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

FIFTH SECTION

DECISION

Application no. 6711/21
Anton Andriyovych LUKYASHCHENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 8 September 2022 as a Committee composed of:

Stéphanie Mourou-Vikström*, President,*
Ivana Jelić*,*
Kateřina Šimáčková*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 29 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, Mr Anton Andriyovych Lukyashchenko, was born in 1994. He was represented by Ms O. G. Semenyuk, a lawyer practising in Kyiv.

The applicant's complaints under Article 3 of the Convention concerning inadequate medical treatment in detention were communicated to the Ukrainian Government ("the Government").

On 18 October 2019 the applicant was arrested on suspicion of murder. Criminal proceedings are currently pending. On 21 October 2019 he was transferred to the Cherkasy Pre-Trial Detention Facility where he is currently detained.

In August 2020 the applicant was diagnosed with neoplasm of brain and was recommended a consultation by the Romodanov Neurosurgery Institute situated in Kyiv ("the neurosurgery institute"). Upon that consultation, held remotely, he was recommended biopsy.

On 20 August 2020 the applicant was taken to the Cherkasy Regional Hospital for a computer tomography of the head and skull base which showed signs of a tumour in the skull base. On the same day referral for a consultation in the neurosurgery institute in Kyiv was issued. However, according to the

Government, the applicant twice refused to be hospitalised. The Government submitted copies of two medical requests for the applicant's hospitalisation stating that the applicant had not agreed to it and had refused to sign the respective documents.

On 21 September 2020, upon the applicant's motion, the Sosnivskyy District Court of Cherkasy ordered a forensic medical examination for proper diagnosis and further treatment. The Cherkasy Regional Forensic Expert Bureau, however, stated that the examination could not be conducted without a biopsy which had been recommended earlier.

On 8 February 2021 the Sosnivskyy District Court of Cherkasy ordered the applicant's transfer from the Cherkasy Pre-Trial Detention Facility to the Kyiv Pre-Trial Detention Facility for his further transfer to the neurosurgery institute. A week later he was brought to Kyiv. The applicant's examination in the institute on 17 March 2021 confirmed a tumour of the skull base. However, no biopsy was performed due to the applicant's refusal to undergo it. According to the national law, a biopsy can only be performed with a patient's consent.

On 5 April 2021 the applicant returned to the Cherkasy Pre-Trial Detention Facility. Later, two more requests were submitted to the court by the Centre for Healthcare of the State Criminal Executive Service requesting the applicant's transfer to the neurosurgery institute in Kyiv, but without success since the applicant refused such transfers.

In his last submissions of 21 January 2022 the applicant stated that he is feeling unwell and weak and that he has frequent headaches.

THE LAW

The Government submitted that the applicant had refused on several occasions transfer to the Kyiv Pre-Trial Detention Facility. He had also refused to undergo a biopsy necessary to prescribe appropriate treatment. The Government further argued that the fact that the applicant had failed to inform the Court about these refusals demonstrated the abusive nature of the application.

In reply, the applicant explained his last two refusals as follows. As to the biopsy, the applicant explained that before authorising that procedure the neurosurgery institute had asked him to pay for a Covid–19 test and "to pay for all escorts" (no further details provided), but for the lack of resources he had had to refuse it. As to the transfer to the neurosurgery institute, the applicant explained that he had not objected to the transfer as such, but it should have been done by car since transport by train was not adapted to his needs. In particular, the applicant stated that his transport to Kyiv had been "by train at night during the cold season".

It appears from the case-file materials that the applicant was properly and accurately diagnosed and that the State showed clear attempts to provide him

with the necessary treatment. However, such treatment was not provided in full given the applicant's failure to cooperate with the authorities which was manifested by the following.

Firstly, according to the Government, the applicant twice refused to be hospitalised and the applicant failed to comment on that statement or to refute it.

Secondly, the applicant, having already been transferred to Kyiv, refused to undergo the biopsy and he did not provide any evidence in support of his explanations about the obligation to pay for Covid–19 test or to pay the cost of his transfer.

Finally, the applicant refused all the subsequent transfers to Kyiv explaining that they are not adapted to his needs. He, however, did not explain what particular needs he had or what the exact nature of the allegedly inappropriate conditions of his transport was.

In view of the above, the Court notes that, even though there were some insignificant delays in the applicant's examination, there is nothing to suggest that they caused any irreversible harm to the applicant or that they were caused exclusively by the authorities. It is proposed to declare the complaint inadmissible as, in the circumstances of the case, there is no indication that the applicant was not offered, albeit with limited success, appropriate medical care in detention.

The Court finds that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 September 2022.

Viktoriya Maradudina Acting Deputy Registrar	Stéphanie Mourou-Vikström President