THE SCOPE OF THE PROTECTION OF THE RIGHT OF A PRISONER ON HUNGER STRIKE TO LIFE AND THE EXPEDIENCY OF ARTIFICIAL (FORCED) FEEDING

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Abstract. Treatment of people with the status of prisoners is one of the main challenges for the modern world. The artificial (forced) feeding of a prisoner during a hunger strike, an international practice, can be divided into four types of approaches. When force feeding, the European Court of Human Rights focuses on the factor of necessity, purpose and procedural guarantees. If artificial (forced) feeding fails to comply with procedural norms, it can result in severe and long-term mental and physical pain. This work presents the author's vision of what changes should be made to the relevant normative act of Georgia in order to define exactly what medical aid means and at what stage of a prisoner's hunger strike can medical aid be applied without the consent of a prisoner. From the analysis of international practice in several Western countries, important principles and standards can be seen by which the necessary measures of artificial (forced) feeding, forced treatment and forced medical examination are implemented. Also, in my view, the norms introduced by one of the decisions of the European Court of Human Rights may be well suited to the case where a prisoner is unconscious and has not previously stated his/her position on artificial feeding. From the moment of beginning a hunger strike by a prisoner, a government faces two options: either a prisoner dies of starvation, or a relevant authority intervenes in the starvation in the form of the artificial (forced) feeding of a prisoner. A question is being asked: is there any third option? When a situation reaches a critical level, a state must find a way to de-escalate it.

Keywords: Artificial (Forced) Feeding, Prisoner on Hunger Strike and Fundamental Rights

Introduction

The treatment of those arrested, accused and convicted is one of the major challenges of the modern world in terms of the overall improvement of the human condition in general[1]. An arrested person, in fact, is left to rely on the good faith of police and prison staff. At the same time, he/she is cut off from the outside world and is not protected from ill-treatment which violates his/her rights. With regard to the artificial (forced) feeding of a prisoner during a hunger strike, world practice can be divided into four types of approaches. The normative acts of Germany, France, USA and Israel explicitly provide for the right to the forced feeding of a person on a hunger strike[2]. The European Court of Human Rights focuses on the necessity, purpose and procedural guarantees of force-feeding[3]. The right and norms of the forced (artificial) feeding of a prisoner on a hunger strike in the case of Georgia are not explicitly and clearly defined by law[4]. The example of Britain, whose case law provides that a person has the right to a self-starvation death, can be considered the fourth type of approach[5]. In these four cases, however, principles and factual circumstances should be taken into account that affect the identification of an intervention in the right of a person on a hunger strike.

It is important to note here that the process of a hunger strike is linked to Article 3 of the European Convention on Human Rights, since under case law the condition of starving is linked to the protection of dignity in certain cases. The broadest notion of torture has been formulated by the UN Committee[6]. It is also clear that forced (artificial) feeding, if it goes beyond compliance with procedural norms, can result in severe and long-term mental and physical pain.

To date, the absence in the legislation of Georgia of a right to the artificial (forced) feeding of a prisoner on a hunger strike and the necessary norms for implementing such measures cause confusion with regard to what the state policy would be in the case of the death of a prisoner on a hunger strike. Establishing at the legislative level the necessary standards for the compulsory medical care and parenteral (intravenous) feeding of a prisoner on a hunger strike in Georgian legislation might serve a good preventive purpose. The aim of this paper is to see a way of preserving the life of a prisoner on a hunger strike by analysing the practice of international organisations and a number of countries, and to

1. United Nations, Office of the High Commissioner for Human Rights, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, International Legal Standards for the Protection of Persons Deprived of Their Liberty, Chapter 8, p.317, New York and Geneva, 2003.
2. *Lempel J.,* Force-Feeding Prisoners on a Hunger Strike: Israel as a Case Study in International Law, Harvard International Law Journal, 2019.
3. Council of Europe, European Court of Human Rights, Guide on the case-law of the European Convention on Human Rights, Prisoner's rights, Updated on 31 December 2021.
4. Order No 169 of the Minister of Penitentiary, Probation and Legal Assistance of Georgia on the Approval of an Instruction on the Conditions of Accused Persons/Convicts on Hunger Strike, 4.7. 2013.
5. Secretary of State for the Home Department v. Robb [1995] 1 All ER 677, Times 21-Oct-1994, Ind Summary 10-Oct-1994.
6. UN, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (General Assembly resolution 39/46), 26/06/1984.

