

Roundtable: Effective national co-ordination: a key factor in reinforcing the domestic capacity for rapid execution of judgments of the European Court of Human Rights

Strasbourg 7 March 2022

At present, the Agent's office in Bulgaria is one of the directorates forming the Special administration within the structure of the Bulgarian Ministry of Justice. The Directorate consist of 10 Government Agents, a Junior expert and a Technical assistant. Back in time, the government agents have been only a few and their activity has not been differentiated in a separate directorate.

In view of strengthening the authority of the agents, clarification of their status and functions, as well as to guarantee the cooperation needed from all of the national authorities, in February 2004 the Council of Ministers has adopted Decree on the procedural representation of the Republic of Bulgaria before the European Court of Human Rights.

Since then more jurists have been attracted to become part of the government agents without there being high turnover of the experts, which leads to a stable and cohesive team. At the same time, the volume of work and the functions of the directorate have also been growing. Currently the Government Agents' office activity is determined by the Ministry's Structural Regulations in 16 points. These could be grouped in the following main aspects.

Along with the procedural representation of the state in the pending cases before the Court, the government agents implement several other functions, almost equally complex and time-consuming.

The Government Agents are responsible to undertake all necessary actions for the implementation of the Court's judgments and subsequently to draw up the Action plans and the Action Reports before the Committee of Ministers. In that sense the Directorate performs coordination function in the implementation process and works closely both with the Department for the Execution of Judgments of the European Court and the competent national authorities. I would like to underline and to thank for the excellent cooperation with the Department for the Execution of the Court's judgments. At national level, the Government Agents' office relies foremost on the good cooperation with the Ministry's management team. For that purpose, the Agents' office has to clearly outline the problems on the basis of the Court's conclusions and to make reasonable proposals for the possible measures to cease and to prevent similar violations in future. If the measure includes legislative amendments the Government Agents subsequently take part in the respective working groups set out to prepare the draft bill. As a function intrinsic to the Government Agents' coordination role is the responsibility to disseminate the Court's judgments and to analyze and summarise its case-law.

A key factor for involvement in the execution process the high-ranking officials is the Annual report of the Minister of Justice on the implementation of the Court's judgments which has to be approved by the Council of Ministers and afterwards is being examined by the National Assembly.

Another important function of the Directorate was introduced in 2016 with amendment in the Statutory Instruments Act. The Directorate is responsible for preparing reports on the compliance with the Convention and the Court's practice of all draft bills (laws and codes) which the Council of Ministers will propose to the National Assembly. This mechanism has a

strong preventive role in order to be avoided regulatory preconditions for possible violations of the Convention.

The Directorate plays a significant role in another procedure introduced in 2012 in the Judiciary Act. This is a compensatory remedy against violations of the right to a court proceedings in a reasonable time. The mechanism is an example for effective and long-term coordination as the powers are divided between two authorities - the Inspectorate to the Supreme Judicial Council and the Minister of Justice. The Government Agents' office assists the Minister in exercising his or her powers to reject the application or to propose a compensation. The Government Agents give an opinion and proposal to the Minister whether the application is unfounded or, on the contrary, the length of the proceedings subject to the applicant's complaint is unreasonable and therefore an agreement should be proposed, suggesting also the compensation's amount in line with the Court's case-law.

The described procedure is actually only one of the measures part of an overall reform in implementation of the Court's 2011 pilot judgments in the cases of "*Finger v. Bulgaria*" and "*Dimitrov and Hamanov v. Bulgaria*". These cases concern the excessive length of judicial proceedings which the Court established to represent a systemic problem in Bulgaria. In 2015, the CM considered that the measures taken by the Bulgarian authorities had led to the introduction of effective compensatory remedies and the main recurrent causes for delays highlighted in these judgments have been eliminated. As a consequence, the examination of the two pilot judgments, as well as of 54 other cases, was closed.

At present, the Bulgarian authorities are successfully implementing another pilot judgment – in the case of "*Neshkov and Others v. Bulgaria*". This case concerns complains regarding the conditions of the applicants' detention and the lack of effective domestic remedies in that respect. The leading role from the part of our Directorate in implementing this judgment had a colleague of mine, as well as our director, whose experience I will try to pass briefly in the next few minutes.

Shortly before the delivery of the pilot judgment in 2015, the need to reform the prison system has already been recognized as a matter of national significance and a cornerstone for a successful criminal policy. Throughout the whole process the Ministry of Justice, which has authority over the Execution of Punishments Directorate, has been determined to carry out the reform. This commitment has been and still is strongly supported by all important actors in the field – the judiciary, the central prison administration and the civil society.

In December 2014 a Round Table has been organized in Sofia by the Department for the Execution of the Judgments and the Ministry of Justice with the presence of all relevant Bulgarian stakeholders. Later, they have taken part in the working groups called upon to implement both the recommendations of the CPT and the Court judgment. Two working groups have been set up: the first with the task to tackle the problems with overcrowding; the second one - focused on the remedies. The groups have consisted of members with various backgrounds - judges, prosecutors, representatives of the civil society, the Ombudsman, government agents and experts from Ministry of Justice. The two deputy ministers who were then placed in charge of the prison reform had a major contribution to the process. This approach have guaranteed that all relevant stakeholders would be heard, different views and approaches would be discussed, former prisoners have also been invited to the discussions to share their experience and offer their input.

The measures undertaken may be divided into legislative, practical and conceptual. The legislative amendments introduced different and more flexible rules for initial allocation and transfer of prisoners, early conditional release, compensatory and preventive remedies. Shifting more power to the prison governors was a key aspect of the reform. The necessary judicial

safeguards against abuse was provided with the supervision of the administrative court over the system. The practical measures focused on enhanced dialogue between the central authorities and the prisons. Major refurbishments of the prison infrastructure started and led to significant improvement of the material conditions. There are serious plans and projects ongoing at present. Conceptually, the general approach towards the role of the punishment in reforming the offender has been frequently reiterated and emphasized.

This reform was largely facilitated by the recommendations, the strong support and the encouragement on the part of the CPT. The reform was furthered by the constructive dialogue with the Department for the Execution of the Judgments. The penitentiary system also received very strong support under the Norwegian mechanism. Even now new projects are underway.

In conclusion, we may call the prison reform in Bulgaria a success not only because today there are visible results but also because these results have come out of a broad and fruitful debate. The work on the implementation of the Court judgment in this case come to show that the results needed could be achieved timely through effective coordination and synergy with all stakeholders which have agreed upon and committed to the main goal.

Thank you all for your attention.