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### DH-DD(2023)956

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Meeting: 1475<sup>th</sup> meeting (September 2023) (DH)

Reply from the authorities (11/08/2023) following a communication from an NGO (Bulgarian Lawyers for Human Rights) (03/08/2023) in the case of Aneva and Others v. Bulgaria (Application No. 66997/13).

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 : 1475<sup>e</sup> réunion (septembre 2023) (DH)

Réponse des autorités (11/08/2023) suite à une communication d'une ONG (Bulgarian Lawyers for Human Rights) (03/08/2023) dans l'affaire Aneva et autres c. Bulgarie (requête n° 66997/13) **[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.

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Submissions of the Bulgarian Government with respect to  
a Communication from the Bulgarian Lawyers for Human Rights (BLHR) in the group of  
Aneva and others v. Bulgaria (Application No. 66997/13)

In response to the communication of the applicant concerning the execution of the abovementioned judgment the Bulgarian Government submit the following.

First of all, the authorities would like to observe that updated information on both individual and general measures within the context of the supervision of the present group of cases has been submitted to the to the Committee of Ministers with an addendum to the action plan dated 2 June 2023.

In their submission, the BLHR do not contest the individual execution measures. The BLHR, however, make some comments regarding the general execution measures.

The allegations that the time necessary for serving the summons often exceeds the limit of two weeks prior the enforcement of the obligation to hand over a child are uncorroborated by specific official data. The suggestion to remove the time limit necessary to await the answer of the execution debtor is rather vague. It should be observed that according to Article 528 (2) of the Code of Civil Procedure the execution debtor has to respond within three days after the service of the summons whether he/she is ready to deliver the child, what impediments are available, if any and to specify the date and time of the meeting. The time limit of three days does not seem to protract considerably the enforcement proceedings considering that the matter concerns a sensitive issue of handover of child wherein impediments of different nature might arise.

The authorities reiterate that the Guidelines on the actions related to the handover of a child do not contain statutory provisions and has no compulsory effect. Each bailiff in compliance with the law and the circumstances underlying the enforcement proceedings should assess the necessity of their application.

As for the involvement of the police in the handover of the child and the suggestion to implicate therein the “Children Pedagogical Room” it should be observed that these units are specialized in preventing anti-social behavior of minors and juvenile delinquency. Any such issues are not raised within the execution of the Aneva and others group.

Next, the appeal of any measures that the social authorities might have undertaken does not bear any relation to any possible retardation of the enforcement proceedings. In principle, the procedures falling within the competence of the social welfare services under the Child Protection Act are not aimed to be part of the enforcement proceedings for handover of child.

In particular, any assistance of the social services where necessary is intended to put in place preparatory measures aimed at creating conditions conducive to reestablishing contact between the child and the parent seeking the enforcement. The resources available to the Social Assistance Directorate in the application of adequate preparatory measures for reunification of a child and a parent include the provision of social services provided by the Center for public support. It offers a wide range of services, activities and programs for support of children and families at risk. The Program for support and consultation of families within the community is

aimed at the development of the parental aptitudes and skills, mobilization of the internal resources to overcome the difficulties encountered in the course of the upbringing of the children including the work with children involved in parental conflicts and risk of parental alienation.

The measures provided in a family environment, which might of relevance to the execution of the group of cases at issue include the conducting of social work to facilitate child-parent relations and solution of relations conflicts and crises. The Social Assistance Department provides the protection measures at the request of the parents, tutors, curators other persons who take care of the child, as well as at the discretion of the Social Assistance Directorate and shall be implemented by social service providers for children or by the Social Assistance Directorate. The social worker in charge with the case monitors the development of the child by arranging regular meetings with the child, the parents and other relatives and if new facts have arisen undertakes other appropriate measures.

In case of refusal of a parent, tutor, curator of the person who takes care of the child to cooperate the director of the Social Assistance Department may issue compulsory prescriptions, which are subject to appeal under the procedure of the Administrative Procedure Code. The failure to comply with a compulsory prescription shall serve as basis for the imposition of a fine or a pecuniary sanction.

