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Meeting: 1521st meeting (March 2025) (DH)

Item reference: Action Plan (15/01/2025)

Communication from Ukraine concerning the case of Karter v. Ukraine (Application No. 18179/17) (Group Fedorchenko and Lozenko)

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Réunion : 1521^e réunion (mars 2025) (DH)

Référence du point : Plan d'action (15/01/2025)

Communication de l'Ukraine concernant l'affaire Karter c. Ukraine (requête n° 18179/17) (Groupe Fedorchenko et Lozenko) **(anglais uniquement)**

DGI

15 JAN. 2025

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Execution of Judgment of the European Court of Human Rights

Action Plan

on measures to comply with the Court's judgment in case of

Karter v. Ukraine

(no. 18179/17, judgment final on 11/07/2024)

CASE SUMMARY

The case concerns the authorities' failure to conduct an effective investigation into verbal and physical attacks on the applicant in 2015 and in 2016, motivated by his sexual orientation (violation of the procedural limb of Article 3 of the Convention, taken in conjunction with Article 14 of the Convention).

INDIVIDUAL MEASURES

1. Just satisfaction

The Court awarded the applicant EUR 7,500 in respect of non-pecuniary damage. The Court also awarded the applicant's representative Ms. Naumenko EUR 4,400 in respect of costs and expenses.

The awarded sum in the amount of UAH 340 966.50 (equivalent to EUR 7,500) was transferred to the applicant's bank account on 03 September 2024 under payment order No. 293.

Costs and expenses in the amount of UAH 200 033.68 (equivalent to EUR 4,400) were transferred to the bank account of Ms. Naumenko on 03 September 2024 under payment order No. 294.

2. Restitutio in integrum

Investigation into the 2015 attack

The Obolonskyi Police Department of the Main Police Department of Kyiv is conducting a pre-trial investigation in criminal proceedings **no. 12015100050008852**, which was initiated on 15 September 2015 on the grounds of a criminal offense under part 2 of Article 186 of the Criminal Code of Ukraine¹ (the "CCU") (robbery combined with violence that is not dangerous to the life or health of the victim, or with the threat of using such violence, or committed repeatedly, or by prior conspiracy by a group of persons) and part 2 of Article 296 of the CCU (gross violation of public order for reasons of obvious disrespect for society, accompanied by special audacity or exceptional cynicism, committed by a group of persons).

As part of the pre-trial investigation, the residents of the house at the place of the offense were questioned as witnesses, the victims were repeatedly questioned, and a forensic medical examination was conducted to Mr. Karter (Mr. I.K. was also assigned a forensic medical examination, but he did not appear for it).

It was also established that there are no surveillance cameras near the scene of attack. In order to establish the location of the property, stolen during the attack on Mr. Karter and Mr. I.K., pawnshops, markets and other places where it might be sold were checked. However, these investigative and search actions did not yield any positive results.

After Mr. Karter filed a statement on 01 October 2015, asserting that he had no claims and requesting the closure of the criminal proceedings, the victims did not appear before the pre-trial

¹ <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

investigation body. At the same time, the criminal proceedings are ongoing, but the victims' phones are unreachable, as confirmed by the reports available in the criminal proceedings. The results of interrogations of neighbours and the concierge revealed that Mr. Karter and Mr. I.K. have not lived at the addresses they provided since 2016. According to Mr. Karter's lawyer, Ms. Naumenko, he is currently outside of Ukraine.

At the same time, the prosecutor, who supervises this criminal proceedings, repeatedly provided the investigator with instructions for a full, comprehensive and objective pre-trial investigation, most recently on 23 December 2024. The pre-trial investigation is ongoing.

Investigation into the 2016 attack

The Investigation Department of the Svyatoshynskyi Police Department of the Main Department of the National Police in Kyiv is conducting a pre-trial investigation in criminal proceedings **no. 12016100080002769**, which was initiated on 14 March 2016 on the grounds of a criminal offense under Part 1 of Article 125 of the CCU (intentional infliction of minor bodily harm).

On 19 October 2023, a decision was made to close the criminal proceedings on the basis of paragraph 2 of part 1 of Article 284 of the Code of Criminal Procedure of Ukraine². On 13 August 2024, the Svyatoshynskyi District Prosecutor's Office of Kyiv cancelled the decision to close the criminal proceedings and provided detailed instructions on the need to conduct investigative (search) and procedural actions.

On 02 September 2024, a decision was made to change the legal qualification of the criminal offense from part 1 of Article 125 (criminal offense) to part 2 of Article 296 (crime) of the CCU.

After the prosecutor gave instructions, repeated attempts were made to call Mr. Karter and Mr. Y. to the investigator, but they never responded to the calls. In these proceedings it was founded as well that they are absent from the addresses they provided as their place of residence. As was stated previously, according to Mr. Karter's lawyer, he left Ukraine. Efforts to contact Mr. D.P. and Mr. V.D., who got into a fight with Mr. Karter and Mr. Y, were unsuccessful as well, since they are absent at their place of residence and do not respond to calls. Given these circumstances, the pre-trial investigation body is unable to objectively verify the circumstances of the incident or conduct a proper legal qualification.

