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Meeting: 1390th meeting (December 2020) (DH)

Communication from an NGO (Bulgarian Helsinki Committee) (03/11/2020) concerning the YORDANOVA AND OTHERS group of cases v. Bulgaria (Application No. 25446/06) and reply from the authorities (16/11/2020).

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1390e réunion (décembre 2020) (DH)

Communication d'une ONG (Bulgarian Helsinki Committee) (03/11/2020) concernant le groupe d'affaires YORDANOVA ET AUTRES c. Bulgarie (Requête no 25446/06) et réponse des autorités (16/11/2020) ***[anglais uniquement]***

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

DEPARTMENT FOR THE EXECUTION OF JUDGMENTS

1390 (DH) MEETING OF THE DELEGATES 1-3 DECEMBER 2020

3 November 2020

OBSERVATIONS

OF THE BULGARIAN HELSINKI COMMITTEE ON THE EXECUTION OF THE GROUP OF JUDGMENTS "YORDANOVA AND OTHERS V. BULGARIA" IN RESPONSE TO THE ADDENDUM TO THE GOVERNMENT'S ACTION PLAN SUBMITTED ON 23 OCTOBER 2020

The present observations of the Bulgarian Helsinki Committee (BHC) should be read together with the observations, which the BHC submitted on 23 October 2020, the same date on which the Government of Bulgaria submitted the addendum to the action plan for the execution of *Yordanova and Others* group of judgments. As the BHC did not have a possibility to respond to the government's submission, it would like to do this briefly with the present observations.

In the first section of their submission the Government of Bulgaria states that "the judicial practice of the domestic courts in 2020 appears to have been consistent in the understanding that a proportionality assessment is admissible and has been carried out where the demolition order appears to interfere with the rights under Article 8 of the Convention". The government refers to several judgments, in which this had allegedly been done.

It has to be underlined that the problem of the admissibility and the way the proportionality assessment is carried out by the Bulgarian courts are two different issues. Discussion of Article 8 has always been admissible if the parties to the concrete case raise it in their appeals. After the delivery of the *Yordanova* judgment in 2012, this has often been the case (of course, in the rare cases in which the victims of forced evictions embarked on appealing their eviction orders in court). Thus, this is not something new. As to the way the proportionality analysis is carried out, the above statement should not leave the delegates with the impression that this is normally done in accordance with the requirements set out in that, as well as in the other judgments of

the European Court of Human Rights. While in the past some administrative courts embarked on such an analysis in cases, which the government refers to in their past, as well as in their present submission, these were definitely isolated cases. As we submitted in our initial observations, the case-law of the administrative courts in fact worsened over the past two years in allowing the municipal authorities unfettered discretion and in interpreting the legitimate aims and the proportionality of the interference in extremely formalistic ways.

In fact, most of the cases, to which the government refers in their submission, are flagrant examples of such a formalistic approach. The overwhelming majority of them were cases, which were lost by the victims of the forced evictions.

One such example is the case of Y.A., referred to by the government in footnote 1 of their submission with two decisions, one of the Supreme Administrative Court (SAC) and one of the Plovdiv Administrative Court (PAC) (decisions nos. 1457/2019 of the PAC and 9716/2020 of the SAC). Y.A is one of the victims of the forced eviction from the village of Voyvodinovo of January 2019, to which we referred in our initial submission. In its decision the SAC considered Article 8 because it was raised by the applicant. The SAC found that "the interference of the state was carried out under the conditions specified in Article 8 § 2 of the Convention – the interference into the interests of the complainant is provided for by the law, which regulates the removal of constructions built without construction documents and contrary to the provisions of the detailed urban plan. It aims at achieving a legitimate aim and is proportionate. The measure is in line with the objective set out in Article 8 § 2 of the Convention, aimed at protecting the health of the occupants, in this case of the complainant and his family, as well as ensuring the safety of the construction and the protection of other citizens… In case of illegal construction and in the absence of project documentation checked by specialists, the constructions can pose a threat, due to which the law provides for their removal". Thus, according to the SAC, proportionality in this case meant leaving Mr. Y.A. with his family on the street in the winter by demolishing their house, in which they lived most of their lives, because it was found dangerous for them on the sole basis that the project documentation was not approved by the respective specialists in advance. At present, Mr. Y.A has a pending application before the ECtHR, which is waiting adjudication.

