



Prisoner on hunger strike was force-fed to suppress protest

In today's **Chamber judgment**¹ in the case of [Yakovlyev v. Ukraine](#) (application no. 42010/18) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

The case concerned the applicant's force-feeding whilst in prison for robbery, after going on hunger strike in protest against his conditions of detention and the attitude of the prison officials.

Given the relatively short time that had elapsed since the start of his hunger-strike, the lack of any explanation in the medical report as to the imminent risk to his life, the absence of any need for hospitalisation, and the fact that he was well enough to attend a domestic court hearing, the Court was not convinced that it had been medically necessary to force-feed Mr Yakovlyev. The judge had ordered that he be force-fed without responding to his concerns and without exploring whether there could be an alternative course of action, and the force-feeding had been carried out in the absence of any legal regulations on the procedures to be followed. Therefore, the Court was not convinced that the domestic courts had fulfilled their role of effective procedural safeguard against abuse. Lastly, an investigation into the real reasons behind the hunger-strike protest and a meaningful response to their complaints and demands would have been the right way for the State to examine and manage the situation. As the only response to the inmates' hunger strike had been to force-feed them, the Court could not rule out that the aim behind the force-feeding had been to suppress the protests in Zamkova Prison.

The Court concluded that the State had not properly managed the situation in relation to Mr Yakovlyev's hunger strike and had subjected him to excessive physical restraint and pain.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Andriy Yakovlyev, is a Ukrainian national who was born in 1983. His current place of residence is unknown.

In November 2014 Mr Yakovlyev was found guilty of robbery and was sentenced to nine years' imprisonment. In early 2015 he began serving his sentence in Zamkova Prison which was a former monastery dating back to the 17th century, and in which there were ongoing conflicts between the prison administration and inmates due to poor conditions of detention.

On 22 January 2018 at least ten inmates, including Mr Yakovlyev, went on hunger strike in protest against those conditions of detention and the attitude of the prison officials. Three days later, Mr Yakovlyev was placed in a disciplinary cell for two weeks ostensibly for having refused to clean the walking yard. On 29 January he was examined by the head of the prison's medical unit and a doctor from the Izyaslav Primary Health Care Centre, who diagnosed that he was suffering from

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

starvation, lower than normal potassium levels (hypokalaemia), exacerbation of chronic pancreatitis and general poisoning of his system. They felt that he should be force-fed.

In deciding whether to grant the prison governor's subsequent application for force-feeding, the Izyaslav Court heard the head of the prison's medical unit and the doctor, who submitted that the applicant's health was deteriorating, and that his health and life were in danger. Despite that, they stated that he did not require hospitalisation and that force-feeding would lead to his quick recovery. Mr Yakovlyev, who was present at the court hearing, objected, maintaining that he was not seriously ill and claiming that there were no legal regulations governing force-feeding procedures.

The court held that there was sufficient proof that Mr Yakovlyev's health was at risk and that his life was in danger. It granted the prison governor's application for immediate enforcement of force-feeding on 31 January 2018, and also extended that to three other inmates who had started a hunger strike at the same time as Mr Yakovlyev. A few days later, similar orders were issued in respect of six additional hunger strikers in the prison.

From 1-5 February 2018, Mr Yakovlyev was subjected to force-feeding on a daily basis. He described having his hands handcuffed behind his back and being held down by several prison officers whilst one of the prison officers forced a rubber tube down his throat causing severe pain and making him choke. The process lasted between 30-90 minutes.

On 5 February 2018 the applicant lodged an appeal, stating that the Code on the Execution of Sentences explicitly prohibited force-feeding of prisoners on hunger strike and that such a measure could be applied only when there was a risk of permanent damage to their health or if their lives were in danger. While there was no legally established procedure for force-feeding in Ukraine, one of the prison officials had specified in the court hearing that the prisoner would be fed a nutritional liquid mixture down a tube and that, if he resisted, he would be handcuffed and a "mouth-widener" applied so that the rubber tube could be forced down his throat. Mr Yakovlyev submitted that such treatment amounted to torture. On 6 February 2018 he ended his hunger strike.

