

Résolution CM/ResDH(2013)2¹
Makedonski contre Bulgarie
Exécution de l'arrêt de la Cour européenne des droits de l'homme

(Requête n° 36036/04, arrêt du 20 janvier 2011, définitif le 20 avril 2011)

Le Comité des Ministres, en vertu de l'article 46, paragraphe 2, de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales, qui prévoit qu'il surveille l'exécution des arrêts définitifs de la Cour européenne des droits de l'homme (ci-après nommées « la Convention » et « la Cour »),

Vu l'arrêt définitif, qui a été transmis par la Cour au Comité dans l'affaire ci-dessus et les violations constatées (voir document [DH-DD\(2013\)154E](#))² ;

Rappelant l'obligation de l'Etat défendeur, en vertu de l'article 46, paragraphe 1, de la Convention, de se conformer aux arrêts définitifs dans les litiges auxquels il est partie et que cette obligation implique, outre le paiement de la satisfaction équitable octroyée par la Cour, l'adoption par les autorités de l'Etat défendeur, si nécessaire :

- de mesures individuelles pour mettre fin aux violations constatées et en effacer les conséquences, dans la mesure du possible par *restitutio in integrum* ; et
- de mesures générales permettant de prévenir des violations semblables ;

Ayant invité le gouvernement de l'Etat défendeur à informer le Comité des mesures prises pour se conformer aux obligations susmentionnées ;

Ayant examiné le bilan d'action fourni par le Gouvernement indiquant les mesures adoptées afin d'exécuter l'arrêt y compris les informations fournies en ce qui concerne le paiement de la satisfaction équitable octroyée par la Cour (voir document [DH-DD\(2013\)154E](#)) ;

S'étant assuré que toutes les mesures requises par l'article 46, paragraphe 1, ont été adoptées ;

DECLARE qu'il a rempli ses fonctions en vertu de l'article 46, paragraphe 2, de la Convention dans cette affaire et

DECIDE d'en clore l'examen.

¹ Adoptée par le Comité des Ministres le 7 mars 2013 lors de la 1164^e réunion des Délégués des Ministres.

² En anglais uniquement.

ACTION REPORT
on the implementation of the judgment of the ECtHR in the case of
Makedonski v. BULGARIA

Application no. 36036/04
Judgment of 20 January 2011
Final on 20 April 2011

The Facts

The case relates mainly to lengthy prohibition to leave the country (violation of Article 2 § 2 of Protocol No 4 to the Convention). The Court considered that “the authorities are not entitled to maintain restrictions on an individual’s freedom of movement over lengthy periods without periodic reassessments of their justification”. The case also concerns the excessive length of criminal proceedings (violation of Article 6, § 1 of the Convention) and lack of an effective remedy with this regard (violation of Article 13 of the Convention).

The applicant, a Bulgarian national, was charged for embezzlement in 1992. In 1994 he was imposed with a prohibition to leave the country. In 2004 the district prosecutor’s office lifted the prohibition and discontinued the criminal proceedings against the applicant. The period of criminal proceedings lasted approximately twelve years and the ban to leave the country – approximately ten years.

Individual measures

a) The compensation was duly transferred to the applicants’ account on 1 June 2011.

b) No additional individual measures were taken following the Court’s judgment since the ban to leave the country has been lifted and the criminal proceedings have ended. Thus, the applicant is no longer suffering consequences of the violation.

General measures

a) **Publication and dissemination of the judgment.** The translation of the judgment in Bulgarian will be available soon on the Ministry of Justice website at <http://www.justice.government.bg/new/Pages/Verdicts/Default.aspx> .

