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Meeting: 1451st meeting (December 2022) (DH)

Item reference: Addendum of the Action Plan (30/09/2022)

Communication from Bulgaria concerning the case of UMO ILINDEN AND OTHERS v. Bulgaria (Application No. 59491/00)

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Réunion : 1451^e réunion (décembre 2022) (DH)

Référence du point : Addendum au Plan d'action (30/09/2022)

Communication de la Bulgarie concernant l'affaire UMO ILINDEN ET AUTRES c. Bulgarie (requête n° 59491/00) (*anglais uniquement*)

ADDENDUM TO THE ACTION PLAN

UMO Ilinden group of judgements

30 September 2022

DGI

30 SEP. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

The Government of the Republic of Bulgaria would like to present an addendum with the latest developments on the execution of the *UMO Ilinden* group of judgements.

I. With regard to the registration procedure:

1. Recent registration request submitted by “UMO Ilinden”

On 17 November 2021, the request was rejected on the following grounds:

- The presented Statutes and Founding Protocol do not clarify the goals of the association and the means for their achievement. The Founding Protocol of the constituent assembly and the Statutes under items 4, 5 and 7, specify obligations for the State instead of goals of the association. This is contrary to the legal requirements regarding the activities of an association for private benefit within the meaning of Art. 2, para. 1 of the NPLEA.

- The goals of the association do not correspond to the activity of the same, which is determined to be in private benefit, according to art. 2, para 1 of the NPLEA. The formulation of the goals implies that they are in public benefit while the association was established for private benefit.

The refusal was appealed before Blagoevgrad Regional Court on 25 November 2021. On 1 December 2021, by decision no. 77 (commercial case no. 188/2021) the Blagoevgrad Regional Court confirmed the motives in the refusal of the Registration Agency. The court also concluded that the stated goals of the association were not in accordance with the law and that the right to association was an inalienable human right, but not when it threatens the public order in the country.

The decision was upheld by the Sofia Court of Appeal on 13 May 2022. In the motives, the court found deficiencies in the establishment of the association, which were independent grounds for refusing the requested registration and could not be defined as "direct discrimination on an ethnic basis against the members of the association", since they did not constitute direct or indirect discrimination based on ethnicity within the meaning of art. 4, para. 1 of the Protection against Discrimination Act, but assessment of the valid establishment of the association, having regard to the content of the documents drawn up and adopted by the founders, and the conformity of the same externally with the mandatory provisions of the law, adopted for the protection of the rights of the members of the association.

- The above mentioned deficiencies in the establishment of the association, found by the court are the following:

- the minutes of the founding meeting of the association submitted with the application do not prove the valid establishment of the association, as the time and place of the meeting are not indicated,, which is necessary to be able to assess the presence of the simultaneously expressed will of the required number of founders, as a requirement for the valid establishment of the association /art. 19 of the Law on non-profit legal entities /.

- the adopted Statutes of the association do not comply externally with the requirements of Art. 20, Item 10 of the Law on non-profit legal entities - to contain the rules regarding the formation and termination of membership, as well as the procedure for settlement of the property relations upon termination of membership.
- From Article 7, item 3 of the Statutes, which states that members of the association are accepted "by submitting an application for membership from the local organization of a regularly convened meeting in the presence of the applicant with usual majority of those present", it was not clear who submits the application for membership - the applicant or the local organization, and to which body of the association, the application is submitted - to a regularly convened general meeting of the association or to regularly convened general meeting of the local organization, respectively which body of the association accepts the applicant as a member by a simple majority of those present of the association.
- The thus formulated provision of Article 8, paragraph 6 of the Statutes, which states that "property relations between the excluded member and the association after termination of membership shall be settled according to the Law of Obligation and Contracts and Civil Procedure Code", is blanket and unclear, and the procedure for settlement of property relations upon termination of membership in the hypothesis of Art. 8, para. 1 and para. 2 of the statutes was not defined, respectively by written notification from the member to the local organization or to the management board, and by automatic termination for unpaid membership fees for more than three months.

2. Registration request by an “Union of Macedonians from Bulgaria who experienced repression, victims of the communist terror” lodged on 26 July 2022.

The request for registration was duly reviewed. On 27 July 2021, it was rejected on the following grounds:

- Failure to remove the obstacles related to the illegality of the goals and means for their achievement specified in the Founding Protocol of the association.

On 8 October 2021, by a decision no. 59 (commercial case no. 146/2021) the Blagoevgrad Regional Court confirmed the motives set forth in the refusal of the Registration Agency, namely the activity for achieving the goals is directed against the unity of the Bulgarian nation and is prohibited by the imperative provision of Art. 44, para. 2 of the Constitution of the Republic of Bulgaria.