analyse which specific features are characteristic of the personal autonomy of a prisoner and when it arises. In the modern world, where there have been active hunger strikes by politically motivated prisoners since the twentieth century, the physical integrity of prisoners has been put on one side of the scales, and the obligation to protect their lives and effectively exercise justice on the other. A prominent example of this argument is the large-scale hunger strikes initiated by Palestinian prisoners accused of terrorism in Israel in 2012, which posed a real threat to the lives of the prisoners[7] The discussion of these issues has not lost its relevance even today.

Chapter 1. Hunger Strike of a Prisoner and International Standards

1. The UN Vision

Under Article 7 of the Covenant on Civil and Political Rights, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation[8]. The essence of Article 7 can be seen in more detail in the General Comments of the United Nations. The committee paid attention to two factors: first, the obligation of the state party to protect all persons against acts prohibited by Article 7 through legislative and other measures. When identifying torture and inhuman treatment, a national court needs to consider a wide range of possibilities and powers: "official", "behind-the-scenes" and "private'[9]. The second factor is the general positive obligation of a state. There is no need to draw sharp distinctions between different forms of prohibited treatment and punishment, as everything depends on a particular case and depends on the type, purpose and severity of a particular treatment[10]. For all persons deprived of their liberty, the treatment prohibited by Article 7 is supplemented by the positive requirement of Article 10(1) of the Covenant[11], which states that they shall be treated with humanity and with respect for the inherent dignity of the human person[12]. According to the International Bill of Human Rights, the right to health is closely linked to the realisation of other human rights. These and other rights and freedoms are related to the components of the right to health[13]. The right to health should not be understood as a

7. Library of Congress, Article Israel: Law Authorizing Force-Feeding of Prisoners Held Constitutional, Israel, 2016.
8. International Covenant on Civil and Political Rights., General Assembly resolution 2200A (XXI), 16/12/1966.
9. United Nations, Office of the High Commissioner for Human Rights, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, International Legal Standards for the Protection of Persons Deprived of Their Liberty, Chapter 8, p. 319, New York and Geneva, 2003.
10. United Nations, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, General comment No. 7, para.1, p. 168, HRI/GEN/1/Rev.8 8 May 2006.
11. International Covenant on Civil and Political Rights.
12. Ibid.

right to being healthy. The right to health is divided into freedoms and rights. It should be noted here that there are two main underlying theories: A theory based on liberty, which is prevalent in common law countries, and a theory based on rights, in civil law countries[14]. Rights, by definition, imply that one has a moral or legal right to do something. And the main condition for freedom implies the absence of coercion or restriction by the state in the choices and actions of an individual[15]. Freedoms with regard to health include the right to control one's health and body. And conversely, the right with regard to health includes the right to a health care system[16]. With regard to prisoners, several issues emerge from the comments of the above-mentioned committee that the state should consider when managing the life of a prisoner on a hunger strike. These are: the physical and mental integrity of an individual, which is directly linked to the perception of the inherent dignity of a person; the scope of the power; the type and severity of treatment that can translate into a type of prohibited treatment or punishment; enabling the prisoner to fully enjoy the right to health, which is linked to the protection of other rights under the Covenant, in particular the rights to dignity, food, freedom from torture and privacy. One of the best safeguards against the ill-treatment of a detainee is a properly trained police officer or prison staff. Officers who have experience and awareness of the protection of human rights will be able to carry out their duties successfully without ill-treating prisoners[17].

