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Date: 24/10/2024

DH-DD(2024)1224

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Meeting: 1514th meeting (December 2024) (DH)

Communication from an NGO (Bulgarian Helsinki Committee) (11/10/2024) concerning the Yordanova and Others group of cases v. Bulgaria (Application No. 25446/06) and reply from the authorities (22/10/2024) (appendices in Bulgarian are available at the Secretariat upon request).

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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

Communication d'une ONG (Bulgarian Helsinki Committee) (11/10/2024) relative au groupe d'affaires Yordanova et autres c. Bulgarie (requête n° 25446/06) et réponse des autorités (22/10/2024) (des annexes en bulgare sont disponibles auprès du Secrétariat sur demande) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

**Submission of the Bulgarian Helsinki Committee
to the Committee of Ministers for the forthcoming review
of the group of cases *Yordanova and Others v. Bulgaria*
(No. 25446/06, Judgment of 24 April 2012)**

11 October 2024

Sent via E-mail

1. These observations are prepared by the Bulgarian Helsinki Committee (BHC) in response to the addendum to the action plan submitted by the Government of the Republic of Bulgaria on 8 July 2024 and the request to the Committee of Ministers to transfer the *Yordanova* group of judgements from enhanced to standard procedure of supervision.

I. Political situation and legislative developments

2. Bulgaria has held six parliamentary elections over the past three and a half years and the next elections will be held on 27 October 2024. Meanwhile, on 20 December 2023, the Bulgarian National Assembly adopted a package of amendments to the Constitution. Under new regulations, the National Assembly shall act permanently and shall not be dissolved by the President, as was the case under the previous regulation of the Constitution (Article 99 (5)).

3. As the Government noted (see Addendum to the action plan, dated 8 July 2024, § 1, p. 2), “[a]n important step to bring a related issue, concerning the lack of address registration, including of those affected by demolitions, to a close, is the Draft Bill to Amend and Supplement the Civil Registration Act [SRA], published for public consultation on 23.01.2024”. This bill was not adopted. However another draft bill on the same act was introduced in July 2024, which was adopted on 25 September 2024 and promulgated on 8 October 2024. The bill introduces the possibility of address registration at an ‘office’ address, which would allow for all citizens to be registered to obtain ID cards.

4. At the same time, the Government admitted (see Addendum to the action plan, dated 8 July 2024, § 1, p. 1), that “[d]ue to the political instability in the country, the Draft Bill to Amend and Supplement the Spatial Development Act [SDA] has not yet undergone a public consultation procedure, impact assessment or financial justification, but the Government will attempt to start those as soon as a Parliament and a regular Government are formed”. The adoption within a year of amendments of SRA and the postponements since 2018 to introduce

the other Draft Bill – SDA clearly indicate the lack of political will to address the fundamental issues caused by illegal housing.

5. Even the adoption of intended amendments of SDA would only address some raised issues sufficiently. The bill would address only one of the possible eviction procedures – the procedure under 225a of SDA (removal of illegal constructions). However, municipal authorities still have other options – under Article 195 of SDA (removal of dangerous construction), and under Article 65 of the Municipal Property Act (seizure of municipal property). Furthermore, along with this, there is the possibility of evictions without those affected having access to a legal remedy at all. Two cases from last year clearly illustrate this statement.

