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Communication from Bulgaria concerning the cases of KEHAYOV and NESHKOV AND OTHERS v. Bulgaria (Applications No. 41035/98, 36925/10)

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Réunion : 1310^e réunion (mars 2018) (DH)

Référence du point : Plan d'action

Communication de la Bulgarie concernant les affaires KEHAYOV et NESHKOV ET AUTRES c. Bulgarie (requêtes n° 41035/98, 36925/10) (**anglais uniquement**)



ACTION PLAN
(revised)

Neshkov and Others v. Bulgaria (pilot judgment)
Kehayov v. Bulgaria group of cases

December 2017

This revised action plan has been prepared to reflect the most recent developments in the execution of the pilot judgment in the case of *Neshkov and Others* and the judgments in the *Kehayov* group of cases.

I. GENERAL MEASURES

As indicated before, based on the Court judgments at issue, five main problems are identified as regards the conditions of detention in the Bulgarian detention facilities: overcrowding, poor material conditions, access to adequate health care, the “special regime” of detention in respect of life prisoners, and the availability and efficiency of the domestic remedies for challenging poor conditions of detention (compensatory and preventive remedies). The measures below focus mainly on prisons and prison hostels attached to them, in particular, because of the ongoing tendency for closure of investigative detention facilities (IDFs), where possible, and the accommodation of detainees in prisons.

On 25 January 2017 Parliament adopted the Law on Amendments in the Execution of Punishments and Pre-Trial Detention Act, the Criminal Code and the Criminal Procedure Code which introduced new rules for allocation and transfer of prisoners as well as preventive and compensatory procedures.

On 1 December 2017 the Bulgarian prisons accommodated 6,841 prisoners. At the moment, the official capacity of the Bulgarian prison system, calculated on the basis of 4 sq.m. per person, is approximately 8,500 individuals (according to the newest information - see the Appendix below).

1. Measures against overcrowding

The amendments introduced different rules for initial allocation and transfer of prisoners as a measure to tackle overcrowding. The decision on the specific prison in which the convicted shall be accommodated is taken by the General Directorate for the Execution of Punishments (hereinafter GDIN). More power is given to the prison governor who is in charge of, *inter alia*, transfers within the prison. It is expected that such a situation will enhance the role of the prison governor and allow for better management of the specific prison. It is true that the changes in the law led to more prisoners being accommodated in open-type prison hostels. The appendix below shows that there is indeed some overcrowdedness in the prison hostels “Stroitel” and “Zhitarovo” attached to Burgas Prison, “Hebros” at Plovdiv Prison, and “Stara Zagora” at Stara Zagora Prison. Pursuant to information from GDIN the overpopulation in the other prison hostels is compensated by accommodating the inmates at external working sites which are not part of the official capacity of the prison system.

Further, it was stated in the previous action plans that alternatives to the deprivation of liberty such as the probation and the suspension of sentences generally work well. The Prison Reform Project of the Ministry of Justice and the Council of Europe envisioned enhancing the capacity of the Probation Service, also through the effective implementation of the electronic monitoring. In the next years GDIN will develop a specific project under the Norwegian Financial Mechanism – “Enhancing the Implementation of Alternative Measures to the Deprivation of Liberty”.

In addition to that, the amendments in the law provide for change in the procedure for early conditional release which shall also lead to reducing the pressure on the prison system.

Finally, the reconstruction of two major prison hostels, attached to the most problematic prisons – those in Varna and Burgas, has been finalised. Razdelna prison hostel has been put into operation in the summer of 2016 whereas Debelt prison hostel was put into operation in March 2017.

a) Allocation of prisoners

It has been identified that with respect to overcrowding the main problem was the allocation of prisoners in the main building of prisons or closed-type prison hostels. Having that into account, the amendments provided for more power to the prison administration in respect of distribution of prisoners, flexible approach to the initial allocation and the transfer of prisoners, and wider use of open-type prison hostels. The rule providing for at least 4 sq.m floor space per prisoner has also come into force.

- *Initial allocation of prisoners*

The new provisions envision initial allocation of prisoners based on a different concept, ensuring more flexibility and preventing overcrowding. The competence is divided between the trial court and the prison administration. The trial court determines the sentence and the regime for serving it, based on the relevant legal rules. The prison administration is in charge of allocating the prisoners based on *inter alia* the capacity of the detention facility. The prison administration is granted more operative powers and possibilities to use open-type prison hostels.

The amended provisions provide that prisoners with determined by the trial court special regime of detention shall be accommodated in prisons; those with strict regime – in prisons and closed-type prison hostels; those with general regime – in open-type prison hostels.

