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DH-DD(2016)205

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: 1250 meeting (8-10 March 2016) (DH)

Item reference: Action plan (19/02/2016)

Communication from Ukraine concerning the case of Davydov against Ukraine (Application No. 39081/02)

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Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1250 réunion (8-10 mars 2016) (DH)

Référence du point : Plan d'action

Communication de l'Ukraine concernant l'affaire Davydov contre Ukraine (Requête n° 39081/02)
(anglais uniquement)

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УКРАЇНА

**УРЯДОВИЙ УПОВНОВАЖЕНИЙ У СПРАВАХ
ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ**

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19/02/2016

№ 39081/02-41-16

Ha № _____

DGI

19 FEV. 2016

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Ms Geneviève Mayer
The Head of Department
for the Execution of Judgments
of the European Court of Human Rights
Directorate General of Human rights – DG II
Council of Europe
F-67075 Strasbourg Cedex

*As to the execution of the Court's judgment
in the case of Davydov and others v. Ukraine (application no. 39081/02)*

Dear Madam,

Herewith please find enclosed the Action plan for the execution of the Court's judgment in the case of *Davydov and others v. Ukraine* (application no. 39081/02).

This information has been also sent by e-mail.

Encl: on 2 pages.

Yours faithfully,

Olga Davydchuk
Acting Government Agent

Annex to the letter of the Government Agent of
Ukraine before the European Court of Human Rights
of 13.02 2016 no. 2081/12.0.1-41-16

Action plan
on measures to comply with the Court's judgment
in the case of Davydov and others v. Ukraine
(application no. 39081/02, judgment of 01/07/2010, final on 01/10/2010)

CASE SUMMARY

The case concerns ill-treatment of the applicants, who were serving their sentences in high-security Zamkova Prison, in the course of training exercises held in prison in May 2001 and January 2002 by special forces and prison staff (violation of the substantive limb of Article 3).

It also concerns the lack of medical assistance and treatment in the wake of the exercises and poor conditions of detention (2 violations of the substantive limb of Article 3); the lack of effective investigation into the ill-treatment (violation of the procedural limb of Article 3); the lack of effective and available remedies in respect of the ill-treatment complaints (violation of Article 13); the unlawful interference with the applicants' correspondence with the Court (violation of Article 8); the pressure exerted on the applicants by the prison authorities and attempts to destroy correspondence to hinder their complaints to the Court (violation of Article 34); the Government's refusal/failure to ensure credible notification and attendance of certain witnesses and to provide certain documents to the Court in the course of the proceedings (violation of Article 38).

The present Action plan covers the violation of Article 3 of the Convention on account of ill-treatment of the applicants and ineffectiveness of investigation. As to the other violations, the Government will provide the Committee with relevant information in the framework of action plans for respective groups of cases.

INDIVIDUAL MEASURES

Just satisfaction

The first and the second applicants were awarded just satisfaction in the amount EUR 20,000 each, and the third applicant – EUR 15,000. The payments to the first and second applicants were affected by Ukrainian Government on 01/01/2011.

As for the third applicant, on 16.12.2010 his monetary award was transferred to the deposit bank account of the State Bailiffs' Service of Ukraine, and on 19.12.2011 it returned back to the State Budget

Restitutio in integrum

Following the Court's judgment at issue, the Government Agent addressed the law-enforcement authorities with a request to reopen investigation in the applicants' case.

In a response Khmelnytsk Regional Prosecutor's Office informed the Government Agent that the relevant information on the abuse of authority by the staff of Zamkova Prison was registered at the Unified State Register of Pre-Trial Investigations under № 4201524000000006, and the relevant investigation was initiated. The Government would keep the Committee informed on any further developments.

GENERAL MEASURES

Ukrainian legislative framework has changed significantly since 2006, when the events of the case took place. Thus, new Criminal Procedure Code was adopted on 13.04.2012 and came into force on 20.11.2012. It establishes the new procedure of the investigation and solved its previously identified flaws.

Moreover, on 12.11.2015 the Parliament of Ukraine has passed the Law of Ukraine On the State Bureau of Investigation. It is planned that after the State bureau is established (on 01.03.2016), it will investigate crimes that are under the jurisdiction of the General Prosecutor's Office of Ukraine. This authority will be independent from the police and penitentiary, dealing with crimes committed by senior officials, civil servants, judges and law enforcement officials etc. The text of the said Law can be found at the official web-site of the Parliament: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54012. The Government will inform the Committee on the progress achieved with this respect.

Additionally, on 03.07.2013 the Ministry of Justice of Ukraine by its decree adopted the Regulations on Territorial (Interregional) Paramilitary Formation of the State Penitentiary Service of Ukraine (can be found at <http://zakon5.rada.gov.ua/laws/show/z1133-13>). § 6.7 of these Regulations states that both the convicts and the detainees cannot be engaged in the course of training exercises held at the penitentiary institutions.

It should also be noted that on 25.08.2015 the National Human Rights Strategy (hereinafter – National Strategy, <http://hrstrategy.com.ua/documents/versions/4>) was approved by the decree of the President of Ukraine. This document provides a five-year roadmap to address human rights issues, among which is torture and cruel, inhuman or degrading treatment or punishment.

A comprehensive Action Plan for the implementation of the National Strategy was developed jointly by national authorities, civil society and international organizations, and subsequently approved by the Resolution of the Cabinet of Ministers of Ukraine of 23.11.2015 no. 1393-p. One of the chapters of the Action plan is dedicated to preventing ill-treatment and provides for number of measures to be taken with this respect, for example, eliminating the statute of limitation for prosecuting torture; initiating investigation following the Court's judgments whereby the violation of Articles 2 and 3 is found; the number of educative measures aimed at building capacity of judicial and law-enforcement authorities, and many others. The full text of the Action plan can be found at <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679>.

Finally, by the letters of 29.10.2010 the Government of Ukraine informed national authorities involved in this case about the Court's conclusions. The authorities acknowledged the receipt of the letter of the Government Agent and informed that the Court's conclusions were discussed at the meeting within each authority.

PUBLICATION AND DISSEMINATION:

The summary of the judgment was published in the Government's Courier [Uriadovyi Kurier], no. 207 of 05/11/2010.

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 26.11.2010).

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.