The Roma neighbourhood of Orlandovtsi

6. The Roma neighbourhood of Orlandovtsi has been in existence since the 1950s. Many of the inhabitants were born and spent all their lives in it. Most of them are very poor and have no other homes. On 16 June 2023, the homes of nearly twenty Roma families, all of them living in the Roma neighbourhood in Orlandovtsi, Serdika District, Sofia Municipality, were visited by officials of the Sofia Municipality. Notices with the following text were glued on their houses: “We inform you that until 30.06.2023, activities will be undertaken to remove all illegally built buildings and to clear the land located in Quarter 24, “Orlandovtsi-Malashevtsi”. These should be vacated by residents and chattels. We apologise in advance for any inconvenience caused and thank you for your understanding”. On 19 June 2023, employees of the Bulgarian Helsinki Committee (BHC) received complaints from a large number of Roma families whose homes were targeted for demolition. Over 120 persons faced the risk of being rendered homeless, including small children, pregnant women, sick, elderly and disabled. All these families have lived in the neighbourhood for generations, and the houses targeted for demolition are their only homes. 21 files with descriptions of households targeted for eviction were opened by the BHC. On 21 June 2023, the mayor of the Serdika District and other officials arrived at the Orlandovtsi neighbourhood and specified the homes that were about to be demolished. They refused to talk to the people living there. In June 2023 14 of the affected persons – heads of households, submitted to the Sofia City Administrative Court (SCAC) requests for protection from possible unlawful acts of the municipal administration based on Article 250 of the Administrative Procedure Code (APC). After a check was carried out within the framework of the initiated court cases, it was found that at the time of the notification, there were no orders issued for any of the buildings, which is why the courts rejected the requests under Article 250 from APC (see attachments No. 1-13). It is thus unclear on what basis officials gave oral orders and explanations and posted notices about the upcoming demolition of “all illegally constructed buildings”. On 19 July 2023, an unidentified group of people arrived at the Orlandovtsi Roma neighbourhood, together with several police patrol cars. Excavators demolished three houses on the same day. No orders were handed to the inhabitants. On 27 July

2023 Bulgarian Helsinki Committee submitted a request for access to orders for the demolition of Roma homes to the Mayor of the Sofia Municipality, the Chief Architect and the Mayor of Serdika District (Attachment No. 14). A written reply was received from the Chief Architect who refused to provide the orders but confirmed that they had been issued and sent for execution (Attachment No. 15). On the early morning of 9 August 2023, residents of the Orlandovtsi Roma neighbourhood reported to the Bulgarian Helsinki Committee that there were excavators in front of their homes. On the same date around 9:20–10:40 a.m., employees of the Bulgarian Helsinki Committee submitted 13 requests to SCAC to stop unlawful actions under Article 250 of the Administrative Procedure Code. On 10 August 2023, ECHR indicated interim measures and stopped demolitions (Attachment No. 16). SCAC rejected all the requests under Article 250 from APC on the basis that applicants' names did not appear on the orders (see attachments No. 17-29) and due to the demolition of the buildings completed during the proceedings before the Court. All the appealed rulings have been upheld by the Supreme Administrative Court (Attachments 30-41).

The Roma family of Lyulin neighbourhood, Sofia

7. The other case concerns an extended Roma family of about 15 people, including sick, elderly, disabled and young children. The family has been living in their home in Sofia, Lyulin since 1994. In October 2023 a member of this family sought legal assistance to the Bulgarian Helsinki Committee after his home was demolished on 5 October 2023. He had never received an order or an invitation to voluntary execution, although he is one of the owners of the plot and the building and he has a property deed for his home. He challenged the order and the actions of execution before the SCAC, referring to the principle of proportionality. The Court established that the order completely ignored the applicant. However, the order was considered lawful. According to the Court, the fact of issuing the order justifies the execution and demolition of the Roma homes. Furthermore, in the Court's view, there is no alleged disproportionate interference with private and family life, because the action has been taken to ensure the safety and health of the inhabitants of the buildings (see Attachments No. 42-43).

II. Case law of the domestic courts

8. The Government stated that “in a predominant part of the judicial acts the judicial panels carry out an analysis of compliance with Article 8 of the Convention and the interference, in this regard, with the fundamental rights and freedoms of persons living in the constructions to be demolished [...] and the assessment of the proportionality of the removal of illegal constructions is part of the general examination of the legality of the contested orders”. This statement is completely incorrect. The cited case law does not support this statement – on the contrary, many relevant judgments copy-paste repeatedly the statement that “Protection under Article 8 could be sought by an owner who is, however, upright and strictly complies with the

established regulations in the case for the construction of the buildings, as no one can draw rights from his unlawful conduct”. This particular statement has been repeated verbatim in 12 judgments, 10 of them by the Supreme Administrative Court, all of which have dismissed appeals against demolition orders (see Attachments No. 55-55).

