

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



Contact: Abel Campos  
Tel: 03 88 41 26 48

Date: 15/02/2013

**DH-DD(2013)60 rev**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1164 DH meeting (5-7 March 2013)

Item reference: Updated action plan (04/02/13)

Communication from Bulgaria concerning the Velikova group of cases against Bulgaria (Application No. 41488/98).

\* \* \* \* \*

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1164 réunion DH (5-7 mars 2013)

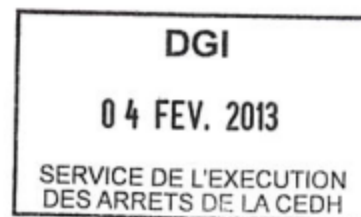
Référence du point : Plan d'action mis à jour

Communication de la Bulgarie relative au groupe d'affaires Velikova contre Bulgarie (requête n° 41488/98)  
**(anglais uniquement)**

---

## Action plan

Group VELIKOVA



### I. List of cases

#### VELIKOVA GROUP

##### Application

##### Case

|          |  |
|----------|--|
| 41488/98 | Velikova, judgment of 18/05/00, final on 04/10/2000                                |
| 38361/97 | Angelova, judgment of 13/06/02, final on 13/09/2002                                |
| 34805/02 | Angelov Angel Vaskov, judgment of 25/03/2010, final on 25/06/2010                  |
| 69138/01 | Boyko Ivanov, judgment of 22/07/2008, final on 22/10/2008, rectified on 08/09/2008 |
| 31365/02 | Dimitrov Georgi, judgment of 15/01/2009, final on 15/04/2009                       |
| 61275/00 | Georgiev Vladimir, judgment of 16/10/2008, final on 16/01/2008                     |
| 53121/99 | Iliev Stefan, judgment of 10/05/2007, final on 10/08/2007                          |
| 55061/00 | Kazakova, judgment of 22/06/2006, final on 22/09/2006                              |
| 50222/99 | Krastanov, judgment of 30/09/2004, final on 30/12/2004                             |
| 7888/03  | Nikolova and Velichkova, judgment of 20/12/2007, final on 20/03/2008               |
| 46317/99 | Ognyanova and Choban, judgment of 23/02/2006, final on 23/05/2006                  |
| 43233/98 | Osman, judgment of 16/02/2006, final on 16/05/2006                                 |
| 57883/00 | Petrov Vasil, judgment of 31/07/2008, final on 31/10/2008                          |
| 47905/99 | Rashid, judgment of 18/01/2006, final on 18/04/2006                                |
| 14383/03 | Sashov and others, judgment of 07/01/2010, final on 07/04/2010                     |
| 17322/04 | Shishkovi, judgment of 25/03/2010, final on 25/06/2010                             |
| 42027/98 | Toteva, judgment of 19/05/2004, final on 19/08/2004                                |
| 48130/99 | Vasilev Ivan, judgment of 12/04/2007, final on 12/07/2007                          |
| 42697/05 | Hristovi, judgment of 11/10/2011, final on 11/01/2012                              |
| 18059/05 | Dimitar Dimitrov, judgment of 03/04/2012, final on 03/07/2012                      |

### II. Description of the cases and violations of the European Convention on human rights:

These cases concern death and/or ill-treatment which had occurred under the responsibility of law enforcement agents, failure to provide medical care in police custody in due time, excessive use of force during arrests, as well as the lack of an effective investigation into the alleged abuses (violations of Articles 2 and/or 3 and 13). The case of Shishkovi also concerns the lack of domestic remedy allowing to claim damages due to the grounds on which the criminal proceedings against the police officers had been terminated (violation of Articles 3 and 13). Some of the cases also concern irregularities related to detention (violation of Articles 5§1 and 5§3), the unlawful destruction of property by the police (violation of Article 1 of Protocol No. 1) and the excessive length of proceedings engaged against the state to obtain compensation for the alleged ill-treatment (violation of Article 6§1)<sup>1</sup>. The death or ill-treatment in all these cases took place during the period between 1993 and 2001.

#### Report of the execution

### III. General measures:

#### A. *Procedural safeguards during police custody:*

<sup>1</sup> The measures concerning the length of the proceedings are contained in the Action report on the execution of the two pilot judgments Dimitrov and Hamanov v. Bulgaria and Finger v. Bulgaria

The Bulgarian legislation provides for a full range of guarantees against ill-treatment during arrest or public custody stemming from the implementation of the European Convention on human rights and the reasoning of the ECHR thereof. The authorities have adopted a new Instruction No.I3-1711 of 15/09/2009 of the minister of Interior, which defines safeguards against police arbitrariness and substantial improvements of the system of police custody.

