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Meeting: 1419th meeting (December 2021) (DH)

Item reference: Action Plan (27/09/2021)

Communication from Ukraine concerning the cases of Vysotskyy and Others v. Ukraine (Application No. 59753/19), NEVMERZHITSKY v. Ukraine (Application No. 54825/00) and MELNIK v. Ukraine (Application No. 72286/01)

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Réunion : 1419^e réunion (décembre 2021) (DH)

Référence du point : Plan d'action (27/09/2021)

Communication de l'Ukraine concernant les affaires Vysotskyy et Autres c. Ukraine (requête n° 59753/19), NEVMERZHITSKY c. Ukraine (requête n° 54825/00) et MELNIK c. Ukraine (requête n° 72286/01) (**anglais uniquement**)



DGI

27 SEP. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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Ms Clare Ovey

**Head of Department
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judgments of the European Court of
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*As to the execution of the Court's judgment
in the "Vysotskyy and Others v. Ukraine" case*

Dear Madam,

Herewith please find enclosed the Government of Ukraine Action Plan for the execution of the European Court of Human Rights judgment in the *Vysotskyy and Others* case (applications nos.59753/19 and 2 others).

This information has been sent by e-mail.

Encl: on 7 pages.

Yours faithfully,

Olga DAVYDCHUK
Acting Agent before
the European Court of Human Rights



Execution of Judgments of the European Court of Human Rights

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27 SEP. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Action Plan

on measures to be taken for implementation of the Court's judgment

in the case of *Vysotskyy and Others v. Ukraine*

(applications nos. 59753/19 and 2 others, judgment of 25 February 2021)

I. CASE SUMMARY

The case concerns inadequate conditions of detention (Dnipro detention facility No. 4) and lack of effective remedy in respect of the complaints at issue (violations of Articles 3 and 13 of the Convention).

The case also raises different aspects of the protection of prisoners' rights, which are examined in other groups: excessive length of pre-trial detention (Article 5 § 3); excessive length of judicial review of detention (Article 5 § 4); lack of, or inadequate compensation for the violation of Article 5 § 3 and § 4 of the Convention; excessive length of criminal proceedings (Articles 6 § 1).

II. INDIVIDUAL MEASURES

Just satisfaction

The Court awarded the just satisfaction for pecuniary and non-pecuniary damage per applicant – Mr Vysotskyy (appl.no.59753/19), Mr Valyeyev (appl.no.60451/19) and Mr Ibragimov (appl.no. 60456/19) – in the amount of EUR 9,800, and for costs and expenses – EUR 250.

The Government would like to note that the execution, namely payment of just satisfaction, of the judgment in *Vysotskyy and Others* case was impossible within time-limit due to the technical issues regarding delivery of the copy of the above Court's judgment to the Government.

According to Rule 77 §§ 2 and 3 of the Rules of European Court for Human Rights, the copies of the judgment shall be sent to the parties.

It should be noted that in practice the Government receive the copy of the final Court's judgment within two or three weeks after it has become final.

As regards the judgment in *Vysotskyy and Others* case, the Government received the copy of the above judgment by the Court on 3 June 2021, after the Government (by the letter of 29 April 2021) informed the Court about non-delivery of the judgment in the above case.

In light of abovementioned, on 6 July 2021, the awarded sums were transferred to the Ministry of Justice of Ukraine special bank account.

On 20 July 2021, the awarded sums in the amount of UAH 325727,54 (EUR 10050) was transferred to Mr Valyeyev bank account.

On 13 July 2021, the awarded sums in the amounts of UAH 325727,54 (EUR 10050) was transferred to Mr Ibragimov bank account.

As to Mr Vysotskyy, the Government would like to note that the enforcement proceedings regarding payment of just satisfaction are still pending due to the applicant's death on 12 January 2021. As of today, the Government take measures to solve the issue regarding payment of just satisfaction to the applicant's heirs.

Other individual measures

The Government would like to provide information on the current situation of the applicants.

Applicant's name	Date	Current situation
Mr Vysotskyy	12 January 2021	died (registration Act No.118 of 14 January 2021)
Mr Valyeyev	21 May 2021	released from detention upon completion of the sentence
Mr Ibragimov	29 March 2021	released from detention upon completion of the sentence

The applicants are not in detention anymore, no additional individual measures are required in this case.