2. The Political Statement of Persons on a Hunger Strike and Guantanamo Bay Detention Camp

In 2014 a political hunger strike erupted in the USA (Aamer v. Obama (D.C. Cir. 2014), which had great resonance in American society[18]. In this case the interpretation of the Court of Appeals of the United States is interesting as to when a state may use force-feeding to save the life of a person on a hunger strike[19]. When granting a preliminary injunction, the Court of Appeal considered the risk of a mistake which affects the life of an individual and, like Judge Collyer, it ruled that in order to maintain a balance between

13. United Nations, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, General comment No.14, para.3, p. 87, HRI/GEN/1/Rev.8 8 May 2006.
14. *Smith R.,* Textbook on International Human Rights, Oxford University Press, 2005, New-York, The Library of the Public Defender of Georgia (Translated by M. Kobiashvili), Tbilisi, 2006, p. 45.
15. *Batiashvili I.,* Article 16 of the Constitution of Georgia in the Continuum of National Legislation and European Convention, Journal of Law, No 2, Tbilisi, 2021, p. 22.
16. United Nations, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, General comment No.14, para. 8, p. 88, HRI/GEN/1/Rev.8 8 May 2006.
17. Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, p.18, (CPT), CPT/Inf/E (2002) 1 – Rev. 2010.
18. *Lempel J.,* Force-Feeding Prisoners on a Hunger Strike: Israel as a Case Study in International Law, Harvard International Law Journal, 2019.
19. United States Court of Appeals for the District of Columbia Circuit, Shaker Abdurraheem Aaamer, detainee, camp delta and Saeed Ahmed Siddique, next friend of Shaker Abdurraheem Aaamer, Appellants Barack Obama, President of America, er al appellees. No. 13-5223, 11/0/2014, 36.

justice and the public interest the request of applicants for a temporary suspension of force-feeding should be rejected. Also noteworthy is a statement submitted by a Senior Medical Officer at Guantanamo Bay Detention Camp summarising the government's force-feeding protocol. If the protocol applies to a detainee, force-feeding will only be applied by medical staff when it is absolutely necessary for the protection of the life and health of a detainee. Forced feeding involves the delivery of food to the stomach through the nose by means of "nasogastric tubes" inserted into a prisoner's nose[20]. The court report in the case of detainee Al-Shehri states that the detainee was not given an anaesthetic or sedative during the procedure; instead, two soldiers restrained him and a member of the medical staff inserted a tube into his nose and throat. The prisoner had a lot of blood coming out of his nose. As a result, he was unable to speak for two days[21]. It is obvious that effective procedural supervision of an appropriate medical protocol for prisoners subjected to force-feeding is crucial to ensure adequate medical care.

3. Declaration of Malta on Hunger Strikers

Judge Douglas noted in one case that "it is hard to imagine a greater violation of the integrity of the human body and the right to self-determination than force-feeding'[22]. Hunger strikers rarely want to die, but some may do so to achieve their goals, therefore there may be a conflict of values. Above all, doctors have a duty to act ethically and to respect autonomy. The use of force-feeding in the context of informed and voluntary refusal is unacceptable, although artificial feeding with the explicit or necessarily implicit consent of the starving person is ethically acceptable. However, doctors use their skills and knowledge to assess benefits and harms. Artificial feeding may be acceptable if a prisoner[23] suffering from a mental disorder has not given prior instructions to refuse it. In this case, the artificial feeding of a hunger striker is acceptable in order to keep him alive or prevent severe irreversible disability. The Declaration of Malta prohibits rectal hydration or feeding support in this form. Also, according to the declaration, there must be constant communication between a doctor and hunger strikers. Sometimes hunger strikers agree to intravenous fluid injections or other types of treatment. However, Article 23 of the Declaration unequivocally states that any intervention of enteral or parenteral feeding against the will of a mentally capable hunger striker must be regarded as "force-feeding". And force-feeding is never ethically acceptable[24].

