed the criminal proceedings. The District court in Pernik revoked the decision from June 22, 2004 which approved the plea bargain between the Prosecutor's Office and Mr. B.I. The case was returned to another panel of the court. On November 09, 2011 the new panel of judges returned the case to the District Prosecutor's Office for the purpose of removal of substantial procedural breaches. Currently, the prosecutors are trying to locate Ms. Ekaterina Gerasimova (the second applicant) as she and her daughter are the heirs-at-law of Mr. Gerasimov in order to serve her with the notification for the partial termination of criminal proceedings which was not served during the initial case. Thus the procedural breach will be corrected and Ms. Gerasimova will be able to appeal against it or, if not, the higher prosecutor's office will be able to initiate a check-up. Unfortunately, Ms. Gerasimova does not reside in Bulgaria, but in Fujairah, UAE and has not presented any contact details to the authorities or her lawyers."

On an unspecified date in September 2012 the prosecutor with the DPO –

Pernik managed to serve the decree for the partial termination to Ms. Gerasimova in Fujairah. She contested it in front of the Pernik District Court which quashed it. The ruling of the DC – Pernik was appealed by the defendant but left without examination. At present further to the instructions of the district court ruling several investigative actions are being performed by the authorities including an additional forensic expert report. The term of the investigation has been prolonged up to 22.04.2013.

- 2.4. Angelova and Iliev: The Supreme Court of Cassation quashed and remitted the case to the Varna Appeal Court. The appellate instance increased the punishment of the defendant and amended the compensation for non-pecuniary damages from 10 000 to 20 000 BGN. The second-instance court decision was not appealed by the parties in front of the higher court instance. It entered into force and was sent for execution to the Shumen District Court. The defendant Mr. Ganev was convicted with the first-instance judgment issued by Shumen District court (No39 /16.10.2008) and as he did not appeal, his sentence entered into force on October 31, 2008. No further individual measures seem possible.
- 2.5. Anna Todorova: The criminal case may not be resumed due to expiry of the absolute prescription period for criminal pursuit. The traffic accident with the applicant's son occurred on 24.10.1994. Proceedings for investigation of a possible crime under art.343, para 1, p. "c" of the Criminal Code ("CC") (death caused by traffic accident) were initiated and eventually terminated by a decree from 27.06.2001 confirmed by the District Prosecutor's Office – Stara Zagora on 23.05.2003. The provision of art.343, para 1, p. "c" envisages punishment of up to 6 years of imprisonment. In accordance with art.80, para 1, p. 3 CC the criminal proceedings are excluded by prescription when they have not been initiated for a period of 10 years for acts punishable by imprisonment for more than 3 years and as per art.81, para 3 CC, irrespective of the suspension or interruption of prescription, criminal pursuit is excluded if a term has passed which exceeds by half the term envisaged in the previous article. In this case the absolute prescription term would be 15 years. Since the moment when the act was committed up to the moment when ECHR announced its judgment more than 16 years had already passed. That is why the Supreme Prosecutor's Office could not renew the case under art.422, para 1, p. 4 of CPC. At the time of ECtHR's judgment entering into force no additional individual measures could be taken on the case.
- 2.6. P.M.: Due to the expiry of the prescription period for criminal pursuit no renewal of the case could be required by the Prosecutor General. No additional individual measures seem possible.
- 2.7. Zashevi: The penal proceedings against the initial defendants concluded with a "verdict of not guilty". The investigation of the Mr. Ivaylo Zashev death continues against unidentified perpetrator. The competent authorities have been requested to present information for the current investigation activities under the case. The preparation and submission of the required information is pending.
- 2.8. Genchevi: The investigation was ceased and could not be resumed due to the lack of important evidences under the case. Resumption might be possible only if there are additional grounds for such action. No further individual measures seem applicable.
- 2.9. Dimovi and Yotova: Following the conclusions of the European Court

under these two cases, the Bulgarian authorities will explore and submit information for the possibility to carry out new investigations / take additional investigative steps.

V. General Measures:

1) Translation, Publication and Dissemination of the European Court Judgments

Most of the judgments are translated in Bulgarian and are available on the Ministry of Justice of the Republic of Bulgaria official website: <http://www.justice.government.bg>.

The translation of Dimovi, Anna Todorova and Yotova judgments is in process of preparation.

A resume of the judgments under the cases of Zashevi, Anna Todorova, Dimitrova and others, Genchevi, P.M. and Biser Kostov is available on the website of the National Institute of Justice as well as on the Bulgarian Lawyers for Human Rights Foundation website.

Most of the judgments were sent to the competent authorities through a circular letter drawing their attention on the main ECtHR's findings.