The new regulation of the initial allocation presupposes broader use of open-type prison hostels. The conditions in the majority of these hostels are decent, with more possibilities for different activities and work.

· *Transfer of prisoners*

The amendments envision that transfers are within the power of the prison administration. First, a prisoner may be transferred from one prison to another by virtue of an order of the chief director when, *inter alia*, there is overcrowding (see section 61 § 1(5)). The order can be challenged before the administrative court by the prisoner or the prosecutor.

Same procedure applies when transferring a prisoner from prison to a closed-type prison hostel, in this situation by virtue of an order of the respective prison governor.

At the same time, a prisoner could request the domestic court to enjoin the administration to transfer him to a different prison or closed-type prison hostel for reasons related to overcrowding and poor material conditions by means of using the special procedure in sections 276-283 of the 2009 Execution of Punishments and Pre-Trial Detention Act (the 2009 Act) (that is the same procedure which shall serve as preventive remedy (see below)).

The new provisions provide that the prison governor may take a decision for transfer to an open-type prison hostel, based on, *inter alia*, considerations related to overcrowding (section 64). The prisoner can also file a transfer request to the prison governor. The transfer order/refusal to transfer is subject to appeal before the administrative court.

There is also a procedure for transfer from open-type prison hostel to prison or closed-type prison hostel – by virtue of a court decision, following a proposal of the prison governor and based on the behaviour of the prisoner.

b) Alternatives to the punishment deprivation of liberty

It was pointed out above that the Probation Service benefitted from the Prison Reform Project between the GDIN and the Council of Europe in order to successfully implement the electronic monitoring. As mentioned above the GDIN will have a project under the NFM for focusing on the use of alternative punishments.

As regards the early conditional release, the amended provisions introduce changes in the conditions and procedure for early conditional release. Both the prison administration and the prisoner now have the right to bring an application to the court for early conditional release after a certain time of serving the sentence had passed. Following that, the court in contentious proceedings decides whether the prisoner has rehabilitated. Also, the early conditional release can be applied more than once when deemed appropriate by the domestic court.

It is expected that these new rules which are based on the Committee of Ministers Recommendation Rec (2003)22 concerning conditional release shall ensure broader and fairer use of conditional release, leading to reducing overcrowding and ensuring transparency.

c) Setting up the new prison hostels in Debelt and Razdelna

It has been identified that the most overpopulated prisons in Bulgaria are those in Burgas and Varna. Therefore in the summer of 2016 the prison hostel in Razdelna attached to Varna Prison has been opened. As a result of that, in August 2016 prisoners from Varna Prison were transferred to the prison hostel which significantly reduced the pressure on the main building.

In March 2017 the prison hostel in Debelt, attached to Burgas Prison, was opened. Prisoners from Burgas Prison were transferred to the Debelt. At present, the Burgas Prison is undergoing refurbishments.

Conclusions and measures to be taken:

Overcrowding has been identified as a major problem within the Bulgarian prison system. The abovementioned general measures are aimed specifically at preventing and tackling it. In particular, the new rules for initial allocation and transfer of prisoners assign the prison administration with more responsibility as well as allow for more flexibility in controlling the prison system and preventing overcrowding. At the same time, having the requirement of 4 sq.m floor space per prisoner as a binding legal rule ensures more vigilance in its application. Finally, the prison population density in main buildings and closed-type prison hostels is reduced as more prisoners, based on the criteria established in the law, are accommodated in open-type prison hostels with better chances for access to work and different activities ensuring rehabilitation and resocialisation.

2. Measures against poor material conditions

In the recent years major refurbishments have taken place in order to prepare the prison system for the entering into force of the new legislative amendments which also envision the functioning of a preventive remedy.

In addition to the information submitted in the previous action plans, in 2017 the following has been achieved in respect of prisons and prison hostels:

- Burgas Prison – refurbishments of the plumbing system and building toilets in the cells;
- Pazardzhik Prison – building toilets in the cells, refurbishments;
- Bobov Dol, Plovdiv, Sliven, Varna, Belene Prisons – refurbishments of the administrative building;
- Plovdiv prison hostel and Stara Zagora Prison Hostel – refurbishments of the living areas;
- Lovech Prison – refurbishments of the living area;
- Lovech Prison Hostel – refurbishments of the roof;
- Sofia Prison Hostel – refurbishments of the sewage system;
- Pleven Prison Hostel – construction of a new heating system;
- Vratsa Prison – refurbishments in order to move the correctional home Boytchinovtzi in the prison building.

