



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

FIFTH SECTION

CASE OF VADYM MELNYK v. UKRAINE

(Applications nos. 62209/17 and 50933/18)

JUDGMENT

Art 3 (substantive) • Degrading treatment • Applicant's confinement in metal cage during appeal hearing without evidence of the existence of actual or specific security risks

Art 5 § 1 • Unlawful extension of detention by trial court during preparatory hearing for lack of reasons

Art 5 § 3 • Reasonableness of pre-trial detention • Failure of domestic courts to give relevant and sufficient reasons to justify need for extension and overall length of applicant's pre-trial detention

Art 5 § 4 • Adequate judicial review on appeal of lawfulness of applicant's re-arrest

STRASBOURG

15 September 2022

FINAL

15/12/2022

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Vadym Melnyk v. Ukraine,

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

Síofra O’Leary, *President*,
Stéphanie Mourou-Vikström,
Lətif Hüseyinov,
Arnfinn Bårdsen,
Mattias Guyomar,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 62209/17 and 50933/18) 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 Vadym Anatoliyovych Melnyk (“the applicant”), on 15 August 2017 and 18 October 2018;

the decision to give notice to the Ukrainian Government (“the Government”) of the complaints under Articles 3 and 5 of the Convention and to declare the remainder of the applications inadmissible;

the parties’ observations;

Having deliberated in private on 5 July 2022,

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

INTRODUCTION

1. The case concerns the adequacy of the applicant’s medical treatment in detention and his placement in a metal cage during court hearings, allegedly in breach of Article 3 of the Convention, as well as the lawfulness of and justification for his pre-trial detention and the alleged absence of a meaningful review thereof, allegedly in breach of Article 5 §§ 1, 3 and 4 of the Convention.

THE FACTS

2. The applicant was born in 1970 and lives in Vyshenki village, in the Kyiv Region. The applicant, who had been granted legal aid, was represented by Mr O.S. Shadrin, a lawyer practising in Irpin.

3. The Government were represented by their Agent, Mr I. Lishchyna of the Ministry of Justice.

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

I. THE APPLICANT'S ARREST AND DETENTION

5. According to the Government, in April 2014 the prosecution authorities instituted a criminal investigation into crimes under Article 146 § 3 (organisation of kidnapping), Article 115 § 2 (organisation of murder), and Article 194 § 2 (organisation of the destruction of property) of the Criminal Code in relation to events that happened in March 2014. In the course of the investigation, the investigator summoned the applicant but he never appeared. The applicant was put on the wanted list, and the Prydniprovsky District Court of Cherkassy ("the Prydniprovsky Court") allowed an application by the investigator concerning forced escorting of the applicant to the court.

6. On 16 May 2017 the applicant was arrested and was formally served with a notice of suspicion of crimes under Articles 146 § 3, 115 § 2, and 194 § 2 of the Criminal Code. He was suspected of organising the kidnapping and murder of Mr. G., a journalist and civic activist. According to the investigation, being the owner of a martial arts sport club in Kyiv prior to his arrest, the applicant, who had received requests from unidentified persons, was suspected of having set up a group of people attending the mentioned sport club to commit the above mentioned crimes.

7. On 17 May 2017 the Prydniprovsky Court ordered the pre-trial detention, referring to the risk of the applicant's absconding.

8. On 30 May 2017 the Cherkassy Regional Court of Appeal ("the Court of Appeal"), sitting in a public hearing, quashed the above decision, finding that the investigator and the court had not sufficiently analysed the possibility of applying more lenient preventive measures to the applicant, applied the measure of "house arrest at night" to the applicant and ordered his immediate release.

9. According to the applicant, the pronouncement of the Court of Appeal's ruling caused the public to become angry, and they effectively trapped the applicant in the cage in which he had been held during the hearing.

10. The applicant submitted a DVD containing a video recording of the events that had taken place in the Court of Appeal hearing room after the decision concerning the applicant's release was pronounced on 30 May 2017. As can be seen from the film, immediately after the pronouncement of the court's decision, a group of people interrupted the hearing and started behaving aggressively towards the judges and the applicant, who was held in a metal cage during the hearing. The group of people shouted and threatened the applicant and the panel of judges with assault. The video recording shows that police officers were present in the courtroom, but they did not, however, attempt to stop the incident and ensure the applicant's release.

11. Approximately two hours after that incident, they "re-arrested" the applicant, who had remained in the cage all that time, in accordance with Article 208 of the Code of Criminal Procedure ("the CCP"). According to the

arrest report, the applicant's arrest was based on the following part of the above-mentioned provision:

“... if immediately after an offence has been committed, eyewitnesses, including victims, or cumulative marks [found] on the body [of a person], on [his or her] clothing or at the scene of the crime, indicate that that particular person has just committed the offence.”

12. On the same day the applicant was served with formal notification of crimes under Article 255 § 1 of the Criminal Code (creation and management of a criminal organisation).

13. On 31 May 2017 the applicant lodged an application with a local court under Article 206 of the CCP, claiming a violation of his right to liberty during the events which had taken place in the Court of Appeal on 30 May 2017. He referred in particular to the fact that he had been trapped by a group of private persons in the Court of Appeal hearing room, and that the investigator had failed to comply with the requirements of domestic law and the Convention in the course of his re-arrest.

14. On the same day the local court dismissed that application, finding that at the time the application was examined, the applicant had been lawfully detained on the basis of the arrest report of 30 May 2017. The decision of the local court was final and could not be appealed.

15. On 1 June 2017 the Prydniprovskyy Court again ordered the applicant's pre-trial detention. The reasons for the applicant's detention were the seriousness of the charges against him, the risk of his absconding, and the risk of unlawful influence on the victim and witnesses. The court did not provide any further details in respect of those reasons.

16. The applicant appealed stating, in particular, that the risks justifying his detention had not been proven and that his re-arrest on 30 May 2017 had been unlawful.

17. According to the applicant, the examination of his appeal was scheduled for 7 June 2017, however the hearing was postponed on account of a disturbance organised by a group of people, supposedly the same group of people which had been present in the courtroom on 30 May 2017 (see paragraphs 9 and 10 above). In particular, a group of people had blocked the escort vehicle with which the applicant was to be transported between the court and the detention facility, and had started a fire near the court building.

