

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1259 meeting (7-9 June 2016) (DH)

Item reference: Action plan (25/04/2016)

Communication from Ukraine concerning the case of Mamchur against Ukraine (Application No. 10383/09)

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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Plan d'action

Communication de l'Ukraine concernant l'affaire Mamchur contre Ukraine (Requête n° 10383/09)
(*anglais uniquement*)

DGI

25 AVR. 2016

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**Action plan
on measures to comply with the Court's judgment
in the case of Mamchur v. Ukraine**

(application no. 10383/09, judgment of 16/07/2015, final on 16/10/2015)

CASE SUMMARY

The case concerns the violation of the applicant's right to respect for his private and family life in connection with his inability to have contacts with his minor daughter since 2005 when she was moved to live with her grandmother in the context of medical problems of the child's mother and her subsequent death, and the authorities decision taken in December 2006 to grant a tutelage over the child to the grandmother. The Court in its judgment found, in particular, that the Ukrainian authorities failed to take necessary actions in order to ensure the applicant's access to his child and his ability to participate in her upbringing (violation of Article 8). The Court also found that the authorities' decision relating to the applicant's child placement with her grandmother was not based on a thorough and professional assessment of the entire family situation and factors pertinent to the applicant's interests and, therefore, was not justified (violation of Article 8).

INDIVIDUAL MEASURES

Just satisfaction

The applicant was awarded just satisfaction in the amount of EUR 15,000 in respect of non-pecuniary damage, as well as EUR 4,000 for costs and expenses in the proceedings before the Court to be paid directly to his lawyer's bank account. These amounts were transferred to the applicant and his lawyer's bank accounts on 31/12/2015.

Restitutio in integrum

Following the Court's judgment, the Government Agent, due to priority of the case at issue, addressed Chernihiv State Administration, Chernihiv City Council and Desnianska District Council in Chernihiv with a request to provide urgently the information concerning current situation as to the applicant's participation in his daughter's life, and undertake measures to guarantee his involvement.

At the same time, the applicant in this case was informed about his right to request the review of impugned proceedings at the national level.

In a response to the Government Agent's request the representatives of Children and Youth Service spoke with the girl and her grandmother; they both wrote the statements dated 19/12/2015 whereby they confirmed they don't object to the applicant's involvement, however only in grandmother's presence. In her statement the grandmother noted that throughout the proceedings she never objected to her granddaughter's communication with her father. Moreover, she invited him to come visit the girl either at school or at home in her presence.

The applicant's daughter, who is 15 years now, in her written statement said that she "doesn't really want to meet her father, however she agrees to meet him at her home... and only in the presence of [her] grandmother... And, shall the question on her return for permanent residence to her father's house arise, [she] would categorically object to it, and wish[es] to live with her grandmother".

Chernihiv State Administration thus concluded that the applicant has the practical possibility to access his daughter and neither her, nor her tutor object to their communication. To confirm that, on 12/02/2016 the representatives of Children and Youth Service called the applicant on the phone in order to consult with him and make sure he has effective access to his daughter. According to the summary of this conversation provided in the letter of Chernihiv State Administration of 17/02/2016, it lasted for 2-3 minutes; the applicant informed that he has an opportunity to communicate with his daughter via the Internet, thus he is not interested in further communication and access to his daughter, he is awaiting for the Court's judgment in his case to be executed, the tutelage decision to be quashed and his daughter to be returned under his parenthood.

As to the review of domestic judgments, the Supreme Court of Ukraine informed the Government Agent that on 10/01/2016 the applicant requested that the domestic judgments be quashed and his daughter be returned to him. The girls' grandmother filed a counterclaim before the Supreme Court for the compensation of non-pecuniary damages. The Government will provide the Committee with the updated information concerning the outcome of the said proceedings.

GENERAL MEASURES

The Government believe that the violations found by the Court in present case resulted from the malpractice of the national authorities rather than the deficiency of national legislation. Thus, in order to improve the relevant case-law and administrative practice, by the letters of 26/11/15 the Government Agent informed the Ombudsperson of Ukraine, the Supreme Court of Ukraine, the High Specialized Court of Ukraine for Civil and Criminal Cases, Chernihiv Regional Court of Appeal, Desnyanskyy District Court in Chernigiv, National School of Judges of Ukraine; Ministry of Social Policy of Ukraine, Chernihiv State Administration, Chernihiv City Council and Desnyanskyy District Council in Chernigiv about the Court's conclusions in this case. The courts were asked to consider the Court's judgment in the present case when preparing the summary of domestic case-law on cases concerning tutelage and guardianship over children, and National School of Judges – to include this judgment into educational and training programs for judges.

The above authorities acknowledged the receipt of the relevant letters, and reported that the Court's conclusions were discussed at the meeting within each authority and the necessary measures were taken in order to prevent similar violations in the future.

PUBLICATION AND DISSEMINATION

The judgment was translated into Ukrainian and published in the Official Herald of Ukraine [*Ofitsiynyi Visnyk Ukrainy*] no. 13 of February 2016 and was placed on the Ministry of Justice official web-site.

The summary of the judgment was published in the Government's Currier [*Uriadovyi Kurier*] no. 231 of December 2015.

Moreover, the Court's conclusions in the abovementioned judgment were included into the submission of the Government Agent to the Cabinet of Ministers of Ukraine as to execution of Court's judgments (as of 29 December 2015).

STATE OF EXECUTION OF JUDGMENT

The Government believe that they show due diligence in fulfillment of obligations arising from the above judgment and will inform the Committee of Ministers about further developments and measures taken.