

## INFORMATION OF THE MINISTRY OF JUSTICE OF UKRAINE

### General comments on the merits of the case

#### ***Presence of the requested persons within the penitentiaries of Ukraine***

As of 19 January 2021, *Mr Alisher Haydarov* does not appear in the records of pre-trial detention facilities and prisons of the State Criminal Enforcement Service of Ukraine.

*Mr Rahmiddin Saparov* served his criminal sentence in the Poltavaska Colony (No. 64) since 08 September 2017.

According to the Resolution of the Leninskyi district court of Poltava city of 02 September 2020, relevant provisions of the Law of Ukraine of 26 November 2015 No. 838 "On Amendments to the Criminal Code of Ukraine about Improvement of the Procedure for Counting by the Court of the Length of Pre-Trial Detention to the Length of Imprisonment" were applied to the prisoner *Rahmiddin Saparov*.

Under the rules of Article 72 (5) of the Criminal Code of Ukraine (hereinafter – CC) the duration of pre-trial detention of *Rahmiddin Saparov* from 21 June 2017 to 04 July 2017 was counted to the imprisonment term based on the calculation where one day of pre-trial detention should be counted as two days of imprisonment.

Taking into account the mentioned court resolution, on 19 October 2020 *Rahmiddin Saparov* was released from the Poltava Colony (No. 64) as a result of serving the term of his sentence.

#### ***Inquiries concerning the requested persons through international cooperation in criminal matters***

The Ministry of Justice of Ukraine (hereinafter - MoJ) did not receive any inquiries from the competent authorities of foreign states regarding *Alisher Haydarov* and *Rahmiddin Saparov* through international cooperation in criminal matters.

In accordance with Article 80 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 and the Protocol thereto of 1997 that cover relations between Ukraine and the Republic of Uzbekistan, extradition and prosecution matters are carried out by Prosecutors General (prosecutors) of the Contracting Parties.

### To the paragraph 9 of the joint communication

#### ***Legal safeguards within the criminal procedure***

According to Article 2 of the CC, a commission by a person of a socially dangerous action that has such elements of crime as envisaged by the CC gives grounds for criminal liability.

Practical application of the provisions of the CC, particularly the establishment of the presence of offence (*corpus delicti*) and taking into criminal liability when there are grounds for it, shall be done by the law enforcement bodies defined in Article 38 of the Criminal Procedure Code of Ukraine (hereinafter – CPC).

Article 2 of the CPC provides for that the objectives of criminal procedure are the protection of individuals, society and the state from criminal offence, the protection of rights, freedoms and legitimate interests of participants in criminal proceedings, as well as the insurance of quick, comprehensive and impartial investigation and trial in order that everyone who committed a criminal offence was prosecuted in proportion to his guilt, no one innocent was

accused or convicted, and no one was subjected to ungrounded procedural compulsion and that an appropriate legal procedure applied to each party to criminal proceedings.

Article 58 (1) of the CPC prescribes that the victim in criminal proceedings may be represented by representative which is a person who has the right to be a defense counsel in criminal proceedings.

According to Article 52 (1) of the CPC, participation of a defense counsel shall be mandatory in criminal proceedings in respect of crimes of especially grave severity. In such cases, participation of a defense counsel is ensured from the time when a person achieves the status of a suspect.

### ***Free legal aid as a type of an effective remedy in Ukraine***

The content of the right to free legal aid (hereinafter - FLA), the procedure for exercising this right, the grounds and procedure for granting FLA, state guarantees for the provision of FLA are defined by the Law of Ukraine "On Free Legal Aid" (hereinafter - the Law).

The right to FLA is a possibility guaranteed by the Constitution of Ukraine for a citizen of Ukraine, a foreigner, a stateless person, including a refugee or a person in need of additional protection, to receive full free primary legal aid, as well as the possibility of a certain category of persons to receive free secondary legal aid in the cases provided by this Law (part one of Article 3 of the Law).

According to the first part of Article 7 of the Law, free primary legal aid is a type of state guarantee, which consists in informing a person about his rights and freedoms, the procedure for their implementation, restoration in case of violation and the procedure for appealing decisions, actions or inaction of public authorities, local self-government bodies and officials.