The efforts of the Standing Committee for Human Rights of the Ministry of Interior are focused on the development of new policies in order to strengthen the protection of the human rights within the national legal system and to harmonize the national framework with the standards imposed by European institutions engaged with the protection of human rights and fundamental freedoms.

In this context it was built a mechanism to put into effect recommendations adopted by the United Nations, Council of Europe, Bulgarian Helsinki Committee, and European Committee for prevention of torture and other organizations whose activities are focused on the protection of human rights.

A Code of Ethics was introduced by order of the Minister of the Interior. The Code lists a number of rules of conduct for police officers. In addition, its non-observance is raised to the level of a disciplinary offence. The monitoring over the implementation of the Code is exercised by the Standing Committee for Human Rights and Police Ethics, within the Interior Ministry. For the period 2009-2010, there are 14 judgments against police officers on cases involving police brutality. According to information contained in the Annual report of the Standing Committee for Human Rights during 2011, 44 cases of violations of the Ethic Code of conduct for officials of the Ministry of Interior were registered. As a result of the verifications the following disciplinary measures had been imposed: ‘dismissal’ of 14 employees for acts incompatible with the ethical rules of conduct; ‘censure’ of 30 employees for violating ethical rules of conduct.

Directorate “Inspectorate” and directorate “Human rights” are responsible for the elaboration of a monitoring report on found violations of human rights from police officers in the performance of their service and for their provision to the Standing Committee for Human Rights. The latter has the duty to identify the gaps and to adopt measures to prevent repetitive violations. In all cases involving supposed violations of the law by police officers inquiries are conducted and where such violations are proven, their perpetrators and, where necessary, their immediate superiors, too, are sanctioned.

On 01/11/2012 a letter from the Chair of the Interior Ministry’s Standing Committee for Human Rights concerning the functioning of two directorates of that ministry involved in internal monitoring of cases of ill-treatment was received. According to the information presented in that letter, the “Inspections” directorate of the Interior Ministry carries out administrative monitoring of infringements of human rights which constitute disciplinary offences. That directorate may also participate in disciplinary procedures.

Furthermore, according to the information contained in the letter the “Human Resources” directorate of the Interior Ministry analyses and monitors discipline and practice in relation to disciplinary offences in the different departments of the Ministry, and supervises those disciplinary procedures which concern the most serious offences, including cases of ill-treatment by the police. Furthermore, in accordance with Instruction No. I3-2813/04.11.2011 on discipline and disciplinary practice within the Interior Ministry, all offences committed by law enforcement agents, and the results of the verification process, must be notified to the

“Human Resources” directorate. The “Human Resources” directorate draws up monthly and annual reports concerning disciplinary offences committed by police officers. In pursuance of Order No. I3-1415/30.07.2009 of the Interior Minister, these reports are classified as “professional secrets” and are not therefore public.

The duties of police officers are regulated by the Law on the Interior Ministry, the implementing decree on the Law on the Interior Ministry and the police Code of Ethics. As said above, failure to comply with the rules laid down in the Code of Ethics is also a disciplinary offence. In the letter from the Chair of the Interior Ministry’s Standing Committee for Human Rights, it is indicated that disciplinary offences must be established in the context of investigations carried out in accordance with the provisions of the Code of Administrative Procedure. Instruction No. I3-2813/04.11.2011 concerning discipline and disciplinary practice in the Interior Ministry also settles certain aspects of disciplinary procedure.

If there are indications that an official holding a high position within the police may have committed an infringement of human rights, the investigation must be conducted by the “Inspections” directorate. If allegations of an infringement of human rights concern another official of the Interior Ministry, the investigation must be conducted by one of the main entities of the Ministry (listed in Article 9 of the Law on the Interior Ministry, such as the “regional police departments”). If a disciplinary offence committed by a police officer also seems to constitute a criminal offence, the evidence collected in the context of the disciplinary procedure is sent to the prosecution authorities.

In particular, in each case of unlawful detention of citizens in the divisions of the Interior Ministry, use of weapons, physical force and auxiliary means from employees’ checks are held and in case of proven guilty disciplinary measures against the perpetrator and his superiors are taken. In compliance with the interdepartmental regulations materials must be sent to the prosecutor for seeking criminal liability.

