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Meeting: 1419th meeting (December 2021) (DH)

Item reference: Addendum to Action Plan (08/10/2021)

Communication from Bulgaria concerning the group of cases of VELIKOVA v. Bulgaria (Application No. 41488/98)

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Réunion : 1419^e réunion (décembre 2021) (DH)

Référence du point : Addendum au Plan d'action (08/10/2021)

Communication de la Bulgarie concernant le groupe d'affaires VELIKOVA c. Bulgarie (requête n° 41488/98)
(anglais uniquement)

ADDENDUM ACTION PLAN

Velikova group of cases

October 2021



The following information is provided in respect of the upcoming examination of the measures for implementation of the judgments in this group at the Committee of Ministers' meeting in December 2021. The information below supplements the information provided in 2020. It should also be noted that the 2020 Interim Resolution has been duly distributed to the respective authorities, including the Ministry of Interior, the Prosecutor General and the Supreme Court of Cassation. The minister of justice annual report to Parliament also reflected the recommendations in the resolution.

It should be noted at the outset that this year has been marked by a political instability and impossibility to elect a government in Bulgaria. Since April 2021 an *ex officio* government was appointed by the President in order to ensure the smooth organisation of parliamentary elections. Such elections were held on 4 April and 11 July 2021 and the respective Parliament elected. However, both legislators could not form a government. New elections, for Parliament and for President, are set for 14 November 2021.

In this situation it has been difficult to undertake a serious reform within the Ministry of Interior in particular, or to focus on sustainable and serious criminal justice reform. Despite several significant initiatives, pointed out below, more significant reforms still await a stable, long-term government.

1. General measures with respect to the police

a) Right to counsel

In respect of the requirement to strengthen the free legal assistance and the availability of a lawyer, the Government submit that on a monthly basis all regional police departments put together a list of *ex officio* lawyers and telephone numbers of the National Bureau for Legal Aid. Pursuant to information provided by the Ministry of Interior, there has been no refusal for an *ex officio* lawyer to appear upon request. In Stara Zagora Regional Police Department there was a complaint that a lawyer has not been summoned and the police officer was disciplinary sanctioned. This comes to demonstrate that police officers need to ensure the attendance of counsel under the fear of a disciplinary punishment.

b) Medical check

In the Interim Resolution, the Committee of Ministers further invited the authorities to improve the promptness, quality and confidentiality of medical examinations.

As pointed out before, from a practical perspective it should be noted that those detainees whose detention is extended by virtue of a prosecutor's order are transferred from the police departments to the IDFs. The IDFs are under the authority of the Ministry of Justice and therefore the rules on reporting to the Prosecutor's Office in case of injuries apply. The detainees go through a mandatory medical check and in case of injuries the medical staff is duty-bound to report to the prosecutor.

Those detainees who are released after the police detention (which could not exceed 24 hours) can visit a doctor at their own choosing and have the potential injuries certified accordingly.

Also, as pointed out by the Ministry of Interior, the Instructions 81213-78/2015 will be reviewed and potentially amended, taking into account these recommendations and in line with the 2021 Road Map for the Implementation of the ECHR Judgments.

c) Police ill-treatment – statistics and measures

In 2020, 237 complaints of excessive use of force were registered at the Ministry of Interior. All of the complaints were checked. Eight of these complaints were found to be fully/partially justified.

Pursuant to section 214 of the Ministry of Interior Act the disciplinary body could suspend the police officer from exercising his duties for the time of the disciplinary proceedings. The suspension is subject to judicial review.

There is no rule which provides for an automatic transfer of the complaints to the Prosecutor's Office. However, pursuant to the latest information from the Ministry of Interior, each complaint of ill-treatment is sent automatically to the respective prosecutor's office.

According to the latest report on the work of the prosecutor's office in Bulgaria (https://prb.bg/bg/pub_info/dokladi-i-analizi), in 2020 the prosecutor offices monitored 85 cases regarding alleged violence on the part of prison staff (78 in 2019 and 69 in 2018). The new cases were 76 (73; 56), concluded – 76 (67; 59). The cases under monitoring were 18, the new cases were 7. Eleven pre-trial investigations were concluded. As provided in the report, the prosecutor offices actively monitor the penitentiary facilities. This report also provides information on the good cooperation between the Agents' Office and the prosecution authorities both on pending cases before the Court and on the execution of the judgments (pp 57-59).

Finally, it should be noted that the minister of interior has ordered a full review of the actions of the police during the protests in the summer and autumn of 2020. The check is ongoing.

2. General measures with respect to prisons

In addition to the information provided in the 2020 Action Plan regarding the present group of cases and the 2021 Action Plan in *Neshkov and Kehayov* groups of cases, the Government submit that the refurbishment of the penitentiary facilities and the project for construction of a new prison continue. This is a major factor in diminishing violence in the system.

Information on statistics on the use of force in the penitentiary facilities is awaited.

3. Criminal investigations

With respect to criminal investigations, the Government submit that on 6 August 2021, the Council of Ministers adopted a Road Map for the Execution of the Court's Judgments. In response to this decision, as well as the Interim Resolutions of 2020 in *S.Z./Kolevi* and *Velikova* types of cases, the minister of justice ordered a setting up of a working group with a task to prepare the necessary amendments in the criminal procedure legislation.

In addition to that, the third and most recent draft of the National Recovery and Resilience Plan of Republic of Bulgaria contains a part with engagements concerning specifically the criminal justice reform and the necessary measures for the implementation of these groups of

cases, such as a procedure for the removal of the Prosecutor General, the introduction of a judicial review at the beginning of the investigations, a possibility for the victim to use the acceleratory remedy before charges are brought, etc.

The need for reforms in the criminal justice was reiterated in the Eighth Annual Report of the Minister of Justice on the Execution of the ECHR, adopted by the Council of Ministers on 6 July 2021 and sent to Parliament. It was published on the Ministry's website and on humanrights.bg.

4. Individual measures

In respect of *Yanchovichin v. Bulgaria*, on 3 June 2021 the Prosecutor General filed an application for reopening of the criminal proceedings, quashing of the judgment and sending the case back to the appellate court for a new examination. Additional information will be provided shortly.

In respect of *Paulfreeman v. Bulgaria* – information from the prosecution authorities is awaited.

In respect of *Mihaylova and Malinova v. Bulgaria*, the Government submit that as it in 2016 the prosecutor did not file an application for reopening of the criminal proceedings on two grounds. First, the applicants did not file such a request to the Prosecutor's Office. Second, the main problems identified in the judgment concerned the collection of evidence at the pre-trial stage. Unfortunately, due to the time lapse the collection of these pieces of evidence would have been impossible. As for the possible reopening at present in addition to the above-mentioned, the prosecutor suggested that such an application would encroach on the rights of the accused because the statutory time-limit (one month after the Prosecutor's Office was notified about the judgment) had expired. Finally, pursuant to the prosecutor the statute of limitations had also expired.

In respect of the case of *Dimitrov and Others* – following the reopening of the criminal proceedings, in a judgment of 5 March 2021 the Supreme Court of Cassation stated that the police officers had caused the death of the applicants' relative by negligence as they had witnessed his deteriorating medical condition but had failed to help him. However, the court further noted that the statute of limitations for punishing the perpetrators had expired. The judgment is final. The Government are of the view that no further individual measures are possible in this case.

In respect of *Myumyun v. Bulgaria* the absolute statute of limitations for a disciplinary punishment expired and at present there is no legal possibility to reopen the proceedings.

The Committee of Ministers will be additionally informed of the future developments.

ENCLOSURES