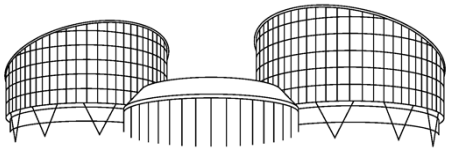

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF YAKOVLYEV v. UKRAINE

*(Application no. 42010/18)*

JUDGMENT

Art 3 (substantive) • Inhuman and degrading treatment • Force-feeding of prisoner on hunger strike, in protest against prison treatment, subjecting him to excessive physical restraint and pain • Medical necessity for force-feeding not convincingly shown to exist • Insufficient procedural safeguards due to absence of legal regulations and ineffective judicial control • State's response to protests limited to force-feeding inmates • Need to investigate underlying reasons for inmates' protests and to ensure a meaningful response to their complaints essential for proper examination and management of situation

STRASBOURG

8 December 2022

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Yakovlyev v. Ukraine,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Georges Ravarani*, President*,
Carlo Ranzoni,
Lado Chanturia,
María Elósegui,
Mattias Guyomar,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 42010/18) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Andriy Gennadiyovych Yakovlyev ("the applicant"), on 25 August 2018;

the decision to give notice of the application to the Ukrainian Government ("the Government");

the parties' observations;

Having deliberated in private on 15 November 2022,

Delivers the following judgment, which was adopted on that date:

# INTRODUCTION

1. The case concerns the applicant's force-feeding in prison and raises issues under Article 3 of the Convention.

# THE FACTS

2. The applicant was born in 1983. His current place of residence is unknown[1]. He was represented by Ms N. Okhotnikova, a lawyer practising in Kyiv.

3. The Government were represented by their Acting Agent, Ms O. Davydchuk.

4. The facts of the case may be summarised as follows.

## I. BACKGROUND

5. On 12 November 2014 the applicant was found guilty of robbery and was sentenced to nine years' imprisonment.

[1] The applicant's prison sentence was to expire on 20 March 2022. The Court has not, however, received any information about his release or his place of residence thereafter.

6. On 7 February 2015 he started serving his sentence in Zamkova Prison no. 58 (further referred to as "Zamkova Prison" or "the prison").

7. That prison is located in a former monastery dating back to the seventeenth century. Its inmates went on hunger strike in protest against the allegedly poor conditions of detention on several occasions in December 2014, December 2016 and May 2017. In December 2016 force-feeding by administration of a nutritional liquid mixture through a gastric rubber tube was applied in respect of four prisoners[2].

8. As further submitted by the applicant with reference to public sources, on 25 October 2017 the Parliamentary Commissioner for Human Rights of Ukraine ("the Ombudsman") and the non-governmental organisation the Kharkiv Human Rights Protection Group, with representatives from the Ministry of Justice and the State Prisons Service, conducted a round table on "The situation regarding prisoners' rights in Zamkova Prison". It was observed that, as established by a monitoring visit to that prison, the temperature in the cells sometimes went below 11°C, and that the problem of inadequate heating had to be resolved. It was also noted that similar round tables had already been conducted previously, but they had not yielded any positive results, and conflicts between the prison administration and inmates persisted. The Government did not refer to this round table in their observations.

## II. THE APPLICANT'S HUNGER STRIKE AND FORCE-FEEDING

9. On 22 January 2018 at least ten inmates of Zamkova Prison, including the applicant, went on hunger strike.

10. On 24 January 2018 the applicant wrote the following statement to the prison governor:

> "Starting from 22 January 2018 I refuse to consume any food in protest against unlawful actions of the prison administration, on account of systemic violations of my constitutional rights".

11. On the same day the applicant was examined by the head of the medical unit. No issues with his health were reported. Nor did he raise any complaints. It was indicated in the medical examination report that the dangers of starvation had been explained to the applicant.

12. On 25 January 2018 the applicant was placed in a disciplinary cell, until 8 February 2018, for "having categorically refused to clean the walking yard". According to the applicant, the real reason was to suppress any protests in the prison.