20. United States Court of Appeals for the District of Columbia Circuit, Shaker Abdurraheem Aaamer, detainee, camp delta and Saeed Ahmed Siddique, next friend of Shaker Abdurraheem Aaamer, Appellants Barack Obama, President of America, er al appellees. No. 13-5223, 11/0/2014, 3.
21. *Gordon A.,* The Constitutional Choices Afforded to a Prisoner on Hunger Strike: Guantanamo, Santa Clara Journal of International Law 345, 2011, 353-354.
22. Supreme Court of New Hampshire, In re Joel CAULK, doc. N. 84-246, 23/07/1984, cite: 480 A.2d 93, 125 N.H. 226.
23. condition in which a prisoner on hunger strike can no longer give informed consent or refusal.
24. WMA DECLARATION OF MALTA ON HUNGER STRIKERS, Adopted by the 43rd World Medical Assembly, Malta, 1991.

4. Current Situation in Georgia Regarding Rights of Prisoners on Hunger Strike

Georgia has a regulatory framework for managing the health of prisoners on hunger strike and it will be discussed in this subchapter. In 2000, Order No 35 of the Minister of Justice of Georgia defined for the first time the responsibilities of a prison administration and director[25]. And Order No 169 of the Minister of Penitentiary, Probation and Legal Assistance of Georgia of 2013 updated the definition of the process of hunger strike and its management[26]. It should be noted that a hunger strike was divided into three parts: incomplete starvation,[27] total starvation[28] and absolute starvation[29].

In my view, the first paragraph of Article 5 of the latter order does not accurately and explicitly express what is meant by medical assistance. The nature of the norm shows that artificial feeding is allowed only with the consent of a hunger striker, but at the same time allows for the exceptional case where, without medical assistance, the death of a hunger striker is inevitable, and the decision must be confirmed by at least one other independent medical actor. Is there any indication of artificial (forced) feeding in the mentioned entry, and does such wording of the norm require additional regulations in the case of emergency medication/injection treatment of a convict on a hunger strike taking place (which can be considered a type of artificial feeding)? Under Georgian law, it is only possible to provide medical aid to a person on a hunger strike against his/her will when the death of a hunger striker has become inevitable. In this case, certain manipulations and therapeutic measures will be carried out on the body of a hunger striker in order to provide medical aid, but this cannot be equated with force-feeding. It should be noted here that the physician is obliged to speak to a hunger striker in private on an every-day basis and determine whether a hunger striker wishes to continue the hunger strike and, if so, what measures are acceptable to him/her when he/she is no longer in a position to make an informed decision. This section and the first paragraph of Article 5, which *a priori* obliges a state to save the life of a hunger striker, are somewhat at odds with each other. A prisoner may wish never to receive medical treatment, but this wish is ignored by the legislation itself. On the other hand, this entry is of a small preventive nature. A record will be made in the medical record of a prisoner as to what kind of medical care is acceptable to a prisoner, on the basis of which the fundamental rights of a prisoner will not be violated by the said action of a relevant authorised person. In 2014, eight prisoners were on hunger strike in the N8 prison in Georgia[30]. From an ethical point of

25. Order No 35 of the Minister of Justice of Georgia on the Approval of an Instruction for the Treatment of Convicts and Prisoners on a Hunger Strike and the Conditions of their Detention, 24.3.2010.
26. Order No 169 of the Minister of Penitentiary, Probation and Legal Assistance of Georgia on the Approval of an Instruction on the Conditions of Accused Persons/Convicts on Hunger Strike, 4.7.2013.
27. A condition in which food intake is insufficient in relation to general energy output.
28. A condition when only water enters the organism.
29. A condition when neither food nor water are taken in.
30. Public Defender (Ombudsman) of Georgia, National Preventive Mechanism Report on the Visit to Prison N8 (27-28 November 2014.

