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Date: 13/02/2019

DH-DD(2019)160

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Meeting: 1340th meeting (March 2019) (DH)

Joint Communication from NGOs – ICO Roma Women Fund Chiricli and European Roma Rights Centre* (01/02/2019) and reply from the authorities (12/02/2019) in the case of Fedorchenko and Lozenko v. Ukraine (Application No. 387/03)

Information made available under Rules 9.2 and 9.6 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 : 1340^e réunion (mars 2019) (DH)

Communication conjointe des ONG – ICO Roma Women Fund Chiricli and European Roma Rights Centre* (01/02/2019) et réponse des autorités (12/02/2019) dans l'affaire Fedorchenko et Lozenko c. Ukraine (requête n° 387/03) (**Anglais uniquement**).

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

* The term "Roma and Travellers" is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term "Gens du voyage", as well as persons who identify themselves as Gypsies. The present is an explanatory footnote, not a definition of Roma and/or Travellers. / Les termes « Roms et Gens du voyage » utilisés au Conseil de l'Europe englobent la grande diversité des groupes concernés par les travaux du Conseil de l'Europe dans ce domaine : d'une part, a) les Roms, les Sintés/Manouches, les Calés/Gitans, les Kaalés, les Romanichels, les Béash/Rudars ; b) les Égyptiens des Balkans (Égyptiens et Ashkali) ; c) les branches orientales (Doms, Loms et Abdal) ; d'autre part, les groupes tels que les Travellers, les Yéniches et les personnes que l'on désigne par le terme administratif de « Gens du voyage » ainsi que celles qui s'auto-identifient comme Tsiganes. Ceci est une note de bas de page explicative, et non pas une définition des Roms et/ou des Gens du voyage.



Council of Europe
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Department for the Execution of Judgments of the ECHR
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1 February 2019

RULE 9 SUBMISSION

Fedorchenko and Lozenko v Ukraine, judgment of 20 September 2012

1. ICO Roma Women Fund Chiricli (“Chiricli”) and the European Roma Rights Centre (“the ERRC”) make this submission in accordance with Rule 9.2 of the Rules of Procedure of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.
2. Chiricli was registered on 30 November 20. The foundation has representatives in 15 regions of Ukraine. The main goals of the organisation are:
 - Creating favourable conditions for saving the historical traditions of and for developing Roma culture.
 - Improving the socio-economic and political position of Roma.
 - Combating racial and ethnic discrimination and intolerance.
 - Promoting ideas of brotherhood and tolerance among different nations and religious confessions.
 - Protecting the cultural, social, educational, and medical rights of Roma people.

During the last three years, the main priorities of fund have been: education; health care and social issues; and human rights.

3. The ERRC is a Roma-led organisation whose vision is for Romani women and men to overcome antigypsyism and its legacy, to achieve dignity, equality, and full respect for their human rights, and to use their experience to contribute to a more just and sustainable world. The ERRC represented the applicants in this case.
4. We are writing because our fact-finding shows that the Ukrainian Government have not taken the necessary general measures to comply with this judgment. Sadly, a recent spate of violent pogroms against Romani communities makes this clear.
5. The following attacks – which bear the signs of racially-motivated pogroms – have recently occurred in Ukraine.
 - a. On 21 April 2018, according to victims with whom we spoke, media reports, and social media postings, members of the far-right group C14 drove fifteen Romani families from their makeshift homes in the Lysa Hora nature reserve in Kyiv. Carrying weapons, they chased down parents carrying small children and fleeing, threw stones at them, and then set fire to the tents where their victims had been living. Serhiy Mazur, a prominent C14 member with clearly racist views, posted photos on Facebook which can still be seen there,¹

¹ Anyone can see the photos and comments at the following link:
<https://www.facebook.com/yakovlev.danylo/posts/607857902908814>.

boasting that C14 had driven away the Romani people living in the Lysa Hora nature reserve.

