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COMMITTEE  
OF MINISTERS  
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Date: 24/10/2023

**DH-DD(2023)1267**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1483<sup>rd</sup> meeting (December 2023) (DH)

Reply from authorities (16/10/2023) following a communication from an NGO (CPI) (10/10/2023) in the case of Petukhov v. Ukraine (No. 2) (Application No. 41216/13).

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 : 1483<sup>e</sup> réunion (décembre 2023) (DH)

Réponse des autorités (16/10/2023) suite à une communication d'une ONG (CPI) (10/10/2023) dans l'affaire Petukhov c. Ukraine (n° 2) (requête n° 41216/13) **[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.

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DGI

16 OCT. 2023

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

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код згідно з ЄДРПОУ 00015622

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код згідно з ЄДРПОУ 00015622

**Mr Pavlo Pushkar**

**Head of Division  
Department for the Execution of judgments  
of the European Court of Human Rights  
Directorate of Human Rights  
Directorate General Human Rights and  
Rule of Law  
Council of Europe**

**F-67075 Strasbourg Cedex**

*Group of cases “Petukhov v. Ukraine (No.2)”  
Application No. 41216/13*

**Dear Mr Pushkar,**

As to the execution of the Court’s judgments in the group of cases “*Petukhov v. Ukraine (No.2)*”, the Government would like to express their appreciation to the *Centre de la protection internationale* (the “**Centre**”) communication under Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (the “**communication**”).

As regards the possibility of release for individuals sentenced to life imprisonment, in the Action Plan of 15 December 2022 on measures taken for implementation of the Court’s judgments in the group of cases “*Petukhov v. Ukraine (No.2)*”<sup>1</sup> the Government provided information on the adoption of the Laws of Ukraine “*On Amendments to the Code of Ukraine on Administrative Offences, the Criminal Code of Ukraine and the Code of Criminal Procedure of Ukraine Concerning Implementation of Judgments of the European Court of Human Rights*”<sup>2</sup> and “*On Amendments to*

<sup>1</sup> [https://hudoc.exec.coe.int/eng?i=DH-DD\(2023\)56E](https://hudoc.exec.coe.int/eng?i=DH-DD(2023)56E)

СЕД АСКОД

Міністерство юстиції України

№ 135256/157430-21-23/5.2.1 від 16.10.2023

Підписувач Сокоренко Маргарита Степанівна

Сертифікат 3ED5083160DBC59B04000000AFB1000046A3A900

Дійсний з 27.10.2022 15:49:33 по 27.10.2023 15:49:33



*Certain Legislative Acts on the Execution of Judgments of the European Court of Human Rights*<sup>23</sup> (the “Laws”), which entered into force on 6 November 2022. The Laws introduce a lenient mechanism of the sentence of life imprisonment. In particular, the possibility for life-sentenced prisoners, who have served *fifteen years* of their sentences, to apply to the court for replacement of their sentences of life imprisonment to fixed-term sentences from *fifteen to twenty years*. And, the prisoners, whose life sentences are commuted, may apply for conditional release after they have served at least *three-quarters of the replaced fixed-term sentences*. Also, there is the periodicity for the possibility of a review on the issue – *one year* after the refusal on initial request for commutation of life-sentence.

In its decision of 9 March 2023, adopted at the 1459<sup>th</sup> meeting (7-9 March 2023) (DH)<sup>4</sup>, the Committee of Ministers “*welcomed the adoption of the mechanism for review for life sentences, the availability of commutation of life sentences into fixed-term sentences following such review, the possibility of conditional release once a prisoner has served a certain period of the fixed-term sentence as well as the availability of periodic review in case of unsuccessful requests...*” (paragraph 6).

Furthermore, in the Government’s response to the previous communication of the Centre dated 7 February 2023<sup>5</sup>, they provided information on accompanying regulatory and legal instruments aimed at implementing the provisions of the Laws, namely: the Procedure for determining the degree of rehabilitation of a life-sentenced prisoner, the Methodology for determining the degree of rehabilitation of a life-sentenced prisoner and the Form of the individual plan or rehabilitation (approved by the Ministry of Justice of Ukraine Order “On Determination of the Degree of Rehabilitation of a Life-Sentenced Prisoner” No. 294/5 of 19 January 2023<sup>6</sup> and came into legal force on 2 February 2023).