18. On 12 June 2017 the Court of Appeal upheld the Prydniprovskyy Court's decision of 1 June 2017. It found, in particular, that in addition to the reasons already indicated by the lower court, the applicant's detention had been justified by the fact that two other suspects were on the wanted list, and the applicant, if at liberty, could cooperate with them and thus further hinder the investigation.

19. Although the relevant appeal procedure did not envisage that (see paragraph 59 below), the Court of Appeal examined the applicant's complaint regarding his “re-arrest” on 30 May 2017, and found that it had

been effected in breach of the procedure prescribed by the CCP. The applicant's detention from the moment of his re-arrest until 1 June 2017, when the local court had ordered his continued detention, had therefore not been in compliance with domestic law. The Court of Appeal further decided that, despite that fact, the applicant could not be released since, as of 12 June 2017 he had been detained on the basis of the court decision of 1 June 2017.

20. On 23 June 2017 the High Council of Justice ("the HCJ"), within the framework of an inquiry upon applications of Court of Appeal judges regarding the events of 7 June 2017, asked the applicant's defence lawyer, Mr G., to make submissions in this regard.

21. According to publicly available information, on 31 October 2017 the HCJ examined the applications of the Court of Appeal judges regarding the alleged interference in their judicial activity on 7 June 2017. The HCJ observed that on 30 June 2017, a criminal investigation had been opened into the events and decided to ask the General Prosecutor's Office to inform it about its progress. The Court was not informed about the outcome of either a criminal investigation or of the HCJ's inquiry.

22. In the course of the pre-trial investigation in respect of the applicant, a bill of indictment was submitted to the trial court for the first time on 17 July 2017, and returned to the prosecutor for corrections a number of times. During the period from 17 July 2017 to 16 March 2018 the applicant's detention was extended by the courts mainly on the basis of the seriousness of the charges against him, the risk of his absconding, and the risk of unlawful influence on the victim and witnesses. Without providing any further details, the trial court noted that the risks which had been examined previously still existed.

23. On 16 March 2018, after the bill of indictment had again been submitted to the court for trial, the Talne Local Court of Cherkassy Region ("the Talne Court") adjourned the preparatory hearing, which was held under Article 315 of the CCP, as some of the parties to the proceedings had failed to appear. At the close of the preparatory hearing the court issued a ruling, pursuant to Article 315 § 3 of the CCP, ordering that the applicant's detention "shall be deemed to be extended" until 16 May 2018, without giving any reasons for that detention. Neither the applicant nor the prosecutor made any applications concerning the preventive measure previously imposed on the applicant and the court did not ask for their opinion on that matter. No appeal lay against that ruling.

24. On 15 May 2018 the trial court again adjourned the preparatory hearing and extended the applicant's detention for another sixty days on the basis of the same reasons as those given in the local court's decision of 1 June 2017 (see paragraph 15 above).

25. In the course of further proceedings the bill of indictment was again returned to the prosecutor for corrections several times. The applicant's

detention was extended by the court accordingly without providing specific details, with reference to the seriousness of the charges against him and the persistence of a risk of his absconding and of a risk of unlawful influence on the victim and witnesses. In the course of one of such extension, on 16 November 2018 the Sosnivskyy Court found that the applicant's arrest on 30 May 2017 had been unlawful. The reasons for the court's decision were similar to those indicated in the decision of the Court of Appeal of 12 June 2017 (see paragraph 19 above).

26. On 22 August 2019 the Gorodyschenskyy District Court of Cherkassy Region ("the Gorodyschenskyy Court") changed the preventive measure applied to the applicant to 24-hour house arrest until 21 October 2019, with the opportunity to attend healthcare establishments. That preventive measure was subsequently extended in respect of the applicant until 13 December 2019, with the same purpose.

27. On 14 November 2019 the Kropyvnytskyi Court of Appeal quashed the Gorodyschenskyy Court's decision of 22 August 2019 and ordered the applicant's detention. The Court of Appeal noted that the Gorodyschenskyy Court had failed to properly assess the risk of the applicant's absconding and his influence on the co-accused and witnesses, as some of them had not yet been questioned in the course of the proceedings.

28. On 8 January 2020 the Gorodyschenskyy Court refused as unsubstantiated a request by the prosecutor for the extension of the applicant's detention, and applied to the applicant the preventive measure of 24-hour house arrest until 7 March 2020, with the opportunity to attend healthcare establishments. On 9 January 2020 the applicant was released from the pre-trial detention centre and placed under house arrest.

29. On 2 March 2020 the Gorodyschenskyy Court maintained the applicant's house arrest until 30 April 2020.

30. At the time the parties replied to each other's observations before the Court (April 2020), the criminal proceedings against the applicant were still pending. The parties did not inform the Court of any further developments in the applicant's case.

II. COMPENSATION PROCEEDINGS

31. In his further submissions to the Court, the applicant mentioned that on 9 October 2019 the Kyiv Court of Appeal had awarded him 5,000 Ukrainian hryvnias (185 euros at the time) in connection with his unlawful arrest on 30 May 2017, which had been established by the Court of Appeal's decision of 12 June 2017. The applicant did not provide copies of any relevant court decisions, however the Unified State Register of Judicial Decisions contains anonymised texts of court decisions given in the same proceedings as those concerning the applicant, awarding the claimant compensation in the amount indicated above, with reference to a decision of

the Court of Appeal of 12 June 2017 (see paragraph 19 above). It appears from the text of the relevant court decisions that the police office, but not the claimant, appealed on points of law against the decision of 9 October 2019. On 14 January 2020 the Supreme Court dismissed that appeal.

III. THE APPLICANT'S CONFINEMENT IN A METAL CAGE

32. According to the applicant, he was confined in a metal cage during the court hearings on the following dates: 17, 30 and 31 May 2017; 1 and 12 June 2017; and 18 January, 18 March, 15 May and 20 July 2018. He submitted a DVD containing a video recording of the events of 30 May 2017 (see paragraph 13 above), and photographs showing the applicant behind metal bars in the courtroom during the hearings on 20 July 2018.

33. According to the Government, the hearing rooms in the Prydniprovsky Court, the Gorodyschensky Court, the Talne Court and the Court of Appeal have been equipped with glass cabins, in which the applicant was held during the hearings in his case.

IV. MEDICAL TREATMENT PROVIDED TO THE APPLICANT IN DETENTION

34. On 26 July 2017 the applicant was placed in the Cherkassy pre-trial detention centre ("the SIZO").

35. According to the material in the case file, on admission to the SIZO the applicant informed the penal authorities that he had the residual effects of a head injury that had occurred in 2009.

