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

# FIFTH SECTION

# DECISION

Application no. 34967/17
Roman Oleksiyovych DOVGYY
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 7 November 2024 as a Committee composed of:

Andreas Zünd, President,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Martina Keller, Deputy Section Registrar,

Having regard to:

the application (no. 34967/17) 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 Roman Oleksiyovych Dovgyy ("the applicant"), on 5 May 2017, who was born in 1980 and lives in Kharkiv, and was represented before the Court by Mr N.S. Kulchytskyy, a lawyer practising in Kyiv;

the decision to give notice of the complaints set out in paragraph 1 below to the Ukrainian Government ("the Government"), represented by their Agent, Ms M. Sokorenko;

the parties' observations;

the information given to the Government that the case was assigned to a Committee, and after having considered the Government's objection, the decision to reject it.

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint under Article 5 § 1 of the Convention that his arrest without a prior court order had been unlawful, under Article 5 § 3 that his complaints about the unlawfulness of that arrest had not been duly examined, and under Article 5 § 5 that he did not have an enforceable right to compensation in respect of these complaints. The

applicant also complained that the Deputy Prosecutor General's post on Facebook of 26 December 2016 had breached his presumption of innocence under Article 6 § 2 of the Convention.

2. Between April 2013 and April 2016, the applicant held the position of Deputy Director for Strategy and Marketing in a State-owned company E.

3. On 28 February 2015 the National Anti-Corruption Bureau of Ukraine ("the NABU") initiated criminal proceedings against the applicant on charges of abuse of office.

4. On 8 November 2016 the NABU informed the applicant of the charges against him.

5. On the same date, at 9.20 a.m., the applicant was arrested under Article 208 § 1 (3) of the Code of Criminal Procedure, which allows arrest without a prior court order in cases where there are reasonable grounds to believe that a person suspected of a serious corruption offence being investigated by the NABU may abscond. The applicant was informed of the grounds for his arrest and of his rights.

6. On 9 November 2016 the NABU lodged an application with the Kyiv Solomyanskyi District Court seeking to have the preventive measure of pre-trial detention imposed on the applicant on two grounds. First, they argued that the applicant's detention was necessary to prevent him from absconding given the fact that he had a valid passport to travel abroad which he had used many times in the period between 2012 and 2016, which indicated that he had financial, organisational, person and business means for leaving Ukraine and thus hindering the conduct of the proceedings into a serious property offence. Moreover, a co-suspect in the case was at large and living abroad. Secondly, NABU argued that the detention was necessary to prevent the applicant from hiding or distorting evidence, putting pressure on witnesses, obstructing criminal proceedings in other ways, and reoffending. Should the court be unwilling to order pre-trial detention, the NABU proposed that financial bail and several restrictions be imposed on the applicant.

7. On 10 November 2016 the applicant applied to the District Court with a request to, *inter alia*, recognise that his arrest and detention were unlawful and to order his immediate release.

8. On the same day, the District Court considered the complaint together with the NABU's request for the applicant's pre-trial detention. It found that NABU had not shown the existence of a risk of absconding. However, there were facts and information showing the existence of a reasonable suspicion that a criminal offence had been committed and there was a risk that the applicant might have some influence on witnesses and other suspects, which justified the imposition of preventive measures. At the same time, the court did not consider that detention was necessary to counteract those risks and so the applicant was released on bail.

9. On 14 November 2016 the Prosecutor General's Office of Ukraine lodged an appeal against the District Court's decision with the Kyiv City Court of Appeal.

10. On 26 December 2016, the Deputy Prosecutor General – Head of the Specialised Anti-Corruption Prosecutor's Office posted a text on Facebook concerning the "completed pre-trial investigation in the criminal proceedings against officials of the Kharkiv enterprise of the State-owned company E, who, abusing their official position, caused grave consequences for the State". The post stated, among other things, that "according to the results of the investigation, a former deputy director of the company for strategy and marketing, who was one of the main participants in the criminal conspiracy, was prosecuted on the grounds of a crime committed under part 2 of Article 364 of the Criminal Code of Ukraine".