- b. At 02.00 hours on 10 May 2018, according to our discussions with the victims and media reports, over thirty masked men attacked the makeshift homes where Roma were living in Lviv. People were dragged out and beaten while their homes were set alight. The case is being investigated as a matter of “hooliganism”. The ERRC is working with local lawyers to have the case reclassified as an investigation into racist violence.²
- c. On 22 May 2018, according to our discussions with victims and to media reports, Romani families living near the village of Velyka Berezovytsia, Ternopil’ were attacked by a group of armed masked men carrying bats and firearms which they used to drive their victims into the forest. Three people were injured in the attack and shots were fired. Eye-witnesses indicated that the perpetrators were clearly from a far-right group. The victims were targeted again as they were being brought to hospital, and medical personnel had to call the police for protection. One of the victims told the ERRC that the next day, she saw a police officer having a coffee with one of the attackers.³

² ERRC, “Roma Burned from Their Homes by Masked Men as Violence Escalates in Ukraine”, available at <http://www.errc.org/news/roma-burned-from-their-homes-by-masked-men-as-violence-escalates-in-ukraine>.

³ ERRC, “Far-Right Attack: Third in Recent Weeks Against Roma in Ukraine”, available at <http://www.errc.org/news/far-right-attack-third-in-recent-weeks-against-roma-in-ukraine>.

- d. On 7 June 2018, according to media reports and social media posts, members of a far-right militia group threatened and then destroyed Romani people living in informal housing in Holosiyivskiy Park in Kyiv. Members of the group filmed the encounter and posted it on their Facebook page. Clips of the whole incident are available online. We encourage members of the Committee of Ministers to watch the video; at the end of a long 12-minute clip, Ukrainian police officers can be seen casually chatting with the attackers as they finish their raid. It seems that the incident is being treated as “hooliganism”, not as a racially-motivated attack.⁴
 - e. On 23 June 2018, according to media reports, masked men attacked Romani people living in informal housing on the outskirts of Lviv. They stabbed and killed a 24 year-old man, and injured several others.⁵
6. We are working with local lawyers and NGOs to provide free legal representation to the victims of these attacks. As far as we are aware, despite the fact that these attacks targeted Romani communities and appeared to be carried out by organised racist groups, **none of them are being treated as hate crimes.**

⁴ Radio Free Europe, “With Axes and Hammers, Far-Right Vigilantes Destroy Another Romany Camp In Kyiv”, 8 June 2018, available (along with a long video clip and relevant links) at <https://www.rferl.org/a/ukraine-far-right-vigilantes-destroy-another-romany-camp-in-kyiv/29280336.html>.

⁵ BBC, “Ukraine Roma camp attack leaves one dead”, 24 June 2018, available at <https://www.bbc.com/news/world-europe-44593995>.

7. That is, as far as we are aware, **none of the mechanisms the Ukrainian Government described in its submission of 4 January 2019 are being deployed in these cases which bear all the hallmarks of racially-motivated violence.** The authorities are not relying on Articles 67(1)(c) and 161 of the Criminal Code of Ukraine when characterising these offences, nor have any of these cases, which are now more than six months' Articles 291 and 374 of the Code of Criminal Procedure of Ukraine. The Division of Ensuring of Human Rights in the National Police of Ukraine does not appear to be involved in any way in dealing with these incidents.
8. If we are incorrect about any of these assertions, we would be happy to be corrected by the Government in their response to these submissions. We invite the Government to provide specific information about the measures being taken, the provisions being relied on, and the actors involved in each of the five cases mentioned above.
9. These attacks are not isolated, nor are they simply the actions of rogue elements in society. They appear to be flourishing with encouragement from public officials. For example, on 28 January 2018, members of the National Corps swore an "*oath of loyalty to Ukrainians*" in the centre of Kyiv; it seems the far-right group, with its history of spreading racial hatred, is cooperating with the national police as part of a "*civil formation*" programme provided for in

domestic law. The group's leaders claim to be cooperating with police.⁶

10. The Government note in their 4 January 2019 submission that there is a permanent working group on law enforcement issues related to Roma, involving civil society organisations and others. Indeed, two years ago a working group on law enforcement and migration issues was established under the Ministry of Internal Affairs of Ukraine for ensuring effective investigations of attacks and hate crimes and providing for better dialogue between Roma and the police. Chiricli has conducted a series of eight trainings in six regions of Ukraine in cooperation with the Human Rights Department of the National police of Ukraine. 120 police officers and 20 Roma mediators and/or representatives of communities participated. This series of trainings ended with a concluding conference jointly organised by the Coalition of Roma NGOs and Chiricli, which then resulted in a declaration of joint actions. The next step is for the declaration to be discussed within the working group. Clearly much more needs to be done, and support for Chiricli and other civil society organisations is vital to ensure effective implementation of the judgment.