According to the Annual report of the Standing Committee for human rights and Police Ethics for 2011 at all meetings with senior staff, as the primary indicator for the effectiveness of each service is set the status discipline of the staff and the work on public signals against illegal actions of police officials. Within the Ministry was established an organization for comprehensive, thorough and objective clarification of the data received on the violations committed by employees of the Ministry.

Special events are designed to strengthen discipline including prevention of manifestations of violence. Responsibility for ineffective prevention of violence and intolerance or omissions in the process of the exercise of control over subordinates is sought from employees occupying management positions.

Concerning the information on the implementation of the safeguards against ill-treatment the Government should stress on the adoption of a Strategy on a reform of the judicial system in the period 2008-2013. The strategy tends to improve the national legal aid system. Among the safeguards against ill-treatment the strategy sets up development and implementation of a unified and clear procedure under the Ministry of Interior Act for the determination of on duty lawyers in cases of “Police custody”.

Article 28 (2) of the Legal Aid Act provides for a lawyer on duty to be appointed in strictly defined cases. The provision reads as follows: “A lawyer on duty shall furthermore be

designated according to the procedure established by Paragraph (1) for a detainee in the cases under [Article 63 \(1\)](#) of the Ministry of Interior Act and under [Article 16a of the Customs Act](#), where the said detainee is unable to retain a lawyer of his or her own.”

The Legal Aid Act makes provision for the following: Immediately after the detention, the authority directing the procedural acts shall explain to the detainee the right to assistance of a lawyer on duty and shall notify the Bar Council of the need to appoint a defence counsel.

The lawyer selected from the list shall proceed forthwith with fulfilment of the obligations thereof concerning the legal aid.

The obligations of the authority directing the procedural acts shall be fulfilled by means of serving the detainee, upon signed acknowledgment of service, with a copy of a form stating the right thereof to assistance of a retained lawyer or a lawyer on duty as from the time of detention.

In its latest report, drawn up after its visit to Bulgaria in 2010, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found, as at the time of its ad hoc visit to Bulgaria in 2008 and its visit in 2006, good implementation of several safeguards, such as the right to notify a third party of one's detention and the distribution of a declaration concerning detainees' rights. In the letter from the Chair of the Interior Ministry's Standing Committee for Human Rights dated 01/11/2012, it is stated that certain regional police departments have declarations concerning detainees' rights available in English, German, French and Turkish.

Concerning the case of *Shishkovi v. Bulgaria* and the other cases of police ill-treatment in the Criminal procedural Code has been introduced the procedural figure of the victim (art.74). According to the provision of article 75 of the Code of criminal procedure the victim has procedural rights for instance to be informed of the progress of the criminal proceedings, to file appeals with regard to the acts resulting in the termination or suspension of criminal proceedings etc.

Concerning the prohibition of ill-treatment during police custody in 2002 a new form was introduced to be signed by all detained persons, containing information on their basic rights.

### ***B. Training of the members of the police on human rights:***

It should be pointed out that appropriate trainings on human rights are held regularly and the employees could benefit from the knowledge gained therein. It should be emphasized that in the syllabus for professional training is included a theme “European police and human rights” part of the program “Prevention and crime against crime of the EU and training of trainers on theme “Crimes, hatred specificity and characteristics”, organized by the Office of democratic institutions and human rights of the Organization for security and cooperation in Europe.

In early 2011 after signing a memorandum of cooperation between the Ministry and the Office of Democratic institutions and human rights was launched a training program in respect of the employees of the Interior Ministry on the detection and investigation of “crimes of hatred”.

On 13.05.2011 the program was launched in Vienna. The commencement of the program and the visit of OSCE's representatives in Sofia in the period on 27.06.2011 -30.06.2011 represents an important step forward in the area of implementation of the policy for provision of technical support to the Member states of the OSCE in the process of execution of their

commitments in the field of prevention and response to all the manifestations of hatred and intolerance.

The goal of the program is to raise the awareness of the law-protecting authorities and to increase their capacity to detect, report and record hate crimes. In cooperation with the Commission for Protection against Discrimination a training event was held from 12 to 14.07.2011 on "National practices preventing and combating discrimination in the Bulgarian society and the role of the Ministry of Interior" 60 employees of the Ministry of Interior attended the training.

