

**SECRETARIAT / SECRÉTARIAT**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE  
OF MINISTERS  
COMITÉ  
DES MINISTRES



Contact: John Darcy  
Tel: 03 88 41 31 56

Date: 10/01/2019

**DH-DD(2019)33**

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: 1340<sup>th</sup> meeting (March 2019) (DH)

Item reference: Action plan (04/01/2019)

Communication from Ukraine concerning the FEDORCHENKO and LOZENKO group of cases v. Ukraine (Application No. 387/03)

\* \* \* \* \*

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 : 1340<sup>e</sup> réunion (mars 2019) (DH)

Référence du point : Plan d'action

Communication de l'Ukraine concernant le groupe d'affaires FEDORCHENKO et LOZENKO c. Ukraine (Requête n° 387/03) (**anglais uniquement**)

---



**МІНІСТЕРСТВО ЮСТИЦІЇ  
УКРАЇНИ**

вул. Городецького, 13, м. Київ, 01001

Тел.: +380 44 278-37-23, факс: +380 44 271-17-83

E-mail: themis@minjust.gov.ua

http://www.minjust.gov.ua

Код ЄДРПОУ 00015622

*02.01.2019* № *67/5.2.1/25-19*

На № \_\_\_\_\_

**Mr Fredrik Sundberg**

**Head of Department Ad Interim  
Department for the execution of judgments of  
the European Court of Human Rights  
Directorate General 1 – Human Rights and  
Rule of Law**

Council of Europe  
F-67075 Strasbourg Cedex

*As to the execution of the Court's judgments  
in the cases of Fedorchenko and Lozenko v. Ukraine  
and Grigoryan and Sergeyeva v. Ukraine*

**Dear Sir,**

Herewith please find enclosed the updated action plan for the execution of the Court's judgments in the cases of "*Fedorchenko and Lozenko v. Ukraine*" (application no. 387/03, judgment of 20/09/2012, final on 20/12/2012) and "*Grigoryan and Sergeyeva v. Ukraine*" (application no. 39081/02, judgment of 28/03/2017, final on 28/06/2017).

This information has been also sent by e-mail.

Encl: on 8 pages.

**Yours faithfully,**

  
**Ivan LISHCHYNA**

Deputy Minister – Agent before  
the European Court of Human Rights

429424



04 JAN. 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 2 January 2019 No.67/5.2.1/25-19*

**Updated Action plan  
on measures to be taken for implementation of the Court's judgments  
in the cases of "*Fedorchenko and Lozenko v. Ukraine*"**  
(application no. 387/03, judgment final on 20/12/2012)  
**and**  
**"*Grigoryan and Sergeyeva v. Ukraine*"**  
(application no. 63409/11, final on 28/06/2017)

## I. CASE SUMMARY

Generally, this group of cases concern the failure to carry out effective investigations into violent acts allegedly carried out on racial/ethnic grounds (violation of the procedural limb of Articles 2 or 3) and to investigate a possible causal link between alleged racist attitudes and the attacks (violation of Article 14 taken in conjunction with Articles 2 or 3 in respect of its procedural limb).

In *Fedorchenko and Lozenko* case the Court found that the authorities failed to investigate the deaths of the applicants' Romani-origin relatives caused by an arson attack on their house in October 2001.

In *Grigoryan and Sergeyeva*, the Court found that the applicant, of Armenian origin, had been subjected to ill-treatment by police in 2010 and that the authorities had failed to effectively investigate that ill-treatment (violation of Article 3 in both procedural and substantive limbs).

## II. INDIVIDUAL MEASURES

### *Just satisfaction*

In the Court's judgment in *Grigoryan and Sergeyeva* case the Court awarded the first applicant, Mr Roman Vitalyevich Grigoryan, just satisfaction in amount of EUR 10 000 in respect of non-pecuniary damage. As to the applicant's failure to submit his full banking details, on 27 September 2017 this sum was transferred to the special deposit account of the Ministry of Justice of Ukraine. Further, the awarded just satisfaction was paid to the applicant under the payment order No. 4676 of 17 October 2017 (UAH 312,299.67).