[2] The applicant submitted four related rulings by the Izyaslav Town Court ("the Izyaslav Court"), on which the Government did not comment.

13. On 28 January 2018 the applicant inflicted four cuts on himself on his left forearm. Following an initial surgical debridement, his wounds were bandaged. The bandages were changed on a daily basis thereafter.

14. On 29 January 2018 the head of the Zamkova Prison medical unit examined the applicant with a doctor from the Izyaslav Primary Health Care Centre, and issued a report with the following findings: body temperature at 36.4ºC, blood pressure at 100/60, weight of 60 kg at a height of 170 cm[3], pulse at 96, skin paleness and reduced elasticity, soft and hollow abdomen, imperceptible intestinal motility, absent defecation, reduced urination, blood sugar level at 4.1 mmol/L (noted to be below normal), and perceptible acetone odour from the mouth. The applicant reportedly complained of pain and cramps in the lower limbs, as well as pain in the left half of the abdomen. The overall diagnoses were formulated as follows: starvation, hypokalaemia, exacerbation of chronic pancreatitis and general poisoning of the system. The medical examination report also stated:

> "I consider that there is a risk [to the applicant] of a permanent health disorder and an obvious danger to his life.
>
> ... in order to save [the applicant's] life and health, he should be subjected to force-feeding by administration of a nutritional liquid mixture through a tube."

15. On 30 January 2018 the prison governor, relying on the above-mentioned report, applied to the Izyaslav Court for an order for the applicant's force-feeding.

16. On 31 January 2018 the court, sitting in a single-judge formation, examined that application. It heard the head of the prison's medical unit, who submitted that the applicant's health was constantly deteriorating, that there was an obvious danger to his life and that force-feeding by the requested method would allow his quick recovery. The court also heard the other doctor who had participated in the applicant's examination on 29 January 2018 (see paragraph 14 above). He noted that, while the applicant did not require hospitalisation, his major health indicators were deteriorating. In particular, his blood pressure was getting lower (90/50 reported at the latest examination). In addition, the applicant's sugar level had been reported to have dropped to 3.0 mmol/L. The doctor observed that the applicant's chronic diseases were worsening, that he had hypokalaemia and that his continued starvation might lead to a critical condition.

17. The applicant, who was present in the court hearing and was legally represented, objected to his force-feeding. He noted that, although he did not feel well, there was no indication of a serious deterioration of his health and that the force-feeding procedure was not legally regulated.

18. Referring to the report of 29 January 2018 and the doctors' submissions in the courtroom, the Izyaslav Court held that it had sufficient evidence proving that the applicant was facing a risk of a permanent health

[3] The applicant's weight at the beginning of his hunger strike had been 62 kg.

disorder and that there was an obvious danger to his life. That being so, it considered that his force-feeding by administration of a nutritional liquid mixture through a tube could not be regarded as degrading treatment. In the light of those considerations and referring to Article 116 § 3 of the Code on the Execution of Sentences (see paragraph 27 below), the Izyaslav Court granted the prison governor's application. Its ruling was to be enforced immediately.

19. On 31 January 2018 the Izyaslav Court also ordered, on similar grounds, force-feeding of three other inmates of Zamkova Prison who had been on hunger strike since 22 January 2018. In early February 2018 it issued such orders in respect of six additional hunger strikers in that prison.

20. During the period from 1 February to 5 February 2018 the applicant was subjected to force-feeding on a daily basis, which was documented by the following record in his medical file:

> "Force-feeding has been carried out by administration of a nutritional liquid mixture through a tube, in the presence of a doctor."

21. The applicant described that procedure as follows. He was handcuffed with his hands behind his back and was held by several prison officers. One of the prison officers forcefully inserted a special rubber tube deep into the applicant's throat causing him serious pain and making him choke. The whole process lasted from thirty to ninety minutes.

22. The Government did not provide any description of the applicant's force-feeding other than what was recorded in the applicant's medical file.