The Government underline that the procedures related to the appeal against mandatory prescription or the challenge of imposed fine and the resulting litigation cannot serve as a ground to suspend enforcement proceedings. Likewise, the outcome of those judicial proceedings has no any direct, immediate or indirect consequences on the hand over of the child therefore it is not decisive for prompt termination of the enforcement proceedings. In this respect, it should be noted that the examples of national jurisprudence given by the BLHR are of no relevance to the execution of the group Aneva and others.

Finally, it should be reiterated that concrete examples of domestic practice under Article 182 (2) of the Criminal Code for failure to comply with enforceable judgment for the determination of custody or of contact rights were presented with the Action plan dated 2 June 2023. It is to be recalled that the legislative amendments<sup>1</sup> of the aforesaid provision provided for much higher penalties in comparison to those that were being valid. Therefore, the criminal prosecution providing more severe punishment should enable the timely termination of the enforcement proceedings on the handover of a child.

Lastly, the Bulgarian Government would like to stress that the communication in question involves speculations and exaggerated comments on issues which are not subject to the supervision process. The Government find it unnecessary to comment on these speculative allegations.

## **CONCLUSION**

In the light of the above and taking into account the domestic wide-ranging and multi-faceted general measures mentioned in previous Action plans the Bulgarian Government kindly invite the Committee of the Ministers to assess positively the execution of the case at issue.

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<sup>1</sup> State Journal No 16/22 February 2019

The Committee of Ministers will be duly informed of the execution of the group and of the outstanding general measures to be taken for prevention of similar violations.

*11 August 2023*

COMMITTEE OF MINISTERS OF THE COUNCIL OF  
EUROPE DEPARTMENT FOR THE EXECUTION OF JUDGMENTS  
1475th (DH) MEETING OF THE DELEGATES

**DH-DD(2023)718**

3 August 2023

OBSERVATIONS

OF BULGARIAN LAWYERS FOR HUMAN RIGHTS FOUNDATION  
ON THE EXECUTION OF JUDGMENTS GROUP *ANEVA and OTHERS v.*  
*BULGARIA*

**regarding the scope and content of the respondent state's action plan**

In the judgments in the group of cases of *Aneva and Others v. Bulgaria*, the Court has found violations of the applicants' right to family life. The finding of a violation was drawn on the basis of the Court's assessment of the ineffectiveness of actions to enforce final judgments relating to custody. In the judgments, the Court details the defects in the proceedings - delayed enforcement proceedings, limitation of bailiffs' actions to scheduling surrender meetings, ineffective imposition of fines, lack of meaningful assistance from the police and social services, and lack of effect of the criminal proceedings brought against the other parent. It follows that the envisaged set of legislative measures cannot lead to the effective enforcement of such a final judgment.

The Government's action plan sent to the Council of Ministers envisages several measures that can be summarised as follows:

1. Proposal for bailiffs to work with children in a safe environment (blue room);
2. Proposal to hold preliminary meetings between the parents and possibly with the children if their age allows it in the presence of the bailiff;
3. Proposal a new social report to be drawn up for the purpose of enforcement proceedings;
4. Comments on the proceedings under Article 528 of the Civil Procedure Code and the opinion of the Chamber of bailiffs.

It is also pointed out that due to the termination of the mandate of the last regular government and the dissolution of the National Assembly, the state has failed to take concrete legislative measures.

In our view, the Bulgarian legislation concerning the enforcement of court decisions on parental rights and parent-child contact' regimes is unclear and, for the most part, remains unenforceable.

We share the Chamber of Bailiffs' view that the proposed measures will contribute to delaying enforcement proceedings and will do nothing to improve them.

Mandatory pre-meetings between parents is pointless. It should be borne in mind that enforcement proceedings are most often the result of lengthy court proceedings in which the parents have had the opportunity to clarify their relationship, have been heard by the court, and social reports have been drawn up by the social services following discussions with the parents and children. Some of the court proceedings have lasted several years, in which the court has ordered interim measures, modified them at the request of one or other parent, taking into account the current situation at the time of the hearing, etc. However, there is often a failure to comply with the final court order and additional meetings between the parents, which should probably be aimed at improving their relationship or clarifying it, only benefit the parent who is in breach of the court order, in so far as this represents additional



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time in which he or she will not be bound in practice to comply with what the court has ordered by a final court judgment.