Article 8 of the Law stipulates that all persons under the jurisdiction of Ukraine have the right to free primary legal aid in accordance with the Constitution of Ukraine and this Law.

According to Article 13 of the Law, free secondary legal aid is a type of state guarantee, which consists in creating equal opportunities for persons to access justice. Free secondary legal aid includes the following types of legal services:

- protection;
- representation of the interests of persons entitled to free secondary legal aid in courts, other state bodies, local self-government bodies, before other persons;
- preparation of procedural documents.

Part one of Article 14 of the Law defines the categories of persons entitled to free secondary legal aid in accordance with this Law and other laws of Ukraine. Such persons include, in particular:

- persons to whom administrative detention has been imposed;
- persons to whom administrative arrest has been imposed;
- persons who are considered as detainees in accordance with the provisions of criminal procedure legislation;
- persons in respect of whom a measure of restraint in the form of detention has been chosen;
- persons in criminal proceedings in respect of whom, in accordance with the provisions of the CPC, the defense counsel is engaged by an investigator, prosecutor, investigating judge or court to carry out defense by appointment or to conduct a separate procedural action;
- persons sentenced to imprisonment;

- persons covered by the Law of Ukraine “On Refugees and Persons in Need of Additional or Temporary Protection” (for all types of legal services provided for in part two of Article 13 of this Law, from the moment a person submits an application for recognition as a refugee or a person in need of additional protection in Ukraine until the final decision on the application has been made, as well as foreigners and stateless persons detained for identification and provision of forced expulsion, from the moment of detention).

Ensuring early access of detainees to free secondary legal aid is provided by regional centers for free secondary legal aid (hereinafter – regional centers) in accordance with the Procedure for informing the centers for free secondary legal aid about cases of detention, administrative arrest or application of a measure of restraint in the form of detention, approved by the Cabinet of Ministers of Ukraine of 28 December 2011 № 1363 (as amended).

In accordance with the provisions of the abovementioned Procedure, immediately after the actual detention of a person, the subjects of information (police and other authorities authorized to carry out detention) report by telephone or facsimile to the regional center information about the person who was detained.

The regional center shall, within one hour from the moment of registration of such notification, appoint a lawyer to provide free secondary legal aid to the detainee by issuing a relevant power of attorney to the defense counsel.

### ***Legal safeguards of prisoners***

The punishment in the form of deprivation of liberty in Ukraine is based on steady observance of the requirement of the current domestic legislation of Ukraine, international legal norms and standards of treatment of prisoners ratified by Ukraine, and shall not be connected with intentional acts that cause physical or moral damage or are degrading.

Prisoners, including prisoners who are foreign citizens, are entitled with a set of legal safeguards from the human rights violations, including torture and ill-treatment.

According to Article 8 of the Criminal Enforcement Code of Ukraine (hereinafter – CEC) prisoners have a right to appeal, under the law, with proposals, applications and complains to administration of prisons and prison authorities, their higher management, Ombudsman, European Court of Human Rights (hereinafter – ECtHR) and other relevant bodies of international organizations, to which Ukraine is a member or party, authorized persons within such international organizations, the court, public prosecutor’s office, other state and local authorities, NGOs. Relevant applications (correspondence) shall be filed to the administration of penitentiary. Prisoner shall be provided by the penitentiary administration with the confirmation coupon about the receipt of the application (correspondence). During three days (and in certain cases determined by law during one day) from the time of issue of confirmation coupon, such application (correspondence) shall be sent to the recipient.

Correspondence that the prisoners address to the Ombudsman and his Representatives, ECtHR, the court, and other relevant bodies of international organizations, of which Ukraine is a member or party, authorized persons within such international organizations, public prosecutor, attorney in the criminal proceeding exercising his/her mandate according to Article 45 of the CPC, or receive from them shall not be the subject of review and during one day from the time of presentation shall be delivered to the addressee or given to the prisoner in a sealed envelope that ensures the right to the privacy of correspondence.

In order to enshrine the right of prisoners to the usage of Internet the MoJ approved the Procedure for Organization of Provision of Prisoners with Access to Internet (Order No. 3233/5 of October 19, 2017). This Procedure provides for the right of prisoners to create and use e-mail, apply means of IP-telephony as well as the right for a permission to use video-conference means via Internet.

