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Meeting:	1577th meeting (December 2026) (DH)
Item reference:	Action Report (18/11/2026)

Communication from Bulgaria concerning the case of Iliev v. Bulgaria (Application No. 34656/18) - *appendices in Bulgarian are available at the Secretariat upon request*

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Réunion :	1577e réunion (décembre 2026) (DH)
Référence du point :	Bilan d'action (18/11/2026)

Communication de la Bulgarie concernant l'affaire Iliev c. Bulgarie (Requête n° 34656/18) ***[anglais uniquement]*** - *des annexes en bulgare sont disponibles auprès du Secrétariat sur demande*

DH-DD(2026)1577: Communication from Bulgaria
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DGI
18 NOV. 2026
SERVICE DE L'EXECUTION DES ARRETS DE LA CEDH

Action report
Iliev v. Bulgaria (application no. 34656/18)

I. Facts

The case concerns a violation of Article 6 §§ 1 and 3 (d) of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, the Convention), arising from the domestic courts' reliance on the pre-trial statement of a key prosecution witness, without giving the applicant an adequate opportunity to participate in his examination. The European Court of Human Rights (the Court) found that the authorities had failed to make all reasonable efforts to secure the witness's attendance and had not provided sufficient counterbalancing measures.

II. Individual measures

The Republic of Bulgaria has paid in full the awarded costs and expenses in the amount of 3,534 Euro.

Furthermore, the competent authorities have initiated proceedings for the reopening of the criminal case pursuant to Article 422 § 1 (4) of the Criminal Procedure Code (the CCP). Reopening case no. 1065/2025 is currently pending before the Second Criminal Division of the Supreme Cassation Court (the SCC). Two public hearings have been held, the most recent on 30 September 2026. The court's decision is awaited.[1]

III. General measures

The Government consider that the violation in *Iliev v. Bulgaria* is an isolated case and does not indicate a systemic problem, given the existing effective legal framework. Bulgarian criminal procedure provides clear safeguards to protect the right to a fair trial and to prevent the use of untested witness statements in breach of Article 6 §§ 1 and 3 (d).

In particular, the CCP requires witnesses to appear when summoned, subject to fines and compulsory appearance before the authorities. If a witness cannot appear before the court, the law allows examination by video or telephone conference. For witnesses abroad, this is secured through international legal assistance or, more recently, a European Investigation Order ("EIO") under Articles 28 and 29 of the European Investigation Order Act.

The judgment has been translated in Bulgarian and published on the portal *humanrights.bg* and on the website of the Ministry of Justice. It has also been sent to the relevant judicial authorities, and its general findings have been included in the training programmes of the National Institute of Justice.[2]

1. Procedural instruments and counterbalancing mechanisms

[1] *Information regarding the current status and progress of the case is available on the official website of the Supreme Court of Cassation: https://shorturl.at/Bgg6e*

[2] *Training sessions conducted and planned by the National Institute of Justice: "Criminal justice in the European Union: Leading judgments of the Court of Justice of the European Union and the European Court of Human Rights in the field of judicial cooperation in criminal matters" (November 4, 2026) https://shorturl.at/LShLb; "The European Investigation Order in practice and electronic tools" (October 9–10, 2025) https://shorturl.at/6dMFo*

In the context of the above legal framework, the court's primary and mandatory tools on the issues discussed in *Iliev* are the statutory compulsory measures. For a witness to be held liable for failure to appear, the CCP requires that he/she has expressly refused to appear "wherever the hearing is held" *(Решение № 2 от 10.02.2020 г. по к.н.д. № 1175/2019 г. на ВКС, II н.о.).* The measures under Article 120 § 3 of the CCP (a fine and compulsory appearance) apply only in cases of unjustified failure to appear. Before applying Article 223 or Article 281 of the CCP (reading out pre-trial statements at trial), the authorities are required to make all reasonable efforts to locate the witness, including conducting a nationwide search, attempts to establish telephone contact, as well as comprehensive checks on border crossings, current address, or possible location in detention facilities *(Решение № 147 от 22.10.2025 г. по дело № 312/2025 г. на Апелативен съд – Пловдив).*

When a witness is abroad, the requirement of due diligence obliges the court to use examination by video conference and the mechanisms of international legal assistance provided by law. *(Решение № 51 от 08.07.2019 г. по н.д. № 30/2019 г., ВКС, III н.о.).* Domestic law regulates this procedure in the current Article 139(12) of the CCP, in full continuity with the former paragraph 7, which operated effectively for 16 years (since May 2010) and was applied to conducting videoconferences *(Решение № 146/29.10.2025 г. по н.д. № 557/2025 г., ВКС, III н.о.)*. All alternative ways of testing the credibility of the witness should be exhausted, including examination by foreign law enforcement authorities *(Решение № 168/03.12.2020 г. по н.д. № 690/2020 г., ВКС, II н.о.).*

Within the European Union, this mechanism operates through the European Investigation Order (EIO) under Articles 28 and 29 of the EIO Act, in accordance with Directive 2014/41/EU. Although that Act entered into force on 23 February 2018, shortly after the domestic proceedings in *Iliev* became final, cross-border examination had already been available as a procedural option through traditional mutual legal assistance mechanisms. The new legal framework, however, provides additional guarantees for effectiveness and for preventing violations similar to the one found in *Iliev*. In relevant case-law, this method has been successfully applied even where requests were initially unexecuted, with the courts consistently securing the right of the defendant and defence counsel to see, hear, and question the witness directly by video conference *(Решение № 295/30.10.2025 г. по в.н.о.х.д. № 1159/2025 г. на Окръжен съд – Бургас)*.