In addition, in its decision the Committee of Ministers noted that “*in order to assess its effectiveness in practice, invited the authorities to provide information on the functioning of the review mechanism in due course, in particular details of administrative and court practice: the role of the prison authorities in the review, the interpretation by courts of the grounds and criteria for such reviews and how the obligation for prisoners to prepare and submit reintegration plans but also for prison authorities to be actively engaged in the same works in practice*” (paragraph 7).

The Committee of Ministers will be provided with updated and comprehensive information on the procedure of review of life sentences by the administrations of penal institutions and courts as it provided by the newly adopted Laws.

The Government would like to note that the comments provided by the Centre in the communication will be taken into account when preparing information for the Government’s further communication in the present group of cases (by 1 September 2024 as requested by the Committee of Ministers in its decision).

**Yours sincerely,**

**Marharyta SOKORENKO**  
**Agent before**  
**the European Court of Human Rights**

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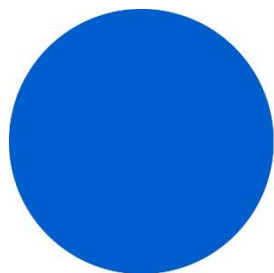
<sup>2</sup> <https://zakon.rada.gov.ua/laws/show/2690-20?lang=en#Text>

<sup>3</sup> <https://zakon.rada.gov.ua/laws/show/2689-IX?lang=en#Text>

<sup>4</sup> [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2023\)1459/H46-33E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2023)1459/H46-33E)

<sup>5</sup> [https://hudoc.exec.coe.int/eng?i=DH-DD\(2023\)178E](https://hudoc.exec.coe.int/eng?i=DH-DD(2023)178E)

<sup>6</sup> <https://ips.ligazakon.net/document/RE39172?an=31>



## Centre de la protection internationale

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DGI

10 OCT. 2023

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

Department for Execution of Judgments  
of the European Court of Human Rights  
Committee of Ministers of the Council of Europe

10 Octobre 2023

### **Information on individual and general measures and request to adopt a resolution**

#### **Joint group of cases *Petukhov v. Ukraine* (No. 2) (Application no. 41216/13)**

##### **Application no. 84210/17 and 23 others**

***Lopata and Others v. Ukraine***

##### **Application no. 2778/18 and 46 others**

***Dembo and Others v. Ukraine***

##### **Application no. 19102/20 and 5 others**

***Borisenko and Others v. Ukraine***

Dear Madams and Sirs,

On 12 March 2019, the European Court of Human Rights made its judgment in the case of *Petukhov v. Ukraine* (No. 2), finding that life imprisonment without the right to review of criminal conviction and any prospect of release was contrary to the European Convention. On 10 December 2020, 11 March and 15 April 2021 respectively, judgments in the above applications were made. The Center represented 14 applicants in those cases (see the list, Annex 1).

On 30<sup>th</sup> of January, 2023 Centre de la protection internationale sent a communication to the Committee of Ministers with the request of adopting a resolution on non-execution of judgment in the case of above mentioned applicants. During the 1459<sup>th</sup> meeting, 7-9 March 2023 the Committee of Ministers adopted its decision regarding the case *Petukhov* (No. 2) group v. Ukraine (Application No. 41216/13). Despite of this fact the Center has to reapply to the Committee of Ministers additionally pointing to systemic problems in Ukrainian law and practice regarding the possibility of release for individuals sentenced to life imprisonment.

Ukrainian legislation doesn't establish prospects of release for the prisoners and a possibility of specific review for continuing incarceration, based on clear and certain rules.

