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

FIFTH SECTION

DECISION

Application no. 8725/21
Mykola Andriyovych BALYSHEV
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 3 February 2022 as a Committee composed of:

Lətif Hüseynov, *President,*
Lado Chanturia,
Arnfinn Bårdsen, *judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 16 January 2021,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant's details are set out in the appended table. He was represented by Mr A.V. Pustyntsev, a lawyer practising in the city of Dnipro, Ukraine.

The applicant's complaints under Articles 3 and 13 of the Convention concerning inadequate conditions of detention and lack of any effective remedy in domestic law in that regard were communicated to the Ukrainian Government ("the Government").

THE LAW

The Government submitted that the applicant, while lodging the application on 16 January 2021 about poor conditions of his detention in the Mykolayiv Pre-Trial Detention Facility, had failed to inform the Court that he had already been transferred to a different detention facility on 13 December 2020. The Government therefore asked the Court to reject the application as an abuse of the right of individual application in accordance with Article 35 § 3 (a) and Article 4 of the Convention.

The applicant's representative confirmed the date of the transfer as presented by the Government but provided no further explanation in this regard.

The Court reiterates that an application may be rejected as an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on false information or if significant information and documents were deliberately omitted, either where they were known from the outset or where new significant developments occurred during the proceedings. Incomplete and therefore misleading information may amount to an abuse of the right of application, especially if the information in question concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; *S.A.S. v. France* [GC], no. 43835/11, § 67, ECHR 2014; and *Čaluk and Others v. Bosnia and Herzegovina* (dec.) [Committee], nos. 3927/15 and 63 others, §§ 18-19, 25 September 2018).

Turning to the present case, the Court observes that the applicant had been transferred to a different detention facility, of which he did not complain, on 13 December 2020, more than a month before the application and authority forms were signed and dispatched on 16 January 2021. However, in his application form the applicant stated that he remained in the Mykolayiv Pre-Trial Detention Facility. His representative only corrected that information after he had received the Government's observations. In his comments to the Government's submissions the applicant's representative acknowledged the fact of the transfer to the new detention facility on the date indicated by the Government but provided no explanation for the incorrect initial information.

Having regard to the fact that the misleading information concerned the very core of the application, the Court finds that such conduct was contrary to the purpose of the right of individual application. Lawyers must understand that, having due regard to the Court's duty to examine allegations of human rights violations, they must show a high level of professional prudence and meaningful cooperation with the Court by sparing it the introduction of unmeritorious complaints and, both before proceedings have been instituted and thereafter, they must inquire diligently into all the details of the case, meticulously abide by all the relevant rules of procedure and must urge their clients to do the same. Otherwise, the wilful or negligent misuse of the Court's resources may undermine the credibility of lawyers' work in the eyes of the Court and even, if it occurs systematically, may result in particular individual lawyers being banned from representing applicants under Rule 36 § 4 (b) of the Rules of Court (see *Stevančević v. Bosnia and Herzegovina* (dec.), no. 67618/09, § 29, 10 January 2017).

In view of the above, the Court considers that the present application constitutes an abuse of the right of individual application within the meaning

of Article 35 § 3 (a) of the Convention. It must therefore be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 February 2022.

Viktoriya Maradudina	Lətif Hüseynov
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Articles 3 and 13 of the Convention (inadequate conditions of detention)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration
8725/21 16/01/2021	**Mykola Andriyovych BALYSHEV** 1989	Pustyntsev Andriy Vitaliyovych Dnipro	Mykolayiv Pre-Trial Detention Facility 02/03/2018 to 13/12/2020 2 years and 9 months and 12 days