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

Item reference: Addendum to an Action Plan (18/10/2021)

Communication from Bulgaria concerning the cases of KOLEVI v. Bulgaria (Application No. 1108/02) and S.Z. v. Bulgaria (Application No. 29263/12)

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

Référence du point : Addendum à un Plan d'action (18/10/2021)

Communication de la Bulgarie concernant les affaires KOLEVI c. Bulgarie (requête n° 1108/02) et S.Z c. Bulgarie (requête n° 29263/12) **(anglais uniquement)**

Addendum to the Action Plan
(S.Z./Kolevi v. Bulgaria)
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 February 2021.

It should be noted at the outset that this year has been marked by a political instability and impossibility to elect a government, and start practical legislative work, in Bulgaria. Two ex officio governments were 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 Parliaments were elected. However, neither legislature could form a government. New elections, for Parliament and for President, are set for 14 November 2021 and the public debate is dominated by the pre-election campaign.

In this situation it has been impossible to focus on serious and sustainable criminal justice reform. Significant reforms still await a stable, long-term government and a legislature.

I. Individual measures

Regarding the *Kolevi* case, the proceedings under the criminal case for the murder of Mr Kolev were once again suspended by the Prosecutor's Office due to not finding the alleged perpetrator of the act or his/her accomplices. The decree for suspension is dated 26 May 2020.

Regarding the *Y* case, information is being sought from the Prosecutor's Office about the options to re-examine the case file, avoid further action becoming time barred and, if the investigation remains feasible, to resume it.

Regarding the *Z.* case, information is being sought from the Prosecutor's Office as to whether there is development on the request for re-opening criminal proceedings.

Regarding the *X and others* case, information is being sought from the Prosecutor's Office about the possibilities for interviews of children from the home and obtaining recordings of the applicants' interviews.

II. Recent developments

With respect to criminal investigations, the Government submit that on 6 August 2021, by Decision No 586, the Council of Ministers adopted a Road Map for the Execution of the Court's Judgments. The aim of the road map is, *inter alia*, to set time-limits for elaboration of general

measures in cases in enhanced procedure and those pending for more than five years and those requiring measures within the executive.

In response to the Decision of the Council of Ministers, as well as the Interim Resolutions of 2020 in S.Z./Kolevi and Velikova types of cases, on 24 September 2021 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, on 14 October 2021 the Council of Ministers adopted the National Recovery and Resilience Plan of Republic of Bulgaria which 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 an effective mechanism for investigation against the Chief Prosecutor and his/her deputies, 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.¹ The measures are concentrated under a special sub-chapter on guaranteeing the effectiveness of criminal proceedings and raising the accountability and responsibility of the Chief Prosecutor, timed until the fourth quarter of 2022. The sub-chapter proposes, *inter alia*:

- introducing judicial control over the decree of the prosecutor to refuse opening of criminal proceedings, the scope and conditions of such control and avoiding excessive workload of judges and prosecutors;

- decreasing the possibilities to remit cases to the pre-trial phase;

- introducing a right for the victim to ask for acceleration of proceedings already before bringing charges;

- regulating in detail the re-opening of criminal proceedings, including through expanded judicial control;

- notably, preparing amendments in the Law on the Judiciary on the powers of the Chief Prosecutor and bringing them in compliance with the Constitution;

- introducing an effective mechanism for responsibility of the Chief Prosecutor and his/her deputies through guarantees for practical, institutional and hierarchical independence of the investigation against them, including regulating temporary suspension in case of criminal proceedings and independent appointment by the Supreme Judicial Council of ad hoc prosecutors and investigative magistrates to investigate the Chief Prosecutor and his/her deputies; independent career development for those, including by re-appointment as judges after the investigation, no control by superior prosecutors, methodological or legality supervision of their acts within the investigation; no disciplinary liability or ad hoc assessments for them for the time of the investigation;

¹ Please consult the National Recovery and Resilience Plan at <https://www.nextgeneration.bg/14>

Notably, all measures are to be consulted with the CoE and the Venice Commission. The formulations have a programmatic nature and allow for maximum flexibility to achieve effectiveness of the legislative work and accompanying public debate.

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.

