

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



Contact: Clare Ovey
Tel: 03 88 41 36 45

Date: 25/07/2016

DH-DD(2016)844

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1265 meeting (20-22 September 2016) (DH)
Item reference: Action plan (21/07/2016)
Communication from Bulgaria in the case of Fazliyski against Bulgaria (Application No. 40908/05)

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1265 réunion (20-22 septembre 2016) (DH)
Référence du point : Plan d'action (21/07/2016)
Communication de la Bulgarie dans l'affaire Fazliyski contre la Bulgarie (Requête n° 40908/05) (**anglais uniquement**)

DGI

21 JUL. 2016

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Application Fazliyski v. Bulgaria (no 40908/05)

Action plan on the execution of the judgment of the European Court of human rights delivered on 16/4/2013
Final on 16/07/2013

This case concerns the refusal of the Supreme Administrative Court in May 2005 to scrutinise the assessment of the applicant's mental fitness for work in the Ministry of Interior prepared by the Ministry's Psychology Institute (violation of Article 6 § 1). The applicant, a former police officer, was dismissed from work, because he had been certified by the Institute to be mentally unfit for work at the Ministry. The case concerns also the failure by the Supreme Administrative Court to give publicity to its judgments in the applicant's case (violation of Article 6 § 1).

1. Individual measures:

The amount of just satisfaction was duly paid. The payment of indemnification should compensate the non-pecuniary damage which the applicant has supported.

The applicant initiated the reopening of the proceedings on the grounds of article 99, point 7 in conjunction with article 100 of the Administrative Procedure Code. Further to a judgment of 26/11/2013 of the Supreme Administrative Court the final judgment was quashed and the case was referred to another three-member panel for new examination. New proceedings have been instituted and with a judgment from 27 July 2014 a panel of the court found that the psychological assessment procedure had been used to circumvent the rules governing disciplinary liability and on that basis quashed the dismissal order. With a judgment from 17 December 2014 a panel of five judges confirmed the judgment of the three panel's judges.

Concerning the failure to give publicity of the judgment it should be pointed out that on 30 August 2006 a commission appointed by the president of the Supreme Administrative Court declassified the judgments.

2. General measures :

A translation has been published on the web site of the Ministry of justice www.mjs.bg.

- a) As concerns the violation of Article 6 § 1 related to the lack of proper judicial control of the assessment of the applicant's mental fitness for work in the Ministry of Interior

According to article 226 §1, point 3 of the 2014 Interior Ministry Act the service relationship of a civil servant employed by the Ministry of Interior shall be terminated for health reasons - in the event of impossibility for the civil servant to perform the duties assigned due to illness, which led to permanent incapacity for work or health counter-indications. Article 226 §3 of the same Act provides that the circumstances under article 226 §1 point3 are to be determined by a Central Medical Expert Commission, whose assessment is amendable to judicial review before the Sofia City Administrative Court. The challenge of a

subsequent dismissal based on conclusion of the Central Medical Expert Commission is possible.

In a judgment № 3483 от 18.04.2005 г. на ВАС по адм. д. № 9378/2004, is pointed out that after the repeal of article 251 §1, point 6 of the of the Act's implementing regulations /repealed on 13/06/2006/ the psychological expert assessment is amendable to judicial review. The psychological incompatibility following a conclusion of the Ministry's Psychology Institute no longer represents a ground for dismissal.

The administrative courts have examined contestation to assessments of the above-mentioned Central Medical Expert Commission. In doing so, they have sought the assistance of medical experts, and have taken into account the opinions of those experts (see реш. № 8753 от 1 юли 2009 г. по адм. д. № 5224/2009 г., ВАС, VI о.; реш. № 3468 от 22 юни 2012 г. по адм. д. № 7227/2011 г., АССГ; and реш. № 4214 от 19 юли 2012 г. по адм. д. № 3664/2012 г., АССГ).

Persons in a similar to the applicant's situation are entitled to bring direct challenges to assessments of the Central Medical Expert Commission (реш.№ 4279 от 27.06.2013 г. по адм. дело № 196/2013 г. на АССГ, реш.№ 5981 от 09.11.2012 г. по адм. д. № 4764/2012 г. на АССГ, реш. № 2978 от 07.05.2013 г., по адм. дело № 5209/2012 на АССГ, реш.№14175 от 29.10.2013 на ВАС по адм. дело № 8933/2013, реш.№6890 от 11.11.2013 по адм.д. № 6382/2013 на АССГ, реш. №5942 от 01.10.2013 г. по адм. дело № 3237/2013 на АССГ).

The courts accept that according to art.21, par.1-3 of the Administrative procedure Code the expert conclusions of the Central Medical Expert Commission are individual administrative acts and are amendable to judicial control in respect of their legal conformity.

- b) As concerns the violation of Article 6 § 1 related to the failure to give publicity of the judgments in the applicant's case

The need for further measures is currently being assessed.

20 July 2016