SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

Date: 22/01/2025

DH-DD(2025)81

Meeting:	1521st meeting (March 2025) (DH)
Item reference:	Action Plan (22/01/2025)

Communication from Bulgaria concerning the case of Borislav Tonchev v. Bulgaria (Application No. 40519/15)

* * * * * * * * * * * *

Réunion :	1521e réunion (mars 2025) (DH)
Référence du point :	Plan d'action (22/01/2025)

Communication de la Bulgarie concernant l'affaire Borislav Tonchev c. Bulgarie (requête n° 40519/15) ***(anglais uniquement)***

ACTION PLAN

Case Tonchev v. Bulgaria

Application no. 40519/15

Judgment of 16 April 2024 (final on 16 July 2024)

1. Convention violation found

The applicant, Borislav Kirilov Tonchev, is a Bulgarian national who was born in 1981 and lives in Lovech (Bulgaria).
In 2013 the applicant was dismissed from his post as a prison guard because his employer discovered that he had been caught drink-driving in 2004, found administratively liable and given a fine. The case concerns the question of whether the allegedly indefinite retention of data about such administrative penalties was "in accordance with the law".
The applicant unsuccessfully sought judicial review of his dismissal and lodged a complaint with the Commission for the Protection of Personal Data, which he subsequently withdrew. He is currently working as a judicial assistant in Lovech Regional Court.
Relying on Article 8 (right to private and family life) of the European Convention on Human Rights, the applicant complains about the retention of the data related to his administrative penalty and the actual and potential disclosure of those data. Specifically, he alleges that the regulations on the retention were ambiguous: while the physical record card about administrative penalties had to be deleted after five years up until February 2013 (it is now after 15 years), it was not clear whether the electronic data derived from the cards had to be deleted too or whether they could be retained for longer or indefinitely.
The Court found a violation of Article 8 and held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. It further held that the respondent State was to pay the applicant 2,900 euros (EUR) for costs and expenses.

2. Individual measures

The sums awarded to the applicant in terms of costs and expenses have been transferred to the account of the applicant's legal representative.

In view of the above, no further individual measures seem to be appropriate in the case.

3. General measures

a) Publication and dissemination of the judgment

The translation of the judgment is available on HUDOC https://hudoc.echr.coe.int/eng?i=001-241444 on Ministry of Justice website at https://justice.government.bg/ and at http://humanrights.bg/.

The translation of the judgment has been sent to the competent directorates of the Ministry of Justice with a letter underlining the conclusions of the ECHR.

b) Source of the violation and proposed general measures

- Source of the violation of Article 8

According to the Court's reasoning, in the light of the discrepancies, including as regards the application of EU law, in interpreting the timeline for the retention of electronic data derived from the record cards for administrative penalties, substituting criminal responsibility, it cannot be accepted that the ongoing retention of the data about the applicant's substitute administrative penalty is "in accordance with the law" within the meaning of Article 8 § 2 of the Convention. This finding obviates the need to determine whether it was "necessary in a democratic society" to attain one or more of the aims set out in Article 8 § 2 of the Convention. There has therefore been a violation of Article 8 of the Convention.

- Relevant domestic law

In some circumstances, Article 78a §§ 1 and 4 of the Criminal Code requires the courts to waive a convicted person's criminal liability and replace it with administrative liability and therefore an administrative penalty. The former Supreme Court has clarified that people who have been given such a substitute administrative penalty are not considered to have been criminally convicted, and that the provisions concerning rehabilitation do not concern them. Until mid-2014, people given such a penalty could not be employed as civil servants in the Ministry of Internal Affairs. Under section 19(2) of the Execution of Punishments and Pre-Trial Detention Act 2009, employees of the Chief Directorate for the Execution of Punishments who are directly responsible for enforcement duties – such as prison guards – must, unless otherwise provided in the Act, meet the appointment requirements of the Ministry of Internal Affairs Act. Until mid-2014, people given such a penalty could therefore not serve in such posts either.

Since March 2008 the retention and disclosure of data about convictions and substitute administrative penalties have been governed by Regulations no. 8 of 2008 of the Minister of Justice *(Наредба № 8 от 26.02.2008 г. за функциите и организацията на дейността на бюрата за съдимост)*. Under the Regulations, there is a criminal records bureau attached to each district court, plus a central criminal records bureau attached to the Ministry of Justice. Each district bureau retains criminal records and makes them available, including records about people born in the respective judicial district who have been convicted or given a substitute administrative penalty by the Bulgarian courts. Criminal records are kept in the form of (a) conviction record cards, and (b) record cards for substitute administrative penalties. Since the beginning of 2022 it has been necessary to keep the cards in both electronic and paper form, the paper form consisting of a printout of the electronic record. Under the initial wording of 2008, a record card for a substitute administrative penalty was to be destroyed five years after the judgments imposing the penalty had become final. An amendment which came into force in February 2013 extended that five-year period to fifteen years. The earmarking of a card for destruction is to be recorded in the alphabetical index, without erasing the names of the people concerned and the related data from the index itself.

- Proposals concerning the general measures

In terms of general measures, discussions will be held with the relevant directorates of the Ministry of Justice (E-Justice and Registers, Legislation Council, International Legal Cooperation and EU Matters, Cooperation with the Judiciary), led by the Ministry management, on possible amendments to Regulations No 8 in view of harmonizing it with relevant data protection norms. Consultative opinions may be requested from the Commission for Personal Data Protection and the Supreme Judicial Council in view of the Commission's legally defined role in supervising personal data protection and the Council's administrative tasks over the functioning of courts.

3. Conclusions

The Government of the Republic of Bulgaria will inform in due course the Committee concerning any additional developments and measures.