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

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Communication from Ukraine concerning the Ignatov group of cases v. Ukraine (Application No. 40583/15)

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Réunion : 1340^e réunion (mars 2019) (DH)

Référence du point : Plan d'action

Communication de l'Ukraine concernant le groupe d'affaires Ignatov c. Ukraine (Requête n° 40583/15)
(anglais uniquement)

DGI

01 FEV. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

*Annex to the letter of the Agent of Ukraine
before the European Court of Human Rights
of 29 January 2019 No. 927/5.2.1/25-19*

**Action plan
on measures to be taken for implementation of the Court's judgments
in the *Ignatov and others* group of cases**

CASE SUMMARY

The cases of the *Ignatov group* concern violations of the applicants' rights to liberty and security due to deficiencies in the legislation, in particular the 1960 Criminal Procedure Code of Ukraine (replaced by a new Code in November 2012: "CCP-2012"). They also concern the application of the provisions of that legislation by the relevant authorities and domestic courts in a manner incompatible with Article 5.

The specific issue of detention on remand without a court order between the end of the investigation and the beginning of the trial was addressed in the *Chanyev* judgment (2015).

The *Korneykova* case concerns the arbitrary arrest and periods of detention on remand of a minor in 2005 (violations of Article 5 §§ 1 (c), 4 and 5).

Moreover, in the *Ignatov* judgment (2017), the Court found that in 2013-2014 (i.e. after the new CCP had entered into force) the applicant was detained in breach of Articles 5 §§ 1(c), 3 and 4. Under Article 46, the Court indicated that it was not convinced that the new legislation was sufficient as regards the requirements for pre-trial detention. The Court further noted that "the most appropriate way to address the above-mentioned violation is to bring the reform of legislation and/or practice forward".

INDIVIDUAL MEASURES

As regards individual measures and additionally to the information on payment just satisfaction and the applicants' current situations which was previously submitted by the Government of Ukraine in their communication of 2 November 2018, please be advised with an updated information in the following cases.

Just satisfaction

In the case of "*Nakonechnyy and others v. Ukraine*" (application no. 34900/08), the Court awarded just satisfaction to the applicants **Mr Miroshnichenko** and **Mr Shtemenko** in amounts of EUR 3 000 and EUR 1 400, respectively. In this regard, the Government would like to inform that on 17 August 2018 the awarded sum (EUR 3000/UAH 92 109, 39) was transferred to the Mr Miroshnichenko representative's (Mr Suntsov) bank account (warrant of attorney No. 1102 dated 31 May 2018). As of just satisfaction was paid outside the deadline the applicant's representative also received default interest in the amount of UAH 727,65.

As to the payment of just satisfaction to **Mr Shtemenko**, the Government would like to note that on 18 December 2018 the awarded sum (EUR 1 400 /UAH 44 577, 95) was transferred to the applicant's bank account.

Furthermore, the Government consider it's necessary to inform that due to a technical error a mistake regarding the date of payment of just satisfaction in the case of *Barskyy v. Ukraine* was made. Thus, it was previously stated that on 29 December 2017 the awarded sum was transferred to the special deposit account of the Ministry of Justice of Ukraine. However, the Government would like to note that, in accordance with the payment order No. 5844 of 29 December 2017,

the awarded sum in amount of EUR 800 (UAH 26 427, 49) was transferred directly to the applicant's bank account.

Restitutio in integrum

The Government would like to draw the Committee's attention to the criminal proceedings in *Yolkin case* (application no. 76741/13). As it was previously stated on 9 August 2018, the Holoziivskyi District Court of Kyiv ruled to change a preventive measure for Mr Yolkin from detention on remand to house arrest and obliged the applicant to wear electronic surveillance until 6 December 2018. However, it should be noted that due to the applicant's escape from the place of house arrest, the prosecutor filed a motion for changing the preventive measure from house arrest to detention on remand. On 6 December 2018, the Holoziivskyi District Court of Kyiv upheld the prosecutor's petition and changed a preventive measure for Mr Yolkin. Furthermore, on 18 January 2019 the Holoziivskyi District Court of Kyiv refused an extension of this preventive measures and placed the applicant under house arrest (from 9:00 p.m. to 8:00 a.m.) for a period of 60 days.