### *Restitutio in integrum: Investigations*

#### *1. Fedorchenko and Lozenko case*

As regards investigation into the circumstances of the death of the applicants' relatives which was a result of an arson attack, the Government would like to note that on 28 October 2001 the criminal proceeding No.01610040 was initiated by the prosecutor's office of Kremenchuk District. Criminal offences in this case were defined under Article 115.2.1 ("Murder") and Article 194.2 ("Wilful destruction or endamage of property") of the Criminal Code of Ukraine (hereinafter – CCU).

Moreover, in para 68 of this judgment the Court stated that on the same date two more houses of Roma origin people were attacked under the same motives – destruction of houses of drug dealers,

in despite of the fact that no information about the relevant involvement of the inhabitants of these houses in drug trafficking was existed.

In these respects, the authorities initiated two separate investigations which on 5 November 2001 were consolidated in one criminal proceeding that concerned an alleged criminal offences prescribed by the abovementioned articles of the CCU.

In the course of the investigation it was found that in October 2001, the attackers, namely N., Ne., No., P., B., G., S., Pa., through arson, destroyed three houses in which the families of the Roma nationality had lived. During the consolidated criminal proceedings it was established as follows:

- In November 2001, N. and G. were arrested on the basis of Article 115 of the Code of Criminal Procedure of Ukraine (1960) (hereinafter – CCP-1960). On 20 April 2004 the Kremenchuk District Court of Poltava Region sentenced: G. to imprisonment for 4 years with the application of Article 75 of the CCU, according to which the court discharged G. from serving a sentence with the probation period on 2 years; N. – to imprisonment for 5 years and discharged him from serving a sentence with the probation period on 3 years. The prosecutor's office partly applied for the appeal against this sentence concerning the N.'s conviction. The court of appeal the trial court's sentence and remitted the case for fresh consideration. Finally, the proceeding was terminated under Article 6.8 of the CCU (1960) due to the defendant's death caused by road traffic accident.

- On 9 November 2001 six suspects, namely P., B., Pa., Ne., No., S., were put on the wanted list by the Kremenchuk Prosecutor's Office.

- On 6 March 2009, P. was arrested as a suspect and served with charges in alleged destruction of the Roma origin people's property. On 14 April 2009 the Kremenchuk District Court sentenced P. to three years of imprisonment according to the Article 194 of the CCU, applied the provision of Article 75 of the CCU and discharged P. from serving a sentence with the probation period on 1 year.

- On 29 April 2009 the criminal case regarding Ne. was reopened in connection with the determination of suspect location. On 29 May 2009 the criminal case against Ne. together with the relevant bill of indictment was transferred to the trial court. On 23 June 2009 the Kremenchuk District Court sentenced Ne. to three years of imprisonment (Article 194 of the CCU) with the application of Article 75 of the CCU, according to which the court discharged him from serving a sentence with the probation period on 1 year.

- On 3 August 2009 the suspect B. came to the Kremenchuk District Police station with confession in committing the criminal offence due to which he was served with charges under Article 194.2 of the CCU. On 9 October 2009 according to Article 232 of the CCP-1960 the B.'s criminal case and bill of indictment were remitted to the Kremenchuk District Court. On 12 November 2009 the court found B. guilty and sentenced him to three years of imprisonment (Article 194 of the CCU) with the application of Article 75 of the CCU, according to which the court discharged him from serving a sentence with the probation period on 1 year.

- On 9 August 2011 Kremenchuk District Court decided to impose for the suspect S. a preventive measure in form of detention on remand. On 23 November 2012 information on alleged criminal offence envisaged by Article 194.2 of the CCU was entered to the Unified Register of Pre-trial Investigations (hereinafter-URPI). On 26 December 2012 S. was informed about suspicion and on 19 March 2013 he was sentenced to nine years of imprisonment under Article 194.1 of the CCU.

- On 6 January 2013 criminal proceedings regarding an alleged criminal offence envisaged by Article 194.2 of the CCU were entered in URPI as per No.12013180220000027. Thus, No. and Pa. were recognised as suspects in these proceedings and put on the wanted list.

