



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

FIFTH SECTION

CASE OF ALPERIN v. UKRAINE

(Application no. 41028/20)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Proportionate forfeiture of part of the applicant's bail for breaching the obligation imposed as part of his bail conditions to hand over all international travel documents that would have enabled him to cross the State border

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 October 2024

FINAL

17/03/2025

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

In the case of Alperin v. Ukraine,

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

Mattias Guyomar, *President*,
Lado Chanturia,
Stéphanie Mourou-Vikström,
María Elósegui,
Kateřina Šimáčková,
Mykola Gnatovskyy,
Artūrs Kučs, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 41028/20) 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 and Israeli national, Mr Vadym Oleksandrovych Alperin (“the applicant”), on 29 August 2020;

the decision to give notice of the application to the Ukrainian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 17 September 2024,

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

INTRODUCTION

1. The case concerns mainly the applicant’s allegedly unlawful arrest without a prior court order and the alleged lack of justification for the courts’ decisions ordering his arrest and setting the bail, in breach of Article 5 §§ 1 and 3 of the Convention; the alleged violation of his presumption of innocence in breach of Article 6 § 2; the allegedly unlawful forfeiture of bail, in breach of Article 1 of Protocol No. 1 to the Convention; and the alleged restriction of his rights outlined above, in breach of Article 18 of the Convention.

THE FACTS

2. The applicant was born in 1972 and lives in Odesa. He was represented by Mr G.V. Tokarev, a lawyer practising in Kharkiv.

3. The Government were represented by their Agent, Ms M. Sokorenko, from the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. Before the events to which the case relates, the applicant had claimed to be a businessman in the field of international maritime transport.

6. In 2017 the National Anti-Corruption Bureau (“the NABU”) started investigating a case concerning large-scale smuggling, corruption and abuse of power involving a number of customs officials. According to the available investigation material, the applicant established a group, which included a number of customs officials, in order to arrange the import of textiles and other consumer goods, and their customs clearance at a lower rate. In the course of the investigation, the applicant was accused of attempting to offer a bribe to one of the investigators dealing with the above-mentioned investigation.

7. On 30 November 2017 the Pecherskyi District Court of Kyiv ordered the applicant’s detention in the context of the investigation into offering a bribe and fixed bail at 20,800,000 hryvnias (UAH – 680,000 euros (EUR)). On 22 January 2018 the Kyiv City Court of Appeal partly allowed the applicant’s appeal and reduced the amount of bail to UAH 140,960 (EUR 4,600). The Kyiv City Court of Appeal also ruled that in the event of bail payment, the following obligations would be imposed on the applicant: to report to the investigator upon the first request; not to leave Odesa without the investigator’s authorisation; to notify the investigator, the prosecutor or the court of any change in his place of residence or place of work; to hand over all international travel documents that would enable him to cross the State border; and to refrain from communicating with witnesses or other co-accused outside of investigative actions. On an unspecified date the applicant was released from detention following the payment of bail.

8. As that large-scale investigation progressed, another set of proceedings concerning new counts of smuggling, corruption and abuse of power was instituted. On the morning of 26 November 2019 the investigator went to the applicant’s home with the intention of performing a search and serving a notification of suspicion (*повідомлення про підозру*) on him; however, he was not at home.

9. According to the Government, the applicant’s wife refused to inform the investigator of the whereabouts of the applicant, who could not be reached as he had switched his mobile phone off. Having checked video surveillance cameras, the investigator established that the applicant had left his home the day before the search and the authorities believed that he had gone into hiding. On 26 November 2019 he was placed on a list of wanted persons.

10. On 26 November 2019 the President of Ukraine posted a statement on his official Facebook page. The statement read that the applicant, “who [was] considered to be one of the godfathers of smuggling” (*якого вважають одним із хрещених батьків контрабанди*), was in hiding. In his statement the President of Ukraine called on the public to help law-enforcement bodies find the applicant. The President promised a reward for the person who could assist in bringing about the “smuggler’s long-awaited meeting with the law” (*допоможе довгоочікуваній зустрічі контрабандиста із законом*). The President’s Facebook post was widely disseminated by the media.

11. On 27 November 2019 the applicant appeared voluntarily before the investigator, who arrested him without a prior court order. The relevant report stated, with reference to Article 208 § 1(3) of the Code of Criminal Procedure (“the CCP”), that the applicant had been arrested on the grounds that he might evade investigation.