23. On 5 February 2018 the applicant lodged an appeal against the ruling of 31 January 2018 (see paragraphs 16-18 above). He observed that Article 116 § 3 of the Code on the Execution of Sentences (as amended in 2016) explicitly prohibited force-feeding of prisoners on hunger strike and, in accordance with that provision, such a measure could be applied only where there was an established risk of a permanent health disorder and an obvious danger to the person's life. In the applicant's view, such risks had not been established in his case. He further noted that, while there was no legally established procedure for force-feeding in Ukraine, an official of Zamkova Prison had specified in the court hearing that this would be done by administration of a nutritional liquid mixture to the applicant through a tube and that, in the event of resistance, physical force would be applied, with the use of handcuffing and a "mouth-widener", followed by the forceful insertion of a rubber tube. The applicant submitted that such treatment amounted to torture.

24. On 6 February 2018 the applicant stopped his hunger strike.

25. On 26 February 2018 the Khmelnytskyy Regional Court of Appeal upheld the Izyaslav Court's ruling of 31 January 2018. Having reiterated the medical findings relied on by the first-instance court, the appellate court stated:

"Under such circumstances, [the applicant's] arguments that the court had no evidence of the existence of an obvious danger to his life are invented and not worthy of attention."

26. In addition, the appellate court provided a summary of Article 116 § 3 of the Code on the Execution of Sentences and held as follows:

"The arguments made in the appeal that the [chosen] force-feeding method was rather traumatic and not provided for by law are groundless."

# RELEVANT LEGAL FRAMEWORK AND PRACTICE

## I. CODE ON THE EXECUTION OF SENTENCES (2003)

27. The relevant provisions of the Code on the Execution of Sentences (2003) read as follows:

**Article 116. Medical and sanitary services for prisoners**

"... 3. Force-feeding of a prisoner refusing to eat shall be prohibited. Force-feeding can be used only on the basis of a court decision delivered in accordance with a medical conclusion that the prisoner faces a risk of a permanent health disorder or there is an obvious danger to his life.

As soon as it becomes known that a prisoner refuses to eat, [he or she] shall be placed under permanent medical monitoring.

When preparing a medical conclusion, the doctor shall define the type of [appropriate] force-feeding depending on the prisoner's health condition ..."

## II. THE 2018 ANNUAL REPORT BY THE PARLIAMENTARY COMMISSIONER FOR HUMAN RIGHTS (OMBUDSMAN) OF UKRAINE

28. The relevant extracts read as follows:

"As a result of violations of their rights by the [Zamkova Prison] administration, inmates often resort to various protests, in particular, hunger strikes. In 2018, following applications by the prison administration, the Izyaslav [Town Court] ruled that at least five inmates of that prison be subjected to force-feeding. That said, the Ministry of Justice repealed the regulations on force-feeding several years ago and no new regulatory document has been adopted in their place. This means that any prison staff member may carry out such force-feeding at his entire discretion (it is noteworthy that force-feeding itself is a form of ill-treatment); ...

RECOMMENDATIONS:

To the Ministry of Justice:

1. To develop legal standards on medical examinations and force-feeding of prisoners who have announced a hunger strike ..."

# INTERNATIONAL MATERIAL

## I. WORLD MEDICAL ASSOCIATION DECLARATION OF MALTA ON HUNGER STRIKERS[4]

29. The Declaration of the World Medical Association (WMA) on Hunger Strikers reads as follows:

"PREAMBLE

1. Hunger strikes occur in various contexts but they mainly give rise to dilemmas in settings where people are detained (prisons, jails and immigration detention centres). They are usually a form of protest by people who lack other ways of making their demands known. In refusing nutrition for a significant period, prisoners and detainees may hope to obtain certain goals by inflicting negative publicity on the authorities. Short-term food refusals rarely raise ethical problems. Prolonged fasting risks death or permanent damage for hunger strikers and can create a conflict of values for physicians. Hunger strikers rarely wish to die but some may be prepared to do so to achieve their aims.