To provide prisoners with the opportunity to use the service of access to the Internet and send online-inquiry it is allowed to use specialized technical devices with relevant software and tablet without possibility of hardware of any kind of SIM-card with locked cameras as well.

According to Article 24 of the CEC and Article 12 of the Law “On Preliminary Detention” representatives of international and domestic preventive mechanisms shall be granted prompt and transparent access to all places of deprivation of liberty.

In 2020, in order to ensure the right of prisoners to FLA, according to the Memorandum concluded between the State Criminal Enforcement Service, Coordinating Center for the Provision of Legal Aid and public authority “Probation Center”, the lawyers (attorneys) conducted 2463 meetings with remand and convicted prisoners in the prisons and pre-trial detention facilities, including 857 online consultations were provided involving 855 lawyers (attorneys). 2909 remand and convicted prisoners received consulting legal aid.

Internal Prison Rules (approved by the Order of the MoJ of 28 August 2018 No. 2823/5) and Internal Pre-Trial Detention Rules (approved by the Order of the MoJ of 14 June 2019 No. 1769/5) were amended. Besides, the Order of the MoJ of 23 September 2020 No. 3306/5 “On Approval of Amendments to Certain Legal Acts of the Ministry of Justice of Ukraine with regard to Improvement of Detention Conditions of Remand and Convicted Prisoners” was adopted. The Order came into legal effect on 29 September 2020.

In accordance with abovementioned amendments, aimed at recording injuries of remand and convicted prisoners, medical staff got the rights to carry portative video-recording items on the territory of pre-trial detention facilities and prisons.

Within pre-trial detention facilities, lawyers and attorneys or other law experts who under the law have the right to provide legal aid, personally or under the order of legal entity, became allowed to carry portative computers and portative printing devices that are necessary for them to perform mandate envisaged by the legislation.

Legal and organizational measures are being taken to ensure the formation of appropriate model of the criminal enforcement process that minimizes or excludes the circumstances and facts of torture and inhuman or degrading treatment or punishment.

Among generally well-known measures of internal control, prosecutorial supervision and public control that are efficient measures for the prevention of negative signs in the activity of authorities and establishments of the State Criminal Enforcement Service, the usage of portative video-recording items and video-surveillance systems is introduced. These measures are of preventive nature and seek to significantly guarantee the integrity and transparency of the activity of penitentiaries, ensure the observance and implementation of legal rights and interests of remand and convicted prisoners and secure the safety of the prison staff, prisoners and citizens situated on the territory of prisons.

Usage of video-recording items and video-surveillance systems ensures:

- increase of responsibility of prison staff during execution of their duties;
- increase of the level of trust of society to prison staff;
- increase of the level of protection of the human rights and freedoms;
- prevention of cases of unjustified application of measures of physical influence, special items and firearms by the prison staff or against the latter;
- securing of objective consideration of cases by the competent authority through creation of additional evidences;
- securing of objective consideration of inquiries, letters, applications, complains about decisions, actions or inactions of the prison staff; reducing of number of unjustified complains;

- prevention of conflict situations.
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## **INFORMATION OF THE SECURITY SERVICE OF UKRAINE**

The Security Service of Ukraine has decided on the forced return to the country of origin or a third country of a foreigner or stateless person in respect of citizens of Uzbekistan Mr. A.Haydarov, 15.07.1975, and Mr. R.Saparov, 06.04.1989. These decisions were taken due to the fact that the actions of the said foreigners were contrary to the interests of national security of Ukraine (A.Haydarov illegally stayed in the territory of Ukraine and was engaged in transportation to the zone of armed conflicts in Syria and Iraq, through the territory of Turkey, of a military ammunition and dual-use goods. Having been in the territory of our country in violation of migration legislation, R.Saparov has committed crimes of a violent nature (convicted under article 186 of the Criminal Code of Ukraine "Robbery").

The Security Service of Ukraine did not carry out any investigative and procedural measures (reporting of suspicion, application of measures to ensure criminal proceedings, drawing up an indictment, extradition, etc.) in relation to these citizens of Uzbekistan.

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