2. General measures under Kolevi case

Mechanism for investigation against the Chief Prosecutor – presidential veto and constitutional court decision

On 29 January 2021 a bill was adopted, introducing an independent mechanism for investigation against the Chief Prosecutor and his/her deputies. The bill was vetoed by the President and re-adopted by the Parliament throughout the first half of February 2021. Then, on 25 February 2021 the Constitutional Court was seized by the President to rule on the unconstitutionality of part of the provisions concerning the new 'prosecutor responsible for the investigation against the Chief Prosecutor or his/her deputies'. The Court's decision came out on 11 May 2021 saying that the legal framework creating the new prosecutor figure and excluding him/her from the supervision of the Chief Prosecutor does not comply with the constitutional structure of the Prosecutor's Office and the Chief Prosecutor's constitutional functions. Moreover, the autonomous exercise of the new prosecutor's rights would limit to a constitutionally unacceptable extent the principle of prosecutorial independence. The new prosecutor is seen as having an extraordinary nature and his/her introduction is unacceptable without an express constitutional framework.

The Constitutional Court decision invalidated the proposed legal framework of the special prosecutor and left Bulgarian law with no specific mechanism for investigation of the Chief Prosecutor and his/her deputies. It remains an option for each prosecutor to investigate possible criminal acts by the Chief Prosecutor, as reiterated by the Constitutional Court decision of 23 July 2020.

In addition, it should be noted that a future mechanism to investigate the Chief Prosecutor, as mentioned above, is a commitment in the National Recovery and Resilience Plan with a deadline the fourth quarter of 2022. A detailed analysis and wide ranging discussion is also planned as part of the working group set up by the Minister of Justice.

3. General measures under the S.Z., X and others and Y cases

As regards general measures under the S.Z. case, the Government would like to assure that the options to introduce judicial review of prosecutorial refusals to open an investigation, together with arrangements to avoid an excessive additional workload for courts and prosecutors, and to provide their assessment of the scope and modalities that such judicial review should have, will be examined in detail as part of the tasks of the working group whose setting was ordered by the Minister of Justice. This is also a commitment as part of the National Recovery and Resilience

Plan. The same is valid for assessing the possibility to strengthen judicial review and guarantees regarding the bringing of charges, adopt more detailed rules on the reopening of investigations by the Chief Prosecutor, further limit the remittals of a case based on procedural violations at the investigation stage, authorise the severance of a case against numerous accused persons at the trial stage and improve practices concerning the content, examination and amendment of the indictment, as well as consider the possibility of allowing victims to use the acceleratory remedy before charges are brought.

Regarding courts being seized with indictments qualifying facts inadequately, bringing, and amending, charges is an exclusive prerogative of the Prosecutor's Office. The court can only undertake victim protection measures under the Criminal Procedure Code upon request of the victim.

Regarding the general measures under the *X and others* case, amendments in the Criminal Procedure Code, concerning victims of crime, and the Law on Assistance and Financial Compensation of Victims of Crime, including children, were introduced into a draft bill of 10 November 2020, further transposing Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. They concerned, *inter alia*, individual assessment of victims' needs, victim support persons, interviews of victims with special protection needs, etc. However, the work on the draft was stopped throughout the long period of parliamentary inactivity and is expected to be resumed through a similar new draft once a new parliament is constituted. Victims as such have the right to information about proceedings during the pre-trial phase, while at the trial phase their participation, and information, is largely dependent on their joining proceedings as private prosecutor or civil claimant. Children victims are largely interviewed in specially adapted 'blue rooms', wherever available, although the rooms' number is still considered insufficient. Information is being sought about the prosecutorial practice and judicial case law on the matter.

Regarding the general measures under the *Z.* case, information is being sought about the practices and case law in investigating and prosecuting rape. The issue of investigation and prosecution of rapes of minors is joined to the information request under the *X and others* case.

III. Conclusions

The Government conclude that the legislative process to fulfil the requirements for independence of an investigation concerning a Chief Prosecutor and high-ranking prosecutors, close to him, as indicated in the Interim Resolution [CM/ResDH\(2019\)367](#) and in the decisions of September 2020 of the Committee of Ministers, need to be re-commenced.

The Government also invite the Committee to separate the supervision of the enforcement of the Kolevi judgment from that of S.Z. group of cases. The Kolevi judgment and the heated debates surrounding its implementation has interfered with the political process in Bulgaria, has caused discussions about constitutional amendments and has touched upon important structural

matters such as the place of the Prosecutor's Office in the constitutional system and the structure of the Supreme Judicial Council. As a result, important legal matters related to the criminal procedure have somehow been overshadowed and did not receive sufficient expert insight and consideration. Therefore, for the sake of the effective implementation of the S.Z. group of cases, the Government suggest that it is examined together with the Velikova group or on its own but in any event separately from the Kolevi judgment.

The Committee of Ministers will be informed on any future developments regarding the execution of this group of judgments.