The decision of the Blagoevgrad Regional Court was appealed to the Sofia Court of Appeal on 16 November 2021.

On 4 February 2022, by a decision no. 78 (commercial case no. 1110/2021) the Sofia Court of Appeal fully upheld the decision of the Blagoevgrad Regional Court.

3. Request for registration by “Union of Macedonians from Bulgaria who experienced repression, victims of the communist terror” lodged on 7 March 2022.

The request for registration was duly examined. On 8 March 2022, it was rejected on the following grounds:

- Failure to remove the obstacles related to the illegality of the goals and means for their achievement specified in the Founding Protocol of the association.
- It was requested to register circumstances that do not correspond to the Statutes adopted by the constituent assembly.
- The goals of the association (Art. 2, para. 1 of the Statute) and the means for their achievement (Art. 2, para. 2 of the Statute), in terms of wording, meaning and content did not correspond to the requirements established by the legislator for private benefit activity within the meaning of Art. 2, para. 1 of Law on non-profit legal entities.
- The main goals and means of the association led to a conclusion that it is an association on an ethnic principle, contrary to the prohibition laid down in Art. 44, para. 2 of the Constitution of the Republic of Bulgaria.
- Art. 2, para. 2, item 10 of the Statutes specified means of achieving the goals, which corresponded to an activity of political parties, while according to paragraph 2 of the Transitional and final provisions of the Law on non-profit legal entities, organizations aiming to carry out political activity are regulated in a separate law.

On 12 April 2022, by decision no. 36 (commercial case no. 64/2022) the Blagoevgrad Regional Court fully confirmed the motives set forth in the refusal of the Registration Agency.

The decision of the Blagoevgrad Regional Court was appealed to the Sofia Court of Appeal.

On 21 June 2022, by a decision no. 423 (commercial case no. 450/2022) the Sofia Court of Appeal upheld the decision of the Blagoevgrad Regional Court.

4. New request for registration by “Union of Macedonians from Bulgaria who experienced repression, victims of the communist terror” lodged on 19 September 2022.

The request for registration was duly examined. On 20 September 2022, it was rejected on the following formal and independent ground:

- It was requested to register circumstances that do not correspond to the Statutes adopted by the constituent assembly and contradict to the provisions of Art. 25, Art. 30 and Art. 31 of the Law on non-profit legal entities.

In addition, the goals of the association were defined as contrary to constitutionally established principles in the Republic of Bulgaria.

At present, the refusal has not been appealed before the Blagoevgrad Regional Court.

5. Information concerning the registration request –by “Macedonian club for ethnic tolerance in Republic of Bulgaria”

With regard to association similar to UMO Ilinden - “Macedonian club for ethnic tolerance in Republic of Bulgaria”, there was a request for registration, lodged on 16 November 2020.

The application for registration was duly reviewed. On 17 November 2020, the application for registration was rejected on grounds related to the goals of the association.

The registry official pointed out that according to Art. 44, para. 1 of the Constitution of the Republic of Bulgaria, citizens are free to associate. As can be seen from the decisions taken and the circumstances declared for registration, the goals and the means for their achievement are not inherent to a legal entity with non-profit activity, in the sense of the NPLEA, but are rather resembling the activity of a political party. The latter falls under the scope of the Political Parties Act, which establishes a different registration legal regime.

The refusal was appealed on 19 November 2020 before the Blagoevgrad Regional Court and upheld on 01 February 2021.

The court accepted that in view of the outlined goals of the association, the subjects of protection are not the rights and legitimate interests of all Bulgarian citizens, repressed during the communist regime, but only to those with "Macedonian self-consciousness and self-determination".

The court also pointed out that based on the provisions of Art. 2 para. 1, item 4 of the Statute, the association sets the goal to protect "human and minority rights of Macedonians and other ethnic minorities in Bulgaria". By this, it imposes the conclusion that the registration of the association is directed against the unity of the nation, prohibited by the norm of Art. 44 para. 2 of the Constitution. The court accepted that the refusal was correct and lawful and should be upheld.

The decision was appealed before the Sofia Court of Appeal and upheld on 8 June 2021.

6. The proceedings for discontinuance of the registration of the association "Civil association of protection of fundamental individual human rights"

On 20 July 2020, the Blagoevgrad District Court discontinued the registration of the association and opened liquidation proceedings with regard to the association.

On 17 August 2020, the decision was appealed to the Sofia Court of Appeal. On 27 August 2020, the appeal was returned to the applicant due to an irregularity.

On 10 March 2021, the Sofia Court of Appeal returned the case to the Blagoevgrad District Court for a court ruling, under Art. 64 of the Code of Civil Procedure - restoration of deadlines.

By a court ruling dated 16 December 2021 the Blagoevgrad District Court dismissed the application. On 30 December 2021, the ruling was appealed to the Sofia Court of Appeal.

