EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Group of prisoners tortured in search and security operation following their hunger strike

In today's Chamber judgment in the case of **Karabet and Others v. Ukraine** (application nos. 38906/07 and 52025/07), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

two violations of Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights, on account of the applicants having been subjected to torture and on account of the lack of an effective investigation into their allegations of torture; and

a violation of Article 1 of Protocol No. 1 (protection of property)

The case concerned the treatment of a group of detainees during and after a search and security operation conducted in January 2007 in Izyaslav Prison.

The Court held in particular that the large-scale violence against the prisoners, intended to punish them for their peaceful hunger strike, had amounted to torture.

Principal facts

The applicants are 18 Ukrainian nationals who were born between 1968 and 1988. They were all serving prison sentences in Izyaslav Prison, where, on 14 January 2007, they participated in a hunger strike to protest about the conditions of their detention, together with almost all the 1,120 prisoners detained there at the time. On 22 January 2007, the prison authorities conducted a security operation, in which 137 officers – a number of whom belonged to a special forces unit - were involved and which included, in particular, searches of the premises and body searches of a group of 41 detainees. Immediately after the search, 41 prisoners, whom the authorities considered to be the organisers of the hunger strike, including 17 of the 18 applicants, were transferred to different detention facilities in a rushed manner without the possibility to collect their personal belongings. The official report of the search operation noted that "measures of physical influence" were applied to eight prisoners, including two applicants. The report noted no complaints from prisoners.

The applicants allege that, during and/or following the operation: they were brutally beaten by masked security officers and by prison guards - to the point of fainting in the case of some of them; they were tightly handcuffed; they were ordered to strip naked and adopt humiliating poses; they were transported in an overcrowded van; they were deprived of access to water or food and exposed to a low temperature without adequate clothing; and, no adequate medical assistance was provided to them.

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

Following the operation, many of the applicants' relatives – who had no information about the applicants' whereabouts – complained to various State authorities, including the Ombudsman, the regional prosecutor's offices and the prison administration, about the alleged ill-treatment and arbitrary transfer of the prisoners. Eight days after the operation, on 30 January, the regional prosecutor questioned seven of the applicants and on the same day they were examined by a forensic medical expert, who noted that two of them had bruises on their buttocks which could have been inflicted by a rubber truncheon. The reports for the other five applicants were all worded identically and were confined to the statement that "no external injuries" had been discovered.

On 5 February 2007, the prosecutor initiated disciplinary proceedings against the governor of Izyaslav Prison, who under the applicable provisions would have been required to inform the prosecutor in advance of the search operation, but had failed to do so. On 7 February 2007, the prosecutor refused to institute criminal proceedings against the prison administration or other authorities involved in the operation. According to the applicants' submissions, their lawyer was only informed of this decision in July 2008. The investigation was reopened in September 2007 and subsequently closed and reopened on a number of occasions, without any further action having been taken.

Complaints, procedure and composition of the Court

Relying on Article 3, the applicants complained of having been ill-treated during and after the security operation. They further complained, under Article 13 (right to an effective remedy), that the investigation into these allegations was ineffective. Finally, relying on Article 1 of Protocol No. 1, they complained that their personal belongings had not all been returned to them following their hasty transfer to different detention facilities.

The case originated in two applications, which were lodged with the European Court of Human Rights on 27 August 2007 and on 21 November 2007, respectively. The Court declared the application inadmissible in the part pertaining to one out of the 18 applicants, as according to the submissions, he was not among the prisoners subjected to the ill-treatment and loss of property complained of and could therefore not claim to be a victim, within the meaning of Article 34 of the Convention (individual applications), of a violation of his Convention rights. The Court delivered its judgement (see below) in respect of the remaining 17 applicants, one of whom died in the course of the proceedings and whose application was pursued by his mother on his behalf.

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),
André **Potocki** (France),
Paul **Lemmens** (Belgium),
Aleš **Pejchal** (the Czech Republic),

and also Claudia **Westerdiek**, *Section Registrar.*

Decision of the Court

Article 3 (investigation)

The Court considered it appropriate to examine the applicants' complaint concerning the investigation of their allegations under Article 3.

Given the magnitude of the operation of which the applicants complained and the fact that it had been conducted under the control of the authorities and with their full knowledge, the Court found that the applicants had an arguable claim of ill-treatment. The State authorities had therefore been under an obligation to carry out an effective investigation into the allegations. However, the Court found that the investigation had not been thorough or independent, had not been prompt and had lacked public scrutiny.

