

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



Contact: Clare OVEY
Tel: 03 88 41 36 45

Date: 27/02/2018

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Meeting: 1310th meeting (March 2018) (DH)

Communication from the authorities (16/02/2018) concerning the case of M.S. v. Ukraine (Application No. 2091/13).

Information made available under Rule 8.2a 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 : 1310^e réunion (mars 2018) (DH)

Communication des autorités (16/02/2018) concernant l'affaire M.S. c. Ukraine (requête n° 2091/13)
(anglais uniquement)

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



МІНІСТЕРСТВО ЮСТИЦІЇ УКРАЇНИ

вул. Городецького, 13, м. Київ, 01001
Тел.: +380 44 278-37-23, факс: +380 44 271-17-83
E-mail: themis@minjust.gov.ua
<http://www.minjust.gov.ua>
Код ЄДРПОУ 00015622

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На № _____



Ms Geneviève Mayer
The Head of Department
for the Execution of Judgments
of the European Court of Human Rights
Directorate General of Human rights –
DG II
Council of Europe
F-67075 Strasbourg Cedex

DGI

16 FEV. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

48829/06

*As to the execution of
the Court's judgment in the case of M.S. v. Ukraine*

Dear Madam,

Please let me, first of all, assure you of our outmost respect.

As regards the case of *M.S. v. Ukraine* (application No. 2091/13) and in order to provide information concerning criminal investigation into the alleged sexual abuse of the applicant's child, the Government of Ukraine would like to submit the following information.

1. The status of the investigation

On 08 May 2013 the applicant filed an application with the Sumy District Office of the Department of the Ministry of the Interior of Ukraine as to the sexually abuse of his minor child and at that date an investigation in criminal proceedings regarding an alleged criminal offence envisaged by Article 156.2 of the Criminal Code of Ukraine were entered in the Unified Register of Pre-Trial Investigations as per No. 12013200260000727.

Within nearly five years, the law enforcement agencies have been conducting investigative actions to identify alleged perpetrators.

Progress of the pre-trial investigation in criminal proceedings was assessed on 08 February 2018, during a briefing by the Prosecutor of Sumy Region. So, based on collected evidence, on 08 February 2017 two notices of suspicion of the criminal offence envisaged by Article 156.2 of the Criminal Code of Ukraine were drawn up regarding S.V., the mother of the applicant's daughter and the first alleged suspect in the criminal proceedings, and F., the second alleged suspect in this criminal proceedings.

As of today, S.V. and F. were served with charges in alleged sexual abuse of the applicant's daughter.

As regards the necessity to provide additional investigative actions pre-trial investigation is planned to conclude in March 2018.

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2. Concrete investigatory steps taken since 06 March 2015

Within the period since 06 March 2015 to the present 11 witnesses were questioned regarding the circumstances of the committed criminal offence known to them; requests were forwarded to educational institutions where the applicant's minor child studied; their responses were received and entered in the criminal case files. On numerous occasions, the Operative Subdivision of the Sumy District Police Office (hereinafter - "Operative Subdivision") was instructed with a view to carrying out investigative (search) actions in order to establish whereabouts of F., the second alleged suspect in the criminal proceedings.

As to the concrete investigatory steps that have been taken since 6 March 2015 the Government of Ukraine would like to inform as follows.

1. On 20 April 2015 the Operating Subdivision was instructed, under Article 40 of the CCP, to establish and verify in an operating way whereabouts and involvement in the aforesaid criminal offense of F., born on 16 January 1967, who was known to have his last residence place at 57 Zavodska St. in the Village of Bezdryk, Sumy District; and S.V., born on 1 May 1989 (known to have her last residence place at 47 Borova St., flat 39, Sumy); as well as to establish subscriber's numbers of telephones they use, their IMEI numbers and existing account in social networks.

2. On 13 October 2015 it was instructed to establish whereabouts of the applicant's minor daughter, the persons she resided with, the educational institution she attended, her school teachers; to request from her last educational institution a psychological and pedagogical reference and psychologist's conclusions made subsequent to examinations during her whole period of study at this educational institution; to question the school psychologist and teachers as witnesses regarding the circumstances of the criminal offence known to them.

3. On 18 December 2017, the Education and Science Department of Sumy Region Administration was officially requested to provide information on educational institutions where applicant's daughter had been studying from September 2014 to 18 December 2017. According to the received response to this request, from 01 September 2014 to 27 January 2015 she had been studying at the Likarskyi Teaching and Educational Complex.

4. On 20 December 2017, in order to find F., the Operating Subdivision of the Sumy Border Department was instructed under article 40 of the CCP, to establish the facts of crossing the border by the said person since 01 June 2017 to the present. Under this instruction the State Border Service responded that F. had not crossed the border.

