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Communication from Bulgaria concerning the case of Avendi OOD v. Bulgaria (Application No. 48786/09)

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Réunion : 1514e réunion (décembre 2024) (DH)

Référence du point : Bilan d'action (11/10/2024)

Communication de la Bulgarie concernant l'affaire Avendi OOD c. Bulgarie (requête n° 48786/09) ***(anglais uniquement)***

ACTION REPORT

concerning the case *Avendi OOD v. Bulgaria (Application no. 48786/09)*

October 2024

I. Violation of the Convention

The case *Avendi OOD v. Bulgaria* concerns the delayed return in March 2007 of merchandise (alcoholic beverages) seized in January 2005 as evidence in the course of criminal proceedings, where the domestic authorities failed to comply with of a final judgement of 7 December 2005 in the context of discontinued criminal proceedings ordering the return of the merchandise to their owner (the applicant company) (violation of Article 1 of Protocol No. 1).

Several different proceedings (both criminal and administrative-penal proceedings) unfolded in parallel, concerning various third parties and the applicant company. Throughout the proceedings, the alcoholic beverages appeared to have been retained by the National Revenue Agency (NRA). They were seized in one set of criminal proceedings but were apparently seen as relevant for other proceedings (including administrative-penal proceedings), a situation which was however not formalised in the way required under domestic law.

In particular, the NRA continued to retain the beverages after the termination of the criminal proceedings, in which the beverages were initially seized, and carried out administrative penal proceedings without formally adducing the alcoholic beverages as evidence in these administrative penal proceedings. In the same context, the NRA ordered as administrative penalty the forfeiture of the beverages, but the forfeiture was quashed by the Varna Regional Court with final effect on 18 December 2006. Only upon the latter judgment and after being presented with a request by the applicant, the NRA returned the bottles, but the shelf life of part of the merchandise had already expired. The applicant filed a claim for damages against NRA on grounds of section 1(1) of the State and Municipalities Responsibility for Damages Act (SMRDA) which was dismissed as SMRDA was not applicable to its claim.

II. Individual Measures

The European Court awarded just satisfaction for pecuniary damage to the amount of EUR 165 000, paid on 21 July 2023. It comprised EUR 115,000 for the purchase price of those beverages that were returned after the expiry of their shelf life; EUR 35,000 for loss of profit and EUR 15 000 for statutory default interest. Therefore, the applicant has obtained sufficient *restitutio in integrum* and no further individual measures are necessary.

III. General measures

It could be noted that the interference with the applicant company's rights resulted mainly from certain lack of coordination and uncertainty apparently created by omissions of State authorities in the handling of parallel administrative and criminal proceedings, as well as from the fact that the otherwise effective domestic remedies did not provide the necessary relief in the particular case.

1) Awareness-raising measures

The Government have disseminated the judgment to the competent domestic authorities.

The judgment has been translated into Bulgarian, published[1] and disseminated.

2) Compensatory remedy against the retention of object seized as evidence in criminal proceedings

The domestic legal order provides for a compensatory remedy against retention of object seized as evidence in criminal proceedings - claim under section 45 in connection to section 49 of the Obligations and Contracts Act.

In the present judgment (§ 56) the European Court noted that claims related to the retention of objects seized as evidence in the course of criminal proceedings are normally subject to the general rules of tort under the Contracts and Obligations Act (Posevini, §§ 42 and 46)

The recent case-law of the Supreme Court of Cassation (SCC) confirms this conclusion (опр. №, 50208 от 14.07.2023 по гр. д. № 3439/2022, ВКС, решение № 3 от 03.01.2024 по гр. д. № 1746/2023, ВКС). The tort claim shall be directed against the Prosecutor's Office irrespective of where and by which state body or private person the retained objects are kept (animals in a private farm (опр. 384 от 13.05.2021 по гр. д. №. 4162/2020, ВКС), rose oil in private companies (реш. № 137/18.02.2019 по гр. д. № 2957/2017, ВКС), cereals in a private storage - реш. № 136 от 27.06.2019 г. по гр. № 501/2019 Г., Г. К., III Г. О. на ВКС). The responsibility of the Prosecutor's Office stems from their prerogative to provide guidance and supervision in the criminal proceedings, under Article 52, para. 3 and Article 46, para. 2, p. 1 of the Criminal Procedure Code (реш. № 136 от 27.06.2019 г. по гр. д. № 501/2019 г., Г. К., III Г. О. на ВКС). In judgment no.137/18.02.2019 in civil case no. 2957/2017, the SCC found the claim admissible and valid jointly against the Prosecutor's Office and the private companies which stored the rose oil retained by the Prosecutor's Office.

In principle, compensation for damage caused by a failure to return material evidence after termination of criminal proceedings, when the evidence is supposed to be returned to its owners, can be claimed from the moment of entry into force of the final act of termination of criminal proceedings, and from that moment it should be considered that the obligation to return the evidence has become due and the statute of limitations has begun.

It can be concluded that the general tort claim under the Obligations and Contracts Act is an effective compensatory remedy.

3) Compensatory remedy under the State and Municipalities Responsibility for Damages Act

At the relevant time the question whether claims in respect of damage caused by unlawful administrative decisions imposing administrative penalties were to be examined by civil courts under the Contracts and Obligations Act or by administrative courts under the SMRDA was subject to conflicting practice in domestic case-law (§ 31).

As noted by the Court in § 47, an interpretative decree in case no. 2/2014 was adopted on 19 May 2015 jointly by the Supreme Court of Cassation and the Supreme Administrative Court

[1] See, https://hudoc.echr.coe.int/eng?i=001-225905
https://justice.government.bg/home/index/48312690-3f31-497b-88ba-3ee5e458e500

to resolve the matter. According to the decree, such claims were to be examined by the administrative courts under the SMRDA, notwithstanding the fact that the decision imposing the administrative penalty was not considered as an individual "administrative act" under Article 21 of the Code of Administrative Procedure. The Supreme Administrative Court and the Supreme Court of Cassation considered that such a decision resulted from the exercise of administrative functions and constituted in substance the exercise of "administrative action" within the meaning of section 1(1) of the SMRDA, the provision circumscribing the jurisdiction of the administrative courts in the relevant area.

Therefore, the claim for compensation that the applicant filed against NRA would be admissible in the light of the interpretation provided in the interpretative decision.

It can be concluded that both remedies assessed by the Court (§§ 54-59) – a general tort claim, and compensation claim under section 1(1) of the SMRDA, are currently effective remedies for the violation at hand.

4) Failure of an administrative authority to comply with a judgment concerning non-substitutable action

The general measures to prevent such violations are examined in the *Stoyanov and Tabakov* group of cases.

IV. Conclusion

The Government consider that all individual and general measures have been adopted and invite the Committee of Ministers to close the supervision of the execution of the present case.