The same applies to the proposal a new social report to be drawn up for the purpose of enforcement proceedings. As pointed out in the opinion of the Chamber of bailiffs, this could take months, which would lead to a blockage of enforcement, especially when the same could be done without much difficulty. Furthermore, it should be stressed that drawing up a new social report, in which the social services will give their opinion on whether and how it is appropriate to enforce the judgment, once it has already entered into force and is the result of a long judicial procedure in which all possible opinions of the social services, recommendations of experts, hearing of the parents and the child have been taken into account, can only lead to the practical suspension of the enforcement of the judgment.

In our Observation, we would like to highlight several significant shortcomings of the current Bulgarian legislation that are not addressed in the Government's Plan.

First of all, all the deadlines set in the law are disproportionately long. The bailiff serves a summons for voluntary execution, which the law requires to be served at least 7 days before the date of execution, but practice shows that bailiffs order service at least 14 days before execution, as in all other enforcement cases. The service of the summons itself often takes weeks or months, during which the judgment is not enforced. These periods need to be shortened considerably. The time limit for serving a summons and waiting for an answer as to whether the parent will comply with the judgment seems completely meaningless. It should be noted that this is the only enforcement procedure in which the debtor is asked whether he will comply with the judgment.

In order to enforce the judgment, the bailiffs may request the Social services to assist in removing obstacles to the timely enforcement of the obligation and to explain to the debtor, and if necessary to the child, the advantages of voluntary enforcement and the adverse consequences of non-compliance with the judgment. The bailiff may request the Social



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services to take appropriate measures under Article 23 of the Child Protection Act and, if necessary, the police authorities to take measures under Article 65 of the Ministry of the Interior Act (Article 528(4) CPC).

This brief and schematic arrangement of the interaction between the different authorities leads in practice to the non-implementation of court decisions.

There is a need to strengthen the involvement of police authorities in the enforcement procedure. The police are the only body with the necessary personnel to remove a person who is obstructing work with a child or preventing the child from being handed over to his or her parent, as well as having a specialised unit called the 'Children's Pedagogical Room', staffed by pedagogues and child psychologists trained to work with children. Most social welfare directorates do not have such specialists, so social welfare directorates often cannot be helpful in the immediate handover of a child to the parent when qualified psychological help is needed on the spot at the handover.

The involvement of social workers and the implementation of their acts should be more precise. Article 528 of the CPC states that, at the request of the bailiff, the Social services may take measures under Article 23 of the Child Protection Act, but it is entirely up to the social worker to decide what these measures should be and within what time limits. The bailiff has no control over their implementation. The Act does not suggest that the imposition of any of the measures under Article 23 of the Child Protection Act will suspend enforcement action, but this is the direct consequence of their imposition - once the bailiff has requested the assistance of social services, the bailiff 'closes' the case until a mandatory measure is issued by them.

It should be noted here that any act of the social services in these proceedings is subject to appeal. This provides a new opportunity for the parent who breaches the court order to delay its implementation as much as possible. The legislation does not provide for any special or expeditious procedure for dealing with this type of case, nor do the courts give them priority





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and they are dealt with at the same pace as any other administrative case. Often that means a year at first instance and another 6 months to 1 year for the cassation instance to deal with it.

<sup>1</sup> These cases are often turned into a new case concerning parental rights and the regime of personal relations, psychological experts are drawn up, witnesses are questioned about the relationship between the child and both parents, one parent claims that the child should not see the other parent, etc. Thus, in practice, the subject of the case is not the mandatory injunction issued and whether it complies with the law and its objectives, but again the family relationship.

Apart from the fact that the law does not provide for any special procedure for the examination of appeals against the acts of the social services, it does not even provide for their provisional execution, which would be justified in view of the fact that they are issued in execution of a final court decision and the ordered regime of personal relations between a child and a parent or in execution of the decision in the part concerning parental rights.

Lastly, the sanction which the social services may impose for failure to comply with a mandatory prescription confirmed by a court is also subject to appeal. This procedure is also a two-instance procedure. The penalties, although not modest (BGN 2 000 to BGN 5 000 and BGN 5 000 to BGN 10 000 in the case of a repeat offence), can be effectively imposed many years after the offence has been committed and even longer after the custody order has entered into force and the enforcement proceedings have been initiated.