12. On 28 November 2019 the NABU investigator lodged an application with the High Anti-Corruption Court (“the HACC”) seeking to have the preventive measure of pre-trial detention imposed on the applicant. The investigator argued that the applicant had established and managed a structured criminal group, which included customs officials, whose aim was to import textiles and other consumer goods and ensure their customs clearance at a lower tax rate. The import of goods and their customs clearance was organised through a number of legal entities that were controlled by the applicant and other members of the group. The damage in the form of unpaid taxes and fees was estimated at UAH 77,719,000. The offence imputed to the applicant was thus classified as “particularly serious”. The NABU investigator submitted that there was a risk that the applicant might abscond since he had tried to hide from the investigation on 26 November 2019; he had an Israeli international travel document indicating that he was an Israeli citizen; he had previously travelled to several specific foreign countries to which he could potentially flee; and he had a registered address in Israel that he had indicated in banking documents. The fact that the applicant was facing a potential sentence of five to twelve years’ imprisonment was another factor cited by the investigator, as was the complexity of the criminal scheme in question and the scale of duplicity it involved. All of those reasons indicated that, if at liberty, the applicant might interfere with the investigation by concealing evidence or influencing witnesses. Should the court be unwilling to order pre-trial detention, the NABU investigator proposed that bail be set as an alternative measure. In determining the amount of bail sought, the NABU investigator referred to Article 182 § 5 of the CCP (see paragraph 31 below) and argued that the applicant was the beneficial owner of eight foreign companies whose aggregate income in 2016-17 had been greater than the sum of 24,000,000 United States dollars and EUR 10,000,000. The investigator further submitted that the applicant had full access to the above-mentioned monetary assets as he had used them for personal purposes, for example by transferring money to his own bank accounts and by paying for the education of his family members. The applicant was also a beneficial owner of nine Ukrainian companies, the aggregate value of his shares in the registered capital amounting to approximately UAH 326,000,000 (EUR 10,860,000). In the light of the above-mentioned information, the NABU investigator proposed that bail be set at UAH 288,150,000 and that a number of obligations be imposed on the applicant.

13. On the same day the applicant lodged an application with the HACC under Article 206 of the CCP, arguing that no reasons had been given for arresting him without a warrant.

14. On 29 November 2019, having examined the NABU investigator's application, a judge of the HACC ordered the applicant's detention, relying on the investigator's submissions and referring to the gravity of the charges against him, the possibility that he might evade the investigation in view of his Israeli citizenship, the risk of influencing other suspects and witnesses, and the risk of destruction of evidence. Within the same proceedings the HACC further rejected the applicant's application under Article 206 of the CCP, holding that the procedure for examining complaints brought under that Article did not envisage the *post factum* examination of the lawfulness of a suspect's arrest made in accordance with Article 208 of the CCP. It also held that such complaints could be examined during the proceedings to select or extend the preventive measure, or during the preliminary hearing at the opening and in the course of the defendant's criminal trial.

15. In addition, the judge set bail and imposed a number of obligations on the applicant, similar to those imposed by the Kyiv City Court of Appeal on 22 January 2018 (see paragraph 7 above), including the obligation to hand over all international travel documents that would enable him to cross the State border. The judge held that the applicant had failed to refute the NABU investigator's arguments regarding his assets and set bail at UAH 70,001,240 (EUR 2,330,000), finding that the amount was not excessive for the applicant and would ensure his proper conduct during the proceedings. The court decision further explained that in the event that the applicant breached those obligations, the amount of bail deposited would be forfeited.

16. The bail was paid on 2 December 2019 and the applicant was released later that day.

17. On 4 December 2019 the applicant handed over his two Ukrainian passports to the authorities.

18. On 4 and 12 December 2019 the applicant lodged appeals against the decision of the HACC of 29 November 2019. He argued that there had been no reasonable suspicion that he had committed the offences in question, that the risks justifying his detention had been minimal and that the amount of bail set had been too high.

19. On 12 December 2019 the Appeal Chamber of the HACC upheld the decision of 29 November 2019, finding that it had been sufficiently reasoned.

20. On 23 January 2020 the HACC extended the period of validity of the obligations set by the HACC in its decision of 29 November 2019.