36. On 25 October 2017 the applicant underwent magnetic resonance tomography of the brain and was diagnosed with mild external frontal-parietal hydrocephalus (*зовнішня тім'яна гідроцефалія*).

37. On 26 October 2017 the applicant was examined by a neurologist from Cherkasy Clinic no. 5, who diagnosed him with a stable residual craniocerebral injury (fracture of parietal bone on the right in 2009), in the form of liquor-dynamic disturbances, mild external frontal-parietal hydrocephalus, stable cephalic syndrome, and vascular disease with medium-frequency convulsive attacks. He was prescribed medicine to take.

38. On 31 October 2017 the applicant's lawyer applied to the Sosnivsky District Court of Cherkassy ("the Sosnivsky Court") for the applicant's release on health grounds. On the same day the Sosnivsky Court rejected the application, but enquired with the penal authorities about the applicant's state of health and whether his continued detention in the SIZO was possible, with a view to adopting a final ruling later.

39. On 14 November 2017 an electroencephalogram was performed on the applicant. This showed focal activity in the left central parietal brain area

together with epileptiform activity in the temporal lobes on the right with generalisation into a secondary bilateral synchronous paroxysm.

40. On 16 November 2017 the SIZO governor reported to the Sosnivskyy Court, at its request of 31 October 2017, about the applicant's state of health. In particular, the SIZO governor stated that the applicant had sustained a head injury in 2009, in respect of which he had undergone medical treatment and monitoring at the Romodanov Neurosurgery Institute ("the Romodanov Institute"). At the time that report was made, the applicant was undergoing inpatient medical treatment in the SIZO medical unit in connection with the residual effects of the head injury of 2009. During the applicant's detention in the SIZO, an ambulance had been called for him once, on 9 June 2017, because of a sudden deterioration of his health. There is no information as to whether an ambulance actually arrived. At the time the report was made, it was recommended that the applicant be admitted to a cardiology department in order to recheck his diagnoses, and that he has the correct medicinal treatment and inpatient treatment in a neurological department. Having regard to the fact that the applicant had earlier been monitored by the Romodanov Institute; the absence of similar medical institutions in Cherkasy; the recommendations made by a doctor from the Romodanov Institute, in particular that surgery might be feasible in the event of focal seizures confirmed by electroencephalography; and the electroencephalography results, it appeared appropriate that the applicant undergo a repeat examination by a doctor from the Romodanov Institute in order to set out his course of treatment.

41. The penal authorities also observed that, under the applicable legal provisions, the SIZO medical unit was suitable for outpatient medical treatment and monitoring, as well as for primary medical care.

42. On 21 November 2017 the Sosnivskyy Court rejected the applicant's application of 31 October 2017 (see paragraph 38 above) by a final ruling, concluding that, according to the SIZO governor's information note of 16 November 2017, the applicant did not require medical treatment outside the SIZO.

43. On 11 January 2018 the applicant was examined in the SIZO by a private cardiologist, who issued a conclusion that the applicant was suffering from stable third-degree stenocardia; cardiomyopathy; second-degree hypertensive disease; and the residual effects of the head injury of 2009. The applicant was prescribed various medicines in respect of the above-mentioned diseases. He was also prescribed immediate inpatient treatment at a medical institution specialising in cardiac and neurological medicine, with a view to checking the diagnosis, and the provision of further treatment.

44. On 17 January 2018 the same private cardiologist issued another conclusion, which was based on the previous one and on the results of recent medical tests that she had performed on the applicant, and some older medical documentation. The doctor confirmed the diagnosis of 11 January 2018 and

added that the applicant was suffering also from chronic kidney disease in the exacerbation phase, and chronic hepatitis. The applicant's state of health was classified as verging on serious, and it was stated that he required immediate hospitalisation at a medical institution specialising in cardiac and neurological medicine, with a view to clarifying the diagnoses and providing further treatment.

45. On 17 January 2018 the penal authorities provided the applicant's lawyer with information about his state of health, which was similar to that already provided by them on 16 November 2017 (see paragraph 43 above). The applicant had been placed in the SIZO medical unit and was being provided with inpatient treatment. The nature of the treatment was not specified. In addition, the penal authorities noted without any further details that the applicant's general state of health was tending towards deterioration.

46. From 1 to 9 February 2018 the applicant underwent examination and treatment at Cherkassy Municipal Hospital. As a result of that examination, the applicant was diagnosed with ischaemic heart disease, angina, hypertensive heart disease, and dyscirculatory hypertensive encephalopathy. Medicine was prescribed for him, and recommendations were made for his further medical care. On the last-mentioned date, the applicant was placed in the SIZO medical unit for an inpatient treatment.

47. According to information from the penal authorities dated 2 March 2018 and addressed to the Agent of the Government of Ukraine before the European Court of Human Rights, the SIZO was not able to implement recommendations given by doctors at Cherkassy Municipal Hospital in view of the lack of the necessary equipment and the absence of a cardiologist and a neurologist on its staff.

48. Following an examination of 23 October 2018, the applicant was diagnosed with ischaemic heart disease, stable stenocardia, ischaemic cardiomyopathy, hypertensive disease, myocardial left ventricular hypertrophy, extrasystolic arrhythmia, cardiac distress with acute deficiency in the left ventricle, the consequences of closed craniocerebral injury in 2009, chronic kidney disease in the exacerbation phase, chronic hepatitis with smoldering cholecystitis. The applicant was prescribed medicine. On 24 October 2018 he underwent a range of examinations in the medical centre outside the SIZO.

49. On 20 November 2018, according to the applicant, he felt pain in the chest area. The applicant believed that it was a heart attack. He was allegedly partly paralysed for more than a day and he did not receive appropriate medical assistance, which put him in a life-threatening situation.

50. On 21 November 2018 the Sosnivskyy Court in a ruling obliged the SIZO to conduct an immediate medical examination of the applicant for his heart conditions.

51. On 22 and 26 November 2018 the Sosnivskyy Court ordered medical treatment for the applicant and urgent inpatient medical assistance.

52. On 28 December 2018 the applicant was examined by a therapist who recommended that he have medical treatment in a specialised department.

53. On 28 January 2019 the Sosnivskyy Court once again ruled on ensuring the applicant's medical treatment.

54. On 21 March 2019 the Prydniprovskyy Court stated that neither the treatment recommended, nor other appropriate medical treatment, had been provided to the applicant after his examination on 28 December 2018. The court ordered the examination and medical treatment of the applicant.