During criminal proceedings it was established that the motives for committing crimes were the confidence of the accused that the victims were drug traffickers. As regards the Major I.'s involvement in the arson attack on the first applicant's house, the Government would like to note that

as result of criminal proceedings initiated in order to eliminate the shortcomings found by the Court, the fact of Major I.'s involvement in the criminal offences was not proven. As of today no reasons were found in order to quash the prosecutor's decision. Moreover, according to Article 303 of the Code of Criminal Procedure of Ukraine ("*Decisions, acts or omissions of investigator or public prosecutor, which may be challenged during pre-trial proceedings and the right to challenge*") no appeals were filed by the applicants against this decision.

## *2. Grigoryan and Sergeyeva case*

On 29 August 2017, the Prosecutor Office of Kyiv City opened criminal proceedings regarding criminal offence envisaged by Article 365.1 of the CCU which were entered in URPI as per No.42017100000001110. The mentioned investigation was aimed at revealing facts of possible abuse of powers by police officers and ill-treatment of the applicants. On 17 April 2018 the criminal proceeding was terminated according to Article 284.1.1 of the CCP due to absence of *corpus delicti* in the police officers' actions.

### III. GENERAL MEASURES

#### *1. Legislative measures*

As regards legislative framework, the Government would like to note that since the violations which the Court had found in *Fedorchenko and Lozenko* case, the criminal law on responsibility for criminal offences with discriminatory grounds has changed significantly, which in turn provides the possibility for protecting victims of hate crimes. Criminal liability for crimes committed on xenophobic motives is provided by articles of the CCU, which have different objects of a criminal offence and at the same time related to the general elements of the subjective part of the crime, in particular, the motive for undertaking the crime. In addition to this, Article 67.1.3 of the CCU envisages that commission of any crime on the grounds of racial, national or religious hatred or discord acts as an aggravating circumstance and provides that any offense, in theory, may be committed on such motives.

Moreover, the Government would like to point out that Article 161 of the CCU stipulated a special provision which provides for a criminal liability for violations caused by national, racial, religious, discriminatory aspects.

In 2009 amendments to the CCU were introduced a qualifying attribute of committing a crime on motives of racial, national or religious intolerance to the responsibility for crimes against life and health of a person.

As to Article 291.2 of the CCP, the bill of indictment should contain, in particular, an account of the actual circumstances of the criminal offence which the prosecutor considers to be established, the legal assessment of the criminal offense, as well as the circumstances, which aggravates or mitigates the punishment. In turn, similar requirements are established by Article 374 of the CCP to judicial decisions.

Thus, provisions of domestic law adequately identify the signs of a socially dangerous act, directly or indirectly related to discriminatory motives, which may contribute to Ukraine's compliance with the international legal standards enshrined in Article 14 of the Convention.

In order to create the appropriate conditions for the protection and integration into the society of the Roma national minority, the provision of equal opportunities for the Roma origin people to the social life of the state "The Strategy for the Protection and Integration of the Roma National Minorities to the Ukrainian Society for the Period to 2020" (the "Strategy") was approved by the Presidential Decree of 8 April 2013 No. 201/2013.

Within the framework of the Strategy implementation, the Ministry of Internal Affairs of Ukraine established a permanent working group on law enforcement and migration issues whose

membership is involved from representatives of domestic authorities, international organisations, national human rights organisations, and Roma community associations. The main task of this group is to work out joint measures for executive authorities and the public on preventing illegal actions against representatives of the Roma national minority in their places of residence and spontaneous settlements. As of 12 December 2018, two meetings of the group mentioned above were held, and the work plan was approved. According to this plan the following, are established:

1. The algorithm of interaction between public authorities, local authorities, representatives of Roma NGOs in case of the discovery of spontaneous settlements of persons of the Roma national minority was developed.
2. An organisation of information and explanatory work among representatives of the Roma national minority regarding the obligation to obtain a certificate of state registration of acts of civil status and documents certifying identity and confirming citizenship.
3. Provide trainings and other educational measures for police officers in order to ensure the rights of the Roma national minority.