The appellate court rejected his appeal, holding that his arguments that the force-feeding method was traumatic and not provided for by law were "groundless."

Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the applicant alleged that he and other inmates had been force-fed for the sole purpose of suppressing their protests. He submitted that it had not been necessary from a medical point of view, that it had grossly breached his personal autonomy, and that it had been carried out with unjustified use of force and restraint, causing him physical pain and mental suffering. He further complained that there had been a violation of Article 6 § 1 (right to a fair trial) on account of his participation in the appellate court hearing via video conference rather than in person.

The application was lodged with the European Court of Human Rights on 25 August 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Georges Ravarani (Luxembourg), *President*,
Carlo Ranzoni (Liechtenstein),
Lado Chanturia (Georgia),
María Elósegui (Spain),
Mattias Guyomar (France),
Kateřina Šimáčková (the Czech Republic),
Mykola Gnatovskyy (Ukraine),

and also Victor Soloveytschik, *Section Registrar*.

Decision of the Court

Article 3

The Court observed that Mr Yakovlyev complained of the lack of any medical necessity for his force-feeding and of the cruelty of that procedure, alleging that the authorities' real intention had been to suppress the protests in the prison. It noted that, as soon as Mr Yakovlyev had informed the prison administration of his hunger strike, he had undergone a medical examination. At a further examination one week later, although the doctor considered that his medical condition was not serious enough for him to be put in hospital, he concluded that he needed to be force-fed as his life was in danger. Despite the lack of further explanation, the Izyaslav Court accepted that conclusion as sufficient grounds for Mr Yakovlyev to be force-fed, even though he was fit enough to participate in the hearing in person and maintained that there was no serious deterioration to his health.

Given the relatively short time that had elapsed since the beginning of his hunger-strike, the lack of any explanation in the medical report as regards the imminent risk to his life, the absence of any need for hospitalisation, and the fact that he had been well enough to attend the court hearing, the European Court was not convinced that the force-feeding had been medically necessary. Moreover, the judge had ordered that he be force-fed without responding to his concerns and without exploring whether there could be an alternative course of action. His submission that there were no legally established procedures for force-feeding in Ukraine had been left unanswered, and the appellate court had simply dismissed his arguments as "groundless" and "not worthy of attention". Therefore, the Court was not convinced that the domestic courts had fulfilled their role of effective procedural safeguard against abuse.

Furthermore, the force-feeding had been carried out in the absence of any legal regulations on the procedures to be followed in such cases. The Ombudsman had noted that "any prison staff member [could] carry out ... force-feeding at his entire discretion". That and the lack of any evidence as to how it had indeed been implemented were sufficient for the Court to accept Mr Yakovlyev's account of the events, including that he had suffered excessive physical restraint and pain.

Lastly, the Court noted that, as acknowledged by the domestic authorities themselves, inmates of Zamkova Prison had been raising grievances about violations of their rights by the prison administration for years, but to no avail. Under such circumstances, the hunger strike started by Mr Yakovlyev together with other inmates on 22 January 2018 could indeed be regarded as a form of protest prompted by the lack of other ways of making their demands heard. An investigation into the real reasons behind the protest and a meaningful response to their complaints and demands would have been the right way for the State to examine and manage the situation. However, no such investigation had been carried out and the only response to the inmates' hunger strike had been to force-feed them. The Court therefore could not rule out that, as submitted by Mr Yakovlyev, his force-feeding had in fact been aimed at suppressing the protests in Zamkova Prison.

The Court concluded that the State had not properly managed the situation in relation to Mr Yakovlyev's hunger strike and had subjected him to ill-treatment in breach of Article 3 of the Convention.

Articles 6 § 1 and 8

The Court found that it was not necessary to examine the admissibility and merits of the remaining complaints.

Just satisfaction (Article 41)

The Court held that Ukraine was to pay the applicant 12,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.