55. During the period of January-August 2019 the applicant was examined by neurologists, gastroenterologists, cardiologists, a neurosurgeon and an orthopaedist from the Cherkassy Regional Hospital, who gave advisory opinions, and gave the applicant recommendations concerning the state of his health.

56. After his release from the SIZO on 9 January 2020 (see paragraph 31 above), the applicant did not update the Court about the state of his health and the treatment he may have been receiving while still under house arrest.

RELEVANT LEGAL FRAMEWORK

I. CODE OF CRIMINAL PROCEDURE 2012

57. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 197

Term of validity of the ruling on detention or continued detention

“1. The term of validity of the ruling by the investigating judge or the court ordering an accused's detention or continued detention may not exceed sixty days ...”

Article 206

General duties of a judge regarding the protection of human rights

“1. Any investigating judge whose territorial jurisdiction extends to a person held in custody shall be entitled to issue a decision ordering any public authority or official to ensure respect for that person's rights.

2. Whenever an investigating judge receives information from any source whatsoever which gives grounds for a reasonable suspicion that there is a person within the court's territorial jurisdiction who has been deprived of his or her liberty without a valid court decision, or has not been released from custody after the payment of bail in accordance with the procedure laid down in this Code, that judge is required to issue a decision ordering any public authority or official in whose custody the person is held to immediately bring that person before the investigating judge in order to verify the grounds for the deprivation of his or her liberty.

3. The investigating judge shall be obliged to release the person deprived of his or her liberty unless the public authority or official holding the person in custody presents a court decision which has already become enforceable, or demonstrates the existence of other legal grounds for depriving the person of his or her liberty.

...

5. Irrespective of whether an application has been lodged by an investigator or a prosecutor, the investigating judge shall be obliged to release the person from custody unless the public authority or official holding him or her in custody demonstrates:

(1) the existence of legal grounds for detaining the person concerned in the absence of a decision of the investigating judge or the court;

(2) that the maximum custody period has not been exceeded; [and]

(3) that there has been no delay in bringing the person before a court.

...”

Article 208. Arrest by a competent official [without a court order]

“1. [In the absence of a court order a] competent official is entitled to arrest (*затримати*) a person suspected of having committed a crime for which a prison sentence may be imposed, only in the following cases:

(1) if the person has been caught whilst committing a crime or attempting to commit one; or

(2) if immediately after a criminal offence the statements of an eyewitness, including the victim, or the totality of obvious signs on the body, or clothes or at the scene of the event indicate that this person has just committed an offence ...

4. A competent official who has carried out the arrest shall immediately inform the arrested person, in a language which he/she understands, of the grounds for the arrest and of what crime he/she is suspected of having committed. The official shall also explain to the arrested person his/her rights: to be legally represented; to be provided with medical assistance; to make statements or to remain silent; to inform [third] persons ... of his/her arrest and whereabouts; to challenge the grounds for the arrest; as well as the other procedural rights set out in this Code.

5. A report shall be drawn up in respect of an individual’s arrest containing, [in particular,] the following information: the place, date and exact time (the hour and minute) of the arrest ...; the grounds for the arrest; the results of the search of the person; requests, statements or complaints of the arrested person, if any; and a comprehensive list of his/her procedural rights and duties. The arrest report shall be signed by the official who drew it up, and by the arrested person. A copy shall immediately be served on the arrested person after obtaining his/her signature ...”

Article 315

Resolution of issues relating to preparation for trial

“...

3. During the preliminary court hearing the court shall be entitled, at the request of participants in the trial, to impose, alter or revoke measures to ensure the conduct of the criminal proceedings, including any preventive measures imposed on the accused. When considering such requests, the court shall follow the rules set forth in Chapter II of this Code [Measures to Ensure the Conduct of Criminal Proceedings]. In the absence of such a request from the parties to the trial, the measures to ensure the conduct of the criminal proceedings that were selected at the pre-trial investigation stage shall be deemed to be extended.”

58. On 23 November 2017 the Constitutional Court declared the last sentence of Article 315 § 3 of the CCP unconstitutional on the grounds that it contradicted the constitutional provision providing that detention must be based on a reasoned court decision. The Constitutional Court relied, in particular, on the Court's judgment in *Ignatov v. Ukraine* (no. 40583/15, § 36, 15 December 2016), where the Court had held that keeping the defendant in detention at the trial stage based on a mere extension of detention imposed at the pre-trial stage and without giving reasons for such a decision had left the defendant in a state of uncertainty as to the grounds for his detention and had been incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1.

59. Article 303 § 1 lists the investigators' and prosecutors' decisions, actions or failures to act which are amenable to appeal during the pre-trial investigation. The decision of the investigator to arrest the suspect is not included in that list. Article 303 § 2 provides that the decisions, actions or failures to act of the investigator or the prosecutor which are not amenable to appeal during the pre-trial investigation, may be examined by the trial court at the preparatory hearing.

II. DECISION OF THE SUPREME COURT OF 27 MAY 2019 IN CASE NO. 766/22242/17

60. In the mentioned decision, the Supreme Court examined an appeal on points of law against the refusal of the Kherson Regional Court of Appeal of 5 June 2018 to hear the claimant's appeal against the decision of the Kherson Local Court of 28 May 2018. By the last-mentioned decision the Kherson Local Court had dismissed the claimant's application regarding the unlawfulness of his arrest, submitted under Article 206 of the CCP. The Supreme Court upheld the decision of the Kherson Regional Court of Appeal of 5 June 2018 finding that the Local Court's decision taken in accordance with Article 206 of the CCP was not subject to appeal. The Supreme Court furthermore stated that Article 206 of the CCP provided for a mechanism for release of a person who was deprived of his/her liberty without a court decision. That mechanism was not applicable to appeals against decisions, acts or omissions of the law-enforcement officers in connection with arrest under Article 208 of the CCP (the provision governing person's arrest without a court order. In respect of such decisions, acts or omissions, the arrested person could raise the issues [of unlawfulness of arrest] in the course of the judicial procedures on preventive measures and/or in the course of the preparatory hearing and the trial.