#### As regards to the instructions and guidelines

The Government would like to note that by the letter of the Main Investigations Division of the National Police of Ukraine on 7 February 2018 recommendations for the implementation of the “Concluding observations on the 7th periodic report of Ukraine: Human Rights Committee” into investigations were brought to the attention of the heads of structural units of the National Police of Ukraine.

Furthermore, the Main Investigations Division of the National Police of Ukraine in cooperation with the Lviv State University of Internal Affairs developed methodological recommendations “Hate Crimes and the investigations’ specifics” which provided for the practical assistant for the law enforcement officers during the pre-trial investigations and the process of discriminatory motives proving.

In addition, it is worth to note that in 2018 ODIHR/OSCE has developed methodological recommendations for the police officers regarding the qualification and investigations of the hate crimes.

The National Academy of the Internal Affairs was developed a series of methodological recommendations, in particular:

- “Legal qualification of the hate crimes” (approved by the Scientific- Methodological Council of National Academy of Internal Affairs by the decision No. 4 on 6 December 2018);
- “Legal conclusions of the European Court of Human Rights regarding the effectiveness of pre-trial investigations of the circumstances of the persons’ death” (approved by the Scientific-Methodological Council of National Academy of the Internal Affairs by the decision No. 9 on 16 May 2018);
- “Detection, documentation, and investigation of crimes against public order and morals” (approved by the Scientific- Methodological Council of National Academy of the Internal Affairs by the decision No. 4 on 6 December 2018).

The indicated methodological recommendations will be printed and sent for use in the work of officers of the National Police of Ukraine and its territorial departments, as well as higher education institutions of the Ministry of Internal Affairs of Ukraine.

#### As regards to the special units

In 2015, on the instructions of the Ministry of Internal Affairs, the Main Investigations Division of the National Police of Ukraine developed the National Contact Point on Hate Crimes, which permanently provides cooperation with the OSCE Office for Democratic Institutions and Human Rights. Since February 2018, the functions of the National Contact Point on Hate Crimes

have been assigned on the Division of the Ensuring of Human Rights of the National Police of Ukraine.

Moreover, the National Police of Ukraine exercises departmental control over the state of the investigation of criminal proceedings against hate crimes, in particular, monitors the URPI, as well as analyses the mass communications regarding information on crimes with discriminatory motives.

It is also important to note that investigative departments of the National Police of Ukraine have introduced positions of practical investigators who should supervise over investigations into crimes with discriminatory motives.

## 2. Practical measures: trainings and awareness measures

Representatives of the territorial bodies of the Ministry of Internal Affairs are continuously involved in trainings and seminars on the issues of overcoming xenophobia, the prevention of crimes on the basis of racial, ethnic, religious and other forms of hatred. In particular, the Government would like to inform the Committee about the series of trainings and seminars:

- On 24-26 October 2017, training session on topic “Best practice in criminal investigations in the European Union” which took place in Vinnytsia under the auspices of the European Union Advisory Mission was held.
- On 20-21 December 2017, training on topic “Countermeasures to intentional ill-treatment in the light of the ECHR” was held. This event was organised within the framework of cooperation between the National Academy of Internal Affairs and the Joint Project of the European Union and the Council of Europe “Strengthening the implementation of European Human Rights Standards in Ukraine”.
- On 17-21 September 2018, training sessions on topic “EU best practice in managing serious crimes investigation and improvement of leadership skills” were held together with the international experts of the European Union Advisory Mission and the officers of departments on investigation of serious crimes of the National Police of Ukraine.
- On 2 November 2018 with the participation of representatives of the Council of Europe Office in Ukraine, Cabinet of Ministers, Ministry of Informational Policy of Ukraine, people’s deputies and media experts were held seminars on topic “Mass media without prejudice: words make a sense”.

On basis of the National Academy of Internal Affairs the lectures on topic “Tolerance and non-discrimination in the professional work of police officers” are provided in order for effective implementation of the international standards in the law enforcement officers’ practice.

The Government would like to note that in cooperation with the experts from Great Britain the seminar on topic “Countermeasures to hate crimes” took place on 25 January 2018. The students from the primary professional study of the National Academy of Internal Affairs also participated in this event.