Obviously, the law provides many and varied options for blocking the enforcement of a judgment by a bad faith parent. There is a need for a comprehensive legislative mechanism that provides for close cooperation between enforcement and child protection authorities,

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<sup>1</sup> See Decision No. 1314 of 31.01.2019 in Administrative Case No. 9518/2018 of the SAC, Decision No. 9628 of 15.07.2020 in Administrative Case No. 12759/2019 of the SAC or Decision No. 1314 of 31.01.2019 in Administrative Case No. 9518/2018 of the SAC - in all three cases, the court proceedings on appeal against a mandatory prescription lasted between one and a half and two years.



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aimed at swift action to enforce the custody rights and access order, rather than a mechanism that focuses on whether a court order should be enforced at all.

The current legislation allows the authorities to transfer the case without actually enforcing the judgment on custody and access.

The legislation in its current form cannot at all meet the needs for swift enforcement of court decisions. According to most court decisions, the handover of the children should take place at least twice a month, while in enforcement proceedings the service of a notice for voluntary enforcement is regulated 14 or 7 days before the date of enforcement, and the service itself can often take even longer. In practice, this becomes a formal activity devoid of any practical value. It is often the case that the notice for voluntary enforcement is received by the debtor even after the date for which enforcement is sought.

A prompt mechanism is needed to give the debtor a real opportunity to enforce the judgment as soon as possible, or even without first asking the debtor whether he wishes to comply. A centralised electronic system could be set up in which, once the bailiff's assistance has been sought, custody judgments could be entered and accessed by bailiffs, social services and the Ministry of the Interior. In accordance with the personal relations regime, the enforcement of the judgment should be carried out on the day and at the time agreed, in the presence of the bailiff, and, at his discretion, the Ministry of the Interior (children's pedagogical room), whose staff are not in uniform and would not stress the child, but are psychologists and pedagogues with professional qualifications in working with children, and the social services, if their assistance is required, should be notified in advance. Ones establish on the spot whether there are any obstacles to handing over the child and, if there are any obstacles but they can be overcome with the help of the police, a psychologist or a social worker, the bailiff should take immediate steps to remove them. At the first finding of non-compliance with the court order, the bailiff should immediately oblige the social services to take immediate measures to protect the child, issue a mandatory injunction to the parent who fails to comply with the court order, which injunction should be made mandatory and immediately

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enforceable, and its non-compliance should be sanctioned with fines, which even in the current legislation are of a considerable amount but are simply not enforced. This could have ensured a swift and timely response by the enforcement authorities, who would have taken the necessary protective measures from the outset and, if necessary, sanctions that would have deterred the parent who breached the order from continuing to do so or from attempting to suspend or delay enforcement.

*Regarding the criminal proceedings under Article 182, paragraph 2 of the Criminal Code*

Following the 2019 amendments to the Criminal Code, under which failure to comply with a court order on custody and access arrangements became a private offence to be prosecuted on the complaint of the victim, the provision of Article 529 of the CPC remained hollow and unenforceable. Article 529 of the CPC provides that if the debtor obstructs enforcement, the police shall arrest him and immediately notify the public prosecutor's office. At the same time, however, the public prosecutor's office is no longer competent to investigate this type of offence.

The Government's arguments that it is possible to hold a parent who fails to comply with a custody order criminally liable are untenable. Even the official statistics presented for 2021 show that criminal proceedings for offences against marriage and the family totalled 798, of which 619 were for offences under sections 176 to 186 of the Criminal Code. Of these 619 cases, 595 are for non-payment of maintenance (Article 183 of the Criminal Code). That is to say, the remaining completed criminal proceedings are only 24, of which it is unlikely that all are for the offence under Article 182(2) of the Criminal Code, which concerns the failure to comply with a court decision on custody and the regime of personal relations.



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These criminal proceedings are also extremely inefficient, as the perpetrators of this crime are most often parents with clean criminal records. The offence falls within the scope of Article 78a of the Criminal Code, which provides for mandatory exemption from criminal liability and the imposition of a monetary fine, which is most often equal to 2 or 3 minimum wages for the country, and the proceedings are extremely slow. Re-conviction within a certain period would result in a probation sentence, which does not affect the convicted parent in any way for the crime committed, and does nothing to help the reunification of the child and the other parent.