III. GENERAL MEASURES

A. Violation of Articles 3 and 13

In the present judgment the Court found violations of Article 3 of the Convention in the light of the fact that the applicants' conditions of detention were inadequate due to the overcrowding, lack of fresh air, lack of or poor quality of bedding and bed linen, poor quality of food, lack of or insufficient electric light, passive smoking, mouldy or dirty cell, infestation of cell with insects/rodents, lack of privacy for toilet, no or restricted access to warm water, lack of or inadequate hygienic facilities, no or restricted access to shower.

It worth to note that within the Work Plan of the Ministry of Justice of Ukraine for 2021, approved by the Ministry of Justice of Ukraine Order No.465/5 of 8 February 2021¹, *the Strategy for Reforming the Penitentiary System of Ukraine for 2026* (hereinafter – the Strategy) is being developed, which, *inter alia*, provides for creation of appropriate conditions of detention in the penal institutions and pre-trial detention facilities. The Strategy is aimed at creation of a humanistic system of execution of criminal sentences, which ensures the rights of convicts and persons taken into custody, as well as bringing material conditions of detention of convicts and persons taken into custody in line with the requirements of the national law and international legal documents.

¹ The original text is available at the link: <https://minjust.gov.ua/files/general/2021/08/09/20210809162645-46.pdf>

The Government would like to note that the Strategy and the Action Plan for its implementation are expected to be submitted for approval to the Cabinet of Ministers of Ukraine by the end of this year.

Having regard that violations of the Convention were found by the Court in the present case with respect to the applicants' detention conditions in the Dnipro Penitentiary Institution (No.4) (hereinafter – **PI No.4**), the Government would like to provide information on measures taken to prevent similar violations of the Convention in future.

According to the information provided by the PI No.4, in 2019-2020 in order to improve the conditions of detention of convicts and detainees, it was attracted funds in the amount of UAH 2373,8 thousand for current repairs.

The following repairs were carried out:

- replacement of electric wiring, installation of LED lamps, electrical sockets and switches;
- replacement of old wooden doors and windows with metal plastic ones;
- completion of floor tiles;
- walls repairs;
- fire system repairs;
- cold storage rooms repairs;
- repairs of premises in the food block;
- replacement of electrical network, sewerage network, plumbing network and heating system;
- repairs of regime building;
- repairs of premises for long-term visits;
- renovation of ceilings;
- replacement of pipelines;
- installation of new ventilation system;
- replacement of sanitary equipments: toilets, showers, etc.;
- purchased air conditioners, tables, chairs, wardrobes, kitchens in premises for long-term visits;
- repairs of the bath and laundry complex.

From the beginning of 2021, repairs have been carried out in the cells nos.614, 634, 638, 690, 694, 05, 18k, 20k, 22k, 118, 125, 317,407, 416, 419, 913, and 918.

As to nutrition of convicts and detainees, the PI No.4 informed that the inmates are provided with food products for 100% of requirements. Convicts and detainees are daily provided with three-time meals. The quality of the meals, served to each convicted/detained, is verified by the medical staff. The food products that come to the PI No.4 are accepted by the commission on the quality, quantity and only with appropriate documents, confirming their quality and safety.

As to the bath and laundry services, the inmates of the PI No.4 are provided with a bath once a week with a mandatory changing of underwear and bed linen (in accordance with the Ministry of Justice of Ukraine Order of 8 June 2012 No. 849/5 “On Regulations On Organisation of Bath and Laundry Services for Persons Held in Penitentiary and Detention Facilities”². All the

² <https://zakon.rada.gov.ua/laws/show/z0947-12?lang=en#Text>

inmates are completely provided with bed linen. The provision of the bed linen to inmates is fixed in the Book of acceptance of bed linen and use of detergents. According to the Internal Rules of the PI No.4, the administration of the PI No.4 provides the inmates with personal hygiene products: soap, a tooth brush, toothpaste, a shaver. As of today, the PI No.4 has 600 hygiene kits, provided by the Ukrainian Red Cross Society.