In respect of IDFs:

- Varna IDF – refurbishments of the premises;
- Sofia IDF “G.M.Dimitrov” – refurbishments of the living premises and toilets;
- Haskovo IDF – refurbishments of living premises.

For 2018 the following is planned:

- New IDF on the territory of Sliven Prison;
- Refurbishments of the Prison Hostels attached to Stara Zagora Prison;
- New IDF at Lovech Prison;
- Refurbishments of the roof and other premises at Sofia Prison.

Under the Norwegian Financial Mechanism, the GDIN has a project for the construction of a pilot prison in Sofia. Also, refurbishments are envisioned in Plovdiv and Bobov Dol Prisons and the prison hostels in Plovdiv, Bobov Dol and Burgas.

Conclusions and measures to be taken:

The Government point out that the refurbishments of the prison system are underway. Financial resources are also ensured under the NFM. The Government will keep the Committee of Ministers up-to-date on the relevant measures to be taken in this regard.

3. Measures aimed at more adequate health care in detention facilities

The Prison Reform Project with the Council of Europe focuses, *inter alia*, on improving the health care in prisons. A national strategy on the provision of health care in prisons, together with an action plan for its implementation, have been developed and are subject to approval. Training has been provided to medical and non-medical staff in detention facilities on provision of health care and medical ethics and for strengthening professional medical work.

Finally, it is worth mentioning that in the beginning of 2017 the rules regarding the setting up of a register for the injuries inflicted in the detention facilities and enhancing the internal control in cases of use of force by the prison staff have been introduced in the regulations for the implementation of the 2009 Act.

Conclusions and measures to be taken:

The Government are aware that health care has been identified as a very weak point in the prison system affecting both the conditions of detention and the prevention of ill-treatment. The Government will keep the Committee of Ministers up-to-date on the relevant measures regarding the implementation of the national strategy on health care in prison.

4. “Special regime” of detention

The amendments to the law provide new rules regarding the special regime of detention. The special regime is imposed by the trial court for a period of one year. After that the prison governor issues an order for the change of the regime or for continuing its application. The order is handed to the inmate and sent to the prosecutor. It can be challenged before the administrative court. The prison governor is also duty-bound to review periodically the special regime, not later than one year after his earlier review. The inmates under special regime may participate in common activities by virtue of an order of the prison governor.

5. Compensatory and preventive remedies

Section 3 of the 2009 Act prohibits torture, cruel, inhuman or degrading treatment, provides that detention in poor conditions also amounts to such treatment, and gives a non-exhaustive list of circumstances which represent such treatment. The aim of this definition is to serve as clear guidance to the prison administration, the prosecutors and the relevant courts as to when conditions of detention go beyond the normal degree of suffering inherent in detention. The newly introduced procedures, which serve as remedies, clearly refer to that definition.

a) Compensatory remedy

A new procedure has been introduced for awarding compensation. It contains explicit rules for shifting the burden of proof to the prison administration once a *prima facie* case is submitted to the court, a presumption that non-pecuniary damage have occurred due to the poor conditions of detention, and examination of the cumulative effect of the conditions on the detainee.

The new provisions respond to the criticism of the Court and are in line with the requirements identified in its case-law.

b) Preventive remedy

The amended law introduces a new procedure for complaining to the domestic court of actions or omissions of the authorities. The detainees may request directly the relevant administrative court to order an injunction on actions or inactions of the administration which amount to inhuman or degrading treatment (by reference to section 3 of the 2009 Act). The proceedings shall develop speedily in order to provide prompt relief. The court may use all evidentiary means to establish the impugned actions or inactions. It can order the administration to stop the violation and enjoin it to carry out the necessary actions (such as transfers, improvement of specific conditions, etc.).

Conclusions and measures to be taken:

The introduction of the new remedies has gone hand in hand with the general improvement of the conditions in the prison system. It is expected that in this situation they will function effectively.

II. INDIVIDUAL MEASURES

In its decision of March 2017 the Committee of Ministers requested information about the individual measures regarding the applicants Halil Adem Hasan, Radev, Dimitrov and Ribov, as well as Jordan Petrov regarding the criminal proceedings against him after their reopening.

Mr Hasan is currently accommodated in Lovech Prison and is placed under a special regime on the grounds of an individual risk assessment. Pursuant to section 198 (3) of the 2009 Act the prison governor shall re-examine the special regime regularly and not later than one year after the latest assessment. Therefore the necessity of the regime is periodically reassessed. Further, Mr Hasan is alone in the cell which has a toilet and running water. He takes part in common activities with other lifers.

Mr Radev is accommodated in the Varna Prison under a strict regime. He is alone in a cell which has a toilet. He takes part in common activities with other lifers.