21. On 5 February 2020 the investigator lodged an application with the HACC seeking the forfeiture of the bail deposited by the applicant, as he had not handed over his Israeli passport and had therefore breached the obligations imposed on him by the decision of the HACC of 29 November 2019. The investigator substantiated his application with

evidence obtained from the Latvian authorities, through international legal assistance channels, testifying that the applicant had used his Israeli passport in Latvian banking institutions several times between 2 February and 11 November 2019. It was also established that the applicant had used that passport when entering Israel in April 2019. In addition, the investigator asked the HACC to set bail afresh in the amount of UAH 76,598,982 in respect of the applicant.

22. The applicant objected to the investigator's application, arguing that he had lost the above-mentioned Israeli passport in autumn 2019, before the HACC had given its decision of 29 November 2019. The applicant refused to indicate the precise date on which he had lost his passport. He further submitted a copy of a certificate issued by the Israeli Embassy in Ukraine on 24 February 2020 attesting that his Israeli passport had been cancelled.

23. On 18 March 2020 the judge of the HACC dismissed that application as unsubstantiated, holding that the available material did not prove that the applicant had breached the obligations set by the decision of the HACC of 29 November 2019.

24. On 16 April 2020 the Appeal Chamber of the HACC partly allowed an appeal lodged by the investigator. The court rejected as unfounded the applicant's assertion that he had lost his passport before the HACC had given its decision of 29 November 2019. Nor had the applicant proved that he had applied to the Israeli authorities about the loss of his passport before the above-mentioned date. In addition, the court held that the applicant should have realised that his failure to hand over his Israeli passport might lead to a breach of the obligations imposed by the decision of the HACC of 29 November 2019. It found as a result that the applicant had breached his obligation to hand over all international travel documents that would enable him to cross the State border.

25. When examining the question of the forfeiture of the bail deposit, the court referred to the provisions of the CCP, which provided that if a suspect breached his or her obligations, bail was to be forfeited. It also observed that the applicant had been found to have breached only one out of several obligations imposed on him by the decision of the HACC of 29 November 2019. In that connection the court considered that the forfeiture of half of the bail would be a proportionate measure in the applicant's case. Lastly, the court examined the investigator's request to increase the amount of bail and observed that the amount previously set had proved to be insufficient to ensure that the applicant would properly fulfil his obligations. The court decided to increase the amount of bail to UAH 76,598,362 (EUR 2,550,000).

26. The parties did not inform the Court as to whether the applicant had paid the increased amount of bail. It appears from publicly available information that it was paid on 21 April 2020.

27. On 24 June 2020 the applicant applied to the Office of the Prosecutor General, seeking a criminal investigation in respect of the President of Ukraine for abuse of power. According to the applicant, at the end of 2020 the Prosecutor General refused to launch such a criminal investigation, referring to Article 105 of the Constitution of Ukraine, which provides that no criminal proceedings can be launched against the President of Ukraine while he or she is in office.

28. According to publicly available information, on 12 October 2023 the HACC, acting as a trial court, terminated the criminal proceedings against the applicant owing to the expiry of the relevant time-limit. The appeal proceedings against the above-mentioned decision are pending.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. 1996 CONSTITUTION OF UKRAINE

29. Article 105 § 1 of the Constitution of Ukraine provides that the President of Ukraine enjoys the right to immunity (*недоторканність*) during his or her term of office.

On 10 December 2003 the Constitutional Court gave an official interpretation of Article 105 § 1 of the Constitution of Ukraine in case no. 1- 17/2003, holding that the immunity (*недоторканність*) under this provision means that the President of Ukraine could not be held criminally responsible and that criminal proceedings could not be brought against him or her during his or her term of office.

II. CODE OF CRIMINAL PROCEDURE OF UKRAINE

1. *Bail*

30. Article 182 § 4 requires that, when setting bail, the courts must take into account the circumstances of the offence to which the charge pertains, the financial and family situation of the defendant, other information concerning his or her character and the risks which the bail is designed to prevent. The amount of bail must guarantee the defendant's compliance with his or her procedural obligations and not be patently excessive (*завідомо непомірним*) for the defendant.

31. Article 182 § 5 lays down ranges for the bail to be set according to the level of seriousness of the offence. The ranges are set out as multiples of the minimum wage. For “particularly serious” offences like in the present case (see paragraph 12 above), bail must be set in an amount between eighty and three hundred times the minimum wage. At the relevant time the latter amount was the equivalent of approximately EUR 23,800.