view, the Georgian medical position is that a doctor should be independent and confident in the mental condition of a hunger striker[31]. Artificial feeding is ethically acceptable if a hunger striker consents. Due to the closed nature of a penitentiary institution, public scrutiny plays an important role in preventing the ill-treatment of prisoners[32]. The Red Cross also considers a hunger strike as a form of protest[33]. In 2007, one of the leaders of a national movement, Irakli Batiashvili, issued a political statement launching an all-out hunger strike in Georgia to protest against the difficult political situation in the country[34]. Mass hunger strikes were not recorded in Georgia until 2013, when prisoners complained about unjustified arrests, and humiliating treatment and conditions inflicted by the previous government. In 2013, Thomas Hammerberg, EU Special Adviser to the Government of Georgia on Constitutional and Legal Affairs and Human Rights, emphasised the importance of establishing a commission to examine the shortcomings of justice and noted that prisoners should be given the opportunity to have their cases reviewed to restore justice[35]. In 2022, former Georgian President Mikheil Saakashvili began an incomplete starvation with a gradual break in time.

Chapter 2. Different Approaches to the Force-Feeding of a Prisoner

5. The decision of the New York Supreme Court in the case Von Holden v. Chapman and the decision of the Supreme Court of Georgia (U.S. State) in the case Zant v. Prevalle

The definition of suicide has a decisive meaning in the situation of a prisoner on hunger strike. Is the aim of a prisoner to commit a suicide? For clarity, one can refer to the New York Supreme Court decision in the case Von Holden v. Chapman and the decision of the Supreme Court of Georgia (U.S. State) in the case Zant v. Prevatte.

The Supreme Court of Georgia upheld a court order banning the force-feeding of the hunger striking prisoner Prevatte[36]. The Court stated that the logical conclusion of the state's

31. Rehabilitation Initiative for Vulnerable Groups (Author: Merab Kavtaradze), Medical services in the penitentiary system, desk research, p. 11.
32. Human Rights Center, The Rights of a Convict and their Protection Mechanisms, Tbilisi, 2014, p. 28.
33. *Gujabidze S.*, onlin article: Hunger Strike as a Protest Action – Known Facts and Historical Background, Voice of America, 2021.
34. Irakli Batiashvili began a prolonged hunger strike on 22 May 2007 during his trial; he was on hunger strike for about 14 days; he took only water. Irakli Batiashvili stopped his hunger strike at the request of the Catholicos-Patriarch of All Georgia Ilia II, who visited Irakli Batiashvili in prison No 7.
35. Human Rights Center, The Rights of a Convict and their Protection Mechanisms, Tbilisi, 2014, p. 31.
36. *Powell S.,* Constitutional Law-Forced Feeding of a Prisoner on a Hunger Strike: A Violation of an Inmate's Right to Privacy, North Carolina Law Review, Vol. 61, No 4, Article 5, 1983, p. 714-715.

argument is that a state is asking the court against the will of a prisoner to keep alive a prisoner who has been sentenced to death and who will then be murdered by the state itself. Although the Court recognised the state's right to implement imprisonment and the death penalty, it refused to extend this right further and thereby "destroy the will of an individual".

The Appellate Division of the New York Supreme Court reached a different decision in the case of Von Holden v Chapman[37]. The Court rejected the prisoner's request for privacy protection on two grounds: First, the Court equated a hunger strike with suicide and stated that "the right to privacy does not include the right to suicide". The Court also noted that it was in the interest of a state to prevent prisoners" desire for the self-destruction. The Court also emphasised the high social value of saving life, and characterised suicide as a "grave social mistake". Equally important in this case are the three opposing views expressed by the Court, which may prevail over the rights of a prisoner, namely: the obligation of a state to protect the health and well-being of persons in detention; the interest of a state in protecting the life of a prisoner; the interest of a state in maintaining rational and orderly procedures in state institutions.

6. Normative Acts of Israel and Germany Regarding Force-Feeding

According to German legislation, force-feeding is allowed under special conditions and in special cases defined by law. The relevant article of the 1976 German Statute Law on the Execution of Sentences and Measures for the Reform and Prevention of Imprisonment (Prison Law) explicitly permits the force-feeding of prisoners against their will, provided that there is a serious threat to the life and health of a prisoner[38]. Under Article 101 of the Prison (Compulsory Medical Assistance Measures)[39] Law, compulsory medical examination, compulsory treatment and compulsory feeding are allowed in three cases: in a life-threatening situation, in a situation that poses a serious threat to the health of a convicted person, or when there is a threat to the health of another person. It is important that such measures against the prisoner are reasonable and do not pose a serious threat to the life and health of a prisoner.