Mr Dimitrov is accommodated in Stara Zagora Prison, in the common premises. He shares a cell with four other inmates. The cell has a toilet. He takes part in common activities with other inmates.

Mr Ribov is accommodated in Burgas Prison. In 2013 his regime was changed from special to strict. In April 2014 he was accommodated in common premises and was entitled to take part in various activities. In December 2016 his regime was amended to special, following an individual risk assessment. At present, he is placed in a refurbished cell with three other lifers. He takes part in common activities with other lifers. In December 2017 he was included in a special program for persons with psychological problems.

In respect of the reopened criminal proceedings against Mr Iordan Petrov, in a final judgment of 31 January 2017 the Supreme Court of Cassation upheld the conviction and amended the sentence to life imprisonment. During the proceedings, the domestic courts excluded from the evidentiary materials the applicant's confession of 19 January 2001.

In view of the above, the Government invite the Committee of Ministers to close the supervision of the execution as regards the individual measures in the above-mentioned cases.

Additional information will be provided about Mr Neshkov in view of his communication of April 2017.

III. CONCLUSION

In view of all of the above, the Government would like to reiterate that different types of measures have been undertaken for addressing the problems identified in the Court's judgments under consideration: amendments in the existing legislation and other measures aimed at tackling overcrowding, improvements of the material conditions in existing detention facilities, introduction of effective compensatory and preventive remedies.

The Government will keep the Committee of Ministers duly informed of any further developments.

| <i>Prisons and prison hostels</i> | <i>Official capacity (4 m² per person) (based on the latest information from GDIN)</i> | <i>Prison population on 1 December 2017</i> |
|---|--|---|
| Boychinovtsi Correctional Home | total 348 | 28 |
| Sliven Prison (for women) | total 407 (including the Correctional Home) | 215 |
| Main Building | 304 | 147 |
| Correctional Home | 28 | 1 |
| Open-type prison hostel “Sliven” | 31 | 48 |
| Open-type prison hostel “Ramanusha” | 44 | 19 |
| Belene Prison | total 513 | 455 |
| Bobov Dol Prison | total 728 | 455 |
| Main Building | 549 | 335 |
| Open-type prison hostel “Samoranovo” | 179 | 120 |
| Burgas Prison | total 829 | 744 |
| Main Building | 300 | 219 |
| Prison Hostel “Debelt” | 378 | 286 |
| Open-type prison hostel “Gitarovo” | 79 | 123 |
| Open-type prison hostel | 72 | 116 |

| | | |
|---|------------------|------------|
| “Stroitel” | | |
| Varna Prison | total 595 | 547 |
| Main Building | 262 | 252 |
| Open-type prison hostel “Razdelna” | 92 | 107 |
| Closed-type prison hostel “Razdelna 1” | 180 | 124 |
| Open-type prison hostel “Varna” | 61 | 64 |
| Vratsa Prison | total 563 | 481 |
| Main Building | 415 | 354 |
| Open-type prison hostel “Keramichna Fabrika” | 148 | 127 |
| Lovech Prison | total 974 | 701 |
| Main Building | 544 | 367 |
| Closed-type prison hostel “Atlant” | 217 | 151 |
| Open-type prison hostel “Poligona” | 110 | 97 |
| Open-type prison hostel “Veliko Tarnovo” | 103 | 86 |
| Pazardzhik Prison | total 457 | 378 |
| Main Building | 335 | 291 |
| Open-type prison hostel “Sredna Gora” | 62 | 32 |
| Open-type prison hostel “Pazardjik” | 60 | 55 |
| Pleven Prison | total 386 | 409 |

| | | |
|--|--------------------|--------------|
| Main Building | 272 | 273 |
| Open-type prison hostel “Pleven” | 75 | 99 |
| Closed-type prison hostel “Vit” | 39 | 37 |
| Plovdiv Prison | total 588 | 606 |
| Main Building | 358 | 385 |
| Open-type prison hostel “Smolyan” | 152 | 126 |
| Open-type prison hostel “Hebros” | 78 | 95 |
| Sofia Prison | total 1,489 | 1,166 |
| Main Building | 670 | 526 |
| Closed-type prison hostel “Kremikovci” | 403 | 348 |
| Open-type prison hostel “Kazichene” | 416 | 292 |
| Stara Zagora Prison | total 614 | 656 |
| Main Building | 406 | 414 |
| Closed-type prison hostel “Cherna Gora” | 120 | 75 |
| Open-type prison hostel “Stara Zagora” | 88 | 167 |
| TOTAL | 8,491 | 6,841 |