However, Article 182 § 5 also provides that “in exceptional cases” (*у виключних випадках*) the judge can set a higher amount of bail for a

defendant accused of a “serious” offence where the judge finds that ordering an amount of bail within the range set by law might not ensure the defendant’s compliance with his or her procedural obligations.

32. Article 182 § 8 of the CCP provides that if a suspect or an accused breaches the obligations imposed on him or her by a court in the course of the application of a preventive measure, the bail amount paid may be forfeited to the State.

2. Arrest without a court order

33. Article 208 of the CCP authorises arrests without a prior court order in the following circumstances and makes them subject to the following requirements:

“1. [In the absence of a court order, a] competent official shall be entitled to arrest a person suspected of having committed an offence punishable by imprisonment, only in the following cases:

(1) if the person has been caught whilst committing or attempting to commit an offence; or

(2) if immediately (*безпосередньо*) after a criminal offence, statements by an eyewitness or victim or [a combination] of clear signs on the body, clothing or at the scene indicate that the person has just committed an offence; or

(3) if there are reasonable grounds to believe that a person suspected of a serious corruption offence being investigated by the NABU may abscond;

...”

3. Domestic court practice

34. On 1 October 2020 the Pecherskyi District Court of Kyiv delivered a decision taken within the framework of civil defamation proceedings instituted by a City Mayor against the President of Ukraine. The court examined the plaintiff’s claims seeking protection of his honour, dignity and business reputation, and refutation of the untruthful information allegedly disseminated by the President of Ukraine. Having examined the circumstances of the case, the court found the claims to be unsubstantiated and refused them (case no. 757/21708/20-ц). The above decision was upheld on appeal on 25 November 2020.

In other civil defamation proceedings, on 13 May 2020 the Pecherskyi District Court of Kyiv allowed the plaintiff’s claims and found an information disseminated by the President of Ukraine regarding the plaintiff to be false and damaging to his honour and dignity (case no. 757/1495/19-ц). On 28 October 2020 the Kyiv Court of Appeal quashed that decision and found that the plaintiff’s claims were unsubstantiated. On 22 December 2021 the Supreme Court upheld that decision.

In neither proceeding did the defendant argue that the President of Ukraine enjoyed the right to immunity against civil claims under Article 105 of the Constitution of Ukraine.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

35. The applicant complained that his arrest on 27 November 2019 without a prior court order had been in breach of the requirements of domestic law. He further complained that the HACC had not provided sufficient reasoning when ordering his detention on 29 November 2019 and, in particular, had set bail at an amount that had been excessive and disproportionate to his financial situation. He also complained that the increase in the amount of bail on 16 April 2020 had not been justified. Lastly, the applicant complained that he had not had an effective and enforceable right to compensation for the alleged violations outlined above. The applicant referred to Article 5 §§ 1, 3 and 5 of the Convention, which read 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.

...

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Article 5 § 1

Admissibility

36. The Government submitted that the applicant had failed to comply with the six-month rule in respect of his complaint that he had been arrested without a prior court order on 27 November 2019, in view of the application having been lodged on 29 August 2020. The Government also argued that the

applicant had failed to exhaust domestic remedies as he had not raised the issue of the alleged unlawfulness of his arrest before the domestic courts.

37. The applicant argued, with reference to *Saakashvili v. Georgia* ((dec.) nos. 6232/20 and 22394/20, §§ 46-59, 1 March 2022), that he had complied with the six-month rule. He further submitted that he had indeed raised a complaint about his arrest without a prior court order during the court proceedings regarding his detention on 29 November 2019.

38. The Court does not find it necessary to deal with the Government's objections, as it considers that this part of the application is anyway inadmissible for the following reasons.

39. It is well established in the Court's case-law on Article 5 § 1 that all deprivation of liberty must not only be based on one of the exceptions listed in sub-paragraphs (a) to (f) but must also be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. This primarily requires any arrest or detention to have a legal basis in domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention (see *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013).

40. As regards the applicant's complaint that his arrest without a prior court order was unlawful, the Court observes that the arrest was carried out in accordance with Article 208 § 1(3) of the CCP. His situation did not fall within the scope of an arrest *in flagrante delicto* regulated by Article 208 §§ 1 and 2 of the CCP, but instead could be seen as somewhat similar to the one examined in *Trofymenko v. Ukraine* ([Committee], no. 18444/18, §§ 15-19, 4 May 2023).