9. Only one judgement of the case law, referred to by the Government, revoked the demolition order and that was because the building was sheltering Ukrainian beneficiaries of temporary protection.

III. Conclusion

10. The Government’s efforts in the execution of this group of judgments is unconvincing. The necessary legislative amendments have not yet been introduced in the National Assembly. Having in mind that the political context has seen many alterations since 2018, when allegedly the Draft SDA was drafted, it may not be foreseen what kind of political setting is needed for the necessary amendments to be moved forward. The manner of covert drafting of this bill is also alarming as no CSOs, including the BHC – a representative organisation of the victims in *Yordanova and others*, but also in *Paketova and others*, and *Ivanova and Cherkezov* – were part of the working group.

11. The mechanism under Article 250 of the Administrative Procedure Code clearly does not provide for protection against demolitions and evictions and the affected citizens are left without a possible avenue to cease an undergoing demolition.

We call for:

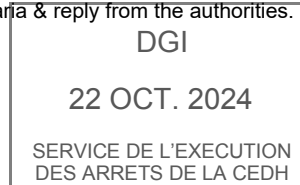
- **Amendments that set out standards for proper proportionality assessment in each case in line with the findings in the *Yordanova and others'* judgement.**
- **Introducing working mechanisms for protection against pending or undergoing demolitions in line with the standards in *Yordanova and others*.**
- **We urge that the enhanced supervision continue until proportionality standards have been adopted into law and effectively implemented by national courts as well as amendments to the protection against underground demolitions.**

Sincerely,

Adela Katchaounova
Co-chair
of the Bulgarian Helsinki Committee

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Submissions of the Bulgarian Government in response to the submissions of the Bulgarian Helsinki Committee to the Committee of Ministers with respect to the execution of the group of cases *Yordanova and Others v. Bulgaria* (25446/06)

The Bulgarian Government wish to provide the Committee of Ministers with some information regarding the statements of the Bulgarian Helsinki Committee (the BHC, the Committee) in their communication of 11 October 2024 in respect of the execution of the group of cases *Yordanova and Others v. Bulgaria*.

Regarding the Committee's comments on Bulgaria's political situation and legislative developments

1. The Committee's submissions start with a mention about Bulgaria's political situation, recent constitutional amendments and the currently permanent cycle of work of the National Assembly. While not directly relevant to the case at hand, the turbulent political situation can also be seen, in the view of the Government, as an obstacle Bulgarian legislature still managed to overcome to adopt one of the sets of important amendments the Committee's submission mentions: those of the Civil Registration Act of 8 October 2024.

2. Indeed, those amendments not only "introduce the possibility of address registration at an "office" address, which would allow for all citizens to be registered to obtain ID cards", as the BHC mentions, but have far more positive implications on the situation of vulnerable groups, including those affected by demolitions. The *ex officio* address was legally defined as a duly designated address of a municipal property for doing *ex officio* permanent and current address registrations, which would potentially prevent all possible discrepancies in municipal practices. *Ex officio* registrations will be done of persons, who cannot supply property/use of property documentation, in the municipality of their last registration. *Ex officio* registrations will also cover persons whose current address is abroad, or persons of refugee status, who cannot designate a permanent address in Bulgaria, and do not have property documents. The Government consider the latter group very important because they have also been subject to recent case-law not allowing the demolition of buildings they stay at due to their vulnerable status, as the Committee also admits in § 9 of their submissions. Such registrations will also be done if an address from the National Address Database is formally closed.