Another case, to which the government refer in the same footnote of their submission, is that of Ms P.M., another victim of the Voyvodinovo eviction, who also lost her case (decision no. 7227/2020 of the SAC). In this case too, the SAC considered Article 8 and, as in the case of

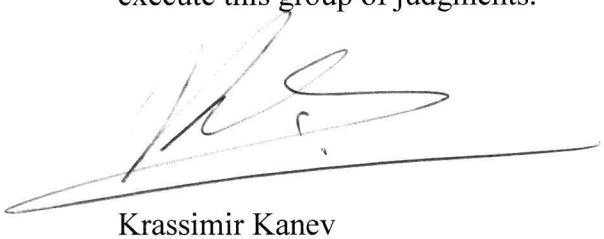
Y.A., decided that the interference into the complainant's rights pursued a legitimate aim – protection of her health and that of her family, because the illegal constructions "can pose a danger, which is why the law introduces a regime for their removal". The SAC also held that the measure was proportionate, because "it achieves a fair balance between the interest of the complainant and the general interest by guaranteeing effective enforcement of the ban on construction without the necessary permits". Ms P.M.'s house, in which she lived all her live, was thus demolished in the name of her health and she and her entire family were rendered homeless after their expulsion from Voyvodinovo in January 2019.

A third case, to which the government refers in footnote 1 of their submission, concerns a SAC decision upholding an order for removal of a solid building, which was home to a Roma family for nine years, because it was illegally built (decision no. 4236/2020 of the SAC). In it the court considered the legitimacy and the proportionality of the measure. It held that the latter was legitimate. According to the SAC, "the measure is in accordance with Article 8 § 2 of the Convention, aiming at protecting the health of the occupants, in this case of the complainant and his family, as well as ensuring the safety of the construction site and the protection of other citizens. In this sense, it should be noted that the licensing regime for construction is related to compliance with certain regulations and standards regarding the strength, structural requirements, sustainability of construction, and was introduced to protect the lives and health of citizens and the safety of construction". The SAC held that the measure had been also proportionate, although it did not say why. It did not consider at all whether the impugned building had been the only home of the Roma family and whether its inhabitants were to be rendered homeless.

In none of the short decisions cited above, the administrative courts went through the entire check list, which the government presents on p. 3 of their submission, as something, which the courts need to examine when adjudicating cases of forced evictions.

The government also submits that the low number of cases reaching the SAC is "indicative of the municipal authorities' handling of those cases and of their taking into consideration the situation of the inhabitants". In fact, the low number of cases is due to the poverty of the victims of the forced evictions and the lack of legal aid, which so far has never been granted by the authorities in such proceedings. This low number of cases reaching the administrative courts vis-à-vis the actual number of evictions is in fact alarming about the need to adopt clear legal rules, which must guide the administrative authorities when undertaking forced evictions.

The BHC would like to again stress that the key recommendation regarding the adoption of such rules through a legislative process has not been fulfilled. It therefore urges the delegates to adopt an interim resolution indicating the systematic failure of the Bulgarian authorities to execute this group of judgments.



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SUBMISSIONS OF BULGARIA IN RESPONSE TO THE OBSERVATIONS OF 3 NOVEMBER 2020 OF THE BULGARIAN HELSINKI COMMITTEE ON THE EXECUTION OF THE GROUP OF JUDGEMENTS *YORDANOVA AND OTHERS V. BULGARIA* (25446/06)

The Bulgarian State would like to take the opportunity to provide the Committee of Ministers with some brief comments regarding the allegation of the Bulgarian Helsinki Committee (the BHC) in their observations of 3 November 2020, as regards the Addendum of October 2020 to the Action Plan regarding the execution of the group *Yordanova and Others v. Bulgaria.*

The Government reiterate that the BHC's statement that during the last two years case-law of the administrative courts "consolidated in allowing unfettered discretion of the municipal authorities to evict families and to demolish housing on the sole basis that it was illegally built" is untruthful. In their comments on the existing case-law of the national courts the BHC once again misrepresent the content of the domestic judgments by pulling isolated quotes out of their context and omitting to mention crucial parts of the courts' reasoning. Thus, as regards judgments nos. 1457/2019 of the Plovdiv Administrative Court 9716/2020 г. of the Supreme Administrative Court (the SAC) the BHC completely failed to mention that in the proportionality analysis the courts noted that the appellant had a current address registration at a location different than the one affected by the demolition order, he had failed to prove that he had resided at the unlawful building for any length of time, the Municipality had provided the applicant with the possibility to build a lawful home by assigning construction rights to him, other opportunities had been provided including for acquisition of municipal housing and the appellant had not sought social assistance or accommodation. Similarly, in judgment 7227/2020 the SAC took into consideration the fact that the appellant had recently acquired immovable property elsewhere and regularly paid electricity bills there and that in another set of court proceedings she had claimed for a different building to be her only home. As regards judgment 4236/2020, it concerned a large unlawful building, which the appellant had built recently after tearing down a lawfully built house, which had been located at the same spot and which he had acquired not too long ago.

Last, the Government take the opportunity to provide some new information with respect to the Sofia – Benkovski case discussed in the BHC's observation of 23 October 2020 and currently pending before *Mladenova and Others v. Bulgaria,* no. 45309/2020. At the time of the

Government's previous submission regarding this case the ECHR had lifted the temporarily imposed interim measure with respect to all applicants save one. After the submission of additional information about that applicant's situation including the fact that his parents had declined the authorities offers for social accommodation on 10 November 2020 the Court lifted the measure.