41. The Court notes that Article 208 § 1(3) of the CCP permits a suspect's arrest without a prior court order in the context of criminal proceedings concerning allegations of serious corruption where there is a risk of the suspect absconding.

42. In the present case, the Court observes that the applicant was suspected of being involved in large-scale smuggling, corruption and abuse of power. The Court also notes that a number of obligations had already been imposed on the applicant in the context of another investigation (see paragraph 7 above) precisely because of a risk of him absconding. Moreover, the facts set out in the investigator's application of 28 November 2019 for the applicant's detention, in particular the fact that he was not reachable when the investigator had come to the applicant's home on 26 November 2019 (see paragraphs 8 and 9 above), taken into account in the judicial decision of 29 November 2019 (see paragraphs 12 and 14 above), demonstrate that the authorities had sufficient reasons to believe that the applicant might abscond from the investigation.

43. The above considerations and the applicant's failure to provide relevant substantiation in support of his complaint do not persuade the Court that the applicant's arrest without a prior court order on 27 November 2019 was unlawful or arbitrary.

44. It follows that this part of the application is unsubstantiated and must be declared inadmissible, pursuant to Article 35 §§ 1, 3 (a) and 4 of the Convention.

B. Article 5 § 3

Admissibility

45. The Government submitted that the courts' decisions regarding the applicant's detention and setting the amount of bail had been well reasoned. The applicant maintained his complaint.

46. The applicable general principles regarding the justification of a suspect's detention and the determination of the amount of bail are set out in *Korban v. Ukraine* (no. 26744/16, §§ 154-57, 4 July 2019), *Mangouras v. Spain* ([GC], no. 12050/04, §§ 78-81, ECHR 2010), and *Istomina v. Ukraine*, (no. 23312/15, §§ 25-26, 13 January 2022). In particular, the amount of bail must be set principally by reference to the accused, his or her assets and his or her relationship with the persons who are to provide the security, in other words to the degree of confidence that is possible that the prospect of loss of the security or of action against the guarantors in the event of his or her non-appearance at the trial will act as a sufficient deterrent to dispel any wish on his or her part to abscond (see *Gafà v. Malta*, no. 54335/14, § 70, 22 May 2018).

47. The Court notes that the applicant's complaint under Article 5 § 3 regarding the lack of justification for his detention concerns principally the period from 27 November to 2 December 2019, which was authorised by the decision of the HACC of 29 November 2019 (see paragraph 14 above). Despite the short period of the applicant's actual detention, the Court reiterates that the justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 87, 5 July 2016).

48. Although the reasons advanced by the HACC in its decision might seem to be laconic, they essentially referred to the detailed submissions of the investigator who initiated the proceedings for the applicant's detention (see *Ugulava v. Georgia*, no. 5432/15, § 101, 9 February 2023).

49. The Court observes that in the application for the applicant's detention, the investigator relied on the risk of the applicant absconding or interfering with the investigation by concealing evidence or influencing witnesses (see paragraph 12 above). In the Court's view, the investigator's arguments in favour of the applicant's detention, which were relied upon by

the HACC in its decision, were relevant and sufficient to justify the applicant's detention at the very beginning of the investigation.

50. As regards the lawfulness of the amount of bail set by the decision of the HACC of 29 November 2019, the Court observes that under Article 182 § 5 of the CCP (see paragraph 31 above) amounts exceeding the relevant maximum could be imposed in "exceptional cases". Under Article 5 § 3 of the Convention, the domestic court was expected to demonstrate the "exceptional" character of the case (see *Istomina*, cited above, §§ 19 and 31) and the Court sees no reason to doubt that this has been complied with in the present case.

51. The Court further observes that the domestic court did make an assessment of the applicant's ability to pay the required sum proposed by the NABU investigator (see paragraph 12 above) and provided justification for its decision (see paragraph 15 above). It recalls that an accused whom the judicial authorities declare themselves prepared to release on bail must faithfully submit sufficient information, which can be checked if need be, about the amount of bail to be set (see *Toshev v. Bulgaria*, no. 56308/00, § 68, 10 August 2006, and *Iwańczuk v. Poland*, no. 25196/94, § 66, 15 November 2011).