2. Physicians need to ascertain the individual's true intention, especially in collective strikes or situations where peer pressure may be a factor. An emotional challenge arises when hunger strikers who have apparently issued clear instructions not to be resuscitated reach a stage of cognitive impairment. The principle of beneficence urges physicians to resuscitate them but respect for individual autonomy restrains physicians from intervening when a valid and informed refusal has been made. This has been well worked through in many other clinical situations including refusal of life saving treatment. An added difficulty arises in custodial settings because it is not always clear whether the hunger striker's advance instructions were made voluntarily and with appropriate information about the consequences.

PRINCIPLES

3. Duty to act ethically. All physicians are bound by medical ethics in their professional contact with vulnerable people, even when not providing therapy. Whatever their role, physicians must try to prevent coercion or maltreatment of detainees and must protest if it occurs.

4. Respect for autonomy. Physicians should respect individuals' autonomy. This can involve difficult assessments as hunger strikers' true wishes may not be as clear as they appear. Any decisions lack moral force if made by use of threats, peer pressure or coercion. Hunger strikers should not forcibly be given treatment they refuse. Applying, instructing or assisting forced feeding contrary to an informed and voluntary refusal is unjustifiable. Artificial feeding with the hunger striker's explicit or necessarily implied consent is ethically acceptable.

5. 'Benefit' and 'harm'. Physicians must exercise their skills and knowledge to benefit those they treat. This is the concept of 'beneficence', which is complemented by that of 'non-maleficence' or primum non nocere. These two concepts need to be in balance. 'Benefit' includes respecting individuals' wishes as well as promoting their

[4] Adopted in Malta in November 1991 and revised on several occasions, most recently in October 2017.

welfare. Avoiding 'harm' means not only minimising damage to health but also not forcing treatment upon competent people nor coercing them to stop fasting. Beneficence does not necessarily involve prolonging life at all costs, irrespective of other determinants.

Physicians must respect the autonomy of competent individuals, even where this will predictably lead to harm. The loss of competence does not mean that a previous competent refusal of treatment, including artificial feeding should be ignored.

6. Balancing dual loyalties. Physicians attending hunger strikers can experience a conflict between their loyalty to the employing authority (such as prison management) and their loyalty to patients. In this situation, physicians with dual loyalties are bound by the same ethical principles as other physicians, that is to say that their primary obligation is to the individual patient. They remain independent from their employer in regard to medical decisions.

7. Clinical independence. Physicians must remain objective in their assessments and not allow third parties to influence their medical judgement. They must not allow themselves to be pressured to breach ethical principles, such as intervening medically for non medical reasons.

8. Confidentiality. The duty of confidentiality is important in building trust but it is not absolute. It can be overridden if non-disclosure seriously and imminently harms others. As with other patients, hunger strikers' confidentiality and privacy should be respected unless they agree to disclosure or unless information sharing is necessary to prevent serious harm. If individuals agree, their relatives and legal advisers should be kept informed of the situation.

9. Establishing trust. Fostering trust between physicians and hunger strikers is often the key to achieving a resolution that both respects the rights of the hunger strikers and minimises harm to them. Gaining trust can create opportunities to resolve difficult situations. Trust is dependent upon physicians providing accurate advice and being frank with hunger strikers about the limitations of what they can and cannot do, including situations in which the physician may not be able to maintain confidentiality.

10. Physicians must assess the mental capacity of individuals seeking to engage in a hunger strike. This involves verifying that an individual intending to fast is free of any mental conditions that would undermine the person's ability to make informed health care decisions. Individuals with seriously impaired mental capacity may not be able to appreciate the consequences of their actions should they engage in a hunger strike. Those with treatable mental health problems should be directed towards appropriate care for their mental conditions and receive appropriate treatment. Those with untreatable conditions, including severe learning disability or advanced dementia should receive treatment and support to enable them to make such decisions as lie within their competence.

