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Meeting: 1355<sup>th</sup> meeting (September 2019) (DH)

Communication from the applicant (12/09/2019) in the case of Kulykov and Others v. Ukraine (No. 5114/09) (Oleksandr Volkov group) (appendices in Ukrainian are available at the Secretariat upon request)

Information made available under Rule 9.1 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 : 1355<sup>e</sup> réunion (septembre 2019) (DH)

Communication du requérant (12/09/2019) relative à l'affaire Kulykov et autres c. Ukraine (requête n° 5114/09) (groupe Oleksandr Volkov) (des annexes en ukrainien sont disponibles auprès du Secrétariat sur demande) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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*Sent by email*

12 September 2019

Dear Sir/Madam,

**Re: Kulykov and others v. Ukraine, App. No. 5114/09 - submissions pursuant to Rule 9(1) of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments**

We are writing to make submissions pursuant to Rule 9(1) of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments as to the individual measures necessary for the full and effective implementation of the judgment in *Kulykov and Others v Ukraine*, which is being supervised as part of the *Oleksandr Volkov group* (and which is scheduled to be examined at the 1355<sup>th</sup> DH meeting in September 2019) .

It is recalled that at the CM meeting on 5-7 June 2018, it was stated as follows:

'Information is expected on the outcome of the reopened dismissal proceedings in the cases of *Kulykov and Others*, which should result in *restitutio in integrum* or restoration of the judicial status of those dismissed in breach of the Convention. The authorities should

be encouraged to maintain the positive approach towards the protection of the rights of judges, referred to in the proceedings before the Court’.

Furthermore, at that meeting the Deputies also

‘invited the authorities to provide updated information as regards the reopening of proceedings in the case of *Kulykov and Others*, and encouraged them to complete this process with the aim of fully achieving *restitutio in integrum* as regards the applicants’.

We are accordingly writing to provide the CM with the latest information (of which we have been made aware) as regards the applicants’ domestic proceedings seeking their reinstatement.

1. Oleg Volodymyrovych BACHUN

On 7 December 2017, the High Administrative Court declared Mr Bachun’s dismissal unlawful, without ordering its reinstatement (Annex 1). That decision was upheld by the Grand Chamber of the Supreme Court on 31 May 2018 (Annex 2). The Grand Chamber held that an additional review of the alleged disciplinary offence should be carried out by the High Council of Justice.

In January 2019, Mr Bachun lodged an application with the Supreme Court, seeking a declaration that the inaction of the High Council of Justice was unlawful. On 1 August 2019, this application was rejected. He was initially invited to a hearing of the High Council of Justice on 8 August 2019, which was postponed, and a revised date for the hearing has not yet been confirmed.

2. Sergiy Mykhaylovych KONYAKIN

A Supreme Court judgment dated 17 May 2018 found Mr Konyakin’s original dismissal to have been unlawful. The judgment held that an additional review into the alleged disciplinary offence was to be carried out by the High Council of Justice. That decision was upheld by the Grand Chamber of the Supreme Court.

3. Petro Olegovych KOVZEL

Mr Kovzel had been reinstated on 18 March 2014, by the decree of the acting President Oleksandr Turchynov (Annex 3) while the European Court application was still pending. His reinstatement as a judge of the Kyiv District Administrative Court was confirmed by the Supreme Court on 17 September 2017. He has received his salary in full for the period when he was not serving as a judge because of his unlawful dismissal (480 000 UAH).

4. Kyrylo Oleksandrovyh KORMUSHYN

In a Supreme Court judgment dated 2 March 2018, Mr Kormushyn’s original dismissal was declared unlawful. The judgment held that an additional review into the alleged disciplinary offence was to be carried out by the High Council of Justice. The Grand Chamber of the Supreme Court upheld that decision on 21 June 2018.

On 26 June 2018 Mr Kormyshun requested the Shevchenkivskyi District Court of Kyiv to reinstate him. The chairperson of the Shevchenkivskyi District Court of Kyiv petitioned the High Council of Justice and the State Judicial Administration, requesting them to clarify whether Mr Kormyshun should be reinstated based on his request. On 10 August 2018, the State Judicial Administration replied to say that there were no grounds to reinstate Mr Kormushyn unless and until the High Council of Justice issued a decision. Mr Kormushyn appealed against the failure of the chairperson of the Shevchenkivskyi District Court of Kyiv to take any action to the Kyiv District Administrative

Court and the Sixth Administrative Court of Appeal. His appeals were rejected on 10 October 2018 (Annex 4) and 12 February 2019 (Annex 5), respectively.