If a direct examination nevertheless proves impossible due to insurmountable obstacles (such as death, untraceable whereabouts, or residence abroad), case-law applies a strict filter to the evidence gathered during the pre-trial stage. Domestic case-law has consistently integrated the Convention standard that a conviction cannot rest "solely or to a decisive extent" on the testimony of a witness whom the defence could not examine at any stage of the proceedings *(Решение № 234/04.08.2011 г. по н.д. № 1314/2011 г., ВКС, II н.о. и Решение № 59/22.06.2016 г. по н.д. № 86/2016 г., ВКС, II н.о.).* As required by ECHR case-law, relying on such testimony requires the authorities to have made all reasonable efforts to ensure the witness's attendance. Furthermore, the testimony must be supported by independent evidence, and the court must examine the reasons for the absence while putting the pre-trial statements under critical scrutiny *(Решение № 328/16.09.2015 г. по н.д. № 1042/2015 г., ВКС, I н.о. и Решение № 186/14.12.2016 г. по н.д. № 677/2016 г., ВКС, I н.о.).* Even when the law allows such testimony to be admitted, the defence retains the right to object to its admissibility or challenge its reliability – objections the court cannot dismiss without examination *(Решение № 136/27.10.2020 г. по н.д. № 693/2020 г., ВКС, II н.о.).*

This standard is consistently applied by the courts. It is accepted that relying on pre-trial testimony does not violate Article 6 § 3 (d) of the ECHR, provided that the defendant had a real opportunity to challenge it. This approach, confirmed in numerous cases involving similar legal issues, entirely precludes convictions based on evidence gathered without the necessary procedural guarantees of equality of arms and an adversarial trial.[3]

2. Case-law in similar cases

The SCC's case-law in cases similar to *Iliev* clearly defines the boundary between the exhaustion of all reasonable efforts and unjustified judicial passivity in securing witness examination.[4]

In Judgment no. 426 of 10 December 2015 in criminal case no. 1278/2015, SCC, Second Criminal Division (*Решение № 426/10.12.2015 г. по н.д. № 1278/2015 г. на ВКС, II н.о.)*, the lack of opportunity for the defence to examine the witnesses (due to their disappearance after their initial examination under Article 223 of the CCP) was considered to have been successfully counterbalanced. In that case, the court had made all reasonable efforts to locate the witnesses in Bulgaria and abroad, and their statements were relied on only to the extent that they were fully corroborated by the remaining evidence.

By contrast, Judgment no. 176 of 14 April 2025 in criminal case no. 20258002200132, SCC, Third Criminal Division *(Решение № 176/14.04.2025 г. по н.д. № 20258002200132/2025 г. на ВКС, III н.о.)*, defines the limits of impermissible passivity. If a witness who left the country after an examination under Article 223 of the CCP is found to be serving a sentence in a foreign prison, the court must continue its efforts by coordinating dates, issuing a new EIO, and examining the witness remotely, since video or telephone conferencing provides a realistically available alternative.

Where it is objectively impossible to locate the witness, the pre-trial statement may be admitted through the compensatory mechanism of careful review. However, if specific information concerning the witness's whereabouts is available and there is a realistically available pathway to examine them, the court cannot remain procedurally passive and is obliged to take all necessary steps to hear the witness.

IV. Conclusion

The Government consider that the available procedural mechanisms and the domestic case-law outlined above confirm that the violation in the particular proceedings stemmed from an insufficiently diligent application of the existing legal framework, rather than from any legal obstacle to examining a witness abroad.

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[3] *Решение № 96/09.03.2023 г. по дело № 1122/2022 г. на Апелативен съд - София, Решение № 116/11.04.2024 г. по дело № 1182/2023 г. на Апелативен съд – София, Решение № 236/15.10.2020 г. по дело № 753/2020 г. на Апелативен съд - София, Решение № 2/06.01.2026 г. по дело № 902/2025 г. на Апелативен съд – София; Решение № 1/08.02.2021 г. по дело № 214/2020 г. на Апелативен съд - Бургас, Решение № 69/21.08.2026 г. по дело № 142/2025 г. на Апелативен съд – Бургас; Решение № 58/13.04.2022 г. по дело № 10/2022 г. на Апелативен съд – Варна, Решение № 168/03.12.2020 г. по н.д. № 690/2020 г., ВКС, II н.о.*

[4] *Решение № 426/10.12.2015 г. по н.д. № 1278/2015 г. на ВКС, II н.о., Решение № 176/14.04.2025 г. по н.д. № 20258002200132/2025 г. на ВКС, III н.о.*

The publication and dissemination of the judgment highlight the specific deficiencies identified by the Court, while ongoing cooperation with the National Institute of Justice reinforces the practical application of the existing safeguards.

Accordingly, the Government invite the Committee of Ministers to find that the available domestic mechanisms and judicial practice are sufficient to prevent similar violations and to close its supervision of the execution of the general measures in this case.