11. As early as possible, physicians should acquire a detailed and accurate medical history of the person who is intending to fast. The medical implications of any existing conditions should be explained to the individual. Physicians should verify that hunger strikers understand the potential health consequences of fasting and forewarn them in plain language of the disadvantages. Physicians should also explain how damage to health can be minimised or delayed by, for example, increasing fluid and thiamine intake. Since the person's decisions regarding a hunger strike can be momentous, ensuring full patient understanding of the medical consequences of fasting is critical. Consistent with best practices for informed consent in health care, the physician should

ensure that the patient understands the information conveyed by asking the patient what he or she understands.

12. A thorough examination of the hunger striker should be made at the start of the fast including measuring body weight. Management of future symptoms, including those unconnected to the fast, should be discussed with hunger strikers. Also, the person's values and wishes regarding medical treatment in the event of a prolonged fast should be noted. If the hunger striker consents, medical examinations should be carried out regularly in order to determine necessary treatments. The physical environment should be evaluated in order to develop recommendations for preventing negative effects.

13. Continuing communication between the physician and hunger strikers is essential. Physicians should ascertain on a daily basis whether individuals wish to continue a hunger strike and what they want to be done when they are no longer able to communicate meaningfully. The clinician should identify whether the individual is willing, in the absence of their demands being met, to continue the fast even until death. These findings must be appropriately recorded.

14. Sometimes hunger strikers accept an intravenous solution transfusion or other forms of medical treatment. A refusal to accept certain interventions must not prejudice any other aspect of the medical care, such as treatment of infections or of pain.

15. Physicians should talk to hunger strikers in privacy and out of earshot of all other people, including other detainees. Clear communication is essential and, where necessary, interpreters unconnected to the detaining authorities should be available and they too must respect confidentiality.

16. Physicians need to satisfy themselves that food or treatment refusal is the individual's voluntary choice. Hunger strikers should be protected from coercion. Physicians can often help to achieve this and should be aware that coercion may come from the authorities, the peer group, or others, such as family members. Physicians or other health care personnel may not apply undue pressure of any sort on the hunger striker to suspend the strike. Treatment or care of the hunger striker must not be conditional upon suspension of the hunger strike. Any restraint or pressure including but not limited to hand-cuffing, isolation, tying the hunger striker to a bed or any kind of physical restraint due to the hunger strike is not acceptable.

17. If a physician is unable for reasons of conscience to abide by a hunger striker's refusal of treatment or artificial feeding, the physician should make this clear at the outset, and must be sure to refer the hunger striker to another physician who is willing to abide by the hunger striker's refusal.

18. When a physician takes over the case, the hunger striker may have already lost mental capacity so that there is no opportunity to discuss the individual's wishes regarding medical intervention to preserve life. Consideration and respect must be given to any advance instructions made by the hunger striker. Advance refusals of treatment must be followed if they reflect the voluntary wish of the individual when competent. In custodial settings, the possibility of advance instructions having been made under pressure needs to be considered. Where physicians have serious doubts about the individual's intention, any instructions must be treated with great caution. If well informed and voluntarily made, however, advance instructions can only generally be overridden if they become invalid because the situation in which the decision was made has changed radically since the individual lost competence.

19. If no discussion with the individual is possible and no advance instructions or any other evidence or note in the clinical records of a discussion exist, physicians have to

act in what they judge to be in the person's best interests. This means considering the hunger strikers' previously expressed wishes, their personal and cultural values as well as their physical health. In the absence of any evidence of hunger strikers' former wishes, physicians should decide whether or not to provide feeding, without interference from third parties.

20. Physicians may rarely and exceptionally consider it justifiable to go against advance instructions refusing treatment because, for example, the refusal is thought to have been made under duress. If, after resuscitation and having regained their mental faculties, hunger strikers continue to reiterate their intention to fast, that decision should be respected. It is ethical to allow a determined hunger striker to die with dignity rather than submit that person to repeated interventions against his or her will. Physicians acting against an advanced refusal of treatment must be prepared to justify that action to relevant authorities including professional regulators.

