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Meeting: 1259 meeting (7-9 June 2016) (DH)

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Communication from Bulgaria concerning the case of Petyo Petkov against Bulgaria (Application No. 32130/03)

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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Bilan d'action mis à jour

Communication de la Bulgarie concernant l'affaire Petyo Petkov contre Bulgarie (Requête n° 32130/03)  
(**anglais uniquement**)

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## ACTION REPORT

32130/03 Petyo Petkov, judgment (merits and just satisfaction) of 07/01/2010, final on 07/04/2010

### 1. Convention violation found

This case concerns the degrading treatment in that the applicant was forced to wear a balaclava whenever he left his cell during his pre-trial detention between May 2002 and June 2003 (Art. 3) and a lack of effective remedy in that respect.

The Court found no violation of Article 3 in respect of the applicant's complaints as to the isolation he suffered during the last six months of his detention. However, it found that the applicant lacked an effective remedy in respect of his complaints of prison confinement (Art. 13).

This case also concerns the unlawful continued detention of the applicant after acquittal (Art. 5§1) and his excessive length of pre-trial detention due to the fact that two decisions extending pre-trial detention were based only on the seriousness of the charges (Art. 5§3).

The Court found also a breach of the applicant's right to presumption of innocence due to declaration by prosecutor capable of creating a public perception that the applicant was guilty of the offence with which he was charged while the proceedings were still pending (Art. 6§2).

Finally, the case concerns an unjustified delay in returning of applicant's taxi, which had been seized as evidence (Art. 1, Prot. No. 1). The vehicle was retained over a year and three months after his definitive acquittal.

### 2. Individual measures

The applicant has been acquitted and released immediately after (§ 20 of the judgment).

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 amount of 6 000 (six thousand) euros pecuniary and 2 500 (two thousand and five hundred) euros non-pecuniary damages. The compensation awarded was transferred to Mr. Petkov's account on 06.07.2010.

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 Petyo Petkov case is available on the Ministry of Justice website at <http://www.justice.government.bg/>.

The same are sent to the competent domestic administrative and judicial authorities (Ministry of Internal Affairs, Supreme Court of Cassation and Prosecutor's Office) through a circular letter drawing their attention on the main conclusions of the ECHR's judgment.

#### *b) Violation of Article 3 related to the concealment of the applicant's face*

It should be noted that at the relevant time the domestic law did not contain any specific rules concerning the concealment of a detainee's face (§ 47 of the judgment).

This shortcoming has been remedied. Since July 2003, the concealment of a detainee's face when he or she appears in public is possible only in exceptional circumstances. Currently this matter is regulated by Section 57 of 2015 Instructions No 81213-78 on the Detention Procedure, on the Equipment of the Detention Premises and the Rules Applicable to Them.

In view of avoiding possible degrading and inhuman treatment during custody also related to other cases of violation of Art. 3 of the Convention presented before the ECHR, shortly before the current case was decided, a new Penal Sanctions and Detention in Custody Act was Promulgated SG No. 25/3.04.2009, effective 1.06.2009. Article 3 of the (new) Implementation of Penal Sanctions and Detention in Custody Act provides:

#### **(1) Sentenced persons may not be subjected to torture, to cruel or inhuman treatment (measures concerning the violations of Article 3)**

(2) The following shall be considered torture, cruel or inhuman treatment:

1. any act or omission which deliberately causes severe physical pain or suffering, except the cases of use of force, auxiliary means or arms as regulated in this Act;
2. any intentional placing in unfavourable conditions of service of the sentence, consisting in deprivation of sufficient living floor space, food, clothing, heating, lighting, ventilation, medical services, conditions for exercise, **continued incommunicado segregation** and other culpable acts or omissions which may cause harm to health;

**3. degrading treatment, which diminishes the human dignity of the sentenced person, forces him or her to act or to suffer any acts against his or her will, arouses in him or her a feeling of fear, defenselessness or inferiority.**

(3) The acts or omissions covered under Paragraph (2), performed by an official or by any other person abetted or aided by an official through express or tacit consent, shall be considered torture, cruel or inhuman treatment.

This legislative amendments as well as the fact that concealing the face of a person placed in custody and preventing him from contact with other persons in order to protect his identity is not widely practiced in Bulgaria, we should reasonably conclude that the situation of Mr. Petyo Petkov was more of an exception than a prevalent practice of the competent authorities.

With the current legislative measures in place the only possible use of concealment of the face of a person, i.e. detained on remand, is in the hypothesis of art. 141 of the CPC – Interrogation of a witness with secret identity or/and under the Law of the protection of persons endangered in relation of a criminal proceeding – the sole aim of such an exceptional measure is the protection of its identity for its own sake.

The government therefore considers that the case of Mr. Petkov is an exceptional one and that the above-mentioned legislative measures, as well as the dissemination of the judgment to the relevant authorities, should be sufficient to prevent any new similar violations.

***c) Violation related to the lack of effective remedies in respect of the concealment of the applicant's face and in respect of his prison confinement***

The Government consider that the domestic case-law concerning claims for damages related to prison confinement /as well as for bad prison conditions/ is forming a clear evolution towards adjudicating compensation for non-pecuniary damages under the general terms of Art. 1 of the Law on Responsibility of State and Municipalities for Damages. The concealment of a detainee's face is an exceptional measure and since the case at hand the authorities had not dealt with similar applications. The general rule provides for these cases also to seek State's liability under the article cited above.

New approach towards the severity and the period of prison confinement can be considered in the Penal Sanctions and Detention in Custody Act with regard of the execution of "Neshkov v. Bulgaria" pilot judgment (Application No 36925/10 and 5 others, judgment of 27 January 2015).

***d) Violations of Article 5, §§ 1 and 3***

As concerns the violation of Article 5 § 1, this case raises questions similar to those examined in the case of Bojinov, closed by final resolution CM/ResDH(2012)166.

As concerns the violation of Article 5 § 3, this case raises questions similar to those examined in the case of Evgueni Ivanov, closed by final resolution CM/ResDH(2012)164.

***e) Violation of Article 6 § 2***

The findings under this Article are similar to those of "Gutsanovi v. Bulgaria" case (application № 34529/10, judgment of 15 October 2013, final on 11 January 2014). As no legislative amendments are possibly feasible the national authorities are taking all necessary awareness-raising measures by informing all competent institutions of this problem, i.e. via educations and seminars under the

supervision of the National Institute of Justice. The dissemination of the judgments is another mean of preventing any further reproduction of such a type of violations. It is to be noted that no similar declarations coming from representatives of the prosecution are observed during the last couple of years.

**f) As concerns the violation of Article 1 of Protocol n°1**

This case raises questions similar to those examined in the Karamitrov case, closed by a final resolution Resolution CM/ResDH(2014)138.

**4. Conclusions**

In conclusion the government consider that the measures adopted have remedied the consequences for the applicant of the violation 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.