52. The Court refers to the HACC findings that the applicant had failed to refute the NABU investigator's submissions regarding his assets (see paragraph 15 above). Nor did he demonstrate, in the proceedings before the Court, that he had provided the authorities with the required information about his financial situation in order for the HACC take it into account when setting bail. The Court also notes that the HACC reduced the amount of bail sought by the investigator to the amount it deemed to be sufficient to ensure the applicant's proper conduct during the proceedings and without it being excessive (*ibid.*). Lastly, the bail was paid on 2 December 2019, three days after it had been set, and the Court notes in this connection that the applicant submitted no information indicating that he had suffered from any undue hardship in finding the bail money. The foregoing circumstances do not disclose a failure by the domestic court to set bail at an amount complying with the requirements of Article 5 § 3.

53. As regards the complaint concerning the decision of the Appeal Chamber of the HACC of 16 April 2020 to increase the amount of bail (see paragraph 24 above), the Court observes, in addition, that there is no evidence that the applicant had been placed in detention on the basis of the above-mentioned court decision or following a failure on his part to comply with the new bail conditions and the applicant has not substantiated any undue hardship in finding the additional bail money.

54. 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.

C. Article 5 § 5

55. The Court reiterates that paragraph 5 of Article 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 of that Article (see *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court.

56. Accordingly, the Court cannot consider an applicant's claim based exclusively on Article 5 § 5 unless a breach of Article 5 §§ 1 to 4 has been established directly or in substance, either by the domestic authorities or by the Court itself. It follows that as the applicant's case does not disclose such a breach, his claim under Article 5 § 5 should be rejected as being incompatible *ratione materiae* with the provisions of the Convention.

57. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

58. The applicant complained that public statements made by the President of Ukraine and publications by the media quoting those statements had infringed his right to presumption of innocence and damaged his reputation. He further complained that he had not had effective domestic remedies in respect of the above complaints. The applicant relied on Article 6 § 2 and Articles 8 and 13 of the Convention. The Court considers that the above complaints fall to be examined solely under Article 6 § 2 of the Convention, which reads as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

Admissibility

1. *The parties' submissions*

59. The Government argued that the applicant had failed to comply with the six-month rule in respect of his complaint under Article 6 § 2, as the disputed statements had been posted on Facebook on 26 November 2019, whereas the application had been lodged on 29 August 2020.

60. They further submitted that the applicant had failed to exhaust domestic remedies regarding the above complaint as he had not raised that issue either in the course of the criminal investigation in respect of him or in the context of civil proceedings. They argued that it was open to the applicant to bring defamation proceedings, which, according to the Court's case-law,

was considered to be an effective remedy in respect of complaints regarding a breach of the right to presumption of innocence.

61. The applicant contested the Government's objections regarding his complaint under Article 6 § 2 and argued that he had complained to the Prosecutor General of Ukraine on 24 June 2020 asking for criminal proceedings to be brought against the President of Ukraine for abuse of power. In his view, he had not missed the time-limit as the "final decision" for the purposes of exhaustion of domestic remedies had not been taken until the end of 2020, when the Prosecutor General of Ukraine had refused to bring criminal proceedings against the President of Ukraine with reference to Article 105 of the Constitution of Ukraine. The applicant submitted that using the above-mentioned remedy could have been the most powerful sanction for the protection of his rights in terms of its consequences for the offender. In addition, he submitted that while the ineffectiveness of the above-mentioned remedy had become evident at the end of 2020, he should not be "punished" for using it.

62. Lastly, the applicant stated that he had not been obliged to use the alternative remedy suggested by the Government, namely a civil-law remedy, in the course of the criminal proceedings against him.

2. *The Court's assessment*

63. In order to determine whether the six-month rule was complied with, the Court must examine whether the applicant had an effective domestic remedy at his disposal and whether he used it.

64. The relevant principles of the Court's case-law concerning the rule of exhaustion of domestic remedies are set out in *Mocanu and Others v. Romania* ([GC], nos. 10865/09 and 2 others, §§ 220-26, ECHR 2014 (extracts)).

65. In addition, the Court has held that Article 35 § 1 requires that the complaints intended to be made subsequently before it should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, furthermore, that any procedural means that might prevent a breach of the Convention should have been used. Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

66. The Court will first examine the applicant's argument that the criminal complaint against the President of Ukraine was an effective domestic remedy.