11. In conclusion, we submit that Ukraine has not taken the general measures necessary to implement the judgment in *Fedorchenko and Lozenko*. On the contrary, things appear to be worsening in the country, and the Committee of Ministers' continued supervision is vital. This is all the more so the case given the Court's similar recent

⁶ Kharkiv Human Rights Protection Group, "Far-right vigilantes imposing 'Ukrainian order' are strange partners for Ukraine's National Police", 30 January 2019, available at <http://khpg.org/en/index.php?id=1517275970>.

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findings in *Burlya v Ukraine* (application number 3289/10, judgment of 6 November 2018).

Chiricli and the European Roma Rights Centre
1 February 2019



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На № _____

Mr Pavlo Pushkar

**Head of Division
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the European Court of Human Rights
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Council of Europe
F-67075 Strasbourg Cedex



As to the communication submitted by ICO Roma Women Fund Chirilcli and European Roma Rights Centre relating to the case of "Fedorchenko and Lozenko v. Ukraine"

Dear Mr Pushkar,

Please let me emphasise once again that the Government of Ukraine do not cast any doubt on the binding force of the European Court's of Human Rights (the "Court") judgments.

On this occasion the Government would like to express appreciation to ICO Roma Women Fund Chirilcli (hereinafter - Chirilcli) and European Roma Rights Centre (hereinafter - ERRC) for such fruitful cooperation with state authorities in addressing the issue of the effectiveness of hate crimes investigations and establishing a dialogue between the representatives of the Roma national minority and the state authorities.

It should be underlined that issues of integration and protection of the Roma national minority is extremely important in modern realities, which is why the Government would like to emphasise that they are ready for further cooperation with Chirilcli, ERRC, and other non-governmental organisations.

As regards the communication submitted and in order to halt down some irregularities, the Government would like to comment the following issues.

As to para 5, the Ukrainian authorities would like to note that certain incidents indicated by Chirilcli and ERRC in the relevant communication regarding the attacks on nationals belonging to Roma are currently being investigated in the pre-trial stage.

Moreover, please be advised as follows:

1. As regards para 5 (a), the Government would like to point out that the incident in question is currently being investigated by Holosiivskyi District Division of National Police in Kyiv. The criminal proceedings are registered in the Unified Register of Pre-trial Investigations (the "URPI") on the basis of Article 161.2 ("Violation of citizens' equality based on their race, nationality, religious preferences, disability or other grounds") and Article 296.4 ("Hooliganism") of the Criminal Code of Ukraine (the "CCU"). In this way, the Government would like to draw attention to the fact that Article 161.2 provides for legal assessment of committed offences which lead to violation of the equality of citizens, depending on their race, nationality, religious beliefs, disability, and other features combined with violence, deceit or threats. In that regard, the Government would like to note that in this case, the law-enforcement bodies classified the attack on the Roma, including through the possible presence of xenophobic motives of suspects.

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2. As to para 5 (b), 5 (c) and 5 (d), the Government do not dispute the fact that criminal proceedings concerning the incidents referred to in those paragraphs were entered to the URPI as alleged criminal offences envisaged by Article 296 of the CCU and classified as “hooliganism”. However, the authorities would like to indicate that due to Article 214.5 (“*Initiating of pre-trial investigation*”) of the Code of Criminal Procedure of Ukraine (the “CCP”), a primary classification which were specified in the URPI, further may be changed. Thus, in accordance with Article 279 (“*Changing of suspicion’s notice*”) of the CCP, in the event of a cause and under the law, the prosecutor has the right to charge a suspect with a new suspicion or to change the already existed one. Moreover, due to Article 338 (“*Changing a charge in court*”) of the CCP, the legal assessment may be changed upon trial. In order to change the classification of crime, the prosecutor has the right to change the scope of the prosecution if the new facts of perpetration of crime have been raised on trial.
3. According to para 5 (e), the Government would like to point out that information regarding criminal offences which were described in this incident were entered to the URPI under Article 115.2 (para 12) (“*Murder*”), Article 296.4, Article 161.1 and Article 304 (“*Engaging of minors in criminal activity*”) of the CCU. As has been noted above, Article 161 of the CCU provides for responsibility for actions with available racist motives.