Furthermore, the trainings regarding the Roma origin people’s rights also play an important role in the advanced training of police officers. In particular, on 9 December 2018 the meeting of the representative of the authorities and public organisation on topic “Approaches to the integration and protection of the Roma origin peoples’ rights”.

As regards professional training of the prosecutors, the Government would like to note that cases of typical violations of the substantive and procedural limb of Articles 2 and 3 of the Convention are constantly brought to the attention of prosecutors who take part in capacity-building programme on the basis of the National Academy of Public Prosecutor of Ukraine. In order to increase the level of awareness of prosecutors with the provisions of the Convention and to ensure the correct application of criminal law, as well as human rights, the National Academy of Public Prosecutor's Office of Ukraine training and seminars on the topic “Applying the practice of the ECHR in prosecutorial activities” are held.

During 16 and 26 October 2018 training sessions were held at the National Academy of Prosecutor’s Office of Ukraine for the first-time appointed prosecutors of local prosecutor's offices

on topic “Requirements and the case law under the Article 14 “Prohibition of the discrimination” of the ECHR”.

In June 2018, representatives of the National Academy of Public Prosecutor of Ukraine participated in the training on human rights issues in the context of the rights of national minorities organised within the framework of the project “Enhancing the Implementation of the European Human Rights Standards in Ukraine” together with the Supreme Court and NGO’s.

Within the framework of the specialised training of prosecutors in cooperation with the Council of Europe, European Union at the National Academy of Prosecutor’s Office of Ukraine the course of the Human Rights Education for Legal Professionals (HELP) on the topic “Prohibition of the torture, degrading or ill-treatment in the law enforcement, security or other imperative context” was introduced.

According to part 107.4 of the “Plan of Measures for Realisation of the National strategy on Human Rights for the period up to 2020”, approved by order of the Cabinet of Ministers of Ukraine dated 23 November 2015 No. 1393-p. the National School of Judges of Ukraine has developed a course for judges on topic “Prevention of Discrimination and Racism”. The National School of Judges of Ukraine includes the Court’s conclusions in *Fedorchenko and Lozenko* case in the programme for judges and candidates on the judges’ positions.

Furthermore, according to the Plan of the scientific and research activity of the National School of Judges of Ukraine on 2018 the course in the form of training on topic “Prohibition of discrimination” was held. The program for candidates to the position of judge includes topics: “European Anti-Discrimination law: basic principles, sphere of power”; “Article 14 of the ECHR and the Protocol No. 12 to the Convention”; “International Standards of Anti-Discrimination Law”; “Types of Discriminations: Direct and Indirect Discriminations”; “Countermeasures against Discriminations of Refugees and Racial Discriminations”; “Access to justice”; “The problem of proving in Anti-Discrimination law”; “The practice of the ECtHR”.

In order to prepare the lecturers for the above-mentioned courses, the National School of Judges of Ukraine and Council of Europe experts provided trainings in which the judges from all regions of Ukraine took part.

As regards statistical data of awareness measures impact, the Government would like to inform that according to professional duties instructions, which regulate an internal rules of the law enforcement authorities, it is not obligatory to provide an examinations of training influence. However, in the context of preparation study of the candidate and capacity-building program it is important to note that at the end of such courses participants required to undergo compulsory testing. In the event of failure to pass such a test, the candidate shall be recognised as person who doesn’t comply with the requirements for position and may be brought to disciplinary responsibility.

#### As regards to trust building measures

The Government would like to point out that Ukrainian authorities on an ongoing basis carry out informational and educational work with representatives of the Roma national minority in order to build mutual understanding and cooperation. Thus, in 2017 Main Territorial Departments of the Ministry of Justice together with the Regional Offices of National Public Broadcasting Company of Ukraine conducted informational and educational work on forming a tolerant attitude of the population towards representatives of the Roma national minority in educational institutions, cultural institutions, institutions for children and youth.