On 16 September 2021, the Constitutional Court of Ukraine made its judgment pursuant to the constitutional appeals lodged by Mr. Dmitry Krupko to contest Article 81 § 1 and Article 82 § 1 of the Criminal Code as contrary to the Constitution of Ukraine; Mr. Vladimir Kostin and Mr. Aleksandr Melnichenko contesting Article 82 § 1 of the Criminal Code as contrary to the Constitution, and Mr. Viktor Gogin to contest Article 81 § 1 of the Criminal Code as contrary to the Constitution (the case on review of life sentences). On 19 October 2022, the Verkhovna Rada of Ukraine, citing the need "to

implement judgments of the ECtHR and the Constitutional Court of Ukraine,” adopted governmental bills no. 4048 “Amendments to selected laws for the execution of judgments of the European Court of Human Rights” and no. 4049 “Amendments to the Code of Administrative Offences, Criminal Code and Criminal Procedural Code of Ukraine for the execution of judgments of the European Court of Human Rights” that were called to “give hope for release” to individuals sentenced to life imprisonment.

On 3 November 2022, the President of Ukraine signed the above Draft Laws that came into effect on 6 November 2022.

The Criminal Code of Ukraine (“the CC”) was amended as follows:

1. Article 81 makes it possible for lifers to have their sentence commuted to a more lenient sentence, and to request early conditional release after having served at least  $\frac{3}{4}$  of the eventual more lenient sentence.

The amended text of Article 81 of the CC reads as follows:

“Early conditional release may be granted after convicts have served at least  $\frac{3}{4}$  of their respective sentences as imposed by the court for a particularly serious crime, where sentence of life imprisonment has been commuted to imprisonment for a definite period...”

This wording discriminates life prisoners against other convicts who are sentenced to imprisonment for a definite period of time and enjoy a predictable procedure of early conditional release, without any preconditions. This amounts to a breach of Article 14 of the Convention that defines discrimination as embracing situations where an individual or a group of people are subjected, in the absence of proper justification, to less advantageous treatment than others, in breach of their constitutional and conventional rights.

Furthermore, the new wording of the above provision is incompatible with the practice of most member States of the Council of Europe and amounts to a gross violation of the Ukrainian Constitutional Court’s judgment no. 6-(II)/2021 of 16 September 2021 (case on review of life sentences, hereinafter – the “Constitutional Judgment”) by the Verkhovna Rada and President of Ukraine. In particular, the Constitutional Court held as follows in the above judgment: “Commuting the outstanding part of life imprisonment to a more lenient sentence shall not be a precondition for early conditional release.”

On 29 January 2021, the Council of Europe gave its expert assessment to certain provisions of the Draft Laws nos. 4048 and 4049 aimed at the implementation of the European Court’s judgments, prepared under the auspices of the Council of Europe Project “Human Rights Compliant Criminal Justice System in Ukraine”, based on the expertise by George Tugushi, international consultant of the Council of Europe. The principal finding of the expert is that, although the system suggested is a step into the execution of the European Court’s judgment in *Petukhov v. Ukraine (No. 2)*, it should be made functional and effective, which could provide realistic hope for the release. To this end, it was recommended that lifers should be given a possibility to apply directly for conditional release after having served certain years in prison.<sup>1</sup>

The paper made it clear that the 2-tier system suggested by the Draft Laws in question reduced the prospects of a realistic release for lifers while paving the way to legal uncertainty and falling short of the practice the majority of the COE member States applied in similar situations.

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<sup>1</sup> <https://rm.coe.int/expert-assessment-4048-4049/1680a137dc>

This means that, contrary to the Constitutional Judgment and strong recommendations of the Council of Europe, an individual sentenced to life imprisonment in Ukraine is not eligible to apply for a conditional release, as only fixed term prisoners can apply for parole and this at least temporarily kills the realistic hope for the lifer to be released on parole.

The Center paid attention to this circumstance when preparing the communication of January 30th, 2023, but it wasn't considered.

Moreover, the prospect of having the outstanding part of imprisonment commuted to a more lenient sentence depends, in addition to the margin of appreciation of the domestic court that deals with this matter, on the discretion and evaluation of the penitentiary facility administration. Law No. 4049 provides that the facility administration shall submit its finding to the court evaluating the degree of rehabilitation of the lifer concerned. The procedure for and approaches to evaluating the degree of rehabilitation shall be defined by the central executive authority responsible for policy-making in the realm of criminal sentences.