Also interesting is an Israeli regulation that has a direct bearing on a political situation. In 2012, Palestinian prisoners suspected and convicted of terrorism went on a mass hunger strike[40].

37. *Powell S.,* Constitutional Law-Forced Feeding of a Prisoner on a Hunger Strike: A Violation of an Inmate's Right to Privacy, North Carolina Law Review, Vol. 61, No 4, Article 5, 1983, p. 715-716.
38. *Lempel J.,* Force-Feeding Prisoners on a Hunger Strike: Israel as a Case Study in International Law, Harvard International Law Journal, 2019.
39. Prison Act of 16 March 1976 (Federal Law Gazette Part I p. 581, 2088), as last amended by Article 1 of the Act of 19 June 2019 (Federal Law Gazette I p. 840), Federal Ministry of Justice of Germany.
40. *Levush R.,* Israel: Law Authorizing Force-Feeding of Prisoners Held Constitutional, Law Library of Congress, 2016.

Israeli Interior and Security Minister Gilad Erdan, while introducing a legal provision for force-feeding hunger-striking prisoners, explained: "A terrorist hunger strike in prison has become an instrument of pressure and threats to the Israeli state to release the terrorists'[41]. According to an amendment to the Israeli Prisons Ordinance, the Commissioner of Prisons, with the approval of the Attorney General, is entitled to apply to the district court for permission to provide medical assistance to a prisoner on hunger strike. At the same time, considerable effort must be made to obtain a prisoner's consent to treatment before applying to court. According to the law, the court must take several factors into account when making its decision, namely: 1. the medical and mental condition of a prisoner; 2. the chances and risks of a prisoner being subjected to state-ordered treatment and other alternatives; 3. the degree of invasiveness[42] of the required treatment and its impact on the condition of a prisoner; 4. the dignity, condition and motives of a prisoner; 5. the consequences of such treatment to human life or the real risk of causing serious harm to national security. Under Israeli Statutory Law, if a court grants permission to save a prisoner's life or to prevent his/her permanent serious disability, minimum medical care may be provided, even if a prisoner objects. The treatment will be carried out in the presence of a doctor and in a place that provides the maximum protection of the dignity of a prisoner. If a prisoner refuses treatment despite a request from the custodian, the custodian may use reasonable (adequate) force on the prisoner only to provide treatment. While applying force, the factor of necessity is taken into account.

7. The Decision of a British Court Regarding Force-Feeding

The years 1969-1978 were politically rather difficult for Britain. The first seeds of starvation to death were planted in 1976, when the "special status" of IRA members was removed, whereby they had the opportunity to refuse to wear prisoner's clothes. The issue of clothing was important to them because they claimed to be "political" prisoners fighting for the IRA's historic goal of unifying Ireland[43]. On 5 May 1981, a 27-year-old Bobby Sands, one of the leaders of the IRA, died of starvation in Maze Prison in Belfast. During the next few months, nine of his fellow hunger strikers were buried[44]. In 1980, the policy of British Prime Minister Margaret Thatcher changed practice in the United Kingdom[45]. Following the starvation to death, Britain allowed IRA prisoners to wear their own clothes and communicate freely,

41. BBC News, (middle east), Israel passes law allowing force-feeding of prisoners, 30/07/2015.
42. The components of invasive methods: 1. the method of accessing a body, 2. tools, 3. required operator skills. (Cousins S., Blencowe N., Blazeby J., What is an invasive procedure? A definition to inform study design, evidence synthesis and research tracking, BMJ Open, 2019, 2, doi:10.1136/bmjopen-2018-028576).
43. *Cloon S.,* Competent Hunger Strikers: Applying the Lessons from Northern Ireland to the Force-Feeding in Guantanamo, Notre Dame Journal of Law, 2017, 387-388.
44. BBC News, Bobby Sands: The hunger strike that changed the course of N Ireland's conflict, 01/05/2021.
45. Dr. Miller, Why H-Block hunger strikers were not force-fed, The Irish Times, 05/07/2016.