THE LAW

I. JOINDER OF THE APPLICATIONS

61. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. SCOPE OF THE CASE

62. In response to the Government's observations, the applicant reiterated complaints already declared inadmissible by the Court, namely that he had been held in a glass cabin during some of the court hearings in breach of Articles 3, 6 § 1 and 13 and that there had been a violation of Article 18 of the Convention in conjunction with Article 5 §§ 1 (c), 4, 5 and Article 6 § 1. The Court's decision to reject these complaints being final, they fall outside of the scope of the case.

63. The Court furthermore observes that, after the communication of the case to the respondent Government, the applicant lodged a new complaint alleging that the conditions of his detention had been poor.

64. In the Court's view, the applicant's new complaint is not an elaboration of his original complaints to the Court on which the parties have commented. The Court considers, therefore, that it is not appropriate to take it up in the context of the present case (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

III. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

65. The applicant complained that he had not had access to adequate medical treatment in detention and that he had been confined in a metal cage during the court hearings which had taken place in 2017-18. He relied on 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

1. As to the medical treatment provided to the applicant

66. The Government submitted that throughout the applicant's detention he had been under constant medical supervision and had been provided with the necessary treatment. Moreover, he had been given the opportunity to attend healthcare establishments while under house arrest and the authorities were not responsible for his medical treatment at that time. The Government invited the Court to declare the above complaint inadmissible.

67. The applicant alleged that he had not been provided with adequate medical care and assistance while detained. He considered that his placement under house arrest had only highlighted the unlawfulness of his deprivation of access to medical facilities while in detention. The applicant contended that following his renewed placement in detention on 14 November 2019, the problem of access to specialised medical care had arisen again and continued until his release on 9 January 2020.

68. The Court reiterates that, in accordance with Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his or her human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (see, for instance, *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

69. However, the Court has held that Article 3 of the Convention cannot be interpreted as ensuring that every detainee should receive medical care at the same level as “in the best civilian clinics” (see *Mirilashvili v. Russia* (dec.), no. 6293/04, 10 July 2007). It has further held that it is “prepared to accept that, in principle, the resources of medical facilities within the [prison] system are limited compared to those of civilian clinics” (see *Grishin v. Russia*, no. 30983/02, § 76, 15 November 2007). On the whole, the standard of the health care provided should be “compatible with the human dignity” of a detainee, but should also take into account “the practical demands of imprisonment” (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008).

70. The thrust of the applicant’s complaint in the present case concerns the alleged lack of effective medical treatment for his cardiac and long-lasting and chronic neurological conditions. As can be seen from the available material, the applicant’s state of health began deteriorating from January 2018. Since then he has been afforded medical care and treatment by both penitentiary and civilian medical facilities (see paragraphs 43, 44, 46 and 55 above).

71. The Court observes that the SIZO authorities reacted promptly to the deterioration in the applicant’s health, providing him with inpatient medical treatment and organising a variety of medical examinations (see paragraphs 46, 48 and 55 above). The applicant was under the constant supervision of doctors who examined him regularly and prescribed relevant treatment, and medical tests which were subsequently carried out.

72. It is true that a private cardiologist recommended that the applicant should receive inpatient treatment at a specialist medical facility outside the SIZO (see paragraph 44 above), and that the domestic courts had to intervene on several occasions to instruct the SIZO administration to provide the

applicant with medical care (see paragraphs 51, 53 and 54 above). Without speculating about whether a private cardiologist was able to perform a comprehensive examination of the applicant at the SIZO without having the necessary equipment, and to provide concrete and verified recommendations for the treatment of the applicant, it is noted that the penal authorities acted on the doctor's recommendations and on the courts' instructions regarding the provision of medical care to the applicant. Furthermore, the applicant did not demonstrate that his health deteriorated as a result of the alleged deficient medical care (see, *mutatis mutandis*, *Koktysh v. Ukraine*, no. 43707/07, § 103, 10 December 2009, and *Pivovarnik v. Ukraine*, no. 29070/15, § 40, 6 October 2016).

73. As regards the applicant's allegation that he had experienced difficulties with access to medical care while under house arrest and during his subsequent placement in detention on 14 November 2019, that is, after the present case was communicated, it is noted that the applicant failed to provide relevant documentary evidence in that regard.

74. In sum, the Court finds that the applicant has not sufficiently substantiated his complaints regarding the alleged deficiencies in the medical assistance provided in detention. Moreover, it is not clear from the case-file whether, if established, those deficiencies would have reached the threshold of severity under Article 3 of the Convention.

75. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

2. As to the applicant's confinement in a metal cage

76. In the present case, regard being had to the parties' submissions and all material regarding the relevant facts (see paragraphs 32 and 33 above), the Court finds it established that the applicant was indeed held in a metal cage only during the hearings at the Court of Appeal on 30 May 2017 and 20 July 2018.

77. Seeing that the alleged violation cannot be seen as a continuing situation for the purposes of Article 35 of the Convention (compare *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 86, ECHR 2014 (extracts)), it further finds that the applicant has not complied with the six-month rule under Article 35 § 1 of the Convention, as in force at the relevant time, in relation to his complaint, introduced on 18 October 2018, concerning confinement in a metal cage on 30 May 2017. The Court therefore declares inadmissible this part of the complaint as being submitted out of time. It also declares inadmissible, as being not supported by the evidence and therefore manifestly ill-founded, the applicant's complaint that he was placed in a metal cage during other hearings. This part of the application must therefore be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

78. As regards the complaint about the applicant's placement in a metal cage during the hearing at the Court of Appeal on 20 July 2018, the Court notes that it is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

79. The Court has already found violations of Article 3 in a number of similar cases and has held that the holding of defendants in metal cages during a court hearing was a standard procedure in Ukraine, which did not include an assessment of the existence of any actual and specific security risks in the courtroom requiring that the defendant be held in a metal cage during the hearings (see *Korban v. Ukraine*, no. 26744/16, § 132, 4 July 2019). The present case is another example of that practice. While it is true that an incident had occurred in the court room on 30 May 2017 (see paragraph 9 above), the Government did not provide any evidence that there had been any actual and specific security risk in the courtroom on 20 July 2018 which required the applicant to be held in a metal cage during that hearing. Even if tension in the courtroom might have been expected to arise again, it has not been shown there were no other means to deal with it.

80. The Court does not see any reason to depart from its earlier findings in the present case. Accordingly, there has been a violation of Article 3 of the Convention.

IV. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

81. The applicant complained, relying on Article 5 § 1 (c) of the Convention, that his being kept in the Cherkassy Regional Court of Appeal hearing room on 30 May 2017 as a result of an incident involving the public, and his subsequent "re-arrest" by the investigator on the same day had been arbitrary.