5. Liliya Anatoliyivna VASINA

Ms Vasina was reinstated as a judge on 31 July 2018 in accordance with the decision of the Chair of the Kirovsk District Court of Dnipropetrovsk (Annex 6). Since 1 August 2018, she has been working again as a judge.

6. Igor Ivanovych BARANENKO

Mr Baranenko's original dismissal was declared unlawful by the High Administrative Court of Ukraine on 13 November 2017, without ordering his reinstatement. This decision was upheld on 10 October 2018 by the Supreme Court of Ukraine. The Kyiv Administrative Court of Appeal, where Mr Baranenko had worked was liquidated on 3 October 2018.

On 16 April 2019, the High Council of Justice ordered Mr Baranenko's reinstatement as a judge of the Kyiv Administrative Court of Appeal. On 20 May 2019, he was reinstated by the order of the Court's Chairperson (Annex 7). However, he is not currently working as a judge, as he is awaiting an assessment by the High Qualifying Commission of Ukraine (as part of the ongoing judicial reforms).

7. Igor Anatoliyovych BONDARENKO

On 19 February 2018, the Supreme Court declared his original dismissal to be unlawful. He was reinstated on 4 May 2018 in the Boryspil Municipal District Court by the order of the Court's chairperson (Annex 8).

On 14 June 2018, he was invited to a hearing of the High Council of Justice. The proceedings have subsequently been adjourned and no further hearings have taken place since then.

On 22 May 2019 the State Judicial Administration rejected Mr Bondarenko's request to be paid his salary arrears during the period when he was not working as a judge because of his unlawful dismissal (Annex 9).

8. Nina Dmytrivna BABYCH

In a Supreme Court judgment dated 17 May 2018 Ms Babych's original dismissal was declared unlawful. The judgment held that an additional review into the alleged disciplinary offence was to be carried out by the High Council of Justice. That judgment was upheld by the Grand Chamber of the Supreme Court on 1 November 2018. On 11 December 2018, Ms Babych was reinstated as a judge of the Sviatoshynsnyi District Court of Kyiv, by the order of the Chairperson of the Court (Annex 10).

9. Oleksandr Anatoliyovych SHKINDER

On 13 February 2018, the Supreme Court declared his dismissal by the High Council of Justice on 24 January 2012 unlawful.

On 20 August 2018, Mr Shkinder petitioned the Genichesk District Court of Kherson Oblast for his reinstatement, but his request was rejected on 22 August 2018. Mr Shkinder appealed to the Kherson District Administrative Court, which was granted on 24 October 2018 (Annex 11). On 1 November 2018, he was reinstated as a judge at the Genichesk District Court of Kherson Oblast (see Annex 12).

On 18 December 2018, the Fifth Administrative Court of Appeal quashed the earlier decision of the Kherson District Administrative Court (Annex 13), resulting in his dismissal from the post of judge at the Genichesk District Court of Kherson Oblast.

On 17 January 2019, the High Council of Justice in an additional review confirmed Mr Shkinder's 2012 dismissal (Annex 14).

10. Gennadiy Leonidovych NEMYNUSHCHYI

Mr Nemynushchyi was reinstated as a judge in September 2018 in the Sloviansk Municipal Court of Donetsk Oblast, by the order of the Court's chairperson. However, his request for reinstatement at the Supreme Court was dismissed. On 14 March 2019 the High Council of Justice confirmed his dismissal (Annex 15). In April 2019, he lodged a complaint to the Supreme Court, and his case is currently pending.

11. Nataliya Grygorivha SEREDNYA

Ms Serednya's original dismissal by the High Council of Justice was declared unlawful on 28 March 2018 by the Supreme Court, but the Court did not order her reinstatement. The Grand Chamber upheld the decision on 22 November 2018 (Annex 16).