and gradually managed to regulate the large-scale hunger strike[46]. The case of the European Court of Human Rights, Ireland v. the United Kingdom, was one of the most high-profile cases detailing a series of clashes and terrorist acts committed by the Ulster Volunteer Force (UVF) and the Irish Republican Army (IRA)[47]. Currently, UK law imperatively prohibits life-extending treatment, including artificial nutrition, for sane prisoners if there was a verbal or written refusal by a prisoner before the begin of hunger strike.

However, this refusal must be very clear, explicit and specific[48]. However, under the Mental Health Act of 1983[49], there are exceptional circumstances in which the authorities may require a prisoner to be force-fed. Also noteworthy is the Prisons Act, under which the Secretary of State may, having regard to all the circumstances of the case, may authorise the temporary release of a prisoner by order[50]. In the legislation of Georgia the issue of suspending sentences is found in a different wording and context[51]. The Criminal Code of Georgia also provides for cases of exemption from serving a sentence[52]. Similarly, in the Criminal Procedure Code, there is an option to defer a sentence.

Chapter 3. The Soviet Union Regime, the Vision of the European Court of Human Rights

8. Case of Merab Kostava

Merab Kostava and his associates were fighting for the independence of Georgia, were engaged in dissident and human rights activities, and thus were fighting against the Soviet regime established in Georgia[53]. Merab Kostava was arrested in 1977 for anti-Soviet activities[54]. On 12 November 1984, the dissident began a 13-month voluntary hunger strike. The case materials show that he was subjected to force-feeding from time to time. Ironically, on 21 January, Merab Kostava, who was already weakened and just transferred from a medical facility, was placed back in a punishment cell for 10 days, and on 31 January, weakened from hunger, he was placed in a punishment cell for 3 months, where he continued his hunger strike and was systematically force-fed against his will[55]. In July 1985 Merab Kostava wrote

46. BBC News, Bobby Sands: The hunger strike that changed the course of N Ireland's conflict, 01/05/2021.
47. European Court of Human Rights (plenary), Case of Ireland v. the United Kingdom (Application no. 5310/71) Judgment, 18.01.1978.
48. BBC News, UK When is force-feeding allowed? 29/10/1999.
49. UK Parliament, (HMSO), Mental Health Act 1983, Chapter 20, part IV, section 63.
50. UK Parliament, (HMSO), UK public general acts, Prison Act 1952, c 52, section 28.
51. Law of Georgia – Imprisonment Code, 2696, 09/03/2010, Article 86.
52. Law of Georgia – Criminal Code of Georgia, 2287, 22/07/1999, Section III, Chapter XIV, Article 74.
53. Free Encyclopaedia, Merab Kostava.
54. *Sanadiradze N.*, (Article – Merab Kostava), Research Publication: Life and Work of Merab Kostava, The Union of Tbilisi Museums, Cezanne Printing House, 2019/2020, p. 241-250, ISBN 978-9941-8-1883-7.
55. *Mikiashvili N.,* Merab Kostava, 2nd Edition, ordered by LTD Sandro-97 and printed by LTD E.S. Geo-Bel.

a poem titled “Hunger” in which he compared artificial feeding with “a feeling of inexorable hunger”. It is a fact that artificial force-feeding under the Soviets was not used to save lives, but as a punitive measure to subdue prisoners.

9. Case of Nevmerzhitsky

On the issue of force-feeding a hunger-striking prisoner in order to save his/her life, the Western world” s vision is not unequivocally established. According to the assessment and conclusions of the European Court of Human Rights in the case of Nevmerzhitsky v Ukraine[56], it can be concluded that if the measures applied by a state were necessary from a medical point of view and at the same time appropriate protection mechanisms were available, this will not be challenged. In particular: in the case of Nevmerzhitsky v Ukraine, the Court held that force-feeding, when it is necessary for medical reasons to save a life, should not, in fact, be regarded as inhuman and degrading treatment. Here it is important that such an action (artificial feeding) is accompanied by procedural safeguards that exclude harsh cruelty, and that the measures applied do not exceed a minimum threshold of cruelty[57]. The Court found that the force-feeding of an applicant by the Government without any medical indication, using the equipment provided for by the ordinance (handcuffs, an oral dilator and a special rubber tube inserted into the alimentary canal), but at the same time with the resistance of an applicant, had the character of torture.