82. The applicant further complained under Article 5 § 1 of the Convention that the court decision of 16 March 2018 committing him for trial had been unlawful as it had been taken on the basis of a legal provision which had not been in force at the time because it had been declared unconstitutional on 23 November 2017. He also complained that his detention between 16 March and 15 May 2018, on the basis of a court order, had sixty-one days contrary to the requirements of the Code of Criminal Procedure, which limited the maximum period of detention on the basis of a single court order to sixty days.

83. The applicant also complained under Article 5 § 3 of the Convention that his pre-trial detention had been unjustified and unreasonable.

84. Relying on Article 5 § 4 of the Convention, the applicant complained that the domestic courts had failed to conduct a proper examination of his application of 31 May 2017 in respect of the lawfulness of his arrest on 30 May 2017.

85. The applicant invoked Article 5 §§ 1, 3, and 4 of the Convention, which reads, in so far as relevant, as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful ...

A. Article 5 § 1 of the Convention

1. Admissibility

(a) As to the applicant's retention in the courtroom for approximately two hours on 30 May 2017

86. The Government submitted that the events of 30 May 2017 at the Court of Appeal had been exceptional: the applicant had been confined only for a short period of time in the interests of his own safety and public order. In response to aggressive behaviour by a group of people, police officers present in the courtroom had tried to stop that group of people and ensure the applicant's safety. The applicant reiterated his complaint.

87. The Court observes that it is unclear to what extent the applicant's inability to freely leave the courtroom for a little more than two hours, between the announcement of the Court of Appeal's decision to release him immediately and until a fresh decision to arrest him was taken by an investigator, was imputable to the police authorities or was the result of a factual situation created by private persons present in the courtroom (see paragraph 10 above). In the Court's view, to the extent that it can be considered that the police officers present in the courtroom prevented the applicant from leaving immediately, the particular situation must be seen as a restriction on the applicant's freedom of movement rather than a deprivation

of liberty within the meaning of Article 5 of the Convention (see *Austin and Others v. the United Kingdom GC*, no. 39692/09 et al., §§ 52-69, 15 March 2012, where the background situation was different but which also involved restrictions temporarily made necessary by the behaviour of third parties). Having regard to the specific circumstances and relatively short duration of the applicant's having been blocked in the courtroom, the Court considers that Article 5 of the Convention did not apply. Noting, in addition, that the applicant's submissions cannot be interpreted as containing, in substance, a complaint under Article 2 of Protocol No. 4 to the Convention, the provision concerning the liberty of movement, the Court finds that the complaint at issue must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention, as being incompatible *ratione materiae* with its provisions.

88. In any event, to the extent that it can be considered that the applicant was in a situation where his right to liberty was threatened by the public present in the courtroom and the above-mentioned circumstances could be seen as giving rise to a positive obligation on the State to protect his liberty (see, for example, *Storck v. Germany*, no. 61603/00, §§ 101-02, ECHR 2005-V), the Court considers that in the present case there is no indication of any failure to discharge that obligation.

89. Bearing in mind that the aggressive behaviour of private persons who were present in the courtroom occurred immediately after the pronouncement of the Court of Appeal's decision concerning the applicant's release, it is difficult for the Court to see any other practical solution available to the authorities which could have effectively stopped the incident at once, while ensuring the applicant's liberty and physical safety in accordance with their Convention duty to protect the life of arrested and detained persons (see, *mutatis mutandis*, *Keller v. Russia*, no. 26824/04, § 88, 17 October 2013). Furthermore, the Court notes that the applicant has not claimed that there was something different that the authorities should have done in the circumstances to ensure at the same time his liberty and safety immediately after the pronouncement of the Court of Appeal's decision concerning the applicant's release.

(b) As to the unlawfulness of the applicant's "re-arrest" by the investigator on 30 May 2017

90. The Court observes that at the time of the exchange of the parties' observations within the framework of application no. 62209/17, the applicant had not instituted compensation proceedings in connection with the Court of Appeal's decision of 12 June 2017. However, when commenting on the Government's observations on the admissibility and merits of application no. 50933/18, the applicant mentioned, without providing any further detail, that the compensation proceedings had in fact been instituted and that the

Court of Appeal had awarded him 5,000 Ukrainian hryvnias (see paragraph 31 above).

91. A decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of his or her status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for instance, *Nada v. Switzerland* [GC], no. 10593/08, § 128, ECHR 2012; see also, concerning Article 5 of the Convention, *Moskovets v. Russia*, no. 14370/03, § 50, 23 April 2009). Only when these two conditions are satisfied does the subsidiary nature of the protective mechanism set up by the Convention preclude examination of an application by the Court (see *Rooman v. Belgium* [GC], no. 18052/11, § 129, 31 January 2019).

92. The Court observes that on 12 June 2017 the Court of Appeal explicitly acknowledged that the applicant’s “re-arrest” by the investigator on 30 May 2017 had been effected in breach of the domestic law and the Convention and notes that this decision enabled the applicant to successfully institute proceedings for damages and obtain an award of compensation (see paragraph 31 above). The applicant has not claimed that the amount was insufficient.

93. In the light of the foregoing, the Court considers that the applicant can no longer claim to be the “victim” of a violation of Article 5 § 1 of the Convention for the purposes of Article 34 of the Convention, as regards his “re-arrest” on 30 May 2017 (see for a similar solution, *Dubovtsev and Others v. Ukraine*, nos. 21429/14 and 9 others, §§ 58-65, 21 January 2021). This part of the application must therefore be rejected in accordance with Article 35 § 4 of the Convention.

(c) As to the extension of the applicant’s detention pursuant to the Talne Court’s decision of 16 March 2018

94. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of his complaint arguing that the third sentence of Article 315 § 3 of the Code of Criminal Procedure, applied by the trial court, had been declared unconstitutional by the Constitutional Court of Ukraine on 23 November 2017 and that the applicant was therefore entitled to compensation. In the Government’s view, the applicant should have instituted administrative proceedings to claim compensation for unlawful detention.

95. The applicant stated that the Government had failed to indicate which compensation procedure could be considered effective in his case and to demonstrate it by providing examples of relevant court decisions.