Furthermore, in June 2019, the Department for Penitentiary Inspections of the State Penitentiary Service of Ukraine conducted an inspection of the PI No.4. As the result of the inspection, the report indentifying violations and shortcomings, as well as recommendations for their elimination, was prepared and sent to the authorities concerned.

As the result, the administration of the PI No.4 has taken control over the accommodation of convicts and detainees, as well as the technical review of cells and premises of the PI No.4 by the shift duty officers.

The internal investigation was carried out regarding violations indentified in the report of the above inspection; guilty officers of the PI No.4 were brought to responsibility.

As to legislative developments

In order to ensure the compliance of the national legislation with the Convention, to create appropriate conditions of detention in the penitentiary institutions and to implement effective preventive and compensatory remedies in respect of inadequate conditions of detention in national law, the Draft Law “*On Amendments to Certain Legislative Acts Concerning Measures to Restore the Rights of Convicts and Persons Taken Into Custody Regarding Inadequate Conditions of Detention*” and the Draft Law “*On Amendments to the Criminal Code of Ukraine and the Code of Criminal Procedure of Ukraine Concerning Measures to Restore the Rights of Convicts and Persons Taken Into Custody Regarding Inadequate Conditions of Detention*” were developed.

On 11 June 2021, the above Draft Laws were registered in the Parliament as per Nos.5652³ and 5653⁴ respectively.

The Draft Law “*On Amendments to Certain Legislative Acts Concerning Measures to Restore the Rights of Convicts and Persons taken Into Custody Regarding Inadequate Conditions of Detention*” (hereinafter – the **Draft Law No.5652**) provides for amendments to the Law of Ukraine “On Pre-Trial Detention”, and the Criminal Execution Code of Ukraine, in particular:

- i. The right of convicts, serving sentences of imprisonment, and persons taken into custody to be held in appropriate conditions in the penal institutions and pre-trial detention facilities, and in case of violation of such right to appeal to the commission for consideration of complaints about inadequate condition of detention in pre-trial detention facilities and penal institutions (hereinafter – the commission); and appeal against the commission’s decision to the court.
- ii. Measures aimed at restoring the rights of persons taken into custody and convicts regarding inadequate condition of detention – preventive and compensatory remedies.

- Preventive remedies are:

³ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72203

⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=72204

- transfer to another cell with appropriate conditions of detention;
 - eliminating the causes that make the conditions of detention inadequate (reducing the occupancy of the cell, carrying out repairs, disinfection, disinsection, etc.);
 - transfer to another pre-trial detention facility/penal institution;
 - other remedies necessary to terminate inadequate conditions of detention.
- Compensatory remedies for inadequate conditions of detention of persons taken into custody (apply in the case of conviction of such persons for criminal offences of which they are accused) and convicts are:
 - reducing the period after which conditional release may be applied;
 - replacement of the punishment on more lenient;
 - expungement of the criminal conviction in the manner prescribed by the Criminal Code of Ukraine;
 - exemption from reimbursement of the cost for maintenance of convicts for the entire term of the inadequate condition of detention (only for convicts).
- iii. Supervision of appropriate condition of detention of persons taken into custody and convicts by the commission.
- iv. The procedure for applying to the commission:
- a convicted person/person taken into custody, his/her family member or close relatives, his/her lawyer may file an application to establish the fact and/or the period of inadequate conditions of detention (hereinafter – the application) to the administration of the penal institution/pre-trial detention facility, which shall immediately transfer such application to the commission, or directly to the commission;
 - the commission shall consider the application within fifteen days from the date of receipt of such application and shall send a decision to the convicted person/person taken into custody;
 - within ten days after receipt of the application from a convicted person/person taken into custody, members of the commission are authorised to visit the relevant penal institution/pre-trial detention facility and examine the state of compliance by the administration of the penal institution/pre-trial detention facility with the conditions of detention;
 - the copy of the commission's decision, which establishes the fact and/or the period of inadequate conditions of detention, shall be sent to the territorial body for execution of criminal sentences and the district prosecutor's office in order to implement preventive and compensatory remedies.