2) General measures corresponding to investigation shortcomings identified by the ECtHR:

A. Failure to conduct the investigation with reasonable expedition

The Supreme Prosecutor's Office has taken a number of organizational measures in order to ensure the prompt investigation, indictment and start of court proceedings in criminal cases, namely:

- a) Instruction No 9371/15.06.2010 for the calculation of terms for investigation in cases of unlawful termination or suspension of criminal proceedings in the pre-trial phase;
- b) Instruction No I-261/12.07.2010 for the improvement of the organization of activities concerning the prolongation of the investigation terms under art.234 (2) and (3) of the Penal Procedural Code (PPC) in accordance with the amendments of PPC promulgated in the State Gazette 32/27.04.2010;
- c) A Register for the terms of investigations, pronouncing by the prosecutors and the detentions on remand and a Register of persons with pending criminal proceedings was set in order to facilitate the monitoring of the length of the criminal proceedings;
- d) Regular inspections on criminal proceedings terminated due to expiration of absolute prescription have been performed on the base of the following Prosecutor General's orders and instructions:
 - Instruction No 122 from 16.03.2007 with regard to discrepancies of data under terminated cases in 2006 due to expiry of prescription;
 - Letter No 210/01.06.2007 to all appellate prosecutor's offices concerning the performance of revisions of pending cases with regard to prescription on the basis of art. 115 and art. 116 (2) and (3) of the Judiciary Act; and
 - Order No LS-2403 from 15.06.2007 containing instructions for inspection of prescribed pre-trial cases;
- e) The issues in question are subject to discussion in the Prosecutor General annual reports with regard to the application of law and the activities of the Prosecutor's Office and the investigation authorities;
- f) The Prosecutor's Office has concluded inter-institutional cooperation agreements for interaction on investigations with Ministry of Interior (MoI), SANS, the Ministry of

Defence, the Council for Coordination of the Combat against Offences Concerning Financial Interests of the European Communities and with other bodies which set organizational prerequisites for the quality and timely conduction of criminal proceedings.

- g) In view of optimizing the efficiency of the prosecutor's offices' work a reorganization in the structure of the Supreme Prosecutor's Office was completed in February 2012.
- h) The cooperation with the MoI was intensified for the purpose of achieving speed, efficiency and results of the investigations. On 30 March 2012 the MoI and the Prosecutor's Office of the Republic of Bulgaria enforced Instruction for Coordination and Cooperation upon Conducting Immediate and Initial Investigative Actions. The aim of the instruction is the elaboration of organizational prerequisites for adequate and timely conducting of investigations while taking into consideration the rights of the parties concerned.

B. Failure by the authorities to investigate a possible racist motive in the attack on the applicants' relative

In order to restrict future violations of ECHR in this matter the Bulgarian authorities initiated legislative amendments to the Criminal Code. After adoption of the amendments the Code envisages more severe sanctions for murder and bodily harm crimes motivated by racial or xenophobic attitudes.

No further amendments are required, moreover the assessment of the Committee at the 1115th meeting, while examining the measures taken to execute the Nachova group of cases, was that the adopted amendments to the Criminal Code appear to be a sufficient measure with regard to the duty to investigate whether or not possible racist motives played a role in an excessive use of force during arrest, insofar as it would oblige the investigation authorities to examine this issue in order to establish the correct qualification of the facts.

C. Failure by the authorities to carry out a thorough, objective and impartial investigation

Aiming at further improvement of the penal proceedings enforcement, article 217 of the Ministry of Interior Act was amended (entered into force on November 24, 2009). The amendment envisages that as an investigating police officer (including chief investigating police officer, senior investigating police officer, investigating police officer and junior investigating police officer) could be appointed only a person who has a university degree in law or holds bachelor degree from the Ministry of Interior (MoI) Academy¹. Such obligatory requirement for all investigating police officers will lead to appointment of highly educated professionals and respectively the risk of omissions and violations during a criminal investigation will be minimized.

Moreover, in the view of the ongoing professional qualification of its employees, including the investigating police officers, the Ministry of Interior adopted an Ordinance No I3-1011/04.07.2006 which regulates the conditions and procedure for planning, organization and performance of the Ministry of Interior employees' professional training.

¹ Before that amendment a university degree in law or bachelor degree from the MoI Academy was an obligatory requirement only for the appointment of a chief investigating police officer or a senior investigating police officer. It was possible an investigating police officer or a junior investigating police officer to be appointed without holding a university degree in law or bachelor degree from the MoI Academy.

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In addition, the Bulgarian National Institute of Justice (NIJ) organizes on annual basis e-learning with subject "Procedural Violations of the Penal Proceedings". The distance training is referred mainly to judges, prosecutors and investigating bodies. Some of the crucial issues put on discussion are as follow:

- Procedural violations concerning the right of legal assistance for the participants in the penal proceedings.
- Procedural violations in the pre-trial process of evidence gathering;
- Procedural violations related to formulation and modification of the accusation;
- Procedural violations in the trial phase.

More information about the number of applicants who had passed the training and the agenda for the forthcoming e-learning in 2013 is available on the following Internet website: www.e-learning.nij.bg.

As regards the other findings of the ECtHR under the Angelova and Iliev group of cases, the Bulgarian Government believes that the acting Bulgarian legislation provides reliable legislative base and consistent practice in order to prevent and avoid future similar violations of the Convention.

The Government considers that most of the identified by ECtHR shortcomings under the Angelova-Iliev group are peculiar to isolated number of cases and do not correspond to the Bulgarian legislative framework and practice.

Conclusion

The Government of the Republic of Bulgaria believes that all individual measures taken have fulfilled the requirements of the ECtHR's judgments and no further examination is necessary. The Government considers that no further general measures are required and propose to the Committee of Ministers to close the supervision of the execution of the above judgments. The Republic of Bulgaria underlines its willingness to continue to follow the main principles and values laid down under the Convention.

Sofia, May 16, 2013