By a court ruling dated 20 January 2022 the Sofia Court of Appeal dismissed the application. The ruling was appealed with a private cassation appeal to the Supreme Court of Cassation.

The case is still under review before the Supreme Court of Cassation under case number 1982/22 from 14 September 2022.

II. With regard to the general measures taken in response of the latest CM recommendations

The Bulgarian government would like to report the following progress regarding the execution of the *UMO Ilinden* group of judgments.

The execution of this group of cases is a priority for the Bulgarian authorities which undertook concrete actions for the implementation of the Committee's main recommendations set out in the Interim Resolution CM/ResDH(2020)197 and in Decision CM/DEL/DEC(2021)1406/H46-9.

On 1 October 2021 a letter, signed by the Minister of Justice, was sent to the Registration Agency. It contained strict instructions for supplementing the methodological guidelines for the registration officers to cover the problematic issues examined in this group of cases, and to prepare detailed, user-friendly instructions containing all the requirements of the registration procedures. The Directorate "Procedural Representation of the Republic of Bulgaria before the ECHR" in the Ministry of Justice offered to provide full assistance in the implementation of these measures.

On 21 October 2021, the Registration Agency reported on **actions taken to ensure better application of the law:**

The Registration Agency informed that in view of the requirement for the Bulgarian authorities to ensure the examination of the registration applications of associations in accordance with Article 11 of the Convention and on the basis of the letter received from the Minister of Justice, the Agency drafted **Principle positions in the registration proceedings for non-profit associations** aimed at registration officials, as well as a **Detailed manual on the requirements of the registration procedure** for assisting the associations in the preparation of the documents on the applications for registration. The Principle positions and Detailed manual were later on published be published on the Agency's website.

The main objectives set in the **"Principle positions in the registration proceedings for a non-profit associations"** are to:

- support the work of the registration officials in considering and ruling on applications for initial registration, entry and deletion of circumstances and announcement of acts in the Register.
- establish uniform rules and criteria for the examination and ruling on applications for initial registration, entry and deletion of circumstances and announcement of acts in the Register.
- ensure predictability, security and application of equal criteria under equal conditions by law for the users of the Register.
- increase the authority of and the trust in the Registry Agency.

The Principle positions contain individual sections explaining in detail the elements, relating to the establishment of an association, the founders, the statutes of the association, the goals, the means, the type of activity and the subject of additional economic activity of the association, as well as the governing bodies and their powers. In the last section, the Registration Agency pays special attention to the gaps in the statutes of the associations, observed in its practice such as:

- lack of procedure for settling property relations upon termination of the membership;
- lack of procedure for determining the amount and the manner of payment of property contributions;
- lack of regulations regarding the distribution of the remaining property after the satisfaction of the creditors, and the possible contradiction between the associations' statutes and Chapter Three of the Law on non-profit legal entities in cases of associations for public benefit.
- lack of precise regulation of the period between receiving a General Meeting invitation and bringing it to the knowledge of the association members on one hand and the date of the General Meeting on the other. The regulation is

important in all cases where the association's Statute provides an additional procedure for convening a General Meeting.

The “**Guidance on the requirements of the registration procedure**” has the following structure:

The first part of the Manual contains detailed explanations regarding the sample application form for initial registration, the content, the form, the method of filling in and the method of submission. Regarding the manner of filling in the application, several thematic groups are featured with the respective explanations:

- Identification;
- Clarification of the application;
- Applicant data, including several fields;
- Main circumstances, including several fields;
- E-mail address for sending instructions and handing over refusals under Article 24 of the Commercial Register Act, including several fields;
- Attachments - all necessary attachments exhaustively listed;
- Optional registration on the grounds of art. 100, para. 5 of the Value Added Tax Act;
- Signature.

The second part of the Manual contains detailed explanations regarding the applications for change of registered circumstances of already registered associations.

The third part of the Manual describes the applicable regulations, state fees (tariff, method of payment, place of payment and bank account) and information on the deletion of personal data.

On 20 September 2022 the Deputy Minister of Justice in charge with the Registration Agency sent a new letter with proposal to supplement the “Principle positions in the registration proceedings for a non-profit associations” and the “Detailed manual on the requirements of the registration procedure”, taking into account also comments of the Execution Department shared on earlier stages of the execution process, for some revisions and additions in the text of the two documents, in order to overcome some incompleteness and ambiguities.

On **27 September 2022**, the Registry Agency reported on the actions taken and that the new edition of the said documents were published on the following address:

<https://www.registryagency.bg/bg/registri/targovski-registar/vprosi-i-otgovori/>

The Government of the Republic of Bulgaria will continue to provide information to the Committee of Ministers on any further developments and additional measures.

30 September 2022

Sofia, Bulgaria