Mr. C., a police officer who arrived at the call regarding the fight, was also interrogated. He reported that Mr. Karter and Mr. Y. stated that they did not know why the conflict had arisen, but claimed that the fight had been initiated by Mr. D.P. and Mr. V.D. Mr. D.P. and Mr. V.D. denied this and asserted that Mr. Karter and Mr. Y. were initiators of the conflict. The investigation was unable to identify any other witnesses.

After analysing the materials of the criminal proceedings, the investigation body found that the allegations of Mr. Karter and Mr. Y. regarding intolerance based on sexual orientation as a possible motive for the attack were not constant and consistent. In particular, Mr. Karter and Mr. Y. pointed to a hooligan motive, also claimed that the attack was causeless. In the explanations from 13 March 2016 they noted that in the supermarket Mr. D.P. and V.D. expressed to them obscene language about sexual orientation, but in the underground passage the conflict arose in connection with the question whether the victims had money. At the same time, the pre-trial investigation body and the procedural prosecutor considered the possibility of changing the legal qualification in these proceedings to the Article 161 of the CCU (violation of the equality of citizens on the grounds of race, ethnicity, religious beliefs, gender or other characteristics), but without additional interrogation of the victims there are not enough reasons for this.

² <https://zakon.rada.gov.ua/laws/show/4651-17>

On 19 December 2024, the prosecutor again provided detailed written instructions on the need to conduct investigative (search) and procedural actions in the criminal proceedings. The pre-trial investigation is ongoing.

The Government also would like to emphasize that by the order of the Main Department of the National Police of Kyiv no. 1517 of 14 August 2024, an internal investigation was ordered. The results of the investigation confirmed the facts of improper conduct of the pre-trial investigation in criminal proceedings no. 12015100050008852 and no. 12016100080002769.

Ms S. – the investigator who conducted the pre-trial investigation in criminal proceedings no. 12015100050008852 – was subject to disciplinary action due to improper conduct of the pre-trial investigation. The latter was dismissed from the National Police of Ukraine by the order of the Main Department of the National Police of Kyiv no. 109 of 13 July 2016.

As to the criminal proceedings no. 12016100080002769, 3 investigators and 2 inquiry officers were subjected to disciplinary action. Investigators Mr. H. and Mr. B. were dismissed from the National Police by orders no. 983 of 01 December 2020 and no. 704 of 15 July 2019, respectively. Investigator R. was transferred to another territorial unit by order no. 701 of 25 August 2016, as well as inquiry officer N. by order no. 959 of 12 June 2023.

Investigator R. cannot be brought to disciplinary responsibility, since more than six months have passed since he committed the disciplinary offense, but he was strictly instructed to observe official discipline and warned against shortcomings in his official activities in the future.

A letter was also sent to the Svyatoshynskyi Police Department of the Main Department of the National Police of Kyiv about the shortcomings and violations identified during the internal investigation in order to avoid their repetition in official activities.

At present, the process of conduction of investigative (search) actions in both criminal proceedings is complicated by the fact that 8 and 9 years have passed since the crimes were committed. Therefore it is currently impossible to interrogate and identify witnesses or (and) eyewitnesses, conduct an examination or document the struggle in the surrounding areas, examine the bodily injuries and to record traces on the clothing of victims as well as possible suspects. Furthermore, the evidence in the proceedings gradually becomes incomplete (witnesses who are identified may forget important details).

The conduct of investigative actions is also complicated by Russia's full-scale invasion of Ukraine, particularly because many investigators have focused their efforts on directly responding to war crimes, aggression, and ensuring the safety of the population. Additionally, as a result of Russia's aggression, many citizens have been forced to leave Ukraine, which has complicated the involvement of witnesses in pre-trial investigations.

Despite this, pre-trial investigations in the aforementioned criminal proceedings regarding attacks on Mr. Karter are ongoing and the investigative bodies continue to make efforts to complete them effectively. The Government will inform about their progress and results in further communications.

GENERAL MEASURES

The Government recognize that the main problem arising from the Court's conclusions based on the results of the consideration of the case of *Karter v. Ukraine* is the ineffective investigation of the violent acts against the applicant and the failure to take into account the possible motive of intolerance on the basis of sexual orientation. By its nature, this case is similar to those supervised by the Committee of Ministers of the Council of Europe (the "Committee") within the group of cases *Fedorchenko and Lozenko v. Ukraine*. Taking into account that the *Fedorchenko and Lozenko* group will be considered at the Committee's 1531st meeting, detailed information on the general measures aimed at overcoming the problem of ineffective investigations and failure to take into account the

motives for committing offenses will be provided in the communication in the context of this group of cases.