As regards criminal proceedings in the *Kolos* case (application no. 61635/13) the Government would like to note that on 18 January 2019 the Supreme Court partially granted the cassation appeal and revoked the Kyiv Regional Court of Appeal decision of 10 April 2017. Furthermore, the Supreme Court have ordered a retrial to the same court, but in another panel of judges.

GENERAL MEASURES

As regards provisions of domestic law which regulate issues under Article 5 of the Convention, the Government would like to note that the relevant information was submitted and analysed in previous action plans and reports in a proper manner. In this regard, currently the Government would like to focus more on the impact of legislative changes and their practical reflection. However, the Government would like to point out that, as already indicated in the previous action plan of 26 March 2018 the Draft Law No. 7089 is still pending before the Parliament of Ukraine. First of all, the duration of its consideration is related to involvement in this process of about seven Committees of the Parliament of Ukraine, which leads to a delay of the legislative procedure. Also, the Government would like to emphasise that Ukraine is currently implementing the Association agreement between the European Union and its Member States, on one side, and Ukraine, on the other one, that urges an optimisation in the adoption of new legislative instruments and generally a precursor to certain delays in their adoption. The Government believe that current situation will be presently changed and the mentioned Draft Law adopted.

Furthermore, the Government would like to point out that the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the improvement of ensuring the observance of the rights of participants in criminal proceedings and other persons by law enforcement bodies during the pre-trial investigation" was adopted. This law is aimed at increasing the responsibility of officials of law enforcement agencies for improper performance of their duties during the pre-trial investigation. In particular, amendments have been made to Article 284 of the CCP-2012, according to which every person, whose rights or legitimate interests are limited during the pre-trial investigation, shall be entitled to apply to the investigating judge with a petition for closure of the criminal proceedings if limitation period have been expired. It is also worth noting that the aforementioned opportunity may be realised from the moment of entering the information about a criminal offense into the Unified Register of Pre-trial Investigations until the day the person has been served with charges. Such amendments will prevent cases of unjustified prolongation of the pre-trial investigation terms in criminal proceedings, in which no one has been notified of suspicion, which leads to disserve the

to persons who are not suspects but in respect of which procedural action are actually being conducted.

Moreover, the Government would like to note that the Ministry of Justice of Ukraine developed the Draft Law of Ukraine “On Amendments to Certain Legislative Acts Concerning Improvement of the Procedure for Compensation of Damage Inflicted for Citizens by Law Enforcement Bodies or by Court in accordance with the European Court of Human Rights’ Case-Law” (the “Draft Law No. 9044”).

The Draft Law No. 9044 proposes to amend Article 1 of the Law of Ukraine “On Procedure for Compensation of Damage Inflicted to the Citizen due to Unlawful Activities of Investigation Bodies, Pre-trial Investigation Agencies, Prosecutor’s Offices and the Court” and to establish the right of a person to get reimbursement for damage caused as a result of illegal detention, violation of reasonable time periods of pre-trial investigation and judicial review of criminal proceedings, as well as determines the cases when such damage is not subject to reimbursement.

As regards statistical data concerning detention on remand

In order to analyse the positive impact of the CCP-2012, the Government would like to provide some statistical data for 2011 and for 2013-2018 years.

In 2011, under Articles 106 and 115 of the CCP (of 1960), overall 1652 persons were detained on remand. In total, 734 people were released from custody, of them:

1. 178 persons were released directly by the investigator without a petition for detention.
2. As to the prosecutor’s refusal to support the petition for detention, 6 persons were released.
3. As to the courts’ refusal to impose a preventive measure in the form of detention on remand, 406 persons were released.
4. As to the appeal courts’ reversal the preventive measure in form of detention on remand, 108 persons were released.

In 2013, according to Articles 207 and 208 of the CCP-2012, 421 persons were detained in total. About 40 persons were released directly by the investigator without imposing of the preventive measures in form of detention on remand and 95 persons due to refusal of the court to impose a preventive measure in form of detention on remand or choosing other preventive measures such as house arrest (41 persons), bail (42 persons) personal recognisance (6 persons). Also, due to cancellation of the ruling on detention by the appeal court, 9 persons were released.