3. The amendments' transitory provisions contain a strict framework for a swift and effective start of the process of *ex officio* registration. Very importantly, persons who, upon the entry into force of the amendments, do not have a valid identity document due to lack of a permanent address, can request an *ex officio* one identifying themselves with an expired identity document. This will close all potential gaps in the authorities' practices and will open the new

type of registration to the biggest possible group of persons. Furthermore, municipal authorities are obligated to designate an *ex officio* address within a very short deadline, one month of the amendments' entry into force. Civil registration authorities, within another short deadline, 2 months of the amendments' entry into force, shall generate a list of citizens whose permanent address is deleted or closed and *ex officio* registrations will be done for them. Although the above will require a considerable effort on the part of authorities, this seems an adequate safeguard that no undue burden will be put on citizens in the process of their *ex officio* registration.

4. The amendments are expected to greatly facilitate the address registration of the persons, covered by them, and their subsequent application for social housing and other support services. They are strongly related and practically answer an important part of the CM Decision on the group of cases from the 1443rd meeting, 20-22 September 2022 (DH), namely “provide more detailed information on the practice developed by municipalities to verify whether persons subject to removal orders have been entered on the list of persons in need of municipal housing; ...provide information on the requirements that persons subject to removal orders need to satisfy to apply for municipal housing; ... provide information on the outcome of their consideration of possible options for amending the rules which currently make it particularly difficult for persons living in unlawful dwellings or not having a registered address or occupying unlawfully municipal dwellings to apply for municipal housing”.

5. Furthermore, despite the lack of adoption of the amendments in the Spatial Development Act (SDA), Bulgarian authorities continue their productive dialogue with the Council of Europe. On 30 September 2024 a meeting took place between the Deputy Minister of Regional Development and Public Works (MRDPW) Ms Yura Yordanova-Vitanova, other representatives of the Ministry, the Directorate of National Construction Control, the Ministry of Justice and the National Association of Municipalities in the Republic of Bulgaria and representatives of the Congress of Local and Regional Authorities and the Department for the Execution of Judgements of the ECHR with the Council of Europe. This was a second of a series of meetings of the Congress, the previous being with the Ministry of Justice in June 2024. The Deputy Minister assured the SDA amendments will be submitted for discussion and adoption in Parliament once it starts working after the upcoming pre-term elections. The Deputy Minister further stated that, despite the delayed adoption of the amendments, authorities perform preliminary assessment of the situation of persons and refrain from demolition of illegal buildings if they are their sole place of living. The MRDPW representatives also informed about significant EU fund allocations for social housing and 40 bigger municipalities eligible to apply. After some difficulties in the application process, it is expected to be re-opened in 2025. The new amendments in the Civil Registration Act were commended and their immediate practical implementation was discussed. The MRDPW is awaiting the action plan, planned to be prepared by the experts of the Congress, to be executed together with the National Association of Municipalities in the Republic of Bulgaria. It is expected to streamline existing good practices on central and municipal level and practically serve as an interim tool for an effective process of proportionality assessment until the SDA amendments are adopted.

6. As for the BHC's concerns in § 5 of their submissions that the upcoming amendments address only one of the possible eviction procedures, the Government state that the bill also includes amendments in Art. 65 of the Municipal Property Act, providing for a proportionality assessment in the cases, covered by that provision. Also, it has been agreed in the interministerial expert group, overseeing the recent analysis on the execution of the *Yordanova* group of judgements¹ that a provision will be included in the amendments for the proportionality assessment to cover all SDA provisions with a similar demolition effect.

Regarding the Roma neighbourhood in Orlandovtsi and the Roma family of Lyulin neighbourhood

7. Regarding the cases in the neighbourhood of Orlandovtsi the BHC talks about, part of them are subject to application no. 30915/23, *Ani Milanova ALEKSIEVA and Others against Bulgaria*, communicated to the Bulgarian Government on 28 March 2024.. The application is pending and the Government's observations on the admissibility and merits of the application were filed on 16 October 2024. Due to the serious nature of the complaints by the applicants, the Government consider manipulative the statement in the submissions of only the applicants' version of events and would refrain from commenting on the matter until it is decided by the Court.