At the same time, given the circumstances of the *Karter v. Ukraine* case, the Government would like to cite the conclusions drawn by the European Commission in the framework of Ukraine's accession process to the European Union. As stated by the European Commission in its report of 08 November 2023³ the number of reported discrimination against minorities, including against LGBTIQ persons, has strongly decreased. The EU Commission also stated that overall, during the reporting period the general trend of increasing tolerance and acceptance of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) persons in Ukrainian society over the last decade was sustained. The trend towards a decrease in the number of attacks and hate crimes against LGBTIQ persons continues (– 44% since 2020). Surveys conducted in 2022 show that a majority is in favour of same-sex partnerships and equal rights for LGBTIQ persons. The Government clearly communicates its support for the rights of LGBTIQ persons and against hate crimes and discrimination.

In its report of 30 October 2024⁴ the European Commission indicated that the general trend of increasing tolerance and acceptance of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) persons continued.

The Government also would like to note that under the supervision of the Committee remains the case *Maymulakhin and Markiv v. Ukraine*, which concerns the violation of the applicants' right to family life due to the failure to comply with a positive obligation to secure their right to have their same-sex relationships adequately recognized and protected by law. In the Updated and Consolidated Action Plan of 01 October 2024 on measures to comply with the European Court of Human Rights' judgment in this case⁵, the Government provided information regarding Draft Law No. 5488⁶, which, among other things, aims to clearly define that an open, prejudiced, negative attitude towards a category of individuals who differ on such ground as sexual orientation will be recognized as aggravating circumstance. Overall, the Draft Law No. 5488 contributes to preventing and combating discrimination.

Publication and dissemination

The *Karter v. Ukraine* judgment was translated into Ukrainian and published in the Official Herald of Ukraine [*Ofitsiynyi Visnyk Ukrainy*], no. 96, of 19 November 2024.

The Ukrainian translation of the judgment is available on the web-site of the National Academy of Internal Affairs⁷. The translation is also available on the HUDOC database⁸, as well as on the legal portal *Liga Zakon*⁹.

The summary of the Court's judgment in Ukrainian language was published in the Government's Currier [*Uriadovyi Kurier*], no. 156 of 02 August 2024, and put on the web-site of the Supreme Court¹⁰.

By the letter of 01 August 2024 the explanatory notes as to the conclusions of the Court in the abovementioned judgment together with its summary were sent to the Office of Prosecutor General, Obolonskyi District Prosecutor's office, Svyatoshynskyi District Prosecutor's office, the National Police of Ukraine and its Obolonskyi and Svyatoshynskyi Departments as well as the Training Center of

³ https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf

⁴ https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2024_en

⁵ [https://hudoc.exec.coe.int/?i=DH-DD\(2024\)1102E](https://hudoc.exec.coe.int/?i=DH-DD(2024)1102E)

⁶ <https://itd.rada.gov.ua/billinfo/Bills/Card/26573>

⁷ <https://ipo.naiu.kiev.ua/documents/%D0%A0%D1%96%D1%88%D0%B5%D0%BD%D0%BD%D1%8F%20%D0%84%D0%A1%D0%9F%D0%9B/2024/%D0%9A%D0%90%D0%A0%D0%A2%D0%95%D0%A0%20%D0%9F%D0%A0%D0%9E%D0%A2%D0%98%20%D0%A3%D0%9A%D0%A0%D0%90%D0%87%D0%9D%D0%98.pdf>

⁸ <https://hudoc.echr.coe.int/ukr?i=001-235740>

⁹ <https://ips.ligazakon.net/document/SOO01926>

¹⁰ https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/zakonodastvo/Karter_Ukraina.pdf

Prosecutors of Ukraine and the National Academy of Internal Affairs. Also, a letter regarding the rendered decision in this case was directed to the Verkhovna Rada of Ukraine. Ukrainian Parliament Commissioner for Human Rights was notified of the judgement in the case of Karter v. Ukraine by letter of 01 August 2024 as well.

Conclusions of the respondent State

The Government assure that despite the difficulties encountered in the pre-trial investigations regarding the attacks on Mr. Karter, the investigating bodies are taking all possible steps to accurately establish the circumstances of the case and to conduct the investigation effectively. At the same time, the lack of communication with Mr. Karter and other victims significantly complicates the investigation and makes it impossible to reclassify the crimes. The Government will continue to inform the Committee about the progress and outcome of these criminal proceedings.

Regarding just satisfaction, Mr. Karter and his representative, Ms. Naumenko, have been paid all the funds awarded by the Court.

The Government would like to emphasize that, despite Russia's aggression against Ukraine, all possible actions are being taken and efforts are being made to ensure equality in Ukraine as well as to combat discrimination, including on the ground of sexual orientation. The Committee will be informed in detail about this in the Government's communication on the implementation of the judgments of the *Fedorchenko and Lozenko* group of cases.