In particular, a forensic medical examination had only been arranged for the group of seven applicants who had been transferred to one detention centre, while the remaining ten who had been placed in another detention facility had not undergone any such examination. As regards the first group, only a visual examination had taken place, without a serious attempt to establish all the injuries and determine their cause. As to the applicants' questioning, it had not been ensured that they were protected from intimidation. In particular, there was no evidence that the questioning sessions had taken place without the presence of detention officers. Furthermore, the Court could only agree with the authorities' criticism - when reopening the proceedings on several occasions - that the investigation had been incomplete. In the Court's view, the authorities had hastily searched for any reason to discontinue the proceedings.

Moreover, the investigation had been entrusted to the prosecutor who was also in charge of supervising compliance with the law in penal institutions. The Court had already found in previous judgments in cases against Ukraine that the status of such a prosecutor, his proximity to prison officials and his integration into the prison system did not offer adequate safeguards such as to ensure an independent and impartial review of prisoners' allegations of ill-treatment on the part of prison officials.

Finally, no evidence in the case file showed that any of the decisions taken in the proceedings had been duly served on the applicants. Their right to participate effectively in the investigation had thus not been ensured. The public at large had been denied detailed information about the investigation which had hindered the possibility of public scrutiny.

In conclusion, the investigation had been inadequate. The Court therefore dismissed an objection of the Ukrainian Government to the effect that the applicants' complaint before the Court was premature since they had not exhausted the national remedies. The Court accordingly found a violation of Article 3 as regards the investigation of the applicants' complaints of ill-treatment.

Article 3 (treatment)

While the national authorities had acknowledged the use of limited physical force only with regard to two of the applicants, the Court found it established that all 17 applicants had been subjected to the treatment of which they complained. The Court was not convinced by the medical records noting that five of the applicants did not have any external injuries, given that the examination had taken place more than a week after the security operation and given that there were methods of applying force that did not leave any trace on a victim's body.

Assessing the facts on the basis of the remaining materials in the case file and the findings in another case against Ukraine concerning a similar security operation which

had earlier been carried out in Zamkova Prison (neighbouring Izyaslav Prison), the Court noted in particular the involvement of the special forces unit, a paramilitary formation equipped and trained for carrying out antiterrorist operations. It observed that Ukraine had subsequently repealed the legal provisions providing the basis for the existence of such a unit as being unconstitutional and against the Court's case-law. The Court further noted that while before the operation almost all detainees of the prison had participated in a hunger strike to complain against the detention conditions, no complaint was recorded after the operation. Such a drastic change of opinion in a few hours could only be explained by indiscriminate brutality against the prisoners.

The prison authorities had resorted to large-scale violent measures under the pretext of a general search and security operation, which had in fact been targeted against the most active organisers of the hunger strike. The prisoners' protests had been confined to a peaceful refusal to eat prison food and the events had taken place in a prison where all inmates were serving a first sentence for minor or medium-severity offences. Moreover, the officers involved had outnumbered the prisoners targeted in the operation by more than three to one. As regards the two cases in which the use of force had been acknowledged, the authorities had not shown that the violence had been necessary in the circumstances. The Court therefore had no doubt that the authorities' brutal action had been grossly disproportionate given that there had been no transgressions by the applicants. The violence had been intended to crush the protest movement, to punish the prisoners for their peaceful hunger strike and to discourage any further complaints. In those circumstances, the Court found that the applicants had been subjected to treatment which could only be described as torture. There had accordingly been a violation of Article 3 on that account.

Article 1 of Protocol No. 1

The Court observed that the hasty manner in which the applicants had been transferred from Izyaslav Prison to the two other detention centres, without any chance to collect their personal belongings, was corroborated by sufficient evidence. In the absence of any evidence provided by the Government to prove that the applicants had eventually received their property, the Court concluded that at least some of it had to have been lost. That interference with the applicants' rights was not lawful and had not pursued any legitimate aim. Accordingly, the Court found a violation of Article 1 of Protocol No. 1.

Just satisfaction (Article 41)

The court held that Ukraine was to pay to each of the 17 applicants 25,000 euros (EUR) in respect of non-pecuniary damage and to one of the applicants EUR 10,000 in respect of costs and expenses.

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.