In 2014, according to Articles 207 and 208 of the CCP-2012, 366 persons were detained in total. From this number, 188 persons have been released: 23 persons were released directly by the investigator without imposing of a preventive measure in form of detention on remand and 92 persons –by the court.

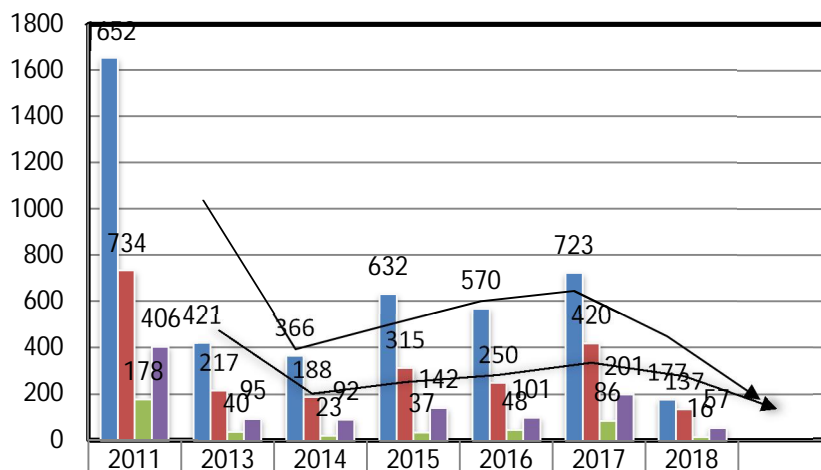
During 2015, under Articles 207 and 208 of the CCP-2012, about 632 persons were detained from which 315 persons were released:

1. 37 persons were released directly by the investigator without a petition for detention.
2. As to the prosecutor’s refusal to support the petition for detention, 7 persons were released.
3. As to the courts’ refusal to impose a preventive measure in the form of detention on remand, 142 persons were released.
4. As to the appeal courts’ reversal the preventive measure in form of detention on remand, 9 persons were released.

In 2016, according to the provisions of articles 207 and 208 of the CCP-2012, 570 persons were detained in total. About 48 persons were released directly by the investigator without imposing of the preventive measures in form of detention on remand and 101 persons due to the refusal of the court to impose a preventive measure in the form of detention on remand. Also, due to cancellation of the ruling on detention by the appeal court, 3 persons were released.

In 2017, according to Articles 207 and 208 of the CCP-2012, 723 persons were detained in total. From this number, 420 persons have been released: 86 persons were released directly by the investigator without imposing of a preventive measure in form of detention on remand and 201 persons– by the court. Also, due to cancellation of the ruling on detention by the appeal court, 10 persons were released.

Statistical data on the detention of persons in the order of investigation of criminal offenses



| | | | | | | | |
|---|------|-----|-----|-----|-----|-----|-----|
| ■ Total number of detained persons | 1652 | 421 | 366 | 632 | 570 | 723 | 177 |
| ■ Total number of released persons | 734 | 217 | 188 | 315 | 250 | 420 | 137 |
| ■ The number of released persons by investigator without a petition for detention | 178 | 40 | 23 | 37 | 48 | 86 | 16 |
| ■ The number of persons released on the court's decision | 406 | 95 | 92 | 142 | 101 | 201 | 57 |

During 2018, in the order of Articles 207 and 208 of the CCP-2012 632 persons were detained from which 315 persons were released:

1. 177 persons were released directly by the investigator without a petition for detention
2. As to the courts' refusal to impose a preventive measure in the form of detention on remand, 57 persons were released
3. As to the appeal courts' reversal the preventive measure in form of detention on remand, 3 persons were released

Taking into account the above-mentioned data, the Government would like to provide information regarding the effectiveness of the implementation of the CCP -2012 and the general measures which were taken for implementation of the Court's judgments in *Ignatov* group of cases.

Thus, statistics show that the detention on remand of persons in the framework of criminal proceedings in 2013 was 25.5 percent less than in 2011 before the adoption of the CCP -2012.