At the Ministry of Justice – the Head Directorate for Punishment Executions also performs adequate employee trainings as well as a part of the joint projects with other EU member states. Currently is continuing the activity approved by the European commission project CDCOC "European police and respect for human rights" on the Specific Programme of the European Commission Preventing and combating crime.

The project started on 1 September 2011 and will end with a closing conference. Commitment to participate in the project have taken the Belgian Federal Police, the criminal police of the German province Baden-Württemberg, the Warsaw Police and national partners- Commission for protection against discrimination, the Bulgarian Helsinki Committee and the Center for research of democracy. The goal of the project is changing attitudes among police officers, overcoming of stereotypes regarding the workload and formation of a new professional behavior and attitude to citizens in terms of respect for human rights.

### ***C. Measures aimed at ensuring the effectiveness of the investigation:***

The government is determined to pursue zero tolerance policy and take all necessary measures for its implementation. Cases of ill-treatment would not be tolerated and the perpetrators would be punished. The competence to investigate criminal offences committed by police officers has been transferred to ordinary prosecutors. A new Subsection was instituted within the Prosecutor`s General Office.

A letter forwarded by the Chief Public Prosecutor`s office was received by the Government Agent office. The letter dated 29/10/2012 contains information about the setting up of a specialised unit comprising prosecutors from that office whose role is to supervise criminal procedures relating to offences committed by or against police officers, officers of the prison service, Defence Ministry staff, etc.

That unit took over *ex officio* the monitoring of time limits and of the prosecutors' acts in cases of this kind. Verification has been ordered of the number of preliminary investigations for which the newly created unit is responsible and which are pending in different entities of the prosecution. Furthermore, prosecutors have been appointed within each Regional Public Prosecutor's office to work as a matter of priority on those offences under the responsibility of the new unit of the chief prosecutor's office.

Furthermore the Appellate Public Prosecutor's offices have been asked to express their opinions as to the need to appoint prosecutors to be responsible for monitoring the criminal investigations concerned in the different regions. Finally, Methodical Instructions No. 30/03/02/2009 have been adopted by the public prosecutor in order to improve the prosecution's work on cases of this kind.

#### ***D. Practical impact of the measures taken:***

##### ***- Monitoring by the civil society***

As an important part of the prevention of future violations of the rights of detainees during police custody the prompt and effective provision of legal aid turned out to be a substantial point.

According to the findings contained in the Annual report on the activity of the National legal assistance bureau for 2010 the legal aid in Bulgaria has received public recognition. The mechanisms for cooperation with the Ministry of justice, bar associations, the judicial authorities and the non-governmental organizations are improved. The existing model for managing legal aid revealed a good balance of public-private partnership.

Simultaneously, in conjunction with the non-governmental sector, projects to counteract violence are being developed.

In 2011 Bulgarian Hezinki Committee participated in the working group to prepare amendments to the Ministry of Interior Act in order to comply with international standards on the use of force and firearms.

A letter was sent to Standing Committee for Human Rights of the Minister of Interior to ask whether there are currently projects for monitoring of the police by observers from the civil society.

According to the most recent information projects concerning monitoring of civil society are not planned currently provided the lack of financing and co-financing partners in this regard.

The "Civil monitoring in the police" made with "Open Society Institute" Sofia on 'methodology approved by the General Directorate "Preserving police" was completed in October 2011. "Open Society Institute" Sofia has submitted the final report. The recommendations made therein were considered by the Standing Committee for Human Rights.

##### ***- Aggravated qualifications for homicide and bodily injuries committed with racist or xenophobic motives***

The legislator introduced in the Criminal Code aggravated qualifications for homicide and bodily injuries committed with racist or xenophobic motives and the creation of a new sub-heading of the offenses in Chapter Fourteen "Crimes against peace and humanity" /article 419a newly adopted/. Those provisions took effect on 27.05.2011 /SG No. 92/2002, supplemented, SG No. 33/2011/. This measure is considered of a particular importance as it would give the floor to the investigation authorities to examine whether or not possible racist motives were at the origin of an excessive use of force during arrest and in terms of the Conventions requirement for the effectiveness of the investigation it would represent an important step forward.

##### ***- Statistical data on investigations concerning allegations of ill-treatment***

The Police harassment has been and will be a subject of deep consideration by the Republic of Bulgaria Prosecutor, whose duties are to ensure the abidance to the law, to lead the cases in the proceedings and to prepare periodic reports on the related topics. The Head Prosecutor and

the Attorney General Office deal with the problematic at issue, and penal responsibility is sought from the persons found guilty.

