



Pre-trial detention conditions of former Ukrainian Minister of the Interior were degrading

The case of [Lutsenko v. Ukraine \(no. 2\)](#) (application no. 29334/11) concerned several complaints about the conditions of the pre-trial detention of the former Minister of the Interior, Yuriy Lutsenko, from December 2010 to April 2012 and his treatment during court hearings.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held:

by a majority, that there had been a **violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights on account of the conditions of Mr Lutsenko's detention from 28 December 2010 to 28 April 2011;

unanimously, that there had been **violations of Article 3** of the Convention on account of the conditions of Mr Lutsenko's detention on days of court hearings and on account of his placement in a metal cage during the trial;

unanimously, that there had been **no violation of Article 3** on account of the conditions of his detention from 28 April to 10 May 2011, from 23 May 2011 to 6 April 2012 and on 20 April 2012, and **no violation of Article 3** on account of the medical treatment which Mr Lutsenko received in detention.

The Court found in particular: that for more than four months Mr Lutsenko had been held in a cell which lacked sufficient space; that he had been required to attend long court hearings while in a poor state of health, without sufficient breaks or being provided with appropriate food; and there had been no justification for his placement in a metal cage during court hearings.

Principal facts

The applicant, Yuriy Lutsenko, is a Ukrainian national who was born in 1964. He was the Minister of the Interior of Ukraine from 2005 to 2006 and from December 2007 to March 2010. Since August 2014 he has been the leader of the Bloc of the Petro Poroshenko party.

Mr Lutsenko was charged with a number of offences – including misappropriation and embezzlement – in November and December 2010. On 26 December 2010 he was arrested, and on 28 December he was placed in a Kyiv pre-trial detention centre, where he remained until August 2012, interrupted by several days spent in an emergency hospital. In February 2012 he was convicted as charged and sentenced to four years' imprisonment. The judgment was upheld on 3 April 2013 at last instance by the Higher Specialised Court for civil and criminal cases. Mr Lutsenko was released on 7 April 2013 following a decree of pardon issued by the President of Ukraine at the time.

Upon his admission to the detention centre in December 2010 until late April 2011, Mr Lutsenko was held in a cell measuring less than nine square metres, which he shared with one or two other

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.

inmates. According to his submissions, the cell was poorly ventilated and lacked both personal hygiene facilities and access to drinking water.

Having been diagnosed with diabetes, chronic gastritis and pancreatitis prior to his arrest, Mr Lutsenko maintains that the medical care he received in detention was inadequate. He submits that, while they did monitor his health, the prison doctors did not pay attention to his chronic diseases. Moreover he was forced to attend a court hearing despite his poor state of health. In April 2011 Mr Lutsenko went on hunger strike for more than one month to protest his continued pre-trial detention.

Mr Lutsenko also maintains that he was held in poor conditions, inadequate to his state of health, during days when court hearings were held. In particular, he had to wait in a small and poorly ventilated room for the hearings and he was not provided with food or drinking water, at one time for 14 hours. During hearings he was placed in a metal cage in the courtroom.

Complaints, procedure and composition of the Court

Mr Lutsenko thus complained that his rights, in particular under Article 3 (prohibition of inhuman or degrading treatment), had been violated on account of: the material conditions of his detention; the inadequate medical treatment he received in detention; his detention conditions on hearing days; and his placement in a metal cage during the trial. As regards the latter point, he submitted in particular that national legislation did not require that the accused should be placed in a cage and that there were no reasons – such as security considerations – to justify the measure.

The application was lodged with the European Court of Human Rights on 6 May 2011.