Furthermore, the Government would like to point out that considering the data regarding the release of detainees, it is important to note that the number of released persons in 2011 was only 44.4 percent, and in 2013 it was 51.5 percent and 51.3 percent in 2014. In 2015 and 2016, these numbers fell to 50 and 44 percent, respectively. However, it should be noted that this is primarily due to the deterioration of the crime situation in the country. In 2017, the rate of release of detainees from custody rose sharply to 58 percent, and in 2018 reached a mark of 77 percent.

The above-mentioned indicators are also confirmed by the existing law-enforcement practice and decisions of domestic courts.

For example, in a criminal case concerning the charge of a person in a robbery, the investigator, with the consent of the prosecutor, appealed to the court with a petition for the suspect's detention based on the possibility of influencing witnesses by a suspect or committing another criminal offense. However, having considered the circumstances of the case in detail, the judge of the Bila Tserkva City Court of Kyiv Region rejected this petition due to absence of facts which confirm involvement of the suspect in committing the crime and the unlawfulness of imposing such preventive measure (follow the link – <http://reyestr.court.gov.ua/Review/76810740>).

It is also important to note that a person has the right to appeal against the trial court's decision on extension of a preventive measure in form of detention on remand. Thus, on 27 August 2018 Kirovograd Regional Court of Appeal considered the appeal complaint of a defendant of the suspect decision of the investigating judge of the Leninsky District Court of Kirovograd City from 15 August 2018. In this decision, the Kirovograd Region Court of Appeal rejected extension of the detention on remand and imposed a house arrest as a preventive measure for the suspect. The court's conclusions were based on the fact that although the mentioned criminal proceedings had a strong public interest, the prosecution hadn't provided sufficient evidence to extend the period of detention (follow link - <http://reyestr.court.gov.ua/Review/76169736>).

On 30 October 2018 the Romny City Court of Sumy Region, in a court session, considered the prosecutor's petition for imposing a preventive measure in form of detention on remand. The prosecutor in support of the petition indicated that the risks that were previously established continued to exist, and the prosecution of criminal proceedings can't be completed because of the objective circumstances. In this case, the court found that within the framework of criminal proceedings a suspect has been already detained, and therefore the prosecutor's request couldn't be satisfied because of the fact that reuse of the same preventive measure is illegal due to domestic law (follow the link- <http://reyestr.court.gov.ua/Review/77514703>).

Furthermore, as to the consideration of the case upon constitutional petition of the Ukrainian Parliament Commissioner for Human Rights concerning unconstitutionality of the provisions of Article 208.1.4 of the CCP, the Government of Ukraine would like to note that constitutional proceeding are currently pending before the Constitutional Court of Ukraine. The next session in this case is scheduled for 31 January 2019.

As regards the judicial practice

The Government would like to note that persons who have suffered from illegal detention are entitled to apply to the court with a statement on violation of their constitutional rights. This statement is confirmed, first of all, by the existing judicial practice. The Government would like to provide some examples from the judicial practice regarding awarded compensation to persons who have suffered from a series of unlawful actions committed by law enforcement agencies.

Thus, in accordance with the decision of the Amur-Nizhnedneprovskyi District Court of Dnipropetrovsk City, a plaintiff appealed against the State Treasury of Ukraine for compensation of non-pecuniary damage caused by unlawful prosecution, unlawful sentencing, and detention. In support of her application, she was brought to the attention of the court that on 11 April 2013 the criminal proceedings had been initiated against her. Within the framework of the criminal proceedings, on 6 June 2013 by the decision of the Industrial District Court of Dnipropetrovsk City a preventive measure in form of a house arrest was imposed to her. On 10 September 2013, it was changed on detention on remand. In this regard, the plaintiff was forced to spend seven months in detention. By the decision of the Court of Appeal of Dnipropetrovsk Region dated 24 April 2013, the decision of the Industrial District Court of Dnipropetrovsk City was revoked. In this civil case, the court, having examined the case files and taking into account the information which was provided by the plaintiff, awarded her compensation in amount of

UAH 116.000 in respect of non-pecuniary damage (follow the link - <http://reyestr.court.gov.ua/Review/71377999>).