The prevailing practice however shows that vesting similar discretion with the penitentiary administration would constitute a further element of corruption. Moreover, even the use of incentives that underlie the evaluation of rehabilitation lies wholly within the discretion of the facility administration. Finally, a convict is not eligible to initiate proceedings before the domestic court for the purpose of commutation of life sentence; his request to that end may be dismissed by the facility's special commission.

That being said, the applicants Mr. Vodotovka (no. 58644/18), Mr. Zhuchenko (no. 47458/1), Mr. Vasalaty (no. 47468/19), Mr. Garkavenko (no. 48975/19), Mr. Khloponin (no. 60591/19), and Mr. Petrikin (no. 21015/20) submit that the facility administration already refused to submit the necessary documents to the court pointing to the lack of an officially approved form to evaluate the degree of rehabilitation of lifers (Annex 2). Strikingly, the applicants note that they have not even asked the facility administration to institute court proceedings for the commutation of sentences (but its special commission already refused to do so, without being asked).

Just after the Resolution of the Committee of Ministers of the Council of Europe, the Ukrainian authorities continued the practice of refusing a life sentence convict to submit a request for a change of sentence to a court (annex 3). Thus, it is the administration of the institution that decides whether or not the sentence can be changed and convict subsequently released, without allowing the case to be considered by the court.

2. Article 82 (by the new title, "Commutation of sentence, whether in full or in part, to a more lenient sentence") provides that the outstanding part of such sentences as limitation or deprivation of freedom, including life imprisonment, may be commuted by the court to a more lenient sentence that shall run from the date on which the outstanding part of imprisonment, including life imprisonment, is commuted to a more lenient sentence.

The sentence of life imprisonment may be commuted to imprisonment for the term of 15 to 20 years, provided that the convict concerned has served at least 15 years of the original sentence.

In practice, this means that a lifer may have a theoretical possibility of release no sooner than after having served 30 years in prison (even this being valid for prisoners who, as of today, have served 15 or fewer years in prison, or for future lifers; this period being much longer for the applicants in the present case). In this context, the applicants believe that the prospect of release that may occur no sooner than after 30 years of imprisonment would be contrary to the European Court's approach as



outlined in the case of *Bancsóok and László Magyar (No 2) v. Hungary* (nos. 52374/15 and 53364/15) where the Court reiterated that life imprisonment may only be compatible with the Convention if a lifer knows from the outset that they will have a prospect of release and a possibility of review no later than 25 years after the imposition of life sentence.

The applicants who submit the present request (except for Mr. Romanenko, no. 58225/18) have already served the terms ranging from 24 years to 32 years in prison. If the domestic laws considered above are applied, this means they can be released, on the average, after having served 50 years in prison.

In fact, adopted laws put the lifers who had served more than 15 years of imprisonment by the time the laws entered into force in a discriminatory position. The new legislation is aimed at improving the situation of individual sentenced to life imprisonment, but there're no transitional provisions for abovementioned individuals. It means that the new legislation put such lifers, in the absence of proper justification, to less favourable treatment than others.

The applicants further argue that the new laws have no regard to the age criteria, as they are 43 to 66 years old now. If the new law applies to them, they will have a theoretical prospect of release at the age of 58 or later (for the youngest applicant), or at the age of 75-80 years (for the elder applicants, such as Mr. Vodotovka who is 62 years old now, Mr. Ivanov – 66 years old, Mr. Zhuchenko – 63 years old, and Mr. Vasalatyy – 60 years old).

Given that the average life expectancy for men in Ukraine is 66.92 years (as of 2021), while general conditions of detention in facilities for lifers are inadequate (as confirmed by this Court in the case of *Yermolenko and Others v. Ukraine*, nos. 27231/21 and 2 others) and the quality of medical care is very low in prisons, the majority of the applicants have no chance to live long enough to be eligible for release on parole, which means their inevitable death in prison, in the absence of a realistic right to or possibility of release.