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

Mark Villiger (Liechtenstein), *President*,
Angelika Nußberger (Germany),
Boštjan M. Zupančič (Slovenia),
Ganna Yudkivska (Ukraine),
Vincent A. de Gaetano (Malta),
André Potocki (France),
Aleš Pejchal (the Czech Republic),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

[Article 3 – detention conditions](#)

From 28 December 2010, when Mr Lutsenko had been placed in the Kyiv pre-trial detention centre, **until 8 May 2011**, he had been kept in a cell measuring less than nine square metres, which he had shared with two other detainees. He therefore had had less than three square metres at his personal disposal, the floor area being reduced even further since the cell also contained sanitary facilities. Having regard to its relevant case-law, the Court came to the conclusion that the detention conditions in which Mr Lutsenko had been kept during this period had been degrading. There had accordingly been a **violation of Article 3**.

As regards the **remaining periods of his detention**, in the same pre-trial detention centre, namely from 28 April to 10 May 2011, from 23 May 2011 to 6 April 2012, and on 20 April 2012, the Court noted in particular that Mr Lutsenko had had more than four square metres of individual space at his disposal. Moreover, there had been no shortage of sleeping places in the cells concerned; there was no evidence that the lighting or ventilation systems had been deficient; and he had been allowed

one hour of exercise per day. The Court considered that, while in some cells the sanitary facilities were very close to the bed and other furniture, the conditions of his detention during those periods had not reached the threshold of severity which would lead to a characterisation as inhuman or degrading. Accordingly there had been **no violation of Article 3** as regards the detention conditions during this period.

Article 3 – medical treatment

The Court found **no violation of Article 3** as regards the medical treatment provided to Mr Lutsenko in detention. It observed that his health had received considerable attention from the authorities. In particular, he had been examined by doctors immediately upon his admission to the detention centre, undergoing clinical, laboratory and X-ray tests. During his detention he had been under regular supervision of the centre's medical unit and he had been examined by civilian doctors while in hospital on two occasions. While on hunger strike, he had been examined on a daily basis. Later on, laboratory test had been conducted to assess the consequences of his hunger strike. Overall, the authorities had thus provided him with comprehensive and effective medical assistance. Although on one occasion the authorities had failed to ensure Mr Lutsenko's speedy transfer to hospital for additional examinations as recommended by the doctors, the Court did not find that this inaction was severe enough to raise an issue under Article 3.

Article 3 – hearing days

The court found a **violation of Article 3** on account of Mr Lutsenko's detention conditions on hearing days. Overall, he had attended 79 hearings before the trial court over a period of about eight months, while he suffered from several diseases requiring continuous treatment. On four occasions, in May 2011 and January 2012, he had to face particular hardship, spending several hours in a waiting room at the court and attending hearings which lasted long hours – the longest one almost 14 hours – without longer breaks. Moreover, on those four days, he had not received any food which would have been appropriate to his state of health. In that context, the Court was not convinced by the Ukrainian Government's assertion that Mr Lutsenko had been permitted to take with him some food provided by his family. The Court underlined that such permission could not substitute for appropriate catering arrangements, since it was primarily the State's responsibility to ensure the well-being of persons deprived of their liberty. The Court considered that the cumulative effect of malnutrition and his state of health must have caused Mr Lutsenko physical suffering and fatigue, moreover at a time – the trial – when he needed the ability to concentrate.

Finally, the Court also found a **violation of Article 3** on account of Mr Lutsenko's placement in a metal cage during the trial. The Court referred to other cases in which it had found a violation of Article 3 on account of that practice. As the applicants in those cases, Mr Lutsenko had no criminal record at the time of the trial and he was not suspected of a violent crime. The Court was therefore not convinced by the argument that the measure had been taken in the interest of public safety. Moreover, behind the bars Mr Lutsenko had been exposed not only to people attending the hearing but, given the presence of journalists and photographers at the trial, also to a much larger public following the proceedings in the media. The Court thus considered that the security arrangements had been excessive and could have reasonably been perceived as humiliating by Mr Lutsenko and by the public.

Just satisfaction (Article 41)

Mr Lutsenko did not submit a claim for just satisfaction. Accordingly, the Court did not consider it necessary to make any awards in that respect.

Separate opinion

Judge Pejchal expressed a partly dissenting opinion which is annexed to the judgment.

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.