On 13 March 2019, following Ms Serednya's appeal, the Supreme Court has additionally declared unlawful and quashed the Parliament Decree № 311-VII of 23 May 2013, which ordered Ms Serednya's dismissal (Annex 17). This decision was upheld by the Grand Chamber of the Supreme Court on 21 August 2019.

12. Volodymyr Mykolayovych KORZACHENKO

Mr Korzachenko's original dismissal was declared unlawful by the Supreme Court, but his request for reinstatement was dismissed on 29 March 2018. On 21 January 2019 the Grand Chamber of the Supreme Court partially upheld the original judgment, further ordering additional review by the High Council of Justice into Mr Korzachenko's dismissal (Annex 18).

On 16 July 2017, Mr Korzachenko lodged an additional application to the European Court of Human Rights concerning the proceedings regarding his reinstatement.

13. Lidiya Volodymyrivna TOKAR

On 22 March 2018 the Administrative Court of Cassation of the Supreme Court declared Ms Tokar's original dismissal to be unlawful, and her case was referred to the High Council of Justice for further review. That decision was upheld on 23 August 2018 by the Supreme Administrative Court of the Supreme Court. Her case is still pending before the High Council of Justice and she has not been reinstated as a judge.

At present, we are not in a position to confirm the current status of the proceedings relating to the following applicants: Andriy Volodymyrovych KULYKOV, Lyudmyla Ivanivna STASOVSKA, Oleksandr, Mykolayovych ROZDOBUDKO, Aleksandr Ivanovich VOLVENKO and Yuriy Oleksiyovych STREBKOV.

We remain at the Department's disposal should any additional information be required.

Yours faithfully,



Philip Leach  
Legal Representative of the applicants

Annexes to the present submission:

1. Judgment of the High Administrative Court of 7 December 2017 regarding Oleg Volodymyrovych BACHUN
2. Judgment of the Grand Chamber of the Supreme Court of 31 May 2018 regarding Oleg Volodymyrovych BACHUN
3. Decree of the acting President of Ukraine Oleksandr Turchynov of 18 March 2014 regarding Petro Olegovych KOVZEL
4. Judgment of the Kyiv District Administrative Court of 10 October 2018 regarding Kyrylo Oleksandrovych KORMUSHYN
5. Judgment of the Sixth Administrative Court of Appeal of 12 February 2019 regarding Kyrylo Oleksandrovych KORMUSHYN
6. Decision of the Chair of the Kirovsk District Court of Dnipropetrovsk of 31 July 2018 on reinstatement of Liliya Anatoliyivna VASINA
7. Order of the Chairperson of Kyiv Administrative Court of Appeal of 20 May 2019 on reinstatement of Igor Ivanovych BARANENKO
8. Order of Boryspil Municipal District Court Chairperson of 4 May 2018 on reinstatement of Igor Anatoliyovych BONDARENKO
9. Reply of 22 May 2019 from State Judicial Administration regarding non-payment of salary arrears to Igor Anatoliyovych BONDARENKO
10. Order of the Sviatoshynsnyi District Court of Kyiv Chairperson of 11 December 2018 on reinstatement of Nina Dmytrivna BABYCH
11. Decision of Kherson District Administrative Court of 24 October 2018 regarding Oleksandr Anatoliyovych SHKINDER
12. Order of Genichesk District Court of Kherson Oblast Chairperson of 1 November 2018 on reinstatement of Oleksandr Anatoliyovych SHKINDER
13. Decision of Fifth Administrative Court of Appeal of 18 December 2018 regarding Oleksandr Anatoliyovych SHKINDER
14. High Council of Justice decision of 17 January 2019 regarding Oleksandr Anatoliyovych SHKINDER
15. High Council of Justice decision of 14 March 2019 regarding Gennadiy Leonidovych NEMYNUSHCHIY
16. Judgment of the Grand Chamber of the Supreme Court of Ukraine of 22 November 2018 regarding Nataliya Grygorivha SEREDNYA
17. Judgment of the Supreme Court of 13 March 2019 regarding Nataliya Grygorivha SEREDNYA
18. Judgment of the Grand Chamber of the Supreme Court of Ukraine of 21 January 2019 regarding Volodymyr Mykolayovych KORZACHENKO