96. The Court notes that the Government do not refer to a particular provision of domestic law providing for a right to claim compensation for unlawful detention when a relevant statutory provision has been declared unconstitutional, without there having been a domestic decision declaring

unlawful the detention of the person concerned. The Government also failed to provide examples of domestic judicial practice to show the effectiveness of the remedy that they suggested.

97. In the light of the foregoing, the Government's objection based on the non-exhaustion of domestic remedies must be dismissed.

98. The Court further notes that the complaints under Article 5 § 1 regarding the alleged unlawfulness of the applicant's detention from 16 March to 15 May 2018, are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

2. *Merits*

99. The applicant submitted that on 16 March 2018 the trial court had maintained his detention without providing any reasons for that decision and on the basis of a legal provision which had been declared unconstitutional by that time (see paragraph 58 above). He further submitted that his detention between 16 March and 15 May 2018 on the basis of the court order of 16 March 2018 had been unlawful as it had lasted sixty-one instead of the maximum sixty days.

100. The Government submitted that there had been a clerical error in the court's decision of 16 March 2018 in respect of the duration of the authorised detention (until 16 May 2018). They added that the court had returned to the question of the extension of the applicant's detention one day earlier than had previously been authorised, namely on 15 May 2018. As a result, the period of his detention based on a single court order had not exceeded the maximum term and had been in compliance with the requirements of the domestic law.

101. The Court notes that following its judgment in the case of *Ignatov* (cited above, §§ 35-36), in which it found that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1, the Constitutional Court had declared the last sentence of Article 315 § 3 of the CCP unconstitutional (see paragraph 58 above). However, despite the Constitutional Court's judgment, in the present case, the trial court relied on that latter provision when ordering that the applicant's detention "shall be deemed to be extended" (see paragraph 23 above).

102. It therefore appears that the applicant's detention from 16 March to 15 May 2018 did not meet the lawfulness requirement as provided by Article 5 § 1 of the Convention. In any event, the circumstances of the applicant's detention during the above-mentioned period of time are similar to those criticised by the Court in *Ignatov* (cited above, §§ 35-37).

103. In the current circumstances there is no need to deal with the question whether the same court order of 16 March 2018 suffered from an additional deficiency, as alleged by the applicant.

104. There has accordingly been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 16 March to 15 May 2018.

B. Article 5 § 3 of the Convention

105. The applicant complained that the court decision of 26 July 2017 extending his detention had not been substantiated. He further complained that his pre-trial detention had been too long.

106. The Government submitted that in its decision of 26 July 2017, the Sosnivskyy Court had provided relevant and sufficient reasons to justify the applicant's continued detention. They further submitted that the overall length of the applicant's pre-trial detention had been reasonable taking into account the nature of the accusations against him and the existing risks of his absconding, in particular the possible influence on his co-accused and other participants to the proceedings.

1. Admissibility

107. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

108. The Court refers to the general principles outlined in *Korban v. Ukraine* (cited above, §§ 154-57), which are equally pertinent to the present case.

109. As regards the period to be taken into consideration for the purposes of Article 5 § 3, the Court notes that that period commenced on 16 May 2017, when the applicant was arrested. In the course of the trial the applicant's detention was replaced by 24-hour house arrest (from 22 August to 14 November 2019, and from 9 January to 30 April 2020; see 29 - 30 above), however the Government did not dispute the applicability of Article 5 of the Convention to the applicant's house arrest, which is considered, in view of its degree and intensity, to amount to a deprivation of liberty within the meaning of this provision (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 104, 5 July 2016, with further references). According to the most recent information obtained from the parties at the time of the exchange of their observations before the Court (April 2020), the applicant was under 24-hour house arrest until 30 April 2020. The period under consideration for the purposes of Article 5 § 3 is, therefore, some two years and eleven months.

110. The Court further observes that the seriousness of the charges against the applicant and the risk of his absconding or interfering with the

investigation were mentioned in the initial order for his detention (see paragraph 15 above). There is little doubt that those reasons justified his initial deprivation of liberty.

111. The Court notes, however, that the applicant's pre-trial detention was extended by a number of decisions delivered by the local courts and the Court of Appeal using a standard template. In particular, with the exception of the order of 12 June 2017 (see paragraph 18 above), they limited themselves to repeating a number of grounds for detention in an abstract and stereotyped way, without giving any factual elements and reasons why they considered those grounds still relevant to the applicant's case (see paragraphs 22 and 25 above).

112. As they were couched in general terms and contained repetitive phrases, the courts' decisions concerning the applicant's pre-trial detention did not suggest that an appropriate assessment had been made of the continued justification of the applicant's deprivation of liberty despite the passage of time.

113. In the present case the Court does not need to examine whether the criminal proceedings against the applicant were conducted with due diligence while he was deprived of liberty pending the determination of the criminal charges against him and whether or not delays were imputable to the authorities or to the applicant. That is so because the considerations in the preceding paragraphs are sufficient to conclude that, by using a standard formula merely listing the grounds for detention without addressing the specific facts of the applicant's case, the domestic courts failed to give "relevant" and "sufficient" reasons to justify the need for the extension and the overall length of the applicant's pre-trial detention from 16 May 2017 to 22 August 2019.

114. The Court notes, however, that as far as the period from 22 August 2019 until 30 April 2020 is concerned, the courts' decisions to impose or extend the applicant's 24-hour house arrest (see paragraphs 26 – 29 above) do not appear to disclose the same defect. In particular, the need for the applicant's continued deprivation of liberty was assessed having regard to his health situation, resulting in a more lenient preventive measure having been imposed. When the Gorodyschenskyy Court was found not to have properly assessed the risk of absconding or influence on the co-accused, the Court of Appeal quashed its decision and ordered his detention which, soon after, was reduced to house arrest when the prosecutor's request to extend detention was held to be unsubstantiated (see paragraphs 26 – 28 above). Consequently, the period of the applicant's detention from 22 August 2019 until 30 April 2020 while the applicant was on house arrest does not appear to be insufficiently justified by the courts.

115. Having regard to the considerations above, the Court considers that there has been a violation of Article 5 § 3 of the Convention regarding the applicant's pre-trial detention from 16 May 2017 to 22 August 2019.

C. Article 5 § 4 of the Convention

116. The applicant complained that the review of the lawfulness of his “re-arrest” of 30 May 2017 had been formalistic and contrary to Article 5 § 4.

