



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

FIFTH SECTION

Application no. 4725/13  
Andrey Vladimirovich LUNEV  
against Ukraine  
lodged on 17 January 2013

**STATEMENT OF FACTS**

The applicant, Mr Andrey Vladimirovich Lunev, is a Ukrainian national, who was born in 1977. He is currently detained in the Starobelsk Temporary Detention Centre No. 18 (“the SIZO”).

**The circumstances of the case**

The facts of the case, as submitted by the parties, may be summarised as follows.

*1. Medical assistance in detention*

On 12 January 2012 the applicant was arrested upon suspicion of drug trafficking.

On 30 January 2012 the applicant was placed to the SIZO. Upon arrival he was diagnosed with toxic encephalopathy and neuropathy caused by a prolonged use of drugs.

On 22 February 2012, following its inquiry, the SIZO administration was informed by a hospital (name unreadable) that the applicant had been diagnosed with the HIV (III stage).

According to the Government, between 30 January 2012 and 9 January 2013 the applicant did not ask for any medical assistance.

On 9 January 2013 the applicant was found unconscious in his cell.

On the same day the Head of the SIZO requested the Bryankivskyy Local Court to accelerate the proceedings in the applicant’s case or to release him on the undertaking not to abscond since the applicant needed urgent medical treatment in a specialised hospital.

On 10 January 2013 the above court decided that the applicant should remain in pre-trial detention but should be placed to a specialised prison hospital or civil hospital.

According to a medical certificate, between 9 and 11 January 2013 the applicant stayed in a hospital. He was diagnosed with an acute serose meningoencephalitis. It was noted that the applicant was in soporose state

On 11 January 2013 the applicant was placed back to the SIZO where he stayed in a medical unit until 15 February 2013.

On 17 January 2013 the applicant requested under Rule 39 of the Rules of Court that the respondent Government be asked to place him in a hospital.

On 8 February 2013 the Bryankivsk Medical Unit (*Брянківське територіальне медичне об'єднання*) informed the SIZO that the applicant had been diagnosed with HIV in October 2010. On 27 October 2010 his CD4+ T cell count was 374. At that time the applicant refused treatment.

On 11 February 2013 the applicant's CD4+ T cell count was 119.

On 19 February 2013 the Bryankivskyy Local Court sentenced the applicant to six and a half years' imprisonment for drug trafficking. The applicant did not provide a copy of this decision and it is unclear whether it was appealed against.

By letter of 7 March 2013 the Government informed the Court that there was no need for the applicant's hospitalisation.

However, on 14 March 2013 the Lugansk Regional Penitentiary Department allowed the applicant's placement to the Lugansk Temporary Detention Centre No. 17 Prison Hospital.

On 22 March 2013 the Court rejected the applicant's request under Rule 39 of the Rules of Court.

## *2. Alleged ill-treatment*

On an unidentified date the applicant was placed to the Alchevsk Temporary Detention Facility ("ITT") for the time of consideration of his case by the court.

At 9:00 a.m. on 30 January 2013 the applicant was called an ambulance since he had an acute pain in his liver.

At around 4:00 p.m. the applicant was brought to a gastroenterologist.

According to the applicant, when back to the ITT, at around 5:25 p.m. he had been hit several times in the stomach and in the liver by two police officers. He was told to write that the SIZO provided him with necessary medical assistance. The applicant allegedly had written such statement.

On the next day the applicant's lawyer complained about this matter to the court. The applicant was called an ambulance and diagnosed with a "possible blunt abdominal trauma". He was brought to a hospital and examined by a surgeon. The latter concluded that the applicant could be detained.

The applicant complained about the beatings to a prosecutor.

On 25 February 2013 the Alchevsk Prosecutor terminated the proceedings for absence of crime. Police officers and other persons present in the ITT on 30 January 2013 gave a detailed description of what had happened in the ITT on that day and stated that nobody had beaten the applicant. The video surveillance system of the ITT was, however, broken between 26 January and 2 February 2013. The surgeon, who examined the applicant on 31 January 2013, testified that the applicant had had no

injuries. The prosecutor also referred to the conclusion of an undated forensic medical examination that the applicant had no injuries.

The applicant appealed against this decision to a court.

## COMPLAINTS

The applicant complains under Article 3 of the Convention that he was not provided with adequate medical assistance in detention and that his state of health is not compatible with detention.

The applicant complains under Article 3 of the Convention about ill-treatment on 30 January 2013 and about the failure to effectively investigate this complaint.

The applicant finally invokes Article 34 of the Convention in respect to his ill-treatment on 30 January 2013.

## QUESTIONS TO THE PARTIES

1. Was adequate medical treatment and assistance provided to the applicant in detention and was such treatment compatible with the requirements of Article 3 of the Convention?

2. Having regard to the applicant's state of health and the medical treatment and assistance available in prison, was his detention at all compatible with requirements of Article 3 of the Convention?

3. Was the applicant subjected to inhuman or degrading treatment on 30 January 2013, in breach of Article 3 of the Convention?

4. Having regard to the procedural protection from inhuman or degrading treatment (see paragraph 131 of *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?

5. Has there been any interference by the State in the present case with the effective exercise of the applicant's right of petition, as guaranteed by Article 34 of the Convention?