21. Artificial feeding, when used in the patient's clinical interest, can be ethically appropriate if competent hunger strikers agree to it. However, in accordance with the WMA Declaration of Tokyo, where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a decision, he or she shall not be fed artificially. Artificial feeding can also be acceptable if incompetent individuals have left no unpressured advance instructions refusing it, in order to preserve the life of the hunger striker or to prevent severe irreversible disability. Rectal hydration is not and must never be used as a form of therapy for rehydratation or nutritional support in fasting patients.

22. When a patient is physically able to begin oral feeding, every caution must be taken to ensure implementation of the most up to date guidelines of refeeding.

23. All kinds of interventions for enteral or parenteral feeding against the will of the mentally competent hunger striker are 'to be considered as 'forced feeding'. Forced feeding is never ethically acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment. Equally unacceptable is the forced feeding of some detainees in order to intimidate or coerce other hunger strikers to stop fasting ..."

## II. WMA DECLARATION OF TOKYO – GUIDELINES FOR PHYSICIANS CONCERNING TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN RELATION TO DETENTION AND IMPRISONMENT[5]

30. The relevant extract reads as follows:

"8. Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially, as stated in WMA Declaration of Malta on Hunger Strikers. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner."

[5] Adopted by the 29th World Medical Assembly in Tokyo in October 1975 and revised on several occasions, most recently in October 2016.

## III. POSITION OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)

31. On 31 January 2013 the ICRC formulated its position on force-feeding of detainees as follows[6]:

> "The ICRC is opposed to forced feeding or forced treatment; it is essential that the detainees' choices be respected and their human dignity preserved. The ICRC's position on this issue closely corresponds to that expressed by the World Medical Association in the Malta and Tokyo Declarations ..."

## IV. OTHER INTERNATIONAL MATERIAL

32. The relevant extracts from the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Health care services in prisons", as well as Recommendation No. R (98) 7 of the Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison, are quoted in *Nevmerzhitsky v. Ukraine* (no. 54825/00, § 65, ECHR 2005-II (extracts))[7].

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained that his force-feeding had been in breach of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

### A. Admissibility

34. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

### B. Merits

#### *1. The parties' arguments*

35. The applicant submitted that the circumstances of his case were similar to those in *Nevmerzhitsky v. Ukraine* (no. 54825/00, §§ 95-99, ECHR 2005-II (extracts)), in which the Court had found a violation of

[6] See https://www.icrc.org/en/document/hunger-strikes-prisons-icrc-position.
[7] Although the CPT standards have been revised in the meantime, the wording of the relevant parts has not changed.

Article 3 of the Convention on account of a prisoner's force-feeding without medical justification and in a cruel manner.

36. The applicant alleged that the prison administration had sought his, as well as other inmates', force-feeding with the sole purpose of suppressing their protests against the appalling conditions of detention and unjust attitude of prison officials. He submitted that that measure had not been necessary from a medical point of view and that it had grossly breached his personal autonomy.

37. The applicant also contended that his force-feeding had been carried out with unjustified use of force and restraint causing him physical pain and mental suffering.

38. The Government submitted that the applicant's force-feeding had been based on a number of medical findings indicating that there was a real danger to his health if he continued to starve himself.

39. The Government also pointed out that, unlike in *Nevmerzhitsky* (cited above), there was no information in the present case about the use of a "mouth-widener".

40. Lastly, the Government contended that the matter had been duly examined by domestic courts at two levels of jurisdiction and that there were no grounds for the Court to question their decisions.

### *2. The Court's assessment*

#### (a) General principles

41. The Court has observed, with reference to the previous case-law of the Commission, that, when a detained person maintains a hunger strike, this may inevitably lead to a conflict between an individual's right to physical integrity under Article 3 of the Convention and the High Contracting Party's positive obligation under Article 2 – a conflict which is not solved by the Convention itself (see *Nevmerzhitsky*, cited above, § 93). Resolving that conflict is further complicated by the fact that both articles in question rank as the most fundamental provisions in the Convention and permit no derogations.

