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

Item reference: Action Plan (12/10/2022)

Communication from Bulgaria concerning the case of Ekimdzhiev and Others v. Bulgaria (Application No. 70078/12)

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

Référence du point : Plan d'action (12/10/2022)

Communication de la Bulgarie concernant l'affaire Ekimdzhiev et autres c. Bulgarie (requête n° 70078/12)
(anglais uniquement)

ACTION PLAN

Ekimdzhiev and Others v. Bulgaria

no. 70078/12, judgment of 11 January 2022, final on 11 April 2022

DGI

12 OCT. 2022

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

I. CASE DESCRIPTION

This case concerns the lack of sufficient safeguards in Bulgarian law against the risk of abuse which is inherent in every secret surveillance system and in any system of retention and accessing of communications data (violations of Article 8 of the Convention).

The main shortcomings identified by the Court regarding the system of secret surveillance concerned the manner in which the judicial authorisation procedure operated in practice; the framework governing the storing, accessing, examining, using, communicating and destroying of surveillance data; the definition of surveillance of “objects”; the duration of the initial authorisation for surveillance on national-security grounds; the lack of sufficient safeguards for the independence, competence and powers of the oversight system; the fact that the notification arrangements were too narrow; the lack of sufficient clarity in the legal framework and the absence of procedural guarantees relating concretely to the destruction of accidentally intercepted lawyer-client communications; the fact that the dedicated remedy was not available in practice in all possible scenarios, did not ensure examination of the justification of each instance of surveillance (by reference to reasonable suspicion and proportionality), was not open to legal persons, and was limited in terms of the relief available.

The main shortcomings identified by the Court regarding the system of retention and accessing of communications data concerned the inability of the judicial authorisation procedure to ensure that retained communications are accessed by the authorities solely when necessary in a democratic society; the absence of clear time-limit for destroying data accessed in the context of criminal proceedings; the absence of publicly available rules on the storing, accessing, examining, using, communicating and destroying of communications data accessed; the inability of the oversight system to effectively check abuse; the fact that the notification arrangements were too narrow; the apparent absence of an effective remedy.

II. INDIVIDUAL MEASURES

The Court held that the findings of violation constituted in themselves sufficient just satisfaction for any non-pecuniary damage suffered by the four applicants on account of the two breaches of Article 8 of the Convention found in the case. The costs and expenses have been duly paid. No further individual measures appear necessary.

III. GENERAL MEASURES

The judgment was translated in Bulgarian and made public on the Government Agents’ website as well as on the website of the Ministry of Justice. It was partially disseminated to the relevant authorities. Further action in respect of dissemination will be undertaken in due course.

Measures concerning the execution of the previous judgments regarding the use of secret surveillance were included in the Road Map adopted by the Council of Ministers in August 2021. The present judgment clarifies shortcomings in the current legislative framework which need to be analysed. It also contains establishment of new problems with respect to the retention and access to communication data. These new issues will be included in the future efforts to execute this group of cases.

The judgment has been discussed within the Ministry of Justice. Since the competence for a legislative reform in this sphere lies with the Ministry of Interior, a letter is under preparation on behalf of the minister of justice to the competent authorities about establishing a working group for legislative and other amendments in the relevant framework.

It should also be noted that in the beginning of this year and at the initiative of the National Institute of Justice a working group of trainers within the institute, such as judges in the Supreme Cassation Court, appellate prosecutors and a member of the National Bureau for Control on the Special Means of Surveillance, presented a research report on “The Use of Secret Means of Surveillance at the Prosecutor’s Request”. The report makes conclusions regarding the domestic law and practice in this respect, recommendations and proposals for legislative amendments. It appears that the National Institute of Justice plans a series of trainings for judges and prosecutors on these issues.

The work on the execution of this judgment is at a very early stage. However, the Government are conscious of its seriousness and importance and will take prompt measures for its execution. The Committee of Ministers will be kept informed on all future developments.