During 2017, 175 speeches in mass media and 37 lectures for Roma origin people in order to encourage the registration of the birth of children and raising awareness of the family law of Ukraine were conducted by Civil Acts Registration Departments in Dnipropetrovsk region. The issue of the protection of the Roma people rights, in particular regarding the provision of study and employment, was discussed at the meetings of the Young Lawyers Coordination Council at the Dnipropetrovsk State Technical University of Ukraine.

The pamphlets regarding protection and integration into the Ukrainian society of the Roma national minority were developed by the Main Territorial Department of the Ministry of Justice in



Zakarpattya Region, and distributed to free secondary legal aid centers. On 7 August 2017 the Head of the Civil Acts Registration Departments in Zakarpattya Region together with Head of the Charity Foundation “Development” carried out a visit to the Roma settlements in Uzhhorod city during which they had explanatory dialogues with Roma origin people regarding human rights and law provisions on the state registration of children's birth.

On 22 December 2017 Charity Foundation “Romano Lungo Trajo” together with the Main Territorial Department of Ministry of Justice in the Zakarpattya Region was organised a roundtable discussion on issues of legal protection of the Roma national minority. During the event, representatives of Roma nationality learned about the possibility of obtaining free legal aid through the system of free legal aid offices and project of the Ministry of Justice of Ukraine “I have a right!”.

During 2017, 137 lectures, 39 speeches among pupils and students of educational establishments, 195 conversations among the population on counteracting bias against persons of Roma nationality were conducted by officers of the Main Department of the National Police of Ukraine in Zaporizhzhya Region.

In order to raise the awareness of representatives of the Roma national minority, an information meeting with representatives of the Roma Center “Lacho Drom” was held by the officials of the Main Territorial Department of Ministry of Justice in Zaporizhzhya Region. Furthermore, experts of Main Territorial Department of Ministry of Justice in Zaporizhzhya Region provided at least 20 seminars on topical issues of the Roma minority rights for collectives of local state administration, territorial bodies of ministries, other bodies of executive power, state enterprises, institutions, organisations.

In public libraries of Kyiv city, a number of information and educational events aimed at counteracting the bias towards Roma origin people, the formation of tolerance, respect for their culture, history, language, customs and traditions were organised.

On 2 August 2017 in Tarutyno City of Odesa Region the meetings with persons of the Roma national minority, in order to inform the population about pilot projects of the Ministry of Justice, were held.

Furthermore, sights, manuals and pamphlets on topics: “Legal status of the Roma national minority”, “Countering the biased attitude towards Roma people”, “Rights of citizens: Roma national minority issues”, “Legislation on the protection of the rights of the Roma minority “ were developed and distributed by the Main Territorial Department of Ministry of Justice in Kharkiv Region. The Department of Communications of National Police in the Kharkiv Region on the permanent basis conducts informational work which aimed at counteracting a biased attitude towards Roma origin people. District police officers carried out visits to Roma houses for informational and educational discussions aimed at raising awareness of human rights, establishing positive interactions among citizens.

During 2017 in Chernivtsy Region, 21 speeches in mass media and 11 informational seminars were carried out during which at least 384 persons were properly informed about the rights of Roma origin people.

Officials of Main Territorial Department of Ministry of Justice in Chernivtsy Region provided meetings with representatives of Roma national minority in several districts during which the rights and duties of citizens of Ukraine were clarified.

Local executive authorities were held:

- The meeting on the topic “Rights of the Roma origin people. Integration into the Ukrainian society of the Roma national minority”;
- The seminar on the topic “Legal Guarantees in Obtaining Identity Documents and Registration of Civil Status Acts for the Roma in Ukraine”.

As to general measures in the context of the violation of Article 3 of the Convention, the Government would like to point out that the question in this matter laid down under the examination of measures taken in Kaverzin/Aanasyev group of cases.

#### **IV. Publication and dissemination**

A summary of judgment in *Grigoryan and Sergeyeva* case in Ukrainian was published in the official government publication, Government's Courier [Uriadovyi Kurier], No. 142 of 2 August 2017.

The National School of Judges of Ukraine in cooperation with the Project "Enhancing the Implementation of the European Human Rights Standards in Ukraine" published recommendation for judges on topic "Advisor in prohibition of discriminations".

#### **V. 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.