42. The Court has also held that force-feeding aimed at saving the life of a particular detainee who consciously refuses to take food might in principle be acceptable from the standpoint of Article 3 of the Convention if such a measure is of therapeutic necessity from the point of view of established principles of medicine, in particular if the medical necessity for it has been convincingly shown to exist. In addition, the Court must ascertain that the procedural guarantees for the decision to force-feed are complied with. Lastly, the Court has noted that the manner in which the applicant is subjected to force-feeding during the hunger strike shall not trespass the threshold of a minimum level of severity envisaged by its case-law under Article 3 of the

Convention (see *Nevmerzhitsky*, cited above, § 94, and *Ciorap v. Moldova*, no. 12066/02, § 77, 19 June 2007).

43. Furthermore, the Court has stated that if a deterioration in a detainee's health condition is caused by his going on hunger strike and/or refusing to accept treatment, this deterioration cannot then automatically be held imputable to the authorities. However, the Court, sharing the principles expressed by the World Medical Association, has also considered that the prison authorities may not be totally absolved of their positive obligations in such difficult situations, passively contemplating the fasting detainee's demise. In particular, since a detainee's decision regarding a hunger strike can be momentous, the prison clinicians must ensure full patient understanding of the medical consequences, verifying, *inter alia*, that that decision to fast is truly voluntary and does not result from a mental impairment of the detainee or any other outside pressure. No less important is continuing communication between the clinicians and the patient during the strike, when the former verify on a daily basis the validity of the detainee's wish to abstain from taking food. It is also crucial, in the Court's opinion, to ascertain the true intention of and real reasons for the detainee's protest, and if those reasons are not purely whimsical but, on the contrary, denounce serious medical mismanagement, the competent authorities must show due diligence by immediately starting negotiations with the striker with the aim of finding a suitable arrangement, subject, of course, to the restrictions that the legitimate demands of imprisonment may impose (see *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, §§ 82-83, 22 November 2011, with further references).

44. Lastly, in its more recent case-law with regard to the specific case of detainees who voluntarily put their lives at risk, the Court has stated that events prompted by acts of pressure on the authorities could not lead to a violation of the Convention, provided that those authorities had duly examined and managed the situation. The Court observed that this was the case in particular where a detainee on hunger strike clearly refused any intervention, even though his state of health would threaten his life (see *Ünsal and Timtik v. Turkey* (dec.), no. 36331/20, § 37, 8 June 2021, and the numerous further case-law references therein).

**(b) Application of the above principles to the present case**

45. The Court observes at the outset that, as in the case of *Nevmerzhitsky* (cited above), the applicant in the present case did not argue that he should have been left without any food or medicine regardless of the possible lethal consequences. Instead, he complained of the lack of any medical necessity for his force-feeding and the cruelty of that procedure. He also alleged that the authorities' true intention had been to suppress the protests in Zamkova Prison.

46. The Court notes that, as soon as the applicant informed the prison administration of his hunger strike, that is, on 24 January 2018, he was examined by the head of the prison's medical unit (see paragraph 11 above). Following a repeated medical examination on 29 January 2018, some changes in the applicant's body indicators that were the inevitable consequences of several days of fasting (in particular, reductions in blood pressure and sugar level, as well as some insignificant weight loss) were reported. Although the doctor considered that the applicant's medical condition did not call for hospitalisation, he concluded, without providing sufficient explanation as to what had led him to that conclusion, that the applicant's force-feeding was required to save his life and health (see paragraph 14 above). The Izyaslav Court accepted that conclusion as sufficient grounds for ordering the applicant's force-feeding, even though the latter, being fit enough to participate in the hearing in person, claimed that there had been no serious deterioration of his health and that there would be no justification for his force-feeding from a medical point of view (see paragraphs 16-17 above).