According to the findings contained in the Annual report for the implementation of the law and the activity of the prosecution and the investigative authorities for 2011 of the Prosecutor general of Bulgaria the offences related to acts of police violence 60 (72;106) cases are under supervision; 37 (43;42) are newly established and 17 pre-trial proceedings are discontinued; 5 persons are brought to trial. A guilty verdict has entered into force for one person; 7 persons were acquitted, 5 of them by a final acquittal.

#### **IV. Individual measures:**

##### *A/ Payment of just satisfaction.*

The amounts of just satisfaction are transferred to all the applicants. The Government is of the opinion that the payment of the indemnifications remedies to a full extent all the negative consequences stemming from the violations found.

In the case of Shishkovi the applicants did not claim before the European Court any pecuniary damage.

##### *B/ Re-opening of the criminal proceedings*

Article 419 of the Code of criminal procedure makes provision that the effective sentences and judgments could be subject to verification in case of re-opening of the criminal proceedings.

The Criminal Procedural Code provided for as well the re-opening of judicial proceedings and the review of the court rulings delivered in cases of appeal of the prosecutorial decree for termination of criminal proceedings.

According to article 442, paragraph (1), item 4 of the Code of criminal procedure by virtue of a judgment of the European Court of Human Rights where a violation of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) has been established that has a considerable importance for the case the criminal proceedings should be reopened.

In the cases of Toteva, Krastanov and Osman the decisions to discontinue the proceedings were re-examined by the competent prosecutors who established the expiry of the limitation period for the alleged criminal offences. It should be recalled in this connection that the above-mentioned cases concern incidents of assault and battery which took place in 1995 and 1996. The Committee of the ministers concluded that no further individual measures appear possible in the cases of Kazakova, Toteva, Krastanov and Osman. The Committee of the ministers recommended as well that under the case of Velikova no further individual measures seems to be required.

Under the case of Anguelova the Supreme Prosecutor's Office of Cassation informed that the investigation could not be reopened, as the decision to discontinue it had been taken by a prosecutor and not by a court. The competent appellate prosecutor examined ex officio the decision to discontinue the proceedings and concluded in 2008 that the initial decision had been lawful and justified.

In the cases of Boyko Ivanov, Georgi Dimitrov, Stefan Iliev, Ognyanova and Choban, Rashid, Sachov and others and Vladimir Georgiev lawsuits were not instituted and in most of the



cases the criminal proceedings were brought to an end by a prosecutorial ordinance. The competent authorities informed the government that in those cases there is a procedural impediment to revoke the ordinance refusing to institute criminal proceedings on account of the availability of the requirements provided with article 24, par.1, p.3 of the Code of criminal procedure namely the extinguishment of the criminal responsibility following the expiry of a statutory limitation period.

The Supreme Prosecutor`s Office of Cassation informed the Government Agent office that the applicants under the cases of Nikolova and Velichkova v. Bulgaria /application no 7888/03/ and Ivan Vasilev v. Bulgaria /application no 48130/99/ did not file requests for resumption of the internal judicial proceedings and there is no re-opening of those specific cases.

An examination of the possibility of new investigation was carried out in the case of Shishkovi. The Government Agent office has been informed that the Prosecutor General filed a request for re-opening of the criminal proceedings under the case of Shishkovi. After a sitting of the Supreme Court of Cassation held on 17 of December 2012 a judgment concerning the re-opening of the case is going to be delivered.

Concerning the case of Vasil Petrov in 2005 the national court terminated the criminal proceedings on account of the prescription.

The Government Agent Office has been informed that the case of Angelov Angel Vaskov /34805/02/ can`t be re-opened. The case file was closed on the grounds of art. 422, par.1, p.4 and 5 with a refusal do institute pre-trial criminal proceedings in view of the fact that judicial act hasn`t been delivered.

#### *C/ Translation and dissemination of the judgments*

The translation of all the cases included in the Velikova group is available on the website of the Ministry of justice [www.justice.government.bg](http://www.justice.government.bg), section "Judgments of ECtHR". Short summaries of the cases and the findings of the ECtHR thereto are disseminated amongst the relevant authorities.

#### **Conclusion**

The need for further individual and general measures is currently being assessed.

Sofia, 4 February 2013