As to para 7 of the communication, the Government would like to reiterate that the legal assessment of crime, both in the pre-trial investigation stage and on trial, is not final and may vary throughout the process and up to the sentencing.

The Government also drew attention to the fact that the submission of Chirileli and ERRC emphasises the length of pre-trial investigation and therefore it’s expedient to study the issue of terms in criminal proceedings. The authorities would like to note that the calculation of maximum permissible terms takes into account the classification of the crime according to gravity. Thus, Article 12.4 (“*Classification of criminal offences*”) of the CCU stipulates that crimes for which a sanction in form of imprisonment for a term up to ten years is imposed, should be considered as grave crimes. Thus, the crimes envisaged by Articles 161 and 296 of the CCU are classified as grave crimes. On this basis and with the application of Article 219.1 (3) (“*Time limits for pre-trial investigation*”) of the CCP, it can be concluded that the term of pre-trial investigation of grave crimes can’t exceed 18 months from the moment of imposing the information about a criminal offence into the URPI until the day of charging the person with a suspicion. In addition, according to Article 219.2 (3) of the CCP, the length of the pre-trial investigation may be extended, but can’t exceed 12 months from the day when the person was informed about the suspicion of committing grievous or extremely grievous crime. In light of the above, the Government would like to conclude that for today the law-enforcement bodies haven’t failed to meet reasonable time limits for conducting pre-trial investigations.

As to para 8 of the communication concerning information on proceedings in five mentioned cases, the Government would like to point out that it is not currently possible to provide detailed information regarding investigation due to the fact that the cases are at the pre-trial investigation stage. Thus, according to Article 222 (“*Inadmissibility of disclosing information of pre-trial investigation*”) of the CCP information regarding pre-trial investigation can become public only through the order of the investigator or prosecutor. This provision is called for ensure the independence of officials of the pre-trial investigative authorities and guaranteeing an implementation of the principle of secrecy of investigation.

Moreover, the Government would like to comment the information provided in para 9 of the communication. According to available data on 28 January 2018, the action in which an oath was given to serve the Ukrainian nation was actually held in the city centre of Kyiv. However, the authorities would like to point out that those individuals who swore an oath essentially had failed to appear public officials due to the fact that they won't, in fact, be the members of the National Corps political party. As the Government have established, the individuals who swore the oath were the members of the Community Organisation "Public Guard" and in fact declared their future cooperation with the police. It is important to note that according to Article 4 of the Law of Ukraine "On Public Associations" the formation and activities of public associations whose purpose (goals) or actions are aimed at promoting war, violence, incitement to interethnic, racial, religious hatred, encroachment on human rights and freedoms, and the health of the population *is prohibited*.

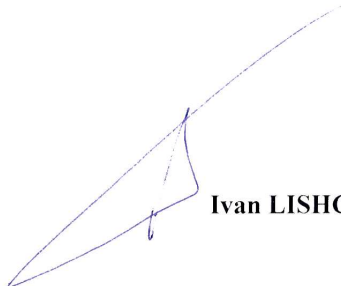
As regards cooperation with the National Police of Ukraine, the Government would like to emphasise that coordination procedure between the public formations and the state authorities is prescribed by Law of Ukraine "On Participation of Citizens in the Protection of Public Order and the State Border". As to Article 20 of this Law the control over activity of public formation for the protection of public order and the state border is carried out by executive authorities and local self-government bodies in accordance with the procedure established by law.

According to Article 30 of the Law of Ukraine "On Public Associations" non-governmental organisations are responsible for the violation of Ukrainian legislation, including activity which is aimed on infraction of equality principle and incitement to racial hatred. Thus, the Government would like to conclude that Community Organisation "Public Guard" activities are under the state control and in case of infringement of a rule of law the members as well as organisation will be prosecuted in accordance with the procedure established by law.

As a conclusion, the Government of Ukraine would like to note that formation of a society upon the principle of equality is a strategic goal of Ukraine. In this regard, the authorities will continue to take all necessary measures for implementation of the Court's judgment in the case of "*Fedorchenko and Lozenko v. Ukraine*" and in order to prevent further similar violations of the Convention.

Yours sincerely

**Deputy Minister – Agent
before the European Court of Human Rights**



Ivan LISHCHYNA