67. In his submissions the applicant stated that his criminal complaint against the President of Ukraine had been rejected with reference to Article 105 of the Constitution of Ukraine, which prohibits criminal prosecution of the President of Ukraine during his term of office. In the

Court's view, it should have been clear from the outset, if not for the applicant himself then for his defence lawyers at the domestic level, that the applicant's criminal complaint against the President of Ukraine would not have had any prospect of success.

68. In the light of the foregoing, the Court considers that the applicant failed to substantiate how the remedy used by him could have been considered effective, and to demonstrate that he had therefore not been required to use the other remedies that had been available to him, in order to comply with the requirements of Article 35 § 1 of the Convention.

69. The Court further observes that in *Shagin v. Ukraine* (no. 20437/05, §§ 71-72, 10 December 2009) and *Dovzhenko v. Ukraine* (no. 36650/03, § 42, 12 January 2012) it found that a complaint of a breach of the right to presumption of innocence brought by the applicant in the course of the criminal proceedings against him or her at the domestic level was considered to be an effective domestic remedy. It further held in *Rytikov v. Ukraine* (no. 52855/19, § 44, 23 May 2024) that in Ukraine a civil-law remedy could, in principle, be an effective way of addressing a complaint relating to allegedly prejudicial statements made in respect of ongoing criminal proceedings, either alone or in combination with a criminal-law remedy.

70. In this connection the Court takes note of the domestic courts' practice in the context of defamation proceedings against the President of Ukraine which shows that the courts were competent to examine the merits of the claimant's claims and delivered reasoned decisions (see paragraph 34 above). It furthermore takes note of the interpretation given by the Constitutional Court regarding the scope of immunity enjoyed by the President of Ukraine (see paragraph 29 above).

71. As the applicant did not submit any argument to the contrary, the Court cannot speculate on the prospect of success of the criminal-law and the civil-law remedies mentioned above, if he had used them in his case, and considers that even if he had doubts about their effectiveness, he was required to try at least one of them. The existence of mere doubts as to the prospects of success of a particular remedy that is not obviously futile is not a valid reason for failing to exhaust that avenue of redress.

72. The above considerations are sufficient to conclude that the applicant failed to exhaust the effective domestic remedies available to him in respect of his complaint under Article 6 § 2 of the Convention. This part of the application must therefore be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

73. The applicant complained that the forfeiture of part of the bail following the decision of the Appeal Chamber of the HACC of 16 April 2020

had been unlawful and disproportionate, in breach of Article 1 of Protocol No. 1 to the Convention which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

74. The Court notes that the above complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

75. The applicant argued that he had not breached his obligation to hand over his foreign passport as he had lost it and that the court had failed to properly take that aspect into account when taking its decision to his detriment.

76. The Government submitted that the forfeiture of part of the bail had been a lawful and proportionate measure and that the domestic court had thoroughly examined the circumstances of the case. The applicant had failed to submit evidence that he had indeed lost his passport before 29 November 2019, and the certificate issued by the Israeli Embassy had only indicated the date on which the passport had been cancelled. In these circumstances the domestic court had reasonably considered that the applicant was to hand over his Israeli passport as part of the obligations imposed on him by the decision of 29 November 2019. When determining the amount of bail to be forfeited, the domestic court had carried out the necessary assessment and had made a reasonable decision, which had been lawful and proportionate in terms of both the domestic legislation and the Convention.

2. The Court's assessment

77. It is not in dispute between the parties that the forfeiture of part of the bail constituted an interference with the applicant's right to the peaceful enjoyment of his possessions. Having regard to its case-law on the matter (see, for example, *Lavrechov v. the Czech Republic*, no. 57404/08, § 43, ECHR 2013), the Court sees no reason to hold otherwise.

78. The parties also agreed that the forfeiture of part of the bail had had a legal basis in the domestic law; namely, it had been based on Article 182 § 8

of the CCP (see paragraph 32 above). Although it may appear that the latter provision is formulated in broad terms and could thus create an impression of a lack of clarity, the domestic court appeared to have eliminated all possible uncertainty by carrying out a thorough analysis of the circumstances and providing substantial reasoning for its decision (see paragraphs 24-25 above).

79. The Court further considers that the above-mentioned measure pursued the legitimate aim of ensuring the proper conduct of criminal proceedings and, more generally, of fighting and preventing crime, which falls within the general interest as envisaged in Article 1 of Protocol No. 1 (see *Lavrechov*, cited above, § 46).

80. It remains to be determined whether a fair balance was struck between the demands of the general interest and the requirements of the protection of the applicant's property rights.