A summary of the judgment in Bulgarian was published on the National Institute of Justice website³ in the monthly Bulletin of Court Practice in Human Rights, issue 5 from February 2011, page 26.

b) **Excessive length of proceedings and lack of effective remedies in this respect.**

With regard to these violations the present judgment relates to issues examined in the Kitov group of cases as well as in the pilot judgments under the cases of Dimitrov and Hamanov. The respective general measures are included in the action plan for legislative amendments as well as in the interim reports for the abovementioned groups.

c) **Amendments in legislation in view of the prohibition to leave the country**

In this case with regard to the violation of Article 2 § 2 of Protocol No 4 the Court established that “the authorities are not entitled to maintain restrictions on an individual’s freedom of movement over lengthy periods without periodic reassessments of their justification”. That is why the new Criminal Procedure Code in force from 29.04.2006 provides for right for the accused, respectively the defendant to contest the prohibition to leave the country at any time during the criminal proceedings.

³ <http://www.nij.bg/Articles/Articles.aspx?lang=bg-BG&pageid=548>

Under Art.68⁴ of the Criminal Procedure Code the prosecutor may prohibit the accused to leave the state only in case he/she is charged with a serious intentional criminal offence (punishable by more than five years of imprisonment). The application of this measure is not automatic but depends on the circumstances of the relevant case. During the past several years the prohibition to travel abroad is imposed relatively seldom.

The accused may request temporary lifting of the measure at any time during the pre-trial phase and the prosecutor is obliged to respond to such request within three days from its submission. The refusal is subject to immediate appeal in front of the respective first-instance court. At the trial stage the temporary lifting of the ban may be requested in front of the trial court.

Furthermore, under paragraphs 4 and 5 of Art.68 the accused is entitled to apply for a full revocation of the prohibition before the respective court at any time during both pre-trial and court proceedings. The court is entitled to revoke the prohibition, provided that there is no risk that the accused, respectively the defendant will flee abroad. Well-established court practice exists with this regard where the courts examine thoroughly all circumstances related to the particular case⁵.

d) Compensatory remedy

The national legislation provides an effective compensatory domestic remedy under Art.2 of the 1988 State and Municipalities Responsibility for Damages Act with regard to unlawful prohibition to leave the country. The respective courts have already heard such complaints and awarded respective compensation (see Decision of the Plovdiv Appellate Court from 06.12.2010 under civil case № 916/2010).

The Government of the Republic of Bulgaria believes that the measures taken have fulfilled the requirements that arise from the Court's judgment and that as a result similar violations will be prevented in the future. In view of the above the Government is of the opinion that the Committee of Ministers may consider to close the supervision of the execution of the present case.

Sofia, 16 November 2012

Enclosed: Sofia District Court Ruling under a.p.c.c № 707/2008, Sofia District Court Ruling under p.c.c. № 888/2007, Decision of the Plovdiv Appellate Court from 6.12.2010 under c.c. № 916/2010 in Bulgarian

⁴ Article 68, CPC

(1) (Amended, SG No. 109/2008) In pre-trial proceedings, where the accused party has been constituted in this capacity because of a serious intentional criminal offence, the prosecutor may prohibit the accused party from leaving the boundaries of the Republic of Bulgaria, unless the prosecutor has given authorisation to this effect. Border control points shall immediately be notified of the imposed prohibition.

(2) The prosecutor shall rule within three days on the request for authorisation under Paragraph 1 of the accused party or his/her defence counsel.

(3) The refusal of the prosecutor shall be subject to appeal before the competent court of first instance.

(4) The court shall consider forthwith the appeal in a single-judge panel, deliberating privately, and shall make pronouncement by a ruling, thus confirming the refusal of the prosecutor or allowing the accused party to leave the boundaries of the Republic of Bulgaria for a set period. The ruling shall be final.

(5) At the request of the accused party or his/her defence counsel, the court may repeal the prohibition under Paragraph 1 in pursuance of the procedure under Paragraph 4, where there is no risk for the accused party to abscond outside this country.

(6) In court proceedings the powers pursuant to paragraphs (1) and (5) shall be exercised by the court examining the case. The ruling of the court shall be subject to appeal by accessory appeal or protest.

⁵ E.g. Sofia District Court Ruling under a.p.c.c № 707/2008, Sofia District Court Ruling under p.c.c. № 888/2007, etc.