On 20 December 2017 in Kyiv Court of Appeal the civil case under appeal of plaintiff's representatives against the Main Department of the State Treasury Service in Kyiv was considered. In the course of consideration of the appeals, the court stated that the person appealed to the General Prosecutor's Office of Ukraine, the Kyiv Local Prosecutor's Office No. 10, the Main Investigation Department of the Financial Investigations of the State Tax Service of Ukraine, the State Treasury Service of Ukraine, the Main Department of the State Treasury Service of Ukraine in Kyiv on compensation for non-pecuniary damage caused by illegal decisions, acts or omissions of the body conducting operative-search activity, pre-trial investigation, prosecutor's office or court. It was also established by the court that the plaintiff was imprisoned in accordance with Article 115 of the CCP (1960) and detained for about 17 months. Based on the case file and evidence submitted by the plaintiff, the court concluded that the plaintiff has the right for compensation of non-pecuniary damage in the amount of UAH 275 thousand (follow the link - <http://reyestr.court.gov.ua/Review/71251627>).

Training

In order to increase the level of awareness of prosecutors with the Convention and to ensure the correct application of criminal legislation, on basis of the National Academy of Prosecutor's Office of Ukraine trainings and seminars on the topic "Applying the ECtHR's Case-Law in Prosecutorial Activities" have been held.

On 31 January 2018, a roundtable discussion was held at the National Academy of Prosecutor's Office of Ukraine for officials of the local prosecutor's office on the topic "Mechanisms for the Implementation of Judgments and Application of the ECtHR's Case-Law".

On 4 and 6 June 2018 training sessions were held at the National Academy of Prosecutor's Office of Ukraine for deputy heads of local prosecutors, with the participation of the staff of the Department for the implementation of ECtHR's case-law and the GPU's cooperation with the Council of Europe and the European Union projects.

During the events, participants discussed in detail the issue of improving the mechanism for implementation of judgments and applying the Court's practice in the prosecutors' professional activities. Also, prosecutors were able to exchange their thoughts, positive experiences and suggestions on resolving the problematic issues in their practice.

On 25 June 2018 at the Prosecutor's Office of Zhytomyr Region seminar on the topic "Issues of the criminal proceedings regarding minors" was held. The seminar was organised in order to familiarise the law enforcement officers with problematic issues in criminal proceedings concerning minors, including the issue of imposing detention on remand.

The Prosecutor's Office of Kyiv Region hosted a seminar on "Observance of constitutional rights of citizens by the investigating authorities of the prosecutor's office during the investigation of criminal cases". During the training, topical issues related to the observance of the constitutional rights of citizens and measures to address them were considered. Also, the issue of imposing and choosing a preventive measure in form of detention on remand as well as possible alternative preventive measures were considered.

On 16 November 2018 at the Kyiv Local Prosecutor's Office No. 4 a training seminar on the topic "Current issues of prosecutor's actions in course of the pre-trial investigation" was held. During the training, problematic issues regarding an appeal to the investigating judge about the suspicion, the detention of a person, the conduct of the search and other investigative actions were discussed with the prosecutors.

On 29 October 2018 the VIII International Scientific and Practical Conference "Combating Crimes: Theory and Practice" was held at the National Academy of Prosecutor's Office of Ukraine. This event of the international level was organised by the Academy together with the General Prosecutor's Office of Ukraine, the Scientific-Research Institute for the Study of Crime Problems named after Academician V. Stashys of the National Academy of Legal

Sciences of Ukraine, the Consultative Mission of the European Union to Ukraine and the Office of the Council of Europe in Ukraine. The participants of the conference discussed the issues of modern Ukrainian criminology, the concept of “anti-crimes” as a doctrinal basis of ensuring law and order in Ukraine, the anti-criminal resource of modern Ukrainian society, corruption risks and ways of their elimination, veiled extortion of unlawful benefits, involvement of a lawyer in a special criminal procedure (in absentia), opposition to loyalty through improvement of the procedural status of the victim, criminal liability and other criminal-law measures in the system of combating crime in Ukraine, lawful detention and arrest of a person for violation of customs rules and smuggling taking into account the Court’s case-law, prospects for the development of international cooperation in combating crime, as well as issues affecting the successful investigation and trial of the cases concerning organised crimes.

STATE OF EXECUTION OF JUDGMENTS

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