81. The Court first notes that the forfeited part of the bail, amounting to approximately EUR 1,165,000, is a substantial amount of money.

82. The bail was forfeited in the present case owing to the fact that the applicant breached the obligations imposed on him as part of his bail conditions, by failing to hand over all international travel documents that could have enabled him to cross the State border. Ensuring the applicant's proper conduct by preventing him from absconding, the risk of which had been considered serious in the light of the events that had preceded his arrest on 27 November 2019 (see paragraph 9 above), was a matter of very significant importance, having regard to the nature of the charges that were pending against the applicant at the material time (see paragraph 6 above).

83. Regarding the applicant's allegation that the investigative authorities created a pretext to bring proceedings for the forfeiture of the bail, the Court refers to the findings of the Appeal Chamber that the applicant had used his Israeli passport until at least 11 November 2019 and that he had failed to prove that he had lost it before the decision of 29 November 2019 had been taken (see paragraph 24 above).

84. The Court reiterates that it is not its task to take the place of the domestic courts, which are in the best position to assess the evidence before them, establish facts and interpret domestic law. The Court should not act as a court of fourth instance and will not therefore question the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, *mutatis mutandis*, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015).

85. In this regard, the Court observes that the forfeiture of the bail was the result of fully adversarial proceedings during which the applicant was able to present his arguments. The domestic courts carefully scrutinised the pertinent issues and the Appeal Chamber reasoned its decision comprehensively (see paragraphs 24 and 25 above). In particular, the Court sees no reason to disagree with the domestic court's findings that the applicant should have realised that failure to hand over all international travel documents that would

enable him to cross the State border would potentially lead to a breach of the obligations set by the above-mentioned decision. The applicant was therefore reasonably expected to do everything possible to convincingly demonstrate that he had fulfilled in good faith all the obligations set on him.

86. As regards the amount of bail that was forfeited, the Court observes that the Appeal Chamber made a thorough assessment of the above-mentioned issue and provided sufficient reasons for its decision, having weighed the breach found against the relevant background and having specifically limited the forfeiture to half of the amount of the bail, for reasons of proportionality.

87. Having regard to the above considerations, the Court considers that the decision to forfeit part of the applicant's bail did strike a "fair balance" between the demands of the general interest of the community and the requirements of the applicant's rights in the circumstances of the case.

88. There has accordingly been no violation of Article 1 of Protocol No. 1.

IV. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

89. The applicant complained that his Convention rights under Articles 5, 6 and 8 of the Convention and Article 1 of Protocol No. 1 had been restricted for purposes other than those prescribed in the Convention. Article 18 reads as follows:

"The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

Admissibility

90. The Government submitted that the applicant's allegations were unsubstantiated since the authorities had acted in accordance with the domestic law with a view to subjecting him to criminal responsibility and in the context of the criminal investigation against him. They further stressed that there had been no violation of the applicant's rights as alleged by him.

91. The applicant argued that all the alleged breaches of his Convention rights examined above had principally pursued populist purposes, namely with a view to demonstrating the authorities' actions to combat corruption and organised crime, on the direct initiative of the President of Ukraine.

92. The general principles concerning the interpretation and application of Article 18 of the Convention were established in *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 287-317, 28 November 2017) and have subsequently been confirmed in *Navalnyy v. Russia* ([GC], nos. 29580/12 and 4 others, §§ 164-65, 15 November 2018).

93. The Court notes that it has found no violation of the applicant's rights under Article 1 of Protocol No. 1 to the Convention, and that the remaining complaints have been declared inadmissible.

94. In the present case, the Court notes that the purpose of the applicant's arrest was to bring him before a competent judicial authority in the context of the criminal investigation in respect of him and that the forfeiture of part of the bail took place as a result of his breaching the obligations imposed on him by the relevant court decision. Regarding the applicant's assertion that the alleged breaches of his Convention rights had occurred in the context of the authorities' actions to combat corruption and organised crime, the Court does not consider that this argument alone proves "beyond reasonable doubt" the existence of an ulterior motive.

95. In the absence of any evidence or further substantiation showing that, in prosecuting the applicant, the authorities pursued a purpose not prescribed by the Convention, the matters complained of do not disclose any appearance of a violation of Article 18 of the Convention. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35§§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention concerning the forfeiture of bail admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 10 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Mattias Guyomar
President