11. On 27 December 2016 the Prosecutor General's Office indicted the applicant in the Kharkiv Ordzhonikidzevskyy District Court on charges of abuse of office.

12. On 5 January 2017 the Kyiv City Court of Appeal dismissed the prosecutor's appeal of 14 November 2016 and upheld the District Court's decision of 10 November 2016 (see paragraphs 8-9 above). It follows from the Court of Appeal's decision that the applicant and his lawyer had asked that the District Court's decision be upheld.

13. It appears that the criminal proceedings are still pending.

## THE COURT'S ASSESSMENT

14. The Government contested the admissibility and merits of the complaints set out in paragraph 1 above.

### I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

#### A. Arrest without a prior court decision

15. While in several judgments against Ukraine the Court has found violations of Article 5 § 1 on account of arrests effected by investigation authorities without a prior court order under the relevant domestic legal provisions concerning situations of urgency (see, for instance, *Strogan v. Ukraine*, no. 30198/11, §§ 88-89, 6 October 2016; *Korniychuk v. Ukraine*, no. 10042/11, §§ 48-52, 30 January 2018 – regarding arrests under the 1960 Code of Criminal Procedure; and *Grubnyk v. Ukraine*, no. 58444/15, §§ 74-85, 17 September 2020 – regarding arrest under Article 208 § 1 (1) and (2) of the 2012 Code), those findings are not applicable to the present case. The applicant was arrested under the provision which did not involve any requirements of urgency but required that an arrest be made in the context of

criminal proceedings concerning allegations of serious corruption and that there be a risk of absconding.

16. There is no indication that those conditions were not met in the present case. In particular, as to the risk of absconding, the authorities cited several specific circumstances justifying the existence of that risk (see paragraph 6 above; and compare *Trofymenko v. Ukraine* [CTE], no. 18444/18, § 17, 4 May 2023). In so far as the Kyiv Solomyanskyi District Court subsequently disagreed with the NABU's initial assessment regarding the applicant's deprivation of liberty on the grounds of a risk of absconding, an issue of "lawfulness" within the meaning of Article 5 § 1 would arise only if there was a "gross and obvious irregularity" in the applicant's arrest rendering the deprivation of liberty *ex facie* invalid. The Court does not find this to be the case in the present case (compare, for instance, *Hađi v. Croatia*, no. 42998/08, §§ 28-35, 1 July 2010).

17. It follows that the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### B. Review of the lawfulness of the arrest

18. The Court notes that according to the materials available in the file the applicant did not lodge an appeal or otherwise raise any issue with the Kyiv City Court of Appeal regarding the alleged deficiencies in the District Court's examination of his case, although he had an opportunity to do so (see paragraph 12 above).

19. The applicant's complaint under Article 5 § 3 must therefore be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

### C. Right to compensation

20. Article 5 § 5 presupposes that a violation of one of the paragraphs of Article 5 has been established, either by a domestic authority or by the Court. In the present case, in the absence of any explicit finding of unlawfulness of the applicant's deprivation of liberty by the domestic courts and having regard to the Court's findings in paragraphs 17 and 19 above, the applicant's complaint under Article 5 § 5 of the Convention is inadmissible (see, for instance, *Osmayev v. Ukraine* (dec.), no. 50609/12, §§ 80-81, 30 June 2015) and must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

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

21. The Court notes, firstly, that the applicant has not claimed that he used a criminal-law remedy in respect of his complaint under Article 6 § 2, namely raising the issue in the course of the criminal investigation. The applicant also did not use any civil-law remedy in that respect, which in Ukraine may, 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 (see *Rytikov v. Ukraine*, no. 52855/19, §§ 42 and 44, 23 May 2024, with further references).

22. In these circumstances, having failed to raise the issue about the alleged breach of his presumption of innocence through either a criminal-law or a civil-law remedy, the applicant's complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 28 November 2024.

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| Martina Keller<br>Deputy Registrar | Andreas Zünd<br>President |