5. On 26 December 2017, in order to find F.'s ex-wife, the Sumy District Vital Statistics Office was officially requested to provide information on the facts of conclusion and dissolution of marriage by F. and his wife's personal details. The aforementioned institution responded that F. did conclude and dissolve his marriage; however no response regarding his wife's personal details have been received.

6. On 11 January 2018 there were questioned as witnesses: a primary school teacher and the secretary of the General School No. 21; and also a primary school teacher and the practical psychologist at the General School No. 27. They characterised

the applicant's daughter as follows: she mastered the curriculum well; an unsociable person; no peculiarities in the child's behaviour were observed that could have indicated her sexual or physical abuse. The girl was always taken from school by her mother, S.V. No indications of her physical or sexual abuse were found.

7. On 15 January 2018, S.V., the first alleged suspect in the criminal proceedings, was summoned (by registered letter sent to her registered address) for carrying out investigative actions with her on 15 January 2018; the aforesaid person failed to appear.

8. On 16 January 2018, the Preventive Activity Department of the Main Department of the National Police in Sumy Region was instructed, in the manner prescribed by article 40 of the CCP, to verify the involvement of F. and S. V. in the criminal offence; to establish subscriber's numbers of telephones they use, accounts; submission of a proposal for undisclosed investigative and search actions. The Operating Subdivision was instructed, in the manner prescribed by article 40 of the CCP, to establish all the saunas located in the Village of Bezdryk, Sumy Region and to ensure the appearance of their owners before investigator for questioning.

9. On 23 January 2018, the Sumy District State Vital Statistics Office of the Main Territorial Department of Justice was officially requested to provide a copy of Certificate of Marriage concluded by F. (Entry No. 16 dated 3 November 1990) or information on personal details of the woman who married F. The Operating Subdivision was instructed, in the manner prescribed by article 40 of the CCP, to question the psychologist, teachers of the Likarskyi Teaching and Educational Complex, where the applicant's daughter was studying in 2014, as witnesses with a view to identify evidence of sexual violence against her.

Therefore, in order to establish the circumstances of the aforementioned criminal offence, the minor victim, her legal representatives and a number of witnesses were questioned, a psychological and physiological interview with polygraph, as well as forensic examination were carried out, etc.

On 08 February 2018 under the Prosecutor of Sumy Region briefing's decisions, on account of improper organisation and implementation of procedural supervision, the issue of bringing of the Deputy Head of the Sumy Local Prosecutor's Office and procedural supervisor to disciplinary liability has been raised before the Qualifications and Disciplinary Commission of Prosecutors.

Furthermore, a letter on taking a decision regarding bringing of the investigator and Head of the Investigation Division to disciplinary liability of the Sumy District Office of the Main Department of the National Police in Sumy Region was sent to the Head of the Main Department of the National Police in Sumy Region in connection with improper investigation.

3. As to the place of residence of the applicant's daughter

The Government of Ukraine would like to confirm that at present F., the second alleged suspect in the criminal proceedings, no longer resides with the applicant's daughter and her mother, S.V.

Pursuant to the Family Composition Certificate issued on 05 February 2018 by the Administrative Service Centre, the following five persons: S.V., T.V., K.L., K.V. and S.S. are registered at 47 Borova St., flat 39, Sumy. The applicant's daughter, is not registered at this address. According to her mother, S.V., the child is registered at 9. M. Lushpy Av., flat 1, Sumy, however she resides with her mother at 47 Borova St., flat 39, Sumy.

No other persons reside at this address, although they are registered there. T.V. is the child's great grandmother, K. L. is the child's grandmother, K.V. and S.S. are the child's uncles.

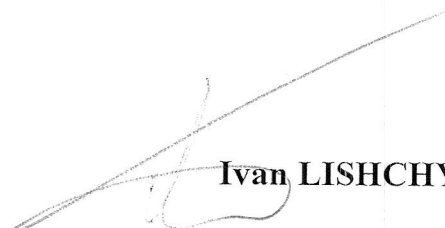
4. Restitutio in integrum

As regards the information provided by the Supreme Court, no requests for revision of decision delivered by the Zarichnyy District Court of Sumy on 20 June 2012 (due to the establishment of Ukraine's violation of international commitments by the Court when delivering domestic judicial decisions) have been filed by the applicant.

Finally, the Government of Ukraine would like to reassure the Committee that the activities concerning the criminal proceedings regarding the alleged sexual abuse of the applicant's child are under special control. Moreover, the Government of Ukraine will inform the Committee on any respective developments.

Yours faithfully

**Deputy Minister – Agent
before the European Court of Human Rights**



Ivan LISHCHYNA