8. Notably, on 9 August 2023 fourteen applicants asked the Court to indicate interim measures under Rule 39 of the Rules of Court and the demolitions ceased on the 10 August 2023, immediately upon the communication of the interim measure. The Government submitted a detailed account of the applicants' personal and family situation, as well as the welfare services' proactive approach in the applicants' situation and the assistance rendered to them. The authorities visited the Roma settlement prior to the demolitions, inquired into the applicants' situation, explained their options to welfare assistance and invited them to apply. Some of the settlers declined straightforwardly. However, those who applied, were approved and issued with respective papers. Shelter was then effectively provided to those who took practical steps to take advantage of the favourable decisions. Others fled, finding shelter with relatives or moving in another state-owned property. Some remained in the ruins and subsequently rebuilt their houses. On 6 October 2023, following the re-consideration of the two interim measures in view of the efforts of the authorities, the Court decided partly to lift and partly to maintain them.

9. Regarding the Roma family of the Lyulin neighbourhood in Sofia, it is impossible for the Government to comment on a case on which only a few documents were enclosed and hence such an approach to present an entirely new case can also be considered misleading.

Regarding the case-law of the domestic courts

¹ <https://humanrights.bg/Contents/Item/Display/32144>

10. The Government consider ineffective the approach of grouping case-law in one or another direction and comparing the relevant numbers of judicial decisions, but would still counter the Committee's findings with another decision of the Supreme Administrative Court the above mentioned analysis cites, under the State Property Act²: *“Issuance of this order is provided for in the law - Article 80a of the State Property Act. It is indisputable that its issuance pursues one of the objectives provided for in paragraph 2 of Article 8 of the Convention, namely to protect the rights of other citizens who meet the conditions to be accommodated, but not yet accommodated in departmental housing. That is, in the specific case, the interference in the private life of the applicants is provided for in the law and pursues a legitimate aim. However, this intervention is disproportionate. This conclusion follows from the overall assessment and comparison of the following circumstances established in the case.”* Apparently, case-law exists in both directions and the decisions under the SDA, State Property and Municipal Property Acts should be looked at in their entirety as they deal with acts with similar effect.

11. In this sense, the Government recall one of the proposals of the above analysis which has already been positively received by relevant practitioners: the issuance of an interpretative decision, which, in accordance with Art. 130, para. 2 of the Judicial System Act would have a binding force for the administration and the judiciary.

12. Finally, regarding the Committee's statement that the mechanism under Article 250 of the Administrative Procedure Code does not provide for protection against demolitions and evictions, the Government recall that, as described in detail in the above-mentioned analysis, citizens have a number of other possible remedies under the Code, namely appealing the execution of demolition orders under Art. 272 of the Code³ and postponing or rescheduling the executions under Art. 278, as well as a claim based on facts occurring after the issuance of the execution title under Art. 292, item 2.

Conclusion

The Government note that both the amendments in the Civil Registration Act and the action plan to be prepared by the Congress of Local and Regional Authorities need to be accorded a proper amount of time to come into full action and produce the intended results. The Government will keep the Committee of Ministers informed of any further developments on the above group of cases.

² Решение № 9871 от 18.07.2018 г. по адм. д. № 966/2018 на Върховния административен съд

³ Решение № 17 от 03.1.2020 г. по адм. д. № 153/2019 г. на Административен съд – София; Определение № 2036 от 04.12.2020 г. по ч. адм. д. № 3134 / 2020 г. на VI състав на Административен съд – Пловдив; Определение № 12938 от 21.12.2023 г. по адм. д. № 11862 / 2023 г. на Върховен административен съд