The Draft Law “*On Amendments to the Criminal Code of Ukraine and the Code of Criminal Procedure of Ukraine Concerning Measures to Restore the Rights of Convicts and Persons Taken Into Custody Regarding Inadequate Conditions of Detention*” (hereinafter – the **Draft Law No. 5653**) envisages:

- in case of ascertainment of the fact that a person was held in inadequate conditions of detention in the penal institution/pre-trial detention facility, the period after which the conditional release may be applied, can be reduced for the period during which the person was held in inadequate conditions of detention (amendments to Article 81 of the Criminal Code of Ukraine);

- in case of ascertainment of the fact that a person was held in inadequate conditions of detention in the penal institution/pre-trial detention facility, the remainder of the sentence, which may be commuted to more lenient, shall be reduced for the period during which the person was held in inadequate conditions of detention (amendments to Article 82 of the Criminal Code of Ukraine);
- the possibility to expunge of conviction in case of ascertainment of the fact that a person was held in inadequate conditions of detention in the penal institution/pre-trial detention facility (amendments to Article 89 of the Criminal Code of Ukraine);
- the possibility of a local court, within whose territorial jurisdiction the convict is serving his/her sentence, to decide the issue on appealing against the commission's decision on ascertainment of the fact and/or the period of inadequate conditions of detention of a convicted person (amendments to Articles 537 and 539 of the Code of Criminal Procedure of Ukraine);
- the right of a person, within six months of serving sentence of an arrest or imprisonment, to apply to a local court, within whose territorial jurisdiction the convict is serving his/her sentence, for ascertainment of the fact and the period of his/her detention in inadequate conditions in penal institution/pre-trial detention facility (amendments to Article 538 of the Code of Criminal Procedure of Ukraine).

Other general measures to respond to the violation of Articles 3 and 13 concerning inadequate conditions of detention in penitentiary institutions and lack of any effective remedy in this regard are examined by the Committee of Ministers in the framework of the *Melnik* (appl.no. 72286/01) group of cases.

B. Violation of Article 6 § 1

General measures to respond to the violation of Article 6 § 1 concerning the excessive length of criminal proceedings are examined by the Committee of Ministers in the framework of the *Merit* (appl.no.66561/01) group of cases.

C. Violation of Article 5 §§ 3, 4 and 5

General measures regarding the excessive length of pre-trial detention (Article 5 § 3); excessive length of judicial review of detention (Article 5 § 4); lack of, or inadequate compensation for the above violations of the Convention (Article 5 § 5) are examined by the Committee in the framework of the *Ignatov* (appl.no.40583/15) group of cases.

IV. PUBLICATION AND DISSEMINATION

The summary of the Judgment was published in the Government's Currier [*Uriadovyi Kurier*], No. 135 of 15 July 2021 and put on the Ministry of Justice official web-site. The judgment was also translated into Ukrainian and put on the Ministry of Justice of Ukraine official web-site. Also, translation of the Judgment was published on the legal portal *Liga Zakon*.

The Government sent explanatory notes as to the conclusions of the European Court in this judgment together with its summary to the following authorities: the Department for Execution of Criminal Sentences of the Ministry of Justice of Ukraine, the Supreme Court, the National School of Judges of Ukraine, the Ministry of Internal Affairs of Ukraine, the National Police of Ukraine, the General Prosecutor's Office of Ukraine, the National Academy of Internal Affairs of Ukraine, the Prosecutor's Training Centre of Ukraine, the court of the first and appellate instances and the local departments of the National Police of Ukraine concerned.

By the letter of 19 July 2021, the Department for Execution of Criminal Sentences of the Ministry of Justice of Ukraine informed that the Court's conclusions in the present judgment were brought to their attention and disseminated among the local departments for execution of criminal sentences of the Ministry of Justice of Ukraine.

V. CONCLUSIONS OF THE RESPONDENT GOVERNMENT

The Government consider that the measures taken will prevent similar violations of the Convention regarding the detention conditions in the PI No.4.

The Government would like to note that the general measures taken to respond to the violation of Articles 3 and 13, Article 5 §§ 3, 4 and 5, Article 6 § 1 of the Convention will continue to be examined by the Committee in the framework of the *Melnik/Merit/Ignatov* groups of cases.

As regards the individual measures, the Government will inform the Committee of Ministers about further developments with respect to the payment of just satisfaction by **1 December 2021**.