Therefore, even if the new laws are applied to the applicants in practice, they are not capable of reaching the purpose of implementation of individual measures in their case.

Having regard to the foregoing, the applicants submit that the national authorities have failed to execute the Court's judgment of 19 March 2019. For this reason, they ask the Committee of Ministers to put this case on the list of cases to be discussed at its nearest session, and to adopt a resolution on non-execution of judgment in their case.

Faithfully yours,



Oxana Preobrazhenskaya  
Legal consultant

Annexes:

1. List of applicants;
2. Copy of extracts from the records of 9 and 16 December 2022;
3. Copy of extracts from the records of 28 April 2023.

№	Application no Date of introduction	Applicant's name Year of birth	Name of the trial court Date of the life sentence	Date of actual imprisonment and time served (excluding Savchenko Act) as of January 2023
1.	<a href="#">19102/20</a> 06/05/2020	<b>Yuriy Sergeyevich BORISENKO</b> 1976 46 years	Donetsk Regional Court, 19/05/1997	02/01/1997 26 years
2.	<a href="#">58225/18</a> 05/12/2018	<b>Aleksandr Anatolyevich ROMANENKO</b> 1972 50 years	Kirovsk Regional Court of Dnipropetrovsk 23/02/2017	16/11/2010 12 years и 2 months
3.	<a href="#">58644/18</a> 10/12/2018	<b>Valeriy Petrovich VODOTOVKA</b> 1960 62 years	Kyiv City Court 01/07/1997	17/01/1992 31 years
4.	<a href="#">59102/18</a> 10/12/2018	<b>Dmitriy Lvovich SILIN</b> 1975 47 years	Kyiv City Court 08/08/2000	05/05/1999 23 years и 8 months
5.	<a href="#">59271/18</a> 10/12/2018	<b>Sergey Stepanovich MARTSYNKEVICH</b> 1967 55 years	Ternopil Regional Court 21/09/2000	10/05/1999 23 years и 8 months
6.	<a href="#">26708/19</a> 24/10/2019	<b>Aleksandr Viktorovich IVANOV</b> 1956 66 years	Odesa Regional Court 19/02/1997	22/03/1996 26 years и 10 months
7.	<a href="#">47458/19</a> 06/09/2019	<b>Aleksandr Ivanovich ZHUCHENKO</b> 1959 63 years	Donetsk Regional Court 04/09/1998	27/03/1997 25 years 10 months
8.	<a href="#">47468/19</a> 06/09/2019	<b>Aleksandr Levkovich VASALATYY</b> 1962 60 years	Zaporizhzhya Regional Court 22/01/1999	13/08/1996 26 years и 10 months
9.	<a href="#">48975/19</a> 16/09/2019	<b>Pavel Andreyevich GARKAVENKO</b> 1979 43 years	Donetsk Regional Court 20/06/2000	20/12/1999 23 years и 1 month
10.	<a href="#">48985/19</a> 13/09/2019	<b>Valeriy Nikolayevich TISHCHENKO</b> 1968 54 years	Kharkiv Regional Court 26/05/2000	16/05/1996 26 years и 8 months
11.	<a href="#">60591/19</a> 19/11/2019	<b>Yevgeniy Viktorovich KHLOPONIN</b> 1975 47 years	Donetsk Regional Court 30/12/1998	26/03/1996 26 years и 10 months
12.	<a href="#">2808/20</a> 02/04/2020	<b>Maksim Viktorovich STEPANENKO</b> 1975 47 years	Donetsk Regional Court, 25/09/1997	20/01/1996 27 years
13.	<a href="#">11572/20</a> 18/02/2020	<b>Pavlo Oleksandrovyeh CHEKAN</b> 1979 43 years	Kharkiv Regional Court, 15/12/2000	23/10/1999 23 years и 3 months
14.	<a href="#">21015/20</a> 22/05/2020	<b>Igor Stepanovich PETRIKIV</b> 1968 54 years	Kherson Regional Court, 27/04/1998	05/11/1997 25 years и 2 months