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

Item reference: Action Plan (01/10/2021)

Communication from Ukraine concerning the case of ARSKAYA v. Ukraine (Application No. 45076/05)

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

Référence du point : Plan d'action (01/10/2021)

Communication de l'Ukraine concernant l'affaire ARSKAYA c. Ukraine (requête n° 45076/05) (**anglais uniquement**)



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*As to the execution of the Court's judgment
in the Arskaya group of cases*

Dear Madam,

Following the Action Plan submitted on 21 September 2021¹ the Government of Ukraine would like to provide additional information on measures taken for the implementation of the Court's judgment in the *Arskaya* group of cases (application no. 45076/05) as follows.

The Government of Ukraine recall that the investigation in the *Arskaya* case is not possible as the events of the present case took place in Crimea which is outside the governmental control.

At the same time, they would like to draw attention to paragraph 65 of the Judgment in the *Arskaya* case where the European Court noted that if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in

¹ [http://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)944E](http://hudoc.exec.coe.int/eng?i=DH-DD(2021)944E)

СЕД АСКОД

Міністерство юстиції України

№ 87925/5.2.1/30-21 від 01.10.2021

Підписувач Давидчук Ольга Василівна

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every case. In the specific sphere of medical negligence, the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained.

In the case of *Gorodovych* the European Court came to similar findings and noted that the failure of any given investigation to produce conclusions does not of itself mean that it was ineffective.

In addition, it appears that no further proceedings can be initiated at domestic level on account of the prescription periods.

Taking into account the unintentionality of medical negligence and expiration of the limitation period, the Government of Ukraine consider that in view of the compensation awarded to the applicants in these two cases by the European Court and by the domestic courts in the *Arskaya* case, no further individual measures are required in these cases.

As regards the *Valeriy Fuklev* case, the Government of Ukraine recall that the domestic court is currently considering the termination of the criminal proceedings regarding the death of Ms Fukleva. At the same time, in accordance with Article 23 of the Civil Code of Ukraine, the applicant retains the right to claim compensation for non-pecuniary damage in civil proceedings.

Given the above, the Government of Ukraine request the Committee to close the supervision of individual measures in the cases of *Gorodovych* (app. no. 71050/11) and *Valeriy Fuklev* (app. no. 6318/03).

Yours faithfully,

Olga DAVYDCHUK
Acting Agent
before the European Court of Human Rights