Conclusion

If artificial (forced) feeding is permitted by law, state standards must be in place, which will be aligned with the case law of the European Court of Human Rights, German law, Israeli law and UN regulations. A review of US case law shows that the position of a state can prevail over the right of a prisoner to autonomy if one of five reasons exist: enough interest in sustaining life; suicide prevention; the need for effective prison management; strict adherence to medical ethics; or fighting against the manipulation of an institutional system[58]. Artificial feeding requires an accurate protocol from a medical point of view and trained health personnel, the establishment, development and supervision of which should be part of public policy. In my view, it would be better to replace the first paragraph of Article 5 of the Order No 169

56. European Court of Human Rights, (177 5.4.2005), Press release issued by the Registrar, case of Nevmerzhitsky v. Ukraine (application no. 54825/00).
57. *Murdoch J.,* Jiricka V., Combating Ill-Treatment in Prison. This work was translated and published within the joint project of the European Union and Council of Europe – Human Rights and Healthcare in Prisons and Other Closed Institutions in Georgia II, Council of Europe, 2016, p. 31-32.
58. *Gordon A.,* The Constitutional Choices Afforded to a Prisoner on Hunger Strike: Guantanamo, Santa Clara Journal of International Law 345, 2011, 355.

of the Minister of Penitentiary, Probation and Legal Assistance of Georgia of 2013 with the following wording: "The forced treatment of a hunger striker in a facility is not allowed. The provision of medical aid during starvation, including artificial feeding, is permitted only with the informed consent of the person on hunger strike, unless the death of a mentally incompetent person is inevitable without medical care. In such case, the decision must be confirmed by at least one other independent medical facility". In addition, a subsection (e) should be added to the definition of terms in Article 2: "Medical aid – parenteral nutrition and/or intravenous infusion and/or other forms of treatment". When analysing the German Prison Act, it is clear that the state must highlight several necessary standards and principles for the artificial (forced) feeding and forced treatment of prisoners. In particular: 1. the existence of a serious and real threat; 2. the reasonableness of the application of a coercive measure with regard to the interests of a prisoner, which means that the measure applied must be relevant, adequate and appropriate to the aim pursued; 3. a prisoner must be mentally incompetent, which means that he/she must be so incapacitated that he/she cannot express his/her will; 4. the necessity of the involvement of a health care professional. Recommendations derived from the above reasoning can be added to a specific article in Israeli prison law where the state is obliged to provide treatment in the presence of a doctor and at the same time on a site that provides the maximum protection of the dignity of a prisoner. In my opinion, it would be appropriate to rely on Israeli law during a prisoner hunger strike: the state should try as much as possible to find an alternative solution.

In my view, the standards created by the decision of the European Court of Human Rights in the case of Nevmerzhitsky v Ukraine may well be applied to a case where a prisoner is unconscious and has not previously determined his/her position on artificial feeding. In such a case, since the wishes of a prisoner are unknown, artificial feeding may be equated with force-feeding. When feeding a prisoner on a hunger strike artificially (force-feeding), the standards laid down by the court must be respected: 1. according to a medical report, artificial (forced) feeding is necessary to save the life of a prisoner; 2. in the case of the artificial (forced) feeding of a prisoner on a hunger strike, the existence of procedural safeguards (implementation of such an action that the intervention does not turn into harsh brutality); 3. the measures taken during artificial (forced) feeding of a prisoner on a hunger strike are within the limits of minimum cruelty. If a state fails to follow these standards, there is a high probability that its actions in such a situation will amount to torture.

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