1. *Admissibility*

117. The Government did not object to the admissibility of this complaint. The Court notes, firstly, that the acknowledgement of unlawfulness and the compensation obtained by the applicant (see paragraphs 19 and 31 above), which led it to conclude that the applicant could no longer claim to be the victim of one of the violations of Article 5 § 1 he alleged (see paragraph 93 above), did not concern the manner in which the courts dealt with the review of lawfulness of his “re-arrest” and, therefore, do not affect the admissibility of the complaint under Article 5 § 4. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

118. The applicant submitted that the review of the lawfulness of “re-arrest” had been formalistic, as the judge of the Prydniprovskyy Court who examined his application of 31 May 2017 (see paragraph 14 above) had only checked whether there was an arrest report in the case file. The judge had failed to assess the grounds for the applicant’s arrest indicated in the report, and had failed to address the applicant’s specific arguments in that regard.

119. The Government submitted that the judge, when examining the applicant’s application, had properly reviewed the lawfulness of his arrest. Having verified that the case file contained the relevant arrest report, that fact, in the Government’s opinion, was sufficient for the judge to reach a decision. They further emphasised that on 12 June 2017 the Court of Appeal had found the applicant’s “re-arrest” of 30 May 2017 to be unlawful.

120. General principles regarding the right to an effective remedy to challenge the lawfulness of detention under Article 5 § 4 of the Convention have been summarised in *Rasul Jafarov v. Azerbaijan*, no. 69981/14, §§ 140- 42, 17 March 2016.

121. The Court observes that on 31 May 2017 the applicant lodged an application with the relevant domestic court referring to Article 206 of the CCP seeking a declaration that his “re-arrest” of 30 May 2017 was unlawful, and a ruling on his immediate release. The applicant explicitly referred to the fact that the reasons for his arrest indicated in the report of 30 May 2017 – essentially, alleged arrest in flagrancy (see paragraph 13 above), – had nothing to do with the actual circumstances in which he had been arrested. In the light of the undisputed facts that the applicant was “re-arrested” as a

crowd present in the court room reacted violently to the judicial decision to release him, the applicant's argument was clearly relevant to the question whether his "re-arrest" was lawful. However, his application was rejected by the local court on 31 May 2017 without any attention having been devoted to the applicant's arguments (see paragraph 14 above).

122. The Court recalls in this connection that while Article 5 § 4 of the Convention does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee and capable of putting in doubt the existence of the conditions essential for the "lawfulness", in the sense of the Convention, of the deprivation of liberty (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II).

123. The circumstances of the present case show that the above-mentioned guarantees have not been respected by the local court when examining the applicant's application of 31 May 2017 (see paragraph 14 above). That means that the review of the lawfulness of the applicant's "re-arrest" undertaken by the local court was clearly defective and did not meet the requirements of Article 5 § 4 of the Convention.

124. However, and while it is true that the local court's decision of 31 May 2017 was in principle final, the Court notes that on 12 June 2017 the Court of Appeal, in separate proceedings whose main object was different, examined the applicant's reiterated complaint regarding his "re-arrest" on 30 May 2017 and found that it had been effected in breach of the procedure prescribed by the CCP. The Court of Appeal acknowledged that the applicant's detention from the moment of his re-arrest on 30 May and until 1 June 2017, when the local court had ordered his continued detention, had not been in compliance with domestic law (see paragraph 19 above).

125. The Court observes that the possibility to examine, nonetheless, the issue of unlawfulness of a person's arrest in the course of the judicial procedure of application of a preventive measure in criminal proceedings, as the Court of Appeal did on 12 June 2017 in the applicant's case (see paragraph 16 above) finds support in the relevant case-law of the Supreme Court (see paragraph 60 above about the Supreme Court's decision of 27 May 2019 in the case no. 766/22242/17 which, albeit postdating the events in the present case appears to reflect an already existing practice).

126. Having regard to the fact that the applicant has successfully used the above-mentioned procedure and has obtained a judicial decision declaring his "re-arrest" on 30 May 2017 unlawful (see paragraph 19 above) and that he has not raised a complaint regarding the delay of twelve days with which a proper review of the lawfulness of his re-arrest eventually took place, the Court considers that in the particular circumstances of the case it cannot be considered that the applicant was not afforded a proper judicial review of the

lawfulness of his re-arrest of 30 May 2017. Accordingly, there has been no violation of Article 5 § 4 of the Convention.

V. OTHER ALLEGED VIOLATION OF THE CONVENTION

127. Relying on Article 6 of the Convention, the applicant furthermore complained that the domestic courts, when dealing with his pre-trial detention, had not been independent in view of pressure put on them by the public and the authorities' inactivity.

128. However, having regard to the facts of the case and the submissions of the parties, the Court finds that the above issue does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

129. 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

130. The applicant claimed 15,000 euros (EUR) in respect of pecuniary damage and EUR 220,000 in respect of non-pecuniary damage.

131. The Government contested the applicant's claims in respect of pecuniary damage as unspecified and unsupported with relevant documentary evidence. As regards the applicant's claims for non-pecuniary damage, they considered them unsubstantiated and excessive.

132. The Court considers that the applicant's claims in respect of pecuniary damage are not substantiated; it therefore rejects this claim. On the other hand, it awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

133. The applicant also claimed EUR 28,838.53 for the costs and expenses incurred before the domestic courts and the Court. He indicated that his lawyers had spent 150 hours on his case at an hourly rate of EUR 100. The applicant further claimed EUR 2,757.71 for administrative and postage expenses. He did not submit documentary proof in support of the above claims.

134. The Government submitted that the applicant's claims for costs and expenses were unsubstantiated since the applicant had failed to support his claims with relevant documentary evidence such as a copy of the contract with the lawyers, time sheets, receipts and other documentary evidence in support of the above claim.

135. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court rejects the applicant's claims since he has failed to support his claims with relevant documentary evidence.

C. Default interest

136. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints under Article 3 regarding the applicant's placement in a metal cage during the hearing at the Court of Appeal on 20 July 2018, under Article 5 § 1 regarding the alleged unlawfulness of his detention from 16 March to 15 May 2018, under Article 5 § 3 regarding the lack of justification for and the length of his pre-trial detention, and under Article 5 § 4 regarding the lack of a review of the lawfulness of his arrest on 30 May 2017 admissible, and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 3 of the Convention regarding the applicant's deprivation of liberty from 16 May 2017 to 22 August 2019;
6. *Holds* that there has been no violation of Article 5 § 4 of the Convention;

7. *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 10,000 (ten 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;

8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Síofra O'Leary
President