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Meeting: 1186 meeting (3-5 December 2013) (DH)

Item reference: Action report (14/11/2013)

Communication from Ukraine concerning the case of Koval and others against Ukraine (Application No. 22429/05)

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1186 réunion (3-5 décembre 2013) (DH)

Référence du point : Bilan d'action

Communication de l'Ukraine concernant l'affaire Koval et autres contre Ukraine (requête n° 22429/05)
(*anglais uniquement*).



Annex to the letter of Acting Government Agent
before the European Court of Human Rights
of _____ 2013 no. _____

Action report
on measures to comply with the Court's judgment
in the case of Koval and others v. Ukraine
(appl. no. 22429/05, judgment of 15/11/2012, final on 15/02/2013)

The applicants are Ukrainian nationals. The first, second and third applicants complained that they had been beaten up by the police at their apartment. The first and third applicants complained that they had been beaten up at the police station, and suffered tortures. Also, the first, second and third applicants complained on the absence of effective investigation in that regard. Moreover, the applicants complained that on two occasions the police officers had unlawfully entered their apartments and had not protected their home from interference by third parties. Further, the first and third applicants complained that the police had seized an electric drill and gas gun in violation of principle of peaceful enjoyment of their possessions.

The Court held that there was a violation of both material and procedural limbs of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) on account of:

- Failure of local authorities to establish neither the exact circumstances in which the first and third applicants received their injuries (therefore some of them could have had happened in the police station) nor that the injuries that followed were wholly caused otherwise than by ill-treatment while in police custody.
- Failure of the police to take appropriate measures to prevent violent actions of O.¹ against the second applicant. Moreover, the police officers tolerated such violent actions, therefore they had to be liable.

¹ A private individual involved

- Absence of the answer to the second applicant's complaint on being beaten up by O. Although there was some investigation into the matter, there has never been a proper decision in this respect.
- Suspension of criminal proceedings against the police officers who used force on the first and third applicants.
- Not implementing the decision to dismiss three of the police officers, thus leaving them unpunished, certifies that virtually total impunity for tortures or ill-treatment is afforded to the national law-enforcement agencies.

The Court held that there was a violation of Article 5 (1) of the Convention on account of:

- Duration of proceedings in connection with the first and third applicants' complaints for unlawful arrest and detention before national authorities. Thus, these proceedings have already been pending for 10 years, and it is highly improbable that they would end up with any satisfactory result.
- Failure to properly document the detention of the first and third applicants (place, names, time and location, date, reason for the detention and name of person effecting it etc.).

The Court held that there was a violation of Article 8 of the Convention on account of:

- Unlawful interference to the applicants' home by police officers.
- Failure to presented to the Court any lawful decision to seize the gas gun – the main argument for such interference to the applicants' home.
- Absence of any safeguards for the applicants against abuse and arbitrariness (use of force against first and third of them being also considered). Therefore the interference with the applicants' right to respect for their home was disproportionate to the aim pursued.

The Court held that there was a violation of Article 1 of Protocol No. 1 to the Convention based on the fact that:

- The police officers had no right to seize the drill due to the fact that no clear legal ground for such actions existed (neither court's decision, nor other decision authorizing the seizure).
- Having regard the above findings under Article 8 of the Convention and the conclusion of the national authorities that police had acted outside its competence, it was found that such seizure was unlawful.

1. Individual measures

In light of Court's conclusions in the present case individual measures are the just satisfaction payment and the review of the impugned proceedings (*restitutio in integrum*).

1.1. Just satisfaction

The Court awarded the just satisfaction to be paid (*see the list of applicants the just satisfaction was awarded to, the sum of just satisfaction awarded and the date of payment in the table below*) in respect of non-pecuniary damages and costs and expenses, plus any taxes that may be chargeable to the applicants.

No	Applicant	Sum, UAH	Data&Note
1	Koval Mykhail Petrovich	129693.11 47510.79 for costs and expenses 682.08 simple interest	02/07/2013 12/06/2013 23/07/2013
2	Koval Anna Petrovna	63347.72 333.12	02/07/2013 23/07/2013
3	Brik Dmitriy Mikhaylovich	126695.45	05/07/2013

		707.99 simple interest	23/07/2013
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1.2. Restitutio in integrum

By the letter of 06 March 2013 the Government of Ukraine informed the applicant about the possibility provided by the legislation in force to apply for the review of the impugned proceedings.

To date, Mr. Koval availed himself to the review procedure. According to the letter of the High Specialized Court of Ukraine for Civil and Criminal Cases, the application of Mr. Koval was rejected due to shortcomings therein. Nevertheless, Mr. Koval preserves the right to re-submit the application.

2. General measures

2.1. As regards violations of Article 3 of the Convention

In this case the Court found violation of Article 3 of the Convention under its both substantive and procedural limbs as regards the ill-treatment of the applicants, and the lack of an investigation in this respect.

Having regard to the nature of these violations the Government note that the measures which had already been implemented in respect of elimination of legislative shortcomings and change of administrative practice were summarized in action plan/report as to the execution of the Court's judgments in the cases of *Afanasyev group*. Further information regarding the effective investigation issues was provided in an action plan in the case of *Kaverzin v. Ukraine*.

2.2. As regards violations of Article 5 § 1 of the Convention, Article 8 of the Convention and Article 1 of Protocol no. 1 to the Convention

Having regard to the nature of violations of the above Articles of the Convention the Government consider that the abovementioned violations were of isolated nature being the result of improper practice of the law-enforcement

authorities which shall be remedied by means of dissemination and publication of the judgment.

3. Publication and dissemination

Taking into account the abovementioned, the Government further note that dissemination and publication of the judgment shall be considered.

The summary of the judgment was published in the Government's Courier [Uriadovyy Kurier], no. 33 of 23/03/2013, and placed on the Ministry of Justice of Ukraine official web-site. The translation of the judgment shall be published in the official Government's print outlet – Official Herald of Ukraine [Ofitsiyny Visnyk Ukrainy] in the nearest future.

By the letters of 12 January 2011 explanatory notes as to the conclusions of the Court in the abovementioned judgment together with its summary were sent to the Supreme Court of Ukraine, the High Specialized Court of Ukraine for Civil and Criminal cases and the Desnianskiy District Court of Chernigiv.

The Court's conclusions in the above case were reported to the staff of the Prosecutor General's Office of Ukraine and the Chernigiv Region Prosecutor's Office together with subordinate departments.

Simultaneously, the Ministry of Internal Affairs of Ukraine and Chernigiv Regional Police Department were reported about the Court's findings in the case of *Koval and others v. Ukraine*. The special courses for Convention studying were held for the officers of Chernigiv Regional Police Department of the Ministry of Internal Affairs of Ukraine.

Moreover, the Court's conclusions in the above judgment were included into the submission to the Cabinet of Ministers of Ukraine as to execution of ECHR judgments (as of April 2013).

The Supreme Court of Ukraine, High Specialized Court of Ukraine for Civil and Criminal Cases and the Desnianskiy District Court of Chernigiv

informed that the Court's conclusions in the above case were reported to the judges of these courts.

4. Conclusions of the Respondent Government

The Government consider that the obligations arising from the above judgment as regards individual and general measures are fulfilled, and that Ukraine has thus complied with its obligations under Article 46 § 1 of the Convention.

Accordingly, the Government ask the Committee to discontinue the supervision of execution of judgment in the case of *Koval and others v. Ukraine*.