47. All these elements – namely the lack of any explanation in the medical report in question of the nature and imminence – especially given the relatively short time passed since the beginning of the hunger-strike – of the risk of the applicant's continued fasting to his life, the absence of any need for his hospitalisation, and his satisfactory health condition allowing him to attend the court hearing – indicate that the medical necessity for the applicant's force-feeding was not convincingly shown to exist (compare *Nevmerzhitsky*, § 96, and *Ciorap*, § 81, both cited above).

48. Although the applicant insisted in his submissions before the Izyaslav Court that, apart from some general weakening, he felt well and that he did not understand what made the doctors think otherwise to the point of seeking his force-feeding, the judge ordered the applicant's force-feeding without having duly responded to that legitimate concern (see paragraphs 17 and 18 above) and without having explored alternative means to avert the alleged risk to the applicant's health. Nor did the Izyaslav Court comment on the applicant's submission about the absence of any legally established procedures for force-feeding in Ukraine. As regards the appellate court, it simply dismissed the applicant's arguments as "groundless" and "not worthy of attention" (see paragraphs 25 and 26 above). That being so, the Court has doubts as to the effectiveness of the judicial control as a procedural safeguard against abuse in the circumstances of the present case.

49. Furthermore, the applicant's force-feeding was carried out in the absence of any legal regulations on the procedures to be followed in such cases. This lacuna was observed, in particular, by the Ombudsman, who noted that "any prison staff member [could] carry out ... force-feeding at his entire discretion" (see paragraph 28 above). The existence of such unfettered discretion for the staff of Zamkova Prison in carrying out the applicant's force-feeding, together with the lack of any evidence as to how it actually

took place, are sufficient for the Court to accept the applicant's account of the events, according to which he suffered excessive physical restraint and pain (see paragraph 21 above).

50. Lastly, the Court notes that, as acknowledged by the domestic authorities themselves, inmates of Zamkova Prison had been raising arguable grievances about violations of their rights by the prison administration for years, but in vain (see paragraphs 8 and 28 above). Under such circumstances, the hunger strike started by the applicant, 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. Launching an investigation aimed at ascertaining the true intention of and real reasons for the inmates' protest, as well as ensuring a meaningful response to their complaints and demands, would have been essential for the proper examination and management of the situation by the State (see, *mutatis mutandis*, *Makharadze and Sikharulidze*, § 83, and *Ünsal and Timtik*, § 37, both cited above). However, no such investigation was apparently carried out and the only response to the inmates' hunger strike was their force-feeding. The Court therefore cannot rule out that, as submitted by the applicant, his force-feeding was in fact aimed at suppressing the protests in Zamkova Prison (compare *Ciorap*, cited above, § 83).

51. In the light of all the foregoing considerations, the Court concludes that the State did not properly manage the situation in relation to the applicant's hunger strike and subjected him to ill-treatment in breach of Article 3 of the Convention. There has therefore been a violation of that provision.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. The applicant additionally complained that his force-feeding had been in breach of his rights under Article 8 of the Convention. He further complained that there had been a violation of Article 6 § 1 on account of his participation in the appellate court hearing through a video conference rather than in person.

53. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 3 of the Convention (see paragraph 51 above), the Court considers that it has examined the main legal question raised in the present application and that it is not necessary to examine the admissibility and merits of the remaining complaints (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

55. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

56. The Government submitted that this claim was excessive and unsubstantiated.

57. The Court considers it reasonable to award the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### B. Costs and expenses

58. The applicant also claimed EUR 850 for the costs and expenses incurred before the Court.

59. The Government contested that claim as unsubstantiated.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court also points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Chamber may reject the claim in whole or in part (see *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017). In the present case the applicant failed to produce any contract with Ms Okhotnikova or any other documents showing that he had paid or was under a legal obligation to pay the fee charged by her (compare *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017). The Court therefore dismisses the claim for costs and expenses.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that it is not necessary to examine the admissibility and merits of the applicant's remaining complaints;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction."

Done in English, and notified in writing on 8 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